

Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings –
safeguards for requested persons

Lithuania,

2022

Contractors: Lithuanian Centre for Social Sciences

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EXECUTIVE SUMMARY

Right to information

The **right to information is enshrined in the Code of Criminal Procedure (the CCP)**. This right is applicable to the EAW proceedings, which are regulated by the CCP. It states that procedural rights must be explained to the participants of proceedings and their exercise should be ensured. However, **the CCP does not mention what rights must be explained to the requested person**. According to the CCP requested persons are to be served a Letter of Rights, which is available in Lithuanian and other more commonly used languages. As regards the speciality rule, under the CCP, a person surrendered to Lithuania cannot be detained, prosecuted, and sentenced for an offence committed prior to their surrender other than that for which they were surrendered. **The CCP does not establish a special procedure for challenging failure to provide EAW-related information about procedural rights**. Nor does it establish specific consequences for failure to provide information about the EAW or the requested person's procedural rights.

The interview data allow us to conclude that **arrested persons are informed about their rights upon arrest**. The same applies for information **about EAW's content and procedures**. Besides being handed a Letter of Rights, **requested persons are always informed about their rights, EAW'S content, and procedure orally**. Usually, this information is provided by prosecutors. Requested **persons are informed about what consenting to surrender entails and the speciality rule is explained separately**. However, some interviewed professionals considered that **arrested persons are not always informed properly**. Most of the interviewed professionals claimed that **requested persons understand the information provided to them**. According to some interviewed lawyers, responsible authorities, especially general prosecutors, also take care and make sure persons understand it. However, **problems might occur when requested persons speak less well-known languages**. Finally, bureaucratic paperwork may delay the process of providing the arrested person with important information on time.

Right to interpretation and translation

Under the CCP, participants of criminal proceedings who do not speak Lithuanian have the right to use their native language or another language they know throughout the proceedings, and they **have a right to be assisted by an interpreter**. However, it is up to the investigating officer, prosecutor or court dealing with the person to determine in "the shortest possible time" whether translation is necessary to ensure that the person properly exercises their rights and understands the proceedings. However, **no specific procedure for determining whether the translation is necessary is established in law**. Nevertheless, efforts to provide translation services are made and translation is available when needed. The courts and police have funding for translators, and there are English and Russian translators working full-time in some of the courts. Translators are hired through public procurement. The right to a translator is assessed by officials that carry out procedural steps, but **written translation is not always provided**. Problematic issues regarding the right to translation and interpretation also include 1) **the availability of translation (*inter alia* ensuring the translation from/into less common languages)**; 2) **time-pressure of the EAW procedure** as finding the translator prolongs the EAW procedure itself; 3) **the lack of criteria under which the quality and the need for translation is assessed**; 4) **the quality of the remote translation** (especially during the pandemic); and 5) **no established formal procedure to challenge failure to provide interpretation or translation**.

Right to access to a lawyer

Under the CCP, the participation of a defence **lawyer for the requested person is mandatory in the proceedings**, when Lithuania is the executing Member State. If the requested person has not hired a lawyer, a legal aid lawyer must be hired from the State-Guaranteed Legal Aid Service. The **right to a lawyer arises from the moment of the first apprehension**, under the Lithuanian Constitution. The requested person also has the right to request that a lawyer be appointed for them in the issuing Member State. When Lithuania is the Issuing Member State, and the requested person asks for a lawyer in Lithuania for the EAW execution procedure, the institution issuing the EAW must provide the requested person with information on how to exercise their right to a lawyer in Lithuania, including the right to legal aid. There are **no special provisions on legal aid for requested persons in other Member States**, thus regular rules under the law on legal aid are applicable. The CCP includes **no special legal regulation or guidance on lawyers' cooperation in the executing and the issuing Member States**. Similarly, there is **no special procedure to challenge failure to provide access to a lawyer**.

Respondents of all professional groups emphasised that **requested persons are informed about their right to be assisted by a lawyer free of charge** in Lithuania both orally and in written form usually by the prosecutor or whoever has the first contact with the person. **No remedies are available in Lithuania when a requested person is not informed about their right to dual legal representation**. However, some interviewees considered that a general complaint can be submitted.

Regarding legal assistance in the executing state, if a person is detained, they can find a lawyer either by themselves, with the help of family member or their country's consulate. Requested persons are not given access to the internet, they do, however, have the right to one phone call. Authorities do not provide a list of possible lawyers. If the requested person cannot find a lawyer, then a lawyer is automatically appointed by the authorities. Persons arrested on the basis of an EAW can meet and consult their lawyers in person at various stages of the procedure.

Regarding legal assistance in the issuing state: most interviewed **defence lawyers agreed that this right exists and is practised**, while **most interviewed prosecutors and judges were not aware that arrested persons could benefit from this right**. The responses on this matter were rather vague. Regarding the collection of additional evidence on the merits of the case, some of the interviewed defence lawyers said they believed it is done, but they were not able to specify. The vagueness of these answers might indicate that practising these rights still need to be developed. Regarding the ways in which a person can choose and get in contact with a lawyer in the issuing Member State in practice, some interviewees **emphasised the importance of digital tools**. Otherwise, the person can be helped to find a lawyer by relatives or by their country's diplomatic institution.

Respondents of various professional backgrounds described **communication between lawyers in both states as challenging**. It takes time to find a lawyer in an issuing state. The mutual recognition of decisions on the execution of the EAW is a further highlighted problem. Possible interventions that can be made by lawyers in different states include sending additional evidence to the issuing state. Lawyers in the issuing state may gather additional evidence as to the merits of the case.

Issuing and execution of the EAW – factors considered

Judges and prosecutors expressed diverging attitudes on the proportionality issue. Most of the interviewed defence lawyers claimed that proportionality is either **often overlooked or not assessed** and the issue of proportionality may be **taken into account only if the defence lawyer raises it and provides necessary evidence**. Most of the interviewed defence lawyers stated that judicial **authorities**

often take a rather formal approach and do not consider proportionality on their own initiative. Lawyers claimed that proportionality can be taken into consideration when the arrested person agrees to appear before the court of the requesting country without implementing EAW. In such case, a person goes freely and then s/he can challenge the EAW, but in the meantime the EAW is still active. Moreover, one lawyer still **expressed criticism of judicial authorities** involved in the EAW process (namely judges and prosecutors) and claimed that it is only if the defence lawyers raise the proportionality issue first and provides evidence, that it might then be taken into account. **Judges stated that proportionality is not the most significant factor, they called it a subjective factor and stressed the importance of the duration of time left until the sentence is served. Prosecutors on the contrary claimed that proportionality is the key factor and that the main principles of the EAW are cost-effectiveness and proportionality.**

Regarding factors that are considered when issuing the EAW, interviewed defence lawyers, judges and prosecutors stated that **formal factors are taken into account: legal qualifications and the possibility of extraditing a person for a criminal claim.** Other factors Lithuanian authorities take into account include conditions laid down by law on **whether or not that person may be extradited, whether there are any obstacles to that, or whether it is a crime or an administrative offence.** The **length of the sentence** is also a factor taken into consideration.

The **issue of EAW can be theoretically challenged on the basis of proportionality concerns** and such arguments would be considered by the courts. If the person disagrees with the decision and the facts are in their favour, then it is only on that basis that one can ask for the warrant not to be executed. Moreover, all procedural actions, beginning with the pre-trial investigation can be appealed i.e. any action or inaction by the investigators, prosecutors, and judges can be appealed, and based on these provisions a requested person could 'theoretically' also challenge the issuing of an EAW.

According to the lawyers, **the court procedures are very formal when executing the EAW, and enforcement authorities usually simply comply with the formal request** However, one lawyer claimed that **the authorities can get in touch with the authorities of the issuing Member State to discuss the possibilities to withdraw the EAW and possibly use other measures if they have reasonable concerns.**

Lawyers, judges and prosecutors claimed that the authorities in Lithuania **do not always take into account or assess conditions of detention** in other countries unless the defence lawyer or the persons themselves raise such an issue and provide necessary facts and evidence. **It is more usual for Lithuanian authorities to receive questions about detention conditions in Lithuania than vice versa.**

Lithuanian judicial institutions **have access to sufficient and reliable data regarding conditions of detention** in the EU and other countries. When assessing the conditions of detention or imprisonment in the Member State issuing the EAW, authorities rely on available sources such as **articles in the press, official reports, databases, as well as witness statements, training, consultations, and possibilities to ask what the conditions are** (via cooperation tools with judicial institutions), **site visits to the detention centres** etc.

Opinions **regarding the right to a fair trial and the situation of rule of law differed among interviewed defence lawyers.** Some lawyers have argued that it is generally assumed that the rights of individuals, including procedural rights, are guaranteed in every country of the European Union. Other interviewed lawyers stated they had not encountered the Lithuanian authorities taking into account the procedural rights of the issuing party and had some doubts as to how this could be ensured. Similar to the lawyers, **judges stated that procedural rights** (such as the right to a fair trial by an independent

court, right to defence, right to translation etc.) **are a formal requirement and are not infringed as EAW is applied within European Union countries.** Prosecutors noted that consideration of the procedural rights of the requested person in the issuing state is particularly significant when persons are tried *in absentia*. In such cases the procedural rights are taken into account more carefully.

In some cases, the courts can take into account the individual situation of the requested persons (personal, family and health status, and other individual circumstances). There is a possibility that **an individual situation will be taken into account because during the process the requested person has the opportunity to express their situation.**

INTRODUCTION

A total of eight interviews were conducted between 26 April 2022 and 19 July 2022. Four defence lawyers, two judges and two prosecutors were interviewed.

The interviews were conducted either face-to-face or by electronic means. All four interviews with lawyers and one interview with the prosecutor were conducted via electronic means. Two interviews with judges and one interview with a prosecutor were conducted face-to-face. All interviews were informative as a convenient time for the interviewees was agreed upon in advance and all interviewees willingly allocated this time for the interview. A good internet connection ensured the smooth running of the interviews via electronic means. The interviews by electronic means were conducted via video, allowing the interviewees to see each other's body language and emotions. All interviews were audio-recorded, with verbal and written consent from the interviewees.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

As the interviews were carried out by researchers with research experience, they did not require extensive training on the interview process, ethics or data analysis. The FRA held the inception meeting on 8 and 9 March 2022. During the meetings two interview reporting templates – one for the judges'/prosecutors' category and one for the lawyers' category were discussed. The methodological tools for the study were developed by the FRA European Arrest Warrant Proceedings – safeguards for requested persons study group. Subsequently, the survey instruments (questionnaires for different professional groups – lawyers, prosecutors/judges), report templates, consent forms and privacy notice were translated into Lithuanian and sent to the FRA team for approval. The FRA team provided a letter of support to the Lithuanian research team explaining the importance of this study and inviting potential expert participants to join the study in Lithuania.

A list of potential interviewees was compiled by a team of Lithuanian researchers. Potential interviewees from professional groups such as lawyers, prosecutors and judges were selected on the basis of their experience in European Arrest Warrant cases. In the case of defence lawyers, the recruitment process was more challenging than expected. Lawyers were first contacted by email and then by telephone. Additionally, the request to the Council of the Lithuanian Bar was sent twice asking support in the recruitment process. The first letter provided the addressees with a detailed description of the subject of the research and the interview process. It was stressed that the interviews could be carried out at a time, place and in a form convenient to them (face-to-face or via electronic means). Unfortunately, a large number of defence lawyers did not respond to the invitations to participate in the research. A follow-up letter was always sent to remind them that they had been sent an invitation to participate in the study. Once the research was halfway through, other participants were recruited on the basis of recommendations from participants who had previously participated in the research. The interview data in this report are presented in accordance with the requirements of research ethics, i.e. in such a way that the interviewees cannot be identified.

In the case of judges and prosecutors the recruitment process was less challenging. The administration of Vilnius District Court and the Office of the Prosecutor General of the Republic of Lithuania were first contacted by email and by follow-up phone calls. The email provided a detailed description of the scope of the research and the interview process. It was stressed that the interviews could be carried out at a time, place and in a form convenient to the judges and prosecutors (face-to-face or via electronic means). Follow-up reminder phone calls were made in order to remind them of the invitation to participate in the study. In the case of Vilnius District Court, the two judges were assigned for the interviews by the administration of the court based on their experience with the EAW. In the case of the Prosecutor General's Office of the Republic of Lithuania two interviewees were assigned

for the interviews based on their experience with the EAW. One prosecutor was assigned from Kaunas District Prosecutor's Office and one prosecutor from the Prosecutor General's Office in Vilnius.

- **SAMPLE AND DESCRIPTION OF FIELDWORK**

Defence lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 4

Table 1: Sample professionals

Group	Gender	Length
Defence lawyer	male	1:17
Defence lawyer	male	0:36
Defence lawyer	male	1:35
Defence lawyer	male	0:53
Judge	male	1:26
Judge	female	0:56
Prosecutor	female	1:11
Prosecutor	female	1:11

Interviews varied in length: the shortest interview was with the lawyer and lasted 36 minutes. The longest interview was with a judge and lasted 1 hour 26 min. The average length of the interviews was 1 hour 7 min. The interview atmosphere was open, cordial and based on mutual trust. We also believe that the fact that the investigation was initiated and supervised by the Fundamental Rights Agency led to a positive attitude towards the research. Some of the participants in the study expressed their willingness to see the final FRA report when it is ready. Judges and prosecutors also expressed willingness to be contacted for clarifications (if needed), but there was no need to contact them afterwards.

- **DATA ANALYSIS**

Each interview was transcribed using automated transcription. To ensure that the information provided during the interview was understood and presented correctly, the automated transcriptions were checked word-for-word and then read closely and referred to while completing FRA's interview reporting templates. Interview data analysis further involved the identification, examination, and interpretation of patterns and themes in data focusing on the patterns and themes in data provided by lawyers, judges and prosecutors and determining how these patterns and themes help answer the research questions.

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

This report presents the findings of Social Fieldwork Research (FRANET) on European Arrest Warrant (EAW) proceedings – safeguards for requested persons in Lithuania. The report aims to provide evidence-based advice on practical aspects on procedural rights in European Arrest Warrant proceedings in Lithuania and to contribute to the proper implementation of fundamental rights and secondary EU legislation at Member State level as concerns specific aspects of the procedural rights of persons being sought under the European Arrest Warrant. The report contains four sections: **right to information, right to interpretation and translation, right of access to a lawyer and issuing and execution of the EAW**. Each section of the report contains the legal overview of the implementation of the EAW in Lithuania and research findings from the qualitative interviews with lawyers, judges and prosecutors in Lithuania on the practical implementation of the EAW and their experience when dealing with the EAW. The interview questions addressed the rights of a requested person (right to information, right to interpretation and translation, right to access to a lawyer) as well as the practical aspects of the issuing and execution of the European Arrest Warrant.

RESEARCH FINDINGS

1. Right to information

a. Legal overview

Legal standards on the right to information for requested persons are laid out in the Code of Criminal Procedure (the CCP). Under the CCP, the judge, prosecutor or investigating officer (police or other law enforcement officer) must explain the procedural rights to the participants of the proceedings and ensure that these rights can be exercised.¹ **The CCP does not provide a list of rights that must be explained to the requested person.** It does establish specific requirements regarding information about some of the rights:

- every person has the right to be informed without delay about the reason for their arrest or detention;²
- also, the requested person must be informed of their right to ask that a lawyer be appointed in the issuing Member State.³

There are no general requirements in the CCP to ensure that the provided information is fully understood by the requested person, or other participants of the proceedings. However, **the requested persons must be served a Letter of Rights.** The standard form of the Letter of Rights has been adopted by the Prosecutor General's Office; it is available in Lithuanian, English, French, German, Polish, and Russian.⁴ The Letter of Rights is drafted to address the reader in the second person, in somewhat simpler, less legal language. It informs the reader that they have been arrested under an EAW, and lists and briefly describes the rights to:

- have a lawyer from the moment of arrest;
- interpretation and translation;
- information about the EAW's contents;
- consent to surrender;
- inform one person and consular authorities;
- receive urgent medical assistance;
- know the maximum period of deprivation of liberty.

Where the **speciality rule** is concerned, under the CCP, a person surrendered to Lithuania cannot be detained, prosecuted, and sentenced for an offence committed prior to their surrender other than that for which they were surrendered.⁵ The CCP does list a number of exceptions to this general rule:

- When the surrendering foreign state gives its consent to do so.
- When the person having had an opportunity to leave the Republic of Lithuania has not done so within 45 days or has returned to its territory after leaving it.
- When the person has consented, before being surrendered, to be prosecuted for other offences committed prior to their surrender.

¹ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Article 45.

² *Ibid.* Article 44 p. 2.

³ *Ibid.* Article 71¹ p. 10.

⁴ Prosecutor General of the Republic of Lithuania, [Order on approval of forms for documents in criminal proceedings](#) (Įsakymas dėl baudžiamojo proceso dokumentų formų patvirtinimo), 28 February 2017, No. I-55.

⁵ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Article 70.

- When the person gives their written consent, after being surrendered. In such instances the consenting person must be brought before an investigating judge within 10 days, and a hearing is held which must be attended by the surrendered person, their lawyer, and the prosecutor. The investigating judge must examine during the hearing whether the person consents voluntarily and is aware of the legal consequences of such consent.
- When the prior offence does not carry the penalty of imprisonment or arrest, and the person cannot be placed in pre-trial detention as a restrictive measure due to the prior offence.

When Lithuania is the executing state, the requested person is surrendered to the issuing state only for the prosecution or to serve a sentence for the offence specified in the issued EAW.⁶ If the issuing state submits a request to surrender a person for prosecution or to serve a sentence for an offence, for which an EAW cannot be issued, the court considers this request along with the EAW.⁷ The court may consent to the above request if the offence in question is also considered an offence under the criminal law of Lithuania.

If the issuing state, post-surrender, submits a request for consent to prosecute the surrendered person or to carry out the sentence for an offence, for which the person was not surrendered under the EAW, this request is examined and granted or refused by the Prosecutor General's Office.⁸

The CCP does not establish a special procedure for challenging the failure to provide EAW-related information about procedural rights. If the requested person is not provided with information about the EAW or their rights, the general procedure for challenging the actions of investigating officers, prosecutors, and investigating judges should be applied. Under the general procedure, an investigating officer's actions and decisions can be appealed to the prosecutor, the prosecutor's actions and decisions – to a higher prosecutor, and the higher prosecutor's – to the investigating judge.⁹

Furthermore, the CCP does not establish specific **consequences for failure to provide information** about the EAW or the requested person's procedural rights. Under the national case-law, the consequences of breaching a person's procedural rights are dismissal of evidence collected in breach, as only information obtained by legal means can be considered evidence.¹⁰

b. Right to information in practice

- **Provision of information (when, how, by whom)**

All interviewed defence lawyers stated that **arrested persons are informed about their rights upon arrest. Arrested persons are informed by the prosecutor. Prosecutors provide arrested persons with information both – in standard written (a two-page list of rights) and explained in oral form.** The following rights were mentioned by the lawyers: the right to have counsel, right to complain, right to be heard, right to make a request, right to an interpretation, right to remain silent or testify and right to contact consular authorities, right to a lawyer, a translator, procedural rights.

⁶ *Ibid.* Article 71¹ p. 6.

⁷ *Ibid.*

⁸ *Ibid.* Article 71¹ p. 7.

⁹ *Ibid.* Articles 62-65.

¹⁰ *Ibid.* Article 20 p. 4.

Judges stated that the arrested persons are informed about their rights, but they were not always precise about when, how, by whom and in what form (orally or in writing) they were informed. For example, one interviewed judge did not remember and stated, “*I don't know the truth after all [...] some things [at court] happen automatically.*” Another judge explained that when persons are arrested under an EAW, the presence of the defence lawyer is obligatory in all cases and arrested persons are also informed “*about other procedural rights*” and it is explained to them that the lawyer can answer all questions asked by the arrested person. Moreover, this judge explained that they did not know if the rights of such persons are explained to them in the courts addressing pre-trial detention measures of the arrest in oral or in written form. According to the interviewed judge, it is not the duty of the judge, but they claimed that the EAW procedural rights are explained during the court session orally.

Prosecutors stated that the arrested persons are informed about their rights orally and in written form. Interviewed prosecutors explained that they are informed orally, and a written document is handed to them and explained that the requested persons are informed about the content of the European Arrest Warrant issued against them, but could not specify what rights they are informed about, but added that the rights are written in the protocol. One prosecutor explained that the written annex of the arrest protocol is handed to the requested person. The annex contains the Letter of Rights of the requested persons, and those rights are similar to the rights of the suspects, according to one prosecutor. The interviewed prosecutor also mentioned rights such as the right to a defence lawyer, the right to translation, the right to be introduced to the content of the EAW and the right to consent or not to the EAW, and the maximum term of the restriction of freedom and explained that the annex of the protocol is handed to the requested person by police officers at the moment of arrest.

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

	L1	L2	L3	L4	J1	J2	P3	P4	Total
YES									0
In writing (Letter of Rights)				X					1
Orally	X					X			2
In writing (Letter of Rights) and orally		X	X				X	X	4
NO	-								0
Don't know/remember	-				X				1
Did not answer	-								0

- **Information about the EAW – content and procedure**

According to the lawyers, arrested persons are informed about the EAW’s content and procedures. This is done by the prosecutor who hands a copy of the translated version of the EAW to the person. Requested persons must be provided with a copy of the EAW within 48 hours of their arrest. The person must be presented to the pre-trial judge for arrest within this time. Lawyers stated that the person who is held in custody has the right to access all the material, all the files that exist at a given moment, and therefore also the Arrest Warrant. However, **one lawyer and one prosecutor stated that arrested persons are first informed about the EAW’s content and procedures by police officers who participate in the arrest.** For example, one interviewed prosecutor (explained that there are cases when the arrested person is transported to a detention centre without the protocol, the officers of the detention centre hand the protocol to the requested person later in the detention centre with the explanation of the EAW contents against them as well as their rights. Lawyers, judges, and

prosecutors mentioned that the procedure of the EAW is quick and must be implemented in the 48-hour period.

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

	L1	L2	L3	L4	J1	J2	P3	P4	Total
YES		X	X	X	X	X	X	X	7
In writing	-	X	X	X		X	X	X	6
Orally	-							-	0
In writing and orally	-				X			-	1
NO	-							-	0
Don't know/remember	-							-	0
Did not answer	-							-	0

- **Information on consenting to surrender**

All of the interviewed defence lawyers shared the opinion that **the requested persons are informed about what consenting to surrender entails in detail** (i.e., that if they consent a 10-day simplified procedure of the EAW is applied, if they do not, the procedure of the EAW takes a longer period). This is explained to the **arrested person by the general prosecutor during the first meeting with the arrested person. The speciality rule is explained separately.** However, according to one interviewed defence lawyer the specialty rule is explained, after the prosecutor of the Prosecutor General's Office applies to a regional court for surrender.

However, one interviewed defence lawyer considered that arrested persons are not always informed properly. According to the lawyer, this is done very formally, i.e., arrested persons are given “*some kind of document*” explaining their rights, with no more explanation and “*that's it.*” Then, if they want more detailed information, they are told to discuss this with the defence lawyer and to find out information (on consenting to surrender etc.) with their help. According to the lawyer, arrested persons are informed that if they agree, the procedure will be quicker and easier, however, they are not told in detail that they will then be prosecuted. This is because the aim is to explain the speed and simplicity of the procedure so that they understand that if they agree, it will be quicker. If they do not, then they will be detained for longer.

This is in contradiction with the views of the judges and prosecutors. According to the judges and prosecutors, the requested persons are always informed about what consenting to their surrender entails, the simplified EAW procedure is explained to them, and they are asked whether they renounce the ‘speciality rule’. The interviewed judges also noted that if requested persons express the need to be informed about the content of the EAW or the procedure once again, they are allowed to do so at a later stage of the court procedure. One of the judges also claimed that it is sometimes explained in simple human language to the arrested persons who consent to their surrender.

One interviewed prosecutor explained that the requested persons are informed about what consenting to their surrender entails, but further added that the requested persons are asked whether they consent or not to the surrender and mentioned that the ‘speciality rule’ is explained to them. One prosecutor also added that the form of the written protocol has a special ‘check’ section where it is marked whether a person renounces (or not the “speciality rule.” According to the judge, renouncing the ‘speciality rule’ is always explained by the prosecutor and “the majority of the arrested persons do not renounce the speciality rule.” As the interviewed prosecutor stated, the requested persons are always informed in detail and in the presence of the defence lawyer about what consenting to their surrender entails. This prosecutor explained that firstly, the requested persons are

informed about the contents of the EAW, then the right to consent or not, and what consenting to the EAW means and also mentioned that efforts are taken to clarify whether grounds under which the requested person cannot be extradited exist, and finally the specialty rule is explained.

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

	L1	L2	L3	L4	J1	J2	P3	P4	Total
YES	X	X	X		X		X	X	6
NO	-			X					1
Don't know/remember	-					X		-	1
Did not answer	-							-	0

- **Understanding of information**

Most of the interviewed defence lawyers said that people understand the information provided to them. According to the lawyers, the responsible authorities, especially general prosecutors, also take care and ensure that people understand the information. One interviewed defence lawyer said that most people understand the information provided to them very well. As he put

“In the cases where I have been involved, of course, everyone understood. And in any case, the specificity of <our country> seems to be that a large number of people agree to be handed over, even in a simplified procedure. That means that they know perfectly well what happens and for what. And we do not have any special cases, or at least we have not had many nuanced cases. As a rule, yes - everybody understands.” (Lawyer, Lithuania)

“Tose bylose, kur aš buvau tai, be abejo, visi suprato. Ir šiaip <mūsų šalies> specifikai yra, matyt, ta, kad didelė dalis žmonių jie sutinka net ir supaprastinta tvarka būti perduoti. Vadinasi, jie puikiai žino, kas ir dėl ko. O mes neturim kažkokių ypatingų, bent jau neturėjome, daug bylų, kur būtų kažkokių niuansų. Kaip taisyklė, taip visi supranta.”

However, some interviewed defence lawyers, had a somewhat different opinion, and doubted whether people understand it. Especially if they are from non-EU countries and speak less well-known languages. According to him authorities do not make much effort to make sure people understand it.

The judges interviewed explained that the information provided is understood by requested persons because they have been informed about the content of the EAW in earlier stages, i.e. first by the prosecutors and defence lawyers, followed by the explanation by the judges. **Judges and prosecutors mentioned that efforts are made to explain the information to arrested persons “in simple words” and the requested persons are asked orally if their rights have been explained to them and if they understand their rights.** It was also mentioned that there are cases when arrested persons do not consent to the EAW and claim to be not guilty. In such cases arrested persons are informed that the decision of whether they are guilty or not will be made by the court of the issuing state. One interviewed prosecutor added that the general prosecutor's office explains further what the EAW process is, and why they are arresting the requested person, especially if there is already a sentence to be served, or part of the sentence has been served. The judges and the defence lawyers also explain the EAW, and *“by the end [...] really everything is explained.”* In the initial meeting when the detention question is decided, the requested persons *“think that their surrender is already decided upon.”* In such a situation, prosecutors explain to the judge that only a pre-trial measure is being decided here, that the surrender process will be decided later in court.

c. Additional best practices or challenges

Regarding provision of information, one interviewed defence lawyer explained that bureaucracy delays the process of providing the arrested person with the EAW translated info. in written form. This lawyer also stressed the paperwork which is often time consuming. Judges and prosecutors mentioned that the main challenge is the limited time-frame of the EAW procedure. They also mentioned the coordination of the EAW procedure between the central and territorial authorities:

“If it happens that the territorial officer does not really know the procedure and takes [the requested person] to the detention centre without the protocol [...] the [written] protocol is later handed by the detention officers to the requested person.” (Prosecutor, Lithuania)

„Jeigu atsitiktų taip, kad teritorinis pareigūnas iš tikrųjų nežino procedūros ir nuveža [prašomą asmenį] į areštinę be protokolo [...], sulaikymo pareigūnai vėliau įteikia [rašytinį] protokolą prašomam asmeniui.“

Regarding the explanation of information one interviewed defence lawyer said that the issue is dealt with rather formally at the court hearing, by simply asking the person whether things have been explained to them or not. **Victimisation of the arrested person can also be an issue as one judge (after the interview) hinted that the arrested persons are not “beginners” (researcher’s observation), and they are familiar with the procedures.** Finally, one more challenge was mentioned by another interviewed defence lawyer. **Regarding the Letter of Rights that is provided to persons, if a person is not familiar with the law, he may find it hard to understand what’s written in the letter.** The other challenge is that a lawyer must be present immediately in EAW cases.

d. Discussion of findings

The right to information is ensured in the Lithuanian CCP. However, it does not specify what rights must be explained to the requested person. A Letter of Rights, in Lithuanian or in another of the most common languages, is always handed to requested person as confirmed by interviewed lawyers, judges and prosecutors. Besides the letter, the rights are also explained to the requested person orally. The information is provided by defence lawyers and prosecutors.

Regarding information about the EAW’s content and procedure, the arrested persons are informed about the EAW’s content and procedures. This is done by the prosecutor who hands a copy of the translated version of the EAW to the person. This must be done within 48 hours of their arrest, when the person must be presented to the pre-trial judge for arrest. The person held in custody has the right to access all the material and files that exist at a given moment, including the Arrest Warrant. However, according to some of the interviewees, the arrested persons are sometimes only informed about the EAW’s content and procedures after being transported to a detention centre. The protocol is handed to the requested person in the detention centre by the officers of the detention centre with an explanation of the contents of the EAW as well as their rights. Interviewees mentioned that the procedure of the EAW is quick and must be implemented in the 48-hour period.

Regarding the information on consenting to surrender most of the interviewees shared an opinion that **the requested persons are informed about what consenting to surrender entails in detail as well as the simplified EAW procedure by the general prosecutor during the first meeting with the arrested person. The speciality rule is explained separately.** The requested persons are informed about what consenting to their surrender entails and are asked whether they consent or not consent to the surrender. The form of the written protocol has a special ‘check’ section where it is marked whether a person renounces (or not renounces) the ‘speciality rule.’

When it comes to understanding the information **the State's CCP does not establish a special procedure for challenging failure to provide EAW-related information about procedural rights nor does it establish specific consequences for failure to provide information about the EAW or the requested person's procedural rights. Yet, according to the interviewed defence lawyers, people understand the information provided to them.** Moreover, responsible authorities, especially general prosecutors, also take care and make sure persons understand it. Efforts are made to explain the information to arrested persons "*in simple words*" and the requested persons are asked orally if their rights have been explained to them and if they understand them. Issues of understanding may arise if the person speaks a less well-known language.

Among possible problems might be the time-consuming bureaucratic procedure which delays the arrested person from being provided with the EAW translated info. in written form. The limited timeframe of the EAW procedure poses another challenge as does the coordination of the EAW procedure between the central and territorial authorities. Regarding the explanation of information, the issue is sometimes dealt with rather formally at the court hearing, by simply asking the person whether things have been explained to them or not. **Victimisation of the arrested persons can also be an issue** as the arrested persons are sometimes not being arrested for the first time and are perceived as already familiar with the procedures. Finally, regarding the Letter of Rights that is provided to persons, **if a person is not familiar with the law, they may find it hard to understand what's written in the letter. The other challenge is that a lawyer must be present immediately in EAW cases.**

2. Right to interpretation and translation

a. Legal overview

Under the CCP, participants of proceedings, including the EAW proceedings, who do not speak Lithuanian have the right to use their native language or another language they know throughout the proceedings, and they **have a right to be assisted by an interpreter**.¹¹ In addition, all case documents that are served to the person must be translated into the person's native language or another language that they know.¹²

It is up to the investigating officer, prosecutor or court dealing with the person to determine in "the shortest possible time" whether the person knows Lithuanian and whether an interpreter is necessary to ensure that the person can properly exercise their rights and understand the proceedings.¹³ No specific procedure for determining this is established in law.

Specifically, where the EAW procedure is concerned, the CCP establishes that if the requested person does not understand the language of the EAW, **the requested person must be provided with a written translation of the EAW** into that person's native language or another language that they know.¹⁴ If the requested person consents to receiving an oral translation, an oral translation of the EAW can be provided instead, if this is not contrary to the interests of justice.¹⁵

As a general rule, the **interpreter can participate in most of the criminal proceedings remotely**, via digital tools, except in instances where direct participation of the interpreter is necessary for the person receiving the interpretation to properly exercise their rights and understand the proceedings.¹⁶ However, **in court hearings remote participation is only allowed by court decision**, in exceptional circumstances, when regular hearings cannot be held, and it can be reasonably expected that this will speed up the proceedings, and the rights of the participants of the proceedings will be guaranteed.¹⁷

There are **no specific measures for verifying the quality of interpretation**. An interpreter is defined in the CCP as "a person who knows the languages needed for interpretation (translation) or understands sign language,"¹⁸ with no specific requirements for qualification established. The only specific safeguard in the CCP is that the interpreter can be removed from the proceedings if it is determined that the interpreter is "incompetent."¹⁹ Case-law establishes that "the qualification of the interpreter and the quality of the interpretation must be such, that a person who does not speak Lithuanian can effectively exercise their procedural rights and their right to a fair trial is guaranteed."²⁰

There is **no special procedure to challenge failure to provide interpretation or translation** to a requested person. In such instances the general procedure in the CCP for challenging the actions of investigating officers, prosecutors, and investigating judges is applicable: an investigating officer's

¹¹ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Article 8 p. 3.

¹² *Ibid.* Article 8 p. 5.

¹³ *Ibid.* Article 8 p. 2.

¹⁴ *Ibid.* Article 71¹ p. 2.

¹⁵ *Ibid.*

¹⁶ *Ibid.* Article 43.

¹⁷ *Ibid.* Article 8² p. 2.

¹⁸ *Ibid.* Article 43.

¹⁹ *Ibid.* Article 58 p. 3.

²⁰ The Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*), [decision No. 2K-452-788/2016](#), 20 December 2016.

actions and decisions, such as failure to secure an interpreter, should be appealed to the prosecutor, the prosecutor's – to a higher prosecutor, and the higher prosecutor's – to the investigating judge.²¹

Furthermore, the CCP does not prescribe the specific consequences of failure to provide interpretation or translation to a requested person. Under the general rules established in the CCP and case-law, which are applicable to EAW proceedings under Lithuanian law, only information obtained by legal means can be considered evidence.²² The case-law of the Supreme Court of Lithuania provides that information cannot be considered evidence if in obtaining it "human rights have been unduly restricted, the principles of the proceedings have been violated, or the procedural action has been carried out without sufficient precision in accordance with the basic rules for that action."²³

More specifically, where right to translation is concerned, the Supreme Court of Lithuania has established that **failure to provide translation of essential case documents, like court decisions, can be considered a fundamental breach of criminal proceedings**, if it breaches the person's right to defence, and can be a basis for retrial.²⁴ However, this is not automatic, and the Supreme Court has ruled in other cases that failure to provide a copy of the translated court decision should not be considered a fundamental breach of criminal procedure if it does not substantially restrict the procedural rights of the person.²⁵

b. Interpretation and translation in practice

- **Provision of interpretation (decision and means)**

All the interviewed defence lawyers agreed that **efforts to provide translation services are made and it is always available when needed**. The courts and police have funding for these translators, and even in some places English and Russian interpreters and translators are working full-time in the courts. They are hired through public procurement. The **right to a translation is assessed by officials that carry out procedural steps**. Yet, as emphasised by one interviewed defence lawyer, **written translation is certainly not always provided**. The text of the European Arrest Warrant is in any case translated into Lithuanian verbally. If the person requested to be extradited from the Republic of Lithuania does not speak Lithuanian, a translator is called to translate everything for him. At the court hearing, the person is provided with verbal translation services only. The prosecutor's written statement to the court is not translated into a language that the person understands, and the court's order is not always translated either.

Finally, some interviewed defence lawyers, opined that although formally translations are provided, sometimes this may not be enough. If a person needs translation from and into less commonly spoken languages, a translator appointed by public authorities will not be enough and the defence will need to hire translator from outside. This means **extra costs for the requested person, as the state scheme covers only the most common languages**. Moreover, there is a question of time before the translator arrives. In the case of a less commonly used language, it will not be translated in written form at the time of arrest, but it will be translated later in the proceedings. And if the defence counsel asks for a

²¹ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Articles 62-65.

²² *Ibid.* Article 20 p. 4.

²³ The Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*), [decision No. 2K-4/2007](#), 16 January 2007.

²⁴ The Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*), [decision No. 2K-592/2004](#), 2 November 2004.

²⁵ The Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*), [decision No. 2K-30/2013](#), 11 January 2013.

translation from such language to be provided, the prosecutor may not agree and tell the defence that they are responsible for providing their own translator for the defence.

In contrast to what lawyers claim, judges and prosecutors explained that EAW is translated into the language which the requested person understands. The translator participates in every process at the court. For example, one judge claimed that EAW is translated into the language which the requested persons understand and stressed that *“this is compulsory.”* Moreover, judges and prosecutors explained that the arrested persons are always handed a copy of the EAW in the language they understand and *“can read.”* One judge also gave an example of a case of an arrested person consenting to the EAW at the beginning of the process and *“changing their mind”* later to not consenting. The mentioned case resulted in the EAW being cancelled and this is *“proof that arrested persons are informed and understand the process.”* This judge also added that the translator participates in every process at the court. One interviewed prosecutor explained that EAW is translated into the language which the requested persons understand and if a person does not understand Lithuanian, the translator participates both in their arrest and further in the process. Another prosecutor explained that the requested persons are provided with interpretation and translation *“in all cases”* when needed. If the person does not understand the language, the translation is provided from the moment of arrest, and the translator participates in all further procedures. One prosecutor also added that the standard EAW Letter of Rights is already translated into five main languages. If there is a need the translation of the Letter of Rights could be made into any other language. The EAW is translated into the language the person understands, the translator participates in all meetings and the final decision document is also translated into the language the requested persons understand.

However, judges and prosecutors could not specify under what criteria the need for interpretation is assessed. For example, one judge mentioned that if they see a need for interpretation they ask for a translator and added that there may be an issue of time constraint with the EAW in finding a translator if other than Russian or Polish language interpretation was needed: *“even English could be a problem, as there is only one such interpreter in all the court.”* Another judge also could not specify under what criteria the need for interpretation is assessed but mentioned that this need is assessed under *“some general criteria,”* i.e., asking if an arrested person needs a translator. One prosecutor explained that there are no specific criteria to assess the need for interpretation. According to them it is just obvious, that a foreign citizen does not understand Lithuanian and if there are doubts that Russian- or Polish-speaking Lithuanian citizens do not understand Lithuanian language well an interpreter is appointed as *“speaking the [Lithuanian] language does not mean understanding the legal [Lithuanian] language.”* It was also mentioned that the requested persons *“usually say to the authorities”* whether interpretation is necessary and what language they are able to communicate in and understand.

- **Translation of documents**

Regarding the translation of the documents, the interviewed **defence lawyers have a different opinion than judges and prosecutors on whether certain documents are always provided in a language the requested person can understand** during EAW proceedings.

Two defence lawyers suggested it is provided, yet another two doubted whether translation of documents is provided. However, only a limited amount of information is provided and if the person in question is a foreign national detained in Lithuania, the documents are usually only translated orally. The other two lawyers suggested it is not always provided. **Translation of the documents may be arranged if the person requests for it.** In the words of one defence lawyer,

“[t]here is a human factor here: there are not many translators, and the terms of the European arrest warrant are quite concise. On the other hand, there are very few documents in the European Arrest Warrant. [...] the arrest report will be written in Lithuanian, the search report will be written in Lithuanian, the report on the interpretation of the rights of the individual will be written in Lithuanian, and the list of rights in those popular languages will certainly be translated.” (Lawyer, Lithuania)

“čia yra žmogiškasis faktorius. Vertėjų nėra per daug, o Europos arešto [orderio] terminai yra ganėtinai glausti. Kita vertus, Europos arešto byloj tų dokumentų yra labai nedaug. [...] sulaikymo protokolas bus surašytas lietuviškai, asmens kratos protokolas bus surašytas lietuviškai, asmens teisių išaiškinimo protokolas bus surašytas lietuviškai, teisių sąrašas tom populiariomis kalbomis tikrai bus išverstas.”

The presented quote suggests what documents are translated into other languages. A similar opinion was held by another defence lawyer, who stated that if authorities need to arrange for translation in such case the information is read out orally:

“The same is true for the case file, as an effort is made not to overdo translations, as they entail costs and the institutions have limited resources. Institutions hand over what is really necessary for the proceedings in Lithuania, and everything else is not translated, because our Code of Criminal Procedure stipulates that for essential key documents, a translation should be provided, and this is more or less respected.” (Lawyer, Lithuania)

“Bylos medžiaga lygiai taip pat, nes stengiamasi nepersistengti ties vertimais, nes kaštai irgi riboti institucijų. Jie įteikia tai, kas tikrai būtina Lietuvoje vykdyti procesą, o visa kita stengiamasi neverst, nes nu yra pas mus BPK ta nuostata, kad esminiam svarbiausiam dokumentams vertinimas būtų užtikrinamas. Jie to daugiau mažiau ir laikosi, nepersistengia.”

Judges and prosecutors explained that in **most cases translation of EAW documents was always provided in the Lithuanian language as the cases involved Lithuanian-speaking citizens**. Regarding the content of the case file, it is provided in the Lithuanian language only. However, **if a request to translate were raised “apparently an interpreter would be assigned.”** According to one judge, the EAW is usually in both the original and Lithuanian language and if there is any doubt that the person does not understand either of them – translation is provided. The importance of the court documents in the language that requested persons understand as the defence lawyers *“are checking this carefully.”* The judge also explained that any doubt that the person does not understand something about the EAW can be a serious procedural obstacle and *“this is where the defence lawyers look first for loopholes”* in the EAW process.

One judge and prosecutor explained that there are not many documents in the EAW case and most of the requested persons are Lithuanian citizens and understand the language. The content of the case file is provided in the Lithuanian language, but the “Letter of Rights” is provided in five main languages, and if the person does not communicate in any of these five languages the “Letter of Rights” can be translated into the language the requested person understands. The protocols of arrest are not translated but oral translation is provided when the person is signing them, and if a requested person were to demand a translation of the arrest protocols and the translation of the case file documents such request would be taken into consideration.

- **Interpretation of consultations with lawyers**

Not every interviewed defence lawyer, judge and prosecutor was able to provide information on the interpretation of consultations with the lawyers. Yet one interviewed defence lawyer stated that that interpreter could be present at consultations with lawyers if the defence lawyer wants and needs it (e.g. in case they do not understand the client). As explained by the lawyer, when it comes to

consultation with a lawyer, the fewer intermediaries between the lawyer and the defendant, the better. When a translator is needed in the institutions (e.g. in court), the interviewed defence lawyer tries to translate everything into the client's language himself, with the help of Google Translate. But if a citizen from a country whose language the interviewee does not speak is being defended, and the citizen does not speak the language of the lawyer, there would be no other option but to have a translator.

Two judges were not able to provide any information on the interpretation of consultations with the lawyers. One of the prosecutors only explained that in the consultations with a lawyer an interpreter is appointed by the state, and another prosecutor stated that the State-appointed translator always participates in meetings which take place at the General Prosecutor's Office. However, they did not provide any further insights on the interpretation of consultations with the lawyers.

Regarding the impact of the pandemic and quarantine, the interviewees said that during the quarantine, video conferences were held. Before the quarantine, there was no such thing. One interviewee made an interesting remark by stating that they prefer to have the translator present live because it is important to notice not only verbal but also non-verbal communication. A similar opinion was expressed by judges and prosecutors, who also claimed that non-verbal communication by the requested persons is as important as non-verbal.

c. **Additional best practices or challenges**

Several interviewed defence lawyers mentioned some challenges regarding the right to translation and interpretation. The first challenge related to providing interpretation is **the time-pressure** of the EAW procedure, as finding the translator prolongs the EAW procedure itself. Another challenge is **remote translation** (especially during the pandemic). If translation was done remotely, according to one lawyer, from a purely technical point of view, the quality of the translation was not always sufficient. According to one interviewed prosecutor, if the interpreter is present physically the requested person would understand better. Sometimes because of this (i.e. when participation of an interpreter was needed), arrest hearings could only be held face-to-face, in order to ensure the quality of the translation.

One more challenge, is **the translation from/into less common languages** (Indian and Pakistani were mentioned). An interviewed defence lawyer claimed that the quality of transition services of less common languages is disappointing and there are only a few such translators in Lithuania.

Cost-related challenges were also mentioned. In the case of state-appointed defence lawyers, they would have to go through a lot of procedures to find an outside translator for the interview with the person to be extradited. State-appointed lawyers usually speak the main languages (English, Russian, Polish or even Latvian). However, if the person does not speak any of these languages, direct communication with state-appointed lawyer can be complicated because an outside / non-State-guaranteed translator (if the defence lawyer decides one is needed) means extra costs and the State-guaranteed legal aid does not have the funds for this. A private lawyer can call in a translator himself, but this will be charged to the client's account (an interviewed defence lawyer).

d. **Discussion of findings**

Under the CCP, participants of the criminal proceedings who do not speak Lithuanian have the right to use their native language or another language they know throughout the proceedings, and they **have a right to be assisted by an interpreter**. However, it is up to the investigating officer, prosecutor or court dealing with the person to determine in "the shortest possible time" whether the person knows Lithuanian and whether an interpreter is necessary to ensure that the person properly exercises

their rights and understands the proceedings. No specific procedure for determining this is established in law.

Effort to provide translation services are made and translation is always available when needed. The courts and police have funding for these translators, and even in some places English and Russian translators are working full-time in the courts. Translators are hired through public procurement.

However, specifically where the EAW procedure is concerned, the CCP establishes that if the requested person does not understand the language of the EAW, the requested person must be provided with a written translation of the EAW. If the requested person consents to receiving an oral translation, an oral translation of the EAW can be provided instead, if this is not contrary to the interests of justice. **The right to translator is assessed by officials that carry out procedural steps.** Yet, **written translation is certainly not always provided.**

As a general rule, the **interpreter can participate in most of the criminal proceedings remotely**, via digital tools, except in instances where direct participation of the interpreter is necessary for the person receiving the interpretation to properly exercise their rights and understand the proceedings. However, **remote translation due to technical issues is regarded as less effective and less efficient** by some judges and prosecutors.

There are **no specific measures for verifying the quality of interpretation** in official documents. Judges and prosecutors also could not specify under what criteria the need for interpretation is assessed. Thus, the **need for translation is most likely assessed subjectively** “seeing the need for interpretation” or under “some general criteria” which judges and prosecutors could not specify. The requested person is simply asked whether they need translation. On the other hand, judges and prosecutors claim that **the need for translation is always taken into account** because “the defence lawyers are checking this carefully” and “this is where the defence lawyers look first for loopholes in the EAW process”. Finally, if a requested person needs translation from and into **less commonly spoken languages**, a translator appointed by public authorities might not be available and of sufficient quality and the defence will need to hire a translator from outside, and thus **extra costs for the requested person.**

There is **no special procedure to challenge the failure to provide interpretation or translation** to a requested person, even though the Supreme Court of Lithuania has established that **failure to provide translation of essential case documents, like court decisions, can be considered a fundamental breach of criminal proceedings** and if it breaches the person’s right to defence, and can be a basis for retrial.

Regarding the **translation of documents**, the interviewed defence lawyers claimed that only a limited amount of information is provided and if the person in question is a foreign national detained in Lithuania, the documents are usually only translated orally. However, judges and prosecutors claimed that **translation of the documents may be arranged if the person requests for it.** Regarding the **content of the case file**, it is provided in the Lithuanian language only. However, judges and prosecutors claimed **if a request to translate were raised an interpreter would be assigned.**

To sum up, the main challenges regarding the right to translation and interpretation include 1) the availability of translation (especially ensuring the translation from/into less common languages); 2) time-pressure of the EAW procedure as finding the translator prolongs the EAW procedure itself; 3) the lack of criteria under which the quality and the need for translation is assessed; 4) the quality of the remote translation (especially during the pandemic); and 5) no formal procedure to challenge failure to provide interpretation or translation.

3. Right of access to a lawyer

a. Legal overview

When Lithuania is the Executing Member State, the **participation of a defence lawyer for the requested person is mandatory** in the proceedings, under the CCP.²⁶ This includes lawyer participation in the court hearing on the requested person's surrender.²⁷ If the requested person has not hired a lawyer, the investigating officer, prosecutor or court must secure a legal aid lawyer from the Lithuanian legal aid agency – the State-Guaranteed Legal Aid Service.²⁸ The right to a lawyer arises from the moments of the first apprehension, under the Lithuanian Constitution.²⁹ The requested person also has the right to request that a lawyer be appointed for them in the issuing Member State.³⁰

When Lithuania is the issuing Member State, and a requested person in another Member State asks for a lawyer in Lithuania for the EAW execution procedure, the institution issuing the EAW³¹ must provide the requested person with information on how to exercise their right to a lawyer in Lithuania, including the right to legal aid.³² The legislation does not provide instructions on the manner in which this must be done. **There are no special provisions on legal aid for requested persons in other Member States**, thus regular rules under the law on legal aid are applicable: such requested person would have the right to a legal aid lawyer if they were deemed to lack the financial means to hire a lawyer in accordance with the national property and income standards established by the Government.³³

There is **no special legal regulation or guidance on lawyers' cooperation in the executing and the issuing Member States**. Case-law in this area is limited as well: in one notable case the Court of Appeal of Lithuania has established that if the issuing Member State does not appoint a lawyer following the requested person's request, this does not suspend the EAW proceedings in Lithuania and the EAW's execution.³⁴

There is **no special procedure to challenge failure to provide access to a lawyer** in the CCP. The general procedure for challenging the actions of investigating officers, prosecutors, and investigating judges is applicable: an investigating officer's actions and decisions, such as failure to secure an interpreter, should be appealed to the prosecutor, the prosecutor's – to a higher prosecutor, and the higher prosecutor's – to the investigating judge.³⁵

²⁶ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Article 51 p. 1.

²⁷ *Ibid.* Article 73 p. 2.

²⁸ *Ibid.* Article 51 p. 3.

²⁹ [The Constitution of the Republic of Lithuania](#) (*Lietuvos Respublikos Konstitucija*), 25 October 1990. Article 31.

³⁰ *Ibid.* Article 71¹ p. 10.

³¹ The issuing institution is the Prosecutor General's Office for prosecution EAWs and regional courts for conviction EAWs.

³² Minister of Justice, Prosecutor General, [Order on adoption of rules for issuing a European arrest warrant and receiving a person under a European arrest warrant](#) (*Įsakymas dėl Europos arešto orderio išdavimo ir asmens pėrėmimo pagal Europos arešto orderj taisyklių patvirtinimo*), No. 1R-195/I-114, 26 August 2004, with subsequent amendments. Point 24¹.

³³ [Law on State Guaranteed Legal Aid](#) (*Valstybės garantuojamos teisinės pagalbos įstatymas*), No. VIII-1591, 28 March 2000, with subsequent amendments. Articles 11, 12.

³⁴ The Court of Appeal of Lithuania (*Lietuvos apeliacinis teismas*), [decision No. 1N-19-518/2020](#), 16 September 2020.

³⁵ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Articles 62-65.

The Supreme Court, in its case-law, tends to find the failure to ensure the presence of a defence lawyer in cases where lawyer’s participation is mandatory to be a fundamental violation of the defended person’s procedural rights: in a 2015 case the Supreme Court of Lithuania ruled that failure to provide a lawyer for a senior defendant with severe hearing impairment, a ground for mandatory lawyer participation under the CCP, amounted to a fundamental violation of the defendant’s rights, and dismissed the case.³⁶

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?		
Lithuania	YES X	NO

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

Free-of-cost lawyer provided in law	When your country is an executing state	When your country is an issuing state (e.g. to assist the lawyer in the executing state)
Lithuania	YES X	NO X

b. Right to access to a lawyer in practice

- **Information about legal assistance (including on dual representation)**

All the interviewed defence lawyers agreed that a person is informed about their right to be assisted by a lawyer in Lithuania both orally and in written form. Some interviewees mentioned that the Lithuanian CCP stipulates that in surrender cases, whether it is an EAW or a surrender request, or when a person does not understand Lithuanian the presence of a defence lawyer is mandatory.

A similar view was held by most of the interviewed judges and prosecutors. The shared view is represented in one interviewed prosecutor’s account, in which they stated that when a person is arrested in Lithuania on the basis of an EAW issued by another European Union country, that person is informed of their right to receive the assistance of a lawyer in accordance with Lithuanian procedures. The right to have a defence attorney is explained from the beginning of the EAW process. The requested person can choose their own defence lawyer, or the lawyer is appointed by the state. According to one prosecutor when a person is detained, they are given access to a phone/internet to contact lawyers and they are asked whether they have their own defence lawyers: “I ask the detention officers to ask whether they [the requested persons] have their own lawyer or if a state lawyer needs to be appointed.”

As regards who informs the person and how, some interviewees stated that this is done by the prosecutor, while others stated that the information is provided by whoever has the first contact with the person, e.g. the police officers who bring the person to the institution.

Regarding the remedies available in Lithuania when a requested person is not informed about their right to dual legal representation, i.e. to be assisted by a lawyer in both the executing and issuing Member States during the EAW procedure, interviewed defence lawyers had a somewhat different opinion. Several defence lawyers stated that no remedies are available in such a situation. One lawyer elaborated on this unavailability by explaining that investigators’ actions can be appealed to

³⁶ The Supreme Court of Lithuania (*Lietuvos Aukščiausiasis Teismas*), [decision No. 2K-462-697/2015](#), 3 November 2015.

the public prosecutor, the prosecutor to a higher public prosecutor, and the pre-trial judge, whose decision is already final. But you can defend yourself. However, he added that:

“What happens in the requesting State cannot be appealed from Lithuania. From the executing State, [a complaint] will not reach the requesting State within the time limits of the European Arrest Warrant, because the first thing, for example, is that I am not allowed to practise in other Member States of the European Union. I have to be recognised accordingly, just as they are here – the mirror version. So, I can only try to appeal against something in the requesting country through a local lawyer. If I know of one and there is one. As for appointing one and contacting the defence counsel for Lithuania as the executing State, as I said, that obligation is not explicitly stated. Well, it is necessary to ensure feedback, while ensuring the ability to communicate, i.e. translation. In fact, I or my client should be able to pay for everything, if there is a shortage of funds, that is a problem then.” (Lawyer, Lithuania)

„Tačiau to, kas vyksta prašančioj valstybėj, iš Lietuvos neapskūsi. Ta prasme iš vykdančiosios valstybės, prašančios valstybės nepasieks realiai per Europos arešto orderio terminus, nes pirmas dalykas - pavyzdžiui, aš, kaip toks neturiu teisės praktikuoti kitose Europos sąjungos valstybėse narėse. Aš tam turiu gauti atitinkamai pripažinimą kaip ir jie lygiai taip pat pas mus - veidrodinis variantas. Tai aš galiu kažką bandyt apskūsti prašančioj valstybėj tik per vietinį advokatą. Jeigu tokį žinau ir toks yra. O dėl jo paskyrimo ir kontakto su Lietuvos kaip vykdančios valstybės gynėjais, kaip minėjau, ta pareiga nėra aiškiai įtvirtinta. Na, kad būtina užtikrinti grįžtamąjį ryšį, kartu užtikrinant gebėjimą susikalbėt, t.y. vertimą. Faktiškai aš turėčiau arba mano klientas viską suspėt apmokėt, jeigu su lėšom striuka – problema.“

However, one interviewed defence lawyer considered that one can write complaints and make requests. These complaints or requests are then considered, investigated, upheld or rejected. The only way to exercise the defence is therefore to state your position in writing on possible procedural irregularities in the EAW or in the general procedure for imposing detention.

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

	L 1	L2	L3	L4	J1	J2	J3	J4	Total
YES	X	X	X	X		X	X	X	7
In writing									0
Orally						X	X	X	3
In writing and orally		X	X	X					3
NO									0
Don't know/remember					X				0
Did not answer									0

Table 8: Information on dual representation, interview findings

	Are persons arrested on an EAW informed by authorities on their right to have the assistance of a lawyer in the issuing Member State?								
	L1	L2	L3	L4	J1	J2	P3	P4	Total
YES					X	X	X	X	4
NO					-	-			0
Don't know/remember					-	-			0
Did not answer	X	X	X	X	-	-			4

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

Most interviewed defence lawyers agreed that, **if a person is detained, they can ask their relatives to find them a lawyer. A person can also contact a lawyer if they already know one.** Two interviewed

defence lawyers, added, that as a foreigner, **such person has the right to get in touch with their country's consular authorities and ask them to recommend a lawyer. If these options do not help to find a lawyer, then a public defender is appointed. Most interviewed defence lawyers stated that the requested persons are not given access to the internet, but they have a right to one phone call.** This aspect/limitation appeared in multiple interviews, indicating that the person is only entitled to one call so, when they want to contact their lawyer, they need to use this opportunity. The interviewed lawyers shared an opinion that authorities do not provide a list of possible lawyers. Yet, one interviewed defence lawyer stated that sometimes investigators know and can provide contacts of lawyers. And if the person really does not have a lawyer, then the service is contacted, which sends someone according to the availability of lawyers, according to the contracts they have with lawyers. The view that the defence lawyer is either appointed automatically or a requested person can choose their own defence lawyer, was shared by the majority of interviewed judges and prosecutors. The interviewed judges and prosecutors also mentioned that **arrested persons have a right to request the disqualification and or changing of the defence lawyer. One interviewed judge also mentioned that if the requested person expresses the need to choose another lawyer, they have a possibility to do so.** However, because of time constraints of EWA (48 hours), this is not always possible because the lawyer specified by the requested person may not be available.

According to both interviewed judges and one prosecutor **the lawyer assists the requested person by providing them with information, explaining the person's legal situation and legal consequences of the EAW, explaining the "speciality rule," discussing whether the arrested person should consent to the EAW or providing arguments as to why they should not consent to it, submitting requests to the court and pointing out that they can appeal the court's decision.** A rather thorough, representative and similar description of lawyer's task were provided by a defence lawyer, who said that the lawyer makes sure that the procedure is fair and in line with the EAW procedure. They look at whether there are grounds for arrest or whether the person really needs to be transferred. The lawyer estimates, on the basis of the principle of "doing everything in the best interests of the client," whether in the country of transfer, their client's human rights are going to be ensured. Lawyers make sure that authorities do not simply give a document and point the finger where to sign, that they invite a translator, and that the person's rights are not just treated as a mere formality. According to the lawyer, it is sometimes the mere presence of a defence counsel that disciplines law enforcement officials, points out the details of the procedure and, in general, ensures human rights in a wider context. Another defence lawyer stated that **as soon as a lawyer becomes aware that a person is in detention, they can go and meet the detainee at any time. The defence counsel of the extradited person has the right to be present and normally always attends court hearings. However, one interviewed defence lawyer held an opinion that the assistance provided by a lawyer in EAW proceedings in the executing state is very minimal.** This is because of several reasons or limitations. If an EAW is issued and asking for a person to be arrested, the first block of questions the defence can ask is – is it really necessary to arrest them? A decision on the arrest is made on the basis of the following information: whether or not the person has social contacts, a job, a place of residence, a livelihood, and a family. The second stage concerns whether or not the person agrees to be extradited and prosecuted. If the person does not agree to be extradited, the field of action on the issue of guilt remains very narrow. A third very important point is that the content of the arrest warrant itself cannot be challenged in the executing state, because there are no defined procedures for such thing.

Regarding the consultations most of the interviewed defence lawyers stated that **persons arrested on the basis of an EAW can meet and consult their lawyers in person.** As described by one defence lawyer, and most of the interviewed judges and prosecutors, **individuals can meet with a lawyer at various stages of the procedure:** first after the arrest, before the decision on arrest, then at the

hearing on arrest, before and during the hearing too and then a meeting can be held if necessary and even while they are in custody and waiting for the surrender hearing. Moreover, according to some judges and prosecutors, **the whole EAW process would not be possible without the defence lawyers as it would be a substantial violation of the EAW.** A similar description was provided by another interviewed lawyer, who said that usually, if there is a defence lawyer the requested person meets the defence lawyer privately, otherwise, the right of the defence lawyer and the confidentiality of the defence lawyer are not guaranteed. When a defence lawyer is contacted, they usually drop everything and go to meet the client immediately, because sometimes time is very important from a tactical point of view, so that somebody does not say something, does not change their mind, does not make something up. In other words, in terms of procedures, it is a matter of going immediately to find out, so as not to waste time and to help as much as possible.

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
L1	X		X
L2			X
L3			X
L4			X
J1		X	
J2		X	
P3		X	
P4		X	
Total	1	4	0

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

Due to a lack of professional experience not every interviewed defence lawyer was able to comment on this question. **Regarding the arrested person's right to be informed that they can benefit from the assistance of a lawyer in the Member State that issued the EAW,** most interviewed defence lawyers agreed that **this right exists and is exercised, while most interviewed prosecutors and judges were not aware of whether the arrested persons can benefit from this right.** According to the lawyers and the interviewed prosecutors, this right is described in the 2-page Rights sheet the requested persons are handed out at the time of arrest where they are informed about all their rights. This right has been created in Lithuania following changes to the CPC and the rules and procedures for the execution of the EAW. One interviewed judge also mentioned that in the case of an EAW issued by another state, this state sometimes sends a request for an explanation of whether a lawyer will be provided to the requested person. The same judge also mentioned that such an explanation that the person will be able to benefit from the lawyer is mentioned in the EAW by issuing state. And one interviewed prosecutor mentioned that **the lawyers inform the requested persons that they will also need a defence lawyer in the foreign country.**

Regarding the collection of additional evidence on the merits of the case, some of the interviewed defence lawyers said they believed it is done, but were not able to specify. Others suggested that there is no reason for doing this. One lawyer said that since no evidence is assessed during the procedure, and since neither guilt nor the sufficiency of the evidence is at issue, reliance is placed on the issuing state's instruction that the evidence is available, and therefore there is no point in the defence collecting evidence on the merits of the case either. However, data can be gathered to substantiate the grounds for non-execution of the EAW. Another lawyer stated that lawyers are not

obliged to do this and yet, if a lawyer is interested in doing their job well, they may ask whether there is any evidence that would help the person's defence.

Regarding the question of how one can choose and get in contact with a lawyer in practice in the issuing Member State, one interviewed lawyer stated that digital tools such as Google search engine **could help**. According to him, without knowing the specifics of the legal system of the requesting state, it is very difficult to get in contact with a lawyer in the issuing state. Yet, when the location case number, and the office that is carrying out the investigation are known, it is possible to do a Google search for a lawyer. Another interviewed lawyer suggested that **practical means available to choose and contact a lawyer in the issuing state were similar to those of choosing a lawyer in Lithuania**: a person can be helped to find a lawyer by relatives or by a lawyer in Lithuania through their acquaintances or contacts. It is not really possible for the requested person to do this themselves as they are not allowed / to make international calls. The embassy may be able to help too. The lawyer was not familiar with any case where Lithuanian national authorities would have provided assistance by facilitating the appointment of a legal aid lawyer in the Member State issuing the EAW. The lawyer said that digital tools could finding legal assistance in the issuing state, but they are not used.

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
L1			X
L2			X
L3	X		
L4	X		
J1			X
J2			X
P3			X
P4			X
Total	2		6

- Communication between the lawyers in both states

Communication between the lawyers in both states may sometimes become a challenge to representation in EAW cases and proceedings. The challenge has been described differently by the interviewed defence lawyers.

To illustrate the possible challenge one lawyer provided the following practical example. They told about a case, which was not an arrest warrant case, but touched on the field of decision-making and recognition. A request came in to take over the execution of a judgment in Lithuania. The person was still in prison abroad and a lawyer appointed by the state was involved in the first instance for recognition. And that was the end of their mission to attend the first instance hearing. The appeal period was 7 days. The agreement is, of course, sent to the requesting state. By the time it is handed to the person, those 7 days have passed. The detained person did know how to get back in touch with the defence counsel who was present previously. Of course, in an EAW case, a defence counsel is appointed for the arrest warrant case. **But if they are tasked only with taking part in the custody decision, the question is whether they will still be interested in the possibility of writing a complaint if they are not asked to do so by the person to be extradited.** On the other hand, according to the lawyers, there are no major problems here, because when it comes to the question of arrest, all the material that is available at that minute must be made available for inspection. The only legal obstacles

that remain are the feedback on the appointment of a defence counsel in the requesting state. And there is also the practical problem of translations in cases involving less well-known languages.

Another interviewed defence lawyer described the possible challenges in the following way. One problem is the previously mentioned lack of time. The procedure in Lithuania still takes some time before a person secures a defence counsel either privately or through the system. And if legal aid is needed in the issuing country, nobody pays attention in Lithuania. **The interviewee said that for them and their colleagues one of the biggest problems and challenges is contacting another lawyer, to consult how things are going in the other country. Another problem concerns the mutual recognition of decisions on the execution of the EAW.** If surrender is sought for a person in Lithuania to another country and if the surrender is refused, the person can stay in Lithuania. Suppose they move to Latvia, where they are detained again. Again, the same procedure is repeated. And this time the decision may be radically different. If the Lithuanian decision refusing surrender were valid in another country, that would be very welcome. The procedure, according to the interviewee, is the same everywhere – the person is searched for through databases, travels, and is detained. The interviewee pointed out that this is especially important in the case of dissidents and oppositionists. They travel a lot and in order not to have to repeat these procedures in every country, for the protection of these individuals, it would be good to ensure that if one country has not agreed to extradite, then that decision should be valid elsewhere, at least within the European Union.

Some interviewed judges and prosecutors described possible interventions that can be made by lawyers in different states. According to one interviewed judge, **the lawyer can send additional evidence to the issuing state**, while one interviewed prosecutor explained that **a lawyer in the issuing state may gather additional evidence as to the merits of the case.** According to one prosecutor, such additional evidence is transferred to the EAW executing authority for evaluation. This prosecutor also mentioned a case when the EAW was cancelled because of such additional evidence:

“There were cases when a requested person claimed that they did not really commit a crime, [and] data [evidence] was collected at the request of that person. And the data [evidence] was handed over to the European Arrest Warrant issuing authority to assess the [evidence] collected. This was a case with [one Member State]. The authorities [of this Member State] have sent a European Arrest Warrant to take legal action. And after checking the data provided by the requested person and confirming those circumstances, the European Arrest Warrant was cancelled.” (Prosecutor, Lithuania)

„Buvo atveju, kai asmuo pasakė, kad tikrai neįvykdė nusikaltimo, it to asmens prašymu, buvo surinkti duomenys [įrodymai]. Ir [įrodymai] buvo perduoti Europos arešto orderj vykdančiai institucijai, kad ji įvertintų surinktus [įrodymus]. Buvo vienas atvejis su [viena Šalimi Nare]. [Šios šalies] institucijos atsiuntė Europos arešto orderj, kad būtų atlikti procesiniai veiksmai. Ir patikrinus duomenis, kuriuos teikė prašomas perduoti asmuo, ir pasitvirtinus toms aplinkybėms Europos arešto orderis buvo atšauktas.“

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

Most of the interviewees shared the opinion that a detained person has the right to free-of-cost access to a lawyer or legal aid in Lithuania when it is the executing state. Interviewed judges and prosecutors claimed that when Lithuania is the issuing state for the purposes of procedures in the executing MS cost-free legal assistance is not available for such persons and interviewed defence lawyers did not specify on this.

Table 11: Cost-free legal assistance, interview findings

Free-of-cost lawyer provided	When your country is the executing state	When your country is the issuing state for the purposes of procedures in the executing MS (e.g. to assist the lawyer in the executing state)
L1	YES	-
L2	YES	-
L3	YES	-
L4	YES	-
J1	YES	NO
J2	YES	NO
P3	YES	NO
P4	YES	NO
TOTAL	8	4

c. Additional best practices or challenges

According to one interviewed defence lawyer, **the defence sometimes helps a person to defend themselves against a formalistic approach to the application of an EAW**. This interviewee recalled the following case from their practice. They were approached by a citizen convicted in Lithuania. After their conviction, they had fled to another EU country, where they had children. The Lithuanian authorities then came up with the idea of bringing them back to Lithuania to serve the remainder of their prison sentence, as they had violated the conditions of their suspended sentence. The interviewee was hired and asked to organise everything so that the person could return to Lithuania with their children to serve their sentence. The EAW was issued by one Regional Court during the first quarantine and was issued on very formal grounds. As a lawyer the interviewee saw that if their client was brought to Lithuania, they would be brought without their children. This was because there is only one detention facility for women in Lithuania with a limited number of places for women who can serve their sentences with children, and all these places were occupied at the time. The interviewee argued that this practice could not be allowed; a woman with a one-year-old child should not be separated from her child just so that she could serve some part of her sentence in Lithuania, a year or less. The courts gave a very formal answer to the interviewee’s appeals, saying that there was a specific procedure in place, that it had not been violated in this case, and that was it. The rights and interests of children were not taken into account. On the advice of the interviewee, the woman then contacted a lawyer in country of her residence who started the procedures to prevent the EAW from being implemented. The warrant was suspended. Thus, in this case, the procedure seems to have been good, but it was formally enforced.

Some interviewed judges and prosecutors mentioned the positive impact digital tools had in ensuring legal representation of a requested person’s interests. One interviewed prosecutor explained that digital tools had some positive impact and mentioned examples such as correspondence online, offering the option of not handing the person over before issuing the EAW, but interviewing them remotely before issuing it. One interviewed judge explained that digital tools had some positive impact on enabling access to information on the appointment of a lawyer in the issuing State and legal aid schemes. For example, online meetings facilitated procedures where the requested person resided in a town other than Vilnius (because EAWs are processed by the Vilnius court only). The choice for lawyers was extended geographically as the requested persons could choose any lawyer in any town in Lithuania. The same judge also mentioned that online meetings saved time and were more comfortable for the requested persons and lawyers in terms of logistics (there was no need for them to travel to Vilnius, no transportation costs, online meetings could be

scheduled early in the morning or at any other convenient time and were easier to coordinate with the schedules of the lawyers).

d. Discussion of findings

This section's findings demonstrate several features regarding a requested person's right of access to a lawyer in practice. First, **information about legal assistance (including on dual representation) is provided to persons in need. They are informed about their right to be assisted by a lawyer in Lithuania both orally and in written form. The requested person can choose their own defence lawyer, or the lawyer is appointed by the state.**

Legal assistance in the executing state (access, consultations, lawyer's tasks) **seems to be in line with the state's legal regulations. The detained person can ask their relatives to find them a lawyer or they can contact a lawyer themselves if they already know one. The detained person also has the right to contact their country's consular authorities and ask them to recommend a lawyer. If these options do not work, then a public defender is appointed.** To exercise their right to hire a lawyer, the detained person has the right to a phone call. However, he does not have access to the internet. Authorities do not provide a list of possible lawyers. According to the interviewees, the lawyer assists the requested person by providing information, explaining their legal situation and legal consequences of the EAW, explaining the "speciality rule" discussing whether the arrested person should consent to the EAW or providing arguments why they should not consent to it, submitting requests to the court and appealing the court's decision. **Persons can meet and consult their lawyers in person at various stages of the procedure. Some of the respondents also mentioned that defence lawyers sometimes help requested persons to defend themselves against the formalistic approach to the application of the EAW,** when a person's surrender is sought without taking into consideration an important context, e.g. parental status.

Legal assistance in the issuing state (access, consultations, lawyer's tasks), is described in the 2-page Rights sheet requested persons are handed on arrest where they are informed about all their rights. This has been confirmed by some of the interviewees, who had enough experience to answer question related to this subtopic. **Digital tools are of practical help and sometimes used to make contact with a lawyer in the issuing Member State.** When the location, case number, and the office that is carrying out the investigation are known, it is possible to google a lawyer. **Other practical means available for choosing and contacting a lawyer in the issuing state were similar to those for choosing a lawyer in Lithuania: relatives can help in finding a lawyer. The requested person's embassy may also be able to help.** The interviewed lawyers were not familiar with any case where Lithuanian national authorities would have provided assistance by facilitating the appointment of a legal aid lawyer in the Member State issuing the EAW.

Regarding communication between the lawyers in both states, **the fact that there is no special legal regulation or guidance on lawyers' cooperation in the executing and the issuing Member States, seemed to be reflected in legal practice too.** The interviewees had little to offer on the matter and it seems that this is something that still needs to be elaborated both from the practical point of view and the legal aspect. Such communication is hampered by time constraints. Lithuanian authorities do not necessarily wait for the detained person to find a lawyer in the issuing state. **Another problem relates to the mutual recognition of decisions on the execution of the EAW (if a surrender in Lithuania is refused, a person can still be detained in another country).**

Regarding the free-of-cost access to a lawyer (or legal aid), all the interviewees confirmed that requested and detained persons have a right to a state-appointed lawyer, if they do not hire a lawyer themselves.

According to some of the respondents, digital tools have some positive impact in ensuring legal representation of requested persons. Online correspondence allows for the possibility of interviewing a person remotely before issuing an EAW. Digital tools facilitate access to information both on the appointment of a lawyer in the issuing State and legal aid schemes. Online meetings save time and are more comfortable for the requested persons and lawyers in terms of logistics.

4. Issuing and Execution of an EAW

a. Legal overview

Under the CCP, when deciding on whether to issue an EAW, the issuing institution, the Prosecutor General's Office or the regional court, **must assess whether the surrender of the person in question complies with the principles of proportionality and cost-effectiveness** of the proceedings with regard to the seriousness and scale of the offence, and the personality of the suspect or the accused person.³⁷

More detailed regulation on issuing EAWs, including assessing their proportionality, is provided in the "Rules for issuing a European arrest warrant and receiving a person under a European arrest warrant" (the EAW Rules), jointly adopted by the Ministry of Justice and the Prosecutor General.³⁸

Under the EAW Rules, **to issue a prosecution EAW, the offence must carry a penalty of at least one year of imprisonment.**³⁹ The EAW cannot be issued for minor crimes if no major property damage was caused.⁴⁰ Also, other possibilities to ensure the participation of the suspect or accused person in the proceedings or to examine the case *in absentia* must already have been exhausted.⁴¹ **To issue a conviction EAW, the remaining imprisonment term to be served is no less than four months.**⁴²

Regional courts occasionally refuse to issue conviction EAWs when formal grounds for the EAW exist, but issuing it would go against the principle of proportionality, e.g. the remaining prison time for the requested person is only several months over the minimum, and the crime itself is not particularly grave.⁴³ Or when issuing the EAW would not be cost-effective, e.g. when the crime itself is not particularly grave and no or little financial damage was caused by the requested person's crimes.⁴⁴

The grounds for mandatory and optional non-execution of an EAW are governed by the Criminal Code.⁴⁵ There are no specific grounds in the Criminal Code for refusing an EAW due to conditions of

³⁷ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Article 69¹.

³⁸ Minister of Justice, Prosecutor General, [Order on adoption of rules for issuing a European arrest warrant and receiving a person under a European arrest warrant](#) (*Įsakymas dėl Europos arešto orderio išdavimo ir asmens perėmimo pagal Europos arešto orderį taisyklių patvirtinimo*), No. 1R-195/I-114, 26 August 2004, with subsequent amendments.

³⁹ *Ibid.* Point 4.

⁴⁰ "Minor crimes" are premeditated criminal offences, which are punishable by no more than three years of imprisonment, under Article 11 p. 3 of the [Criminal Code](#). "Major property damage" is financial or property damage in excess of 150 "minimum standards of living," under Article 212 p. 1 of the [Criminal Code](#). At the time of writing, one "minimum standards of living" is [set at EUR 42 by the Government as of 1 January 2022](#), making "major property damage" damage in excess of EUR 6 300.

⁴¹ Minister of Justice, Prosecutor General, [Order on adoption of rules for issuing a European arrest warrant and receiving a person under a European arrest warrant](#) (*Įsakymas dėl Europos arešto orderio išdavimo ir asmens perėmimo pagal Europos arešto orderį taisyklių patvirtinimo*), No. 1R-195/I-114, 26 August 2004, with subsequent amendments. Point 4.

⁴² *Ibid.* Point 5.

⁴³ E.g., Kaunas Regional Court (*Kauno apygardos teismas*), [decision No. ES1-15-813/2022](#), 3 May 2022; Kaunas Regional Court (*Kauno apygardos teismas*), [decision No. ES1-18-954/2021](#), 5 October 2021; Klaipėda Regional Court (*Klaipėdos apygardos teismas*), [decision No. ES1-9-795/2021](#), 26 July 2021.

⁴⁴ Klaipėda Regional Court (*Klaipėdos apygardos teismas*), [decision No. ES1-9-795/2021](#), 26 July 2021. Vilnius Regional Court (*Vilniaus apygardos teismas*), [decision No. ES1-32-626/2017](#), 19 June 2017.

Kaunas Regional Court (*Kauno apygardos teismas*), [decision No. ES1-46-493/2016](#), 25 October 2016.

Kaunas Regional Court (*Kauno apygardos teismas*), [decision No. ES1-5-579/2016](#), 26 January 2016.

⁴⁵ [Criminal Code](#) (*Baudžiamasis kodeksas*), 26 September 2000, No. VIII-1968, with subsequent amendments. Article 9¹.

detention or risks to fair trial rights in the issuing Member State. However, there is a general ground for **mandatory non-execution of an EAW when the surrender of the requested person “would violate fundamental human rights and (or) freedoms.”**⁴⁶

There is **no procedure in the CPT and the EAW Rules for challenging the EAW** or requesting the withdrawal of an EAW.

b. Issuing and Execution of the EAW in practice

- **Factors considered when issuing the EAW**

Legal requirements

Regarding factors that are considered when issue the EAW, some interviewed defence lawyers, judges and prosecutors stated that **formal factors are taken into account**: legal qualifications and the possibility of extraditing a person for a criminal claim. According to one judge, the factors Lithuanian authorities take into account include conditions laid down by law on whether or not that person may be extradited, whether there are any obstacles to that, or whether it is a crime or an administrative offence, because there are countries, for example, what is a crime in the Scandinavian countries can be an administrative offence in Lithuania – *“this has to be checked.”* Also, the length of sentence is another factor taken into consideration. According to one judge, when deciding on the issuing of an EAW, the factors taken into account include: a) the fact that the person has been avoiding judicial institutions; b) proportionality; c) the cost of surrender, i.e. the violation must be significant and; d) personal situation of the requested person. According to a prosecutor, before issuing an EAW, other *“milder”* ways of achieving the same result are considered: i.e. instead of interrogating a person by issuing a European Arrest Warrant, writing a legal aid request, i.e., *“I am looking at those things first.”* This prosecutor also mentioned other factors such as the gravity of the crime, and what the possible punishment could be. Another prosecutor also explained that an EAW is only issued in exceptional circumstances and cannot be issued for minor crimes and also mentioned that all other means have usually been exhausted before issuing an EAW.

Proportionality

Judges and prosecutors expressed diverging attitudes on the proportionality issue. One judge could not comment much on the proportionality factor, but mentioned that proportionality can be taken into consideration, e.g. if the arrested person agrees to appear before the court of the requesting country without implementing an EAW. One of the judges mentioned that proportionality is not the most significant factor and called it a subjective factor and stressed the importance of the duration of time left until the sentence is served. In contrast, one prosecutor claimed, that proportionality is the key factor, i.e. whether that person, if found guilty and would be given a real prison sentence. Finally, according to another prosecutor, when deciding on the issuing of an EAW, Lithuanian authorities take into account the order of the Lithuanian Ministry of Justice *“Regarding the approval of the rules for the issuance of the European Arrest Warrant and the seizure of a person under the European Arrest Warrant.”* The main principles of this order according are cost-effectiveness and proportionality.

Most of the interviewed defence lawyers agreed that proportionality is either **often overlooked or not assessed**. It is not asked whether, in all cases, the EAW is the appropriate instrument to ensure a person’s participation in criminal proceeding and it is issued solely for formal reasons. For example, the person may not be hiding but simply living abroad, and they could be requested to appear in Lithuania. According to one interviewed defence lawyer, the issue of proportionality may be **taken**

⁴⁶ *Ibid.*

into account only if the defence [lawyer] raises [the issue of proportionality] and provides the necessary evidence. Another interviewed defence lawyer also stated that proportionality is a conditional issue and needs to be taken into account, however, it is often overlooked. According to the third interviewed defence lawyer, the principle of proportionality is not assessed. It is not asked whether, in all cases, the European Arrest Warrant is the appropriate instrument to ensure that a person will come from a foreign country and participate in the process, or whether this cannot be achieved in some simpler and less coercive way.

Most of the interviewed defence lawyers stated that judicial **authorities often take a rather formal approach** and do not consider proportionality on their own initiative. Authorities simply comply with the request to extradite a person and do not assess it. One interviewee, however, provided an example of an opposite practice, when a person was not extradited due to proportionality reasons. A citizen of the Republic of Lithuania was suspected of committing some low-value crime in another, they had children and a job in Lithuania. The court said that the person was not hiding and that the issuing state, did not use other means to secure their participation. The interviewee noted that these were exceptional cases.

Another defence lawyer also stated that although the general approach is formal, if one sees the situation is unclear, additional information will be asked for. The person is presented with the arrest warrant and if they see that there are inaccuracies, they may question whether they are in fact the person referred to or that they could not have done what they are accused of. The interviewee presented a situation where a person who was detained in Lithuania was asked to be surrendered. They immediately complained that it could not have been them, because they had been elsewhere at the time of the crime. The information was sent to the requesting country. But at the same time, data on the composition of the family were also sent. The other side then decided that the crime could have been committed by the person's brother. A new arrest warrant was then issued for the brother. Eventually, they were acquitted in what became quite a famous case, and they then sued for compensation for unjustified prosecution.

One interviewed defence lawyer, however argued that the issue of proportionality has been resolved recently, and it is taken into account, in the sense that **there are no longer any cases where an arrest warrant would be issued for small crimes.** According to the interviewed defence lawyer, the situation has improved in Lithuania, and *“there are no longer any cases where an arrest warrant would be issued for stealing a cutlet and failing to pay in a catering establishment.”* This indicates some institutional and procedural improvements (i.e. learning from mistakes). However, another lawyer still **criticised the judicial authorities** involved into EAW process (namely judges and prosecutors) and claimed that only if the defence lawyers raise proportionality issue first and provide evidence, then maybe it would be taken into account.

Challenging the issue

Most interviewed defence lawyers, judges and prosecutors, had not encountered a case of someone challenging the issuing of an EAW. An interviewed lawyer and one prosecutor, however, claimed that the issuing of an EAW **can be theoretically challenged on the basis of proportionality concerns** and such arguments would be considered by the courts. If the person disagrees with the decision and the facts are in their favour, then it is only on that basis that one can ask for the warrant not to be executed: *“[but] that is really the only possibility to ask for it”* as one lawyer mentioned. One prosecutor explained that all procedural actions, beginning with the pre-trial investigation can be appealed. According to the interviewed prosecutor, in the Lithuanian Penal Code, any action or

inaction by the investigator, prosecutors, and judges can be appealed, and based on these provisions a requested person could “theoretically” also challenge the issuing of an EAW.

Moreover, interviewees also claimed, that although the issuing of the EAW cannot be disputed, in **practice it might look different**. One interviewed defence lawyer claimed that there is a conflation of two things: an arrest warrant for the purpose of prosecution and an arrest warrant for the purpose of execution of a sentence. If an arrest warrant is issued for the purpose of execution of a sentence, it cannot be overturned in Lithuania from a final judgment, unless newly discovered circumstances that were not known at the time are presented. In principle, the EAW as a document is not subject to appeal in Lithuania and in most EU Member States, because it is based on a decision to recognise a person as a suspect. However, in practice, sometimes **it is possible to challenge the issuing of the EAW**. The defence lawyer provided an example of a person who was suspected of beating his wife and fleeing to the UK. The British authorities found the story strange and the surrender to Lithuania stalled. The British judicial institutions asked the interviewee for help. They tried to look into the case, but were not allowed to. The person was not extradited, and the case was deadlocked. But then the British agreed to a proposal to interview the person remotely. The person agreed to come to the Lithuanian Embassy, and gave an explanation, the case was transferred to the court, and the person was still in the UK and attended all the hearings remotely. Then the UK court decided that the Lithuanian side had asked for the presence of the person in the proceedings, they were present, there were no problem with it, and they did not extradite the person in question.

Factors considered when executing an EAW

Proportionality

When **executing an EAW, according to lawyers, the court procedures are very formal and enforcement authorities usually simply comply with the formal request**. The interviewed judge also specified that the issues with proportionality are dealt with by prosecutors. If the case has already reached the court, the court does not discuss the possibility of withdrawing the EAW or using other measures: *“there is no reverse gear.”*

However, one of the interviewed defence lawyers claimed that **the authorities can get in touch with the authorities of the issuing Member State to discuss the possibilities to withdraw the EAW and possibly use other measures if they have reasonable concerns**. Contact is made both directly and through Eurojust. Because Eurojust is the European Union's legal cooperation body based in The Hague for the optimisation and coordination of all mutual communication processes, and both the Framework Decision on the Arrest Warrant and the Code of Criminal Procedure still contains a provision to consult Eurojust on matters arising. According to the lawyer, this is an obligation, and such communication between the authorities in the executing and issuing countries is rather informal as the employees of judicial institutions know one another and are willing to help and to consult one another.

According to the above-mentioned lawyer, although **the general approach is formal, if there is a request, then there will be compliance**. But if it is seen that the situation is unusual (“strange”), then additional information will be asked for. One judge also mentioned that issues with proportionality are considered and the possibilities of withdrawing the EAW and using other measures are discussed and provided an example of where an EAW was not executed because of the health status of the requested person and other measures were applied in the mentioned case. This judge mentioned that there are no obstacles to evaluating such aspects and the Lithuanian authorities can get in touch with issuing authorities and can discuss the possibilities to withdraw the EAW and possibly use other

measures. According to one judge, this can be done by the courts as well, but the prosecutors usually have better contacts with the EAW issuing authorities and usually deal with the authorities of the issuing Member State in such situations.

Moreover, the lawyer stated that there were a number of court decisions in Lithuania where persons had not been extradited for reasons of proportionality. The lawyer provided an example of a case of a citizen of the Republic of Lithuania who was suspected of committing some low-value crime in another Member State; they had children and a job in Lithuania. The court said that the person was not hiding and that the issuing state, did not use other means to secure their participation. The interviewee noted that these were exceptional cases. One prosecutor informed that initiatives such as withdrawing the EAW and using other measures usually come from the defence lawyers' side, and that there *"have been such cases."*

Conditions of detention

Lawyers, judges and prosecutors claimed that the authorities in Lithuania **do not always take into account or assess conditions of detention** in other countries, unless the defence lawyer or the persons themselves raise such an issue and provide necessary facts and evidence. It was simply stated that there are no grounds for doubting adherence to human rights in EU countries. For example, one judge that in countries such as Germany, Finland and Norway there are no risks of violating the rights of the requested persons and Lithuanian authorities consider the detention conditions in the issuing state only *"in theory"* as the conditions of detention in other EU countries are subjectively perceived as *"better."* However, if the person to be extradited claims that the country to which they are to be extradited is characterised by appalling conditions, that could certainly be taken into account.

According to one prosecutor, detention conditions are worse in Lithuania than in other countries, thus **it is more usual for Lithuanian authorities to receive questions about detention conditions in Lithuania than vice versa**. Judges and prosecutors stated that the authorities from *"more advanced"* EU countries send requests to Lithuanian authorities for information about where the person will serve the sentence in Lithuania, and what are the conditions of detention (e.g. room size, and the safety of the person, number of people in the room, sanitary conditions). According to one judge, information regarding conditions of detention in Lithuania is provided by the responsible institution (i.e. Department of Prisons under the Ministry of Justice of the Republic of Lithuania), to the court or to a judge. As one interviewed prosecutor explained, *"I haven't heard that Lithuania raises that issue anywhere"* but mentioned that Germany, the Netherlands and the UK (previously) refused to execute an EAW because of the poor conditions of imprisonment in Lithuania.

Lithuanian judicial institutions **have access to sufficient and reliable data regarding the conditions of detention** in the EU and other countries. The lawyers stated, that regarding access to sufficient and reliable data regarding conditions of detention and when assessing the conditions of detention or imprisonment in the member state issuing the EAW, authorities rely on available sources such as **articles in the press, written documents, as well as witness statements**. Lawyers also mentioned that all the criteria for **conditions of detention are laid down in the Lithuanian Code of Criminal Procedure**. One defence lawyer emphasised that Lithuania has resolved issues of poor conditions of detention, as the arrest centre at Kosciuškos Street in Vilnius, which was notorious for its poor conditions, is no longer there, and the Lukiškės isolation room is no longer in operation. Lithuania had at one time committed itself to placing persons transferred from the United Kingdom and Ireland elsewhere than in those institutions that were notorious for their poor conditions. Judges and prosecutors also mentioned the **trainings** that they participated in. One prosecutor mentioned **consultations**, and possibilities to ask what the conditions are, where the person is, where the person would be transferred etc. According to this prosecutor, such **cooperation with judicial institutions** is

possible and there are no issues in getting information about detention conditions abroad. One prosecutor was also familiar with the **Fundamental Rights Agency's Detention Conditions Database** and has been consulting this database, when needed. One judge was not familiar with the FRA database on conditions of detention, however, mentioned that similar databases exist, and had **received training on how to use the databases** and could find the needed information. One prosecutor mentioned **official reports** "*published by organisations,*" but did not specify the type of organisations or their names. Finally, one judge also mentioned **site visits to the detention centres (in Lithuania)** and similar institutions as well as information provided by the Department of Prisons under the Ministry of Justice of the Republic of Lithuania.

Rights to a fair trial (rule of law)

Opinion **regarding the right to a fair trial and the situation of rule of law differed among the interviewed defence lawyers**. Some lawyers have argued that it is generally assumed that the rights of individuals, including procedural rights, are guaranteed in every country of the European Union. Other interviewed lawyers stated they had not encountered the Lithuanian authorities taking into account the procedural rights of the issuing party and had serious doubts as to how this could be ensured. One interviewed defence lawyer stated that there is no chance of this happening, primarily because the issue of the person's guilt and, consequently, the evidence, is not discussed and solved. Therefore, there is no link because what procedural rights can be tackled in the requesting state. This is because only Member States of the European Union can issue an arrest warrant. A more or less similar set of procedural rights exists. Therefore, there are only minor nuances, and the same directives apply to all of them – the right to information, the right to a lawyer, and the right to translation. In that sense, all the countries are members of the Council of Europe and, accordingly, the judgments of the European Court of Human Rights are relevant to them all. The case-law of the European Court of Human Rights has been developed, shall we say, on practically all the acute issues. Of course, according to the lawyer, there are some states that are rather lax in what is decided. But in principle, there are no fundamentally different procedural rules, so the procedures may differ to some extent, but the basic package of procedural guarantees is the same everywhere.

Similar to the lawyers, the **judges stated that procedural rights** (such as the right to a fair trial by an independent court, right to defence, right to translation etc.) **are a formal requirement and are not infringed as the EAW is applied within European Union countries**. It was mentioned by one judge and one prosecutor that the national court's system among the EU Member States is highly reliable. According to one prosecutor: "*all [EAW] countries guarantee the same rights. I have not heard any stories of anyone not ensuring things are done correctly.*" Another prosecutor explained that EAW is applied within European Union countries and the Member States work in a reliable and responsible way to ensure the procedural rights of the persons: "*we work on the principle of mutual trust.*"

When the EAW concerns the execution of a conviction for **a person tried in absentia**, one judge mentioned the rights provided for in the Criminal Code (e.g. a right to be informed about the trial and the right to not consent and the right to retrial, the right to appeal, and whether there are obstacles to the right to appeal). According to one prosecutor, if the person is on trial *in absentia*, or if there are doubts that the case will not be examined correctly, **it is possible to consult or ask for a consultation**. One prosecutor stated that consideration of the procedural rights of the requested person in the issuing state is particularly significant when persons are tried *in absentia*. According to another prosecutor, in such cases **the procedural rights are taken into account more carefully**. Where the EAW concerns the execution of a conviction for a person tried *in absentia* this prosecutor mentioned the Council Framework Decision on European Arrest Warrant and Transfer Procedure between Member States. If additional clarifications are needed about the procedural rights of the requested

person tried *in absentia*, information is checked with both issuing and executing Member State authorities.

Individual situation

All the interviewed defence lawyers said they believed **that the individual situation should be taken into account when issuing or executing the EAW**. Most often formal assessment is made on whether the activity covered by the arrest warrant is the activity for which the warrant is issued and whether there are formal grounds for not executing the warrant. According to some of the interviewed lawyers, in rare cases the court takes into account both the marital status of the person, the severity of the activity that is charged, and other circumstances. As explained by one lawyer, the possibility to have an individual situation taken into account is ensured because during the process the person has the opportunity to explain their situation.

Humanitarian reasons, and individual situations related to gender, pregnancy, disability, marital status are taken into account and might be sufficient reason to suspend the criminal procedure, according to one interviewed defence lawyer. One interviewed defence lawyer also claimed that there are cases where evidence had been gathered about the humanitarian situation as well as human vulnerability. According to one judge, there can be cases when the EAW procedure can be suspended or denied for exceptional humanitarian reasons, but could not provide any examples. According to another judge, the EAW is executed in the European Union only, where exceptional humanitarian conditions rarely exist (as in contrast to Ukraine was mentioned). Likewise, one interviewed defence lawyer did not doubt that individual situations are taken into account when issuing or executing the EAW: *“If the nuances are real, it is natural that no one would put a sick person in handcuffs on a plane.”*

According to another interviewed defence lawyer, during the process **the person has the opportunity to tell of their individual situation** and claimed that in any case **should be possible to suspend such a procedure**. The interviewee considered that if, say, the pregnancy is coming to an end, it is unlikely that anyone would try to extradite such a person just before giving birth.

According to one judge, an **individual situation is assessed on individual grounds (e.g. pregnancy, health issues) and also on procedural grounds**, i.e. the person is already serving a sentence in Lithuania, or their case is under pre-trial investigation, or an investigation is still ongoing. One prosecutor mentioned the Council Framework Decision on the European Arrest Warrant and Transfer Procedure between Member States, which contains conditions under which the EAW cannot be refused or postponed. One judge also mentioned a case during the pandemic when the requested person could not be extradited to Italy because of travel restrictions. The EAW time was postponed until pandemic restrictions were lifted. A prosecutor presented an example of a situation where the requested person was taking care of their disabled mother. In this particular case, the intensive supervision measure was applied instead of arrest. An example of a person who could not fly by plane due to some medical condition was also given by one prosecutor. In this case, the court requested the opinion of medical doctors and the conclusion of a specialist, and the person was transferred via different means of transport.

Discussion of findings

Judges and prosecutors expressed diverging opinions on the proportionality issue. Most of the interviewed defence lawyers claimed that proportionality is either **often overlooked or not assessed** and the issue of proportionality may be **taken into account only if the defence [lawyer] raises [the issue of proportionality] and provides necessary evidence**. Most of the interviewed defence lawyers stated that judicial **authorities often take a rather formal approach and do not consider proportionality on their own initiative**. Lawyers claimed that proportionality can be taken into

consideration when the arrested person agrees to appear before the court of the requesting country without implementing an EAW. Moreover, one lawyer was still **critical of the judicial authorities** involved in the EAW process (namely judges and prosecutors) and claimed that it was only if the defence lawyers raised the proportionality issue first and provided evidence, that it might then be taken into account. The **judges stated that proportionality is not the most significant factor, they called it a subjective factor and stressed the importance of the duration of time left until the sentence is served.** The **prosecutors on the contrary claimed that proportionality is the key factor and that the main principles of the EAW are cost effectiveness and proportionality.**

Regarding factors that are considered when issuing the EAW, interviewed defence lawyers, judges and prosecutors stated that **formal factors are taken into account: legal qualifications and the possibility of extraditing a person for a criminal claim.** Other factors that Lithuanian authorities take into account include conditions laid down by law on **whether or not that person may be extradited, whether there are any obstacles to that, or whether it is a criminal or an administrative offence.** The **length of the sentence** is also a factor taken into consideration.

The **issue of an EAW can be theoretically challenged on the basis of proportionality concerns** and such arguments would be considered by the courts. If the person disagrees with the decision and the facts are in their favour, then it is only on that basis that one can ask for the warrant not to be executed: *“[but] that is really the only possibility to ask for it”* (interviewed lawyer). One prosecutor explained that all procedural actions, beginning with the pre-trial investigation can be appealed. According to this prosecutor, in the Lithuanian Penal Code, any action or inaction by the investigator, prosecutors, and judges can be appealed, and based on these provisions a requested person could *“theoretically challenge the issuing of an EAW.”*

When **executing the EAW**, according to the lawyers, **the court procedures are very formal and enforcement authorities usually simply comply with the formal request.** However, one lawyer claimed that **the authorities can get in touch with the authorities of the issuing Member State to discuss the possibilities to withdraw the EAW and possibly use other measures if they have reasonable concerns.**

Lawyers, judges and prosecutors claimed that the authorities in Lithuania **do not always take into account or assess the conditions of detention** in other countries unless the defence lawyer or the persons themselves raise the issue and provide necessary facts and evidence. **It is more usual for Lithuanian authorities to receive questions about detention conditions in Lithuania than vice versa.**

Lithuanian judicial institutions **have access to sufficient and reliable data regarding conditions of detention** in the EU and other countries. When assessing the conditions of detention or imprisonment in the Member State issuing the EAW, authorities rely on available sources such as **articles in the press, official reports, databases, as well as witness statements, training, consultations, and possibilities to ask what the conditions are** (via cooperation tools with judicial institutions), **site visits to the detention centres** etc.

Opinions **regarding the right to a fair trial and the situation of rule of law differed among the interviewed defence lawyers.** Some lawyers have argued that it is generally assumed that the rights of individuals, including procedural rights, are guaranteed in every country of the European Union. Other interviewed lawyers stated they had not encountered the Lithuanian authorities taking into account the procedural rights of the issuing party and had serious doubts as to how this could be ensured. Similar to the lawyers, the **judges stated that procedural rights** (such as the right to a fair trial by an independent court, right to defence, right to translation etc.) **are a formal requirement and**

are not infringed as the EAW is applied within European Union countries. Prosecutors noted that consideration of the procedural rights of the requested person in the issuing state is very significant when persons are tried *in absentia*. In such cases the procedural rights are taken into account more carefully.

In some cases, the courts can take into account the individual situation of the requested persons (personal, family and health status, and other individual circumstances). **During the process the requested person has the opportunity to explain their situation, and this ensures that individual situations are taken into account.**

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

Under the CCP, **procedural actions, such as questionings etc., can be carried out using electronic communication technology (videoconferencing), only under exceptional circumstances**, when it is impossible to carry them out in accordance with the normal procedures, and it can be reasonably expected that this will speed up the proceedings.⁴⁷ This is not applicable to procedural actions which, due to their nature, cannot be carried out remotely, or when direct participation is necessary to fully examine all the details relevant to the investigation, and to guarantee the rights of the participants of the proceedings.

Similarly, participants of a court hearing can only attend remotely, via videoconferencing, in exceptional circumstances, when regular hearings cannot be held, and it can be reasonably expected that this will speed up the proceedings, will not prevent a full examination of the case, and the rights of the participants of the proceedings will be guaranteed.⁴⁸ The decision on remote participation is made by the court, prior to the hearing, and is not subject to appeal. However, participants in the proceedings have a right to raise an objection to the use of videoconferencing in advance, in which case these measures may not be used.

The **Court of Appeal of Lithuania maintains the exceptional nature of the above measures** in its case-law.⁴⁹ It has refuted a requested persons position that execution of the EAW should be refused, since procedural actions could be carried out remotely, reasoning that the requested person was wanted not only for questioning but also for other procedural actions and also because the investigation concerned offences committed by a number of accomplices rather than a single person, and direct participation of the requested person would be required in most instances. The court stressed that conducting procedural actions by remote measures is only allowed in exceptional cases, when “conducting the proceedings in this way will not, *inter alia*, preclude a full and objective examination of all the circumstances relevant to the investigation.”⁵⁰

Under the CCP, the **interpreter can participate in most of the criminal proceedings remotely**, via digital tools, except in instances where direct participation of the interpreter is necessary for the person receiving the interpretation to properly exercise their rights and understand the proceedings.⁵¹ However, **in court hearings remote participation is only allowed by court decision**, in exceptional circumstances, when regular hearings cannot be held, and it can be reasonably expected that this will speed up the proceedings, and the rights of the participants of the proceedings will be guaranteed.⁵²

Furthermore, **documents can be served digitally in criminal proceedings** by the investigating law enforcement institutions, prosecutors, and courts to lawyers, as well as to other participants of the proceedings, if the latter have agreed to be served digitally and provided the required contact

⁴⁷ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Article 8² p. 1.

⁴⁸ *Ibid.*

⁴⁹ The Court of Appeal of Lithuania (*Lietuvos apeliacinis teismas*), [decision No. 1N-13-1020/2021](#), 14 July 2021.

⁵⁰ *Ibid.*

⁵¹ [Code of Criminal Procedure](#) (*Baudžiamojo proceso kodeksas*), 14 March 2002, No. IX-785, with subsequent amendments. Article 43.

⁵² *Ibid.* Article 8² p. 2.

details.⁵³ Lawyers and other participants of the proceedings also have the right to serve documents to law enforcement institutions, prosecutors, and courts digitally.⁵⁴

No legal standards on cooperation between the lawyers in the issuing and executing Member States are available.

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)
Lithuania	YES	YES	YES	NO	YES	NO	NO
TOTAL							

b. Interview findings

There are **no accepted standards in Lithuania on how using digital and technological tools** in practice may be applied in EAW cases and thus vulnerabilities of the legal process may arise. As stated by a defence lawyer, although different countries agree on how the EAW should be implemented, they still have different criminal policies based on different criminal philosophies. In more liberal countries digitalisation may be in favour, but the interviewee doubted the possibility of wider application of such means, *“Lithuania’s approach to criminal justice is very inflexible,”* according to the lawyer. Accordingly, judge claimed, that digitalisation can be beneficial in ‘simple’ cases, but questions can be raised on how to enforce a court sentence on the offenders if they are not present. Another judge also mentioned that face-to-face communication allows viewing the non-verbal communication of the defendant and it allows the judges to form ‘an inner certitude’ [if the requested person is telling the truth/lying etc].

Regarding fundamental rights benefits one judge mentioned that defendants would avoid difficulties with getting tired from regular arrivals and transfers to and from the courtroom and between different cities: “pulling from one institution to another.” While digitalisation would also save time it might require more technically equipped premises in courtrooms. There can also be difficulties if the requested persons are not able to use computer technology. According to one judge the requested persons would avoid stress from being transported from one location to the other and instead, they would have more time to think and prepare for court hearings and more time to communicate with the defence lawyers. One interviewed prosecutor also mentioned that digitalisation would save time as the defendants would avoid getting stressed with regular transportation between different cities, it would also make the process of the EAW faster and more efficient, would save time for defence lawyers. However, another judge mentioned that personal face-to-face communication with the defence lawyers can be more comfortable for the requested persons for psychological reasons. Digital technology means reduced opportunities to listen to a person directly and therefore, might affect human rights protection negatively (an interviewed defence lawyer).

⁵³ *Ibid.* Article 8² p. 6.

⁵⁴ *Ibid.* Article 8² p. 8.

Several defence lawyers have pointed to **the threat that more digitalisation could lead to less human individuality**. One lawyer explained another threat that digitalisation might have on human rights by providing the example about a pre-trial investigation case (not EAW). According to the lawyer, with the introduction of the integrated prosecution system of the CETA, the “boxes” are being filled in, and there are no longer any grounds in the orders or decisions. Where there are no reasons, the number of contested options is correspondingly reduced:

“And after all, each person is an individual. You tick the numbers on the certificate, you tick the boxes and it's easy. Whether there is a certificate or not – nobody will ask you whether your pregnancy is in the first month or the sixth month, etc.” (Lawyer, Lithuania)

“Kiekvienas asmuo yra individualus. Nu ir užpildei skaičiukus kokią nors pažymą nu laukelius varnelės dedė ir tada viskas easy yra nėra pažyma, niekas žmogaus nebepaklaus. Ar tavo nėštumas pirmo ar šešto mėnesio ar ten dar kažkas.”

This reduces the possibility of taking into account the individual situation. Moreover, the above quoted lawyer also stated that digitalisation also reduces the scope for litigation, because it is not possible to come up with interrogation questions that are suitable for each individual case, let alone each individual person. Thereby, the reduction of that human factor leads to a reduction in quality.

However, it is important to mention that **not everyone agreed that digitalisation poses a threat to human rights**. As stated by one defence lawyer, digitisation could help ensure human rights. According to the lawyer, in Lithuania the tendency to restrict access to information exists, i.e. only the police, or the prosecutor's office only, or the court has the information, that other parties cannot see. Thus, digitalisation would enable access to information. Here the lawyer did not see any danger if the information is made available. They felt that the evidence will still be available at some point, when the case goes to court when the person is extradited to the other country, they will still get access,

“So why not give them access now so that they can have full access to everything at the time of the case, and, if they are not already fully using it to defend themselves, then that is it. This would prevent cases where people sue the state for tangible and intangible damages experienced through the criminal procedure.” (Lawyer, Lithuania)

“tai kodėl jam neduoti dabar, kad šiam momentui galėtų jisai pilnai viskuo naudotis ir, jeigu jau pilnai naudodamasis ten neapsigina, nu tai viskas tvarkoj, reiškia neapsigynė. O jeigu apsigynė, tai tada nereikia paskui va tų visų atsakinėt procesų, ieškoti žalų materialinių nematerialinių ir visokių dalykų.”

Judges and lawyers were also **positive regarding digitalisation of documentation** in EAW proceedings **in practice** (such as faster sharing of information, access to the case file by all parties etc.). However, there can be technical and personal difficulties for judges (*“I personally tend to forget how to connect [passwords], paper is better [for me] to have in hand,”* as well as failures in the system etc. *“especially in the beginning it is difficult to work [with digital] systems.”* Another judge also mentioned that digitalisation allows faster sharing of information and faster and easier communication between central (Vilnius) and regional level judicial authorities in other localities (towns, municipalities etc.) and helps to question defendants remotely rather than requesting transportation of the requested person, thus processes are faster.

One interviewed defence lawyer also stated that it would be beneficial to have **all the case material digitised and available for lawyers to consult and use**. But according to the lawyer, this is hard to imagine because there is always a fear among law enforcement authorities that if you give a person access to digital systems, they will not be there to seek help, but rather to destroy evidence in digital form quickly: *“that is probably the biggest fear, how to control it, how to limit it so that a person can*

only access certain sites and not somewhere else.” Regarding digitalisation, in EAW proceedings one interviewed prosecutor viewed it positively and mentioned that the online meetings with the requested persons before surrender would be a rational step in EAW proceedings to both issuing and executing states. According to them, this would enable making better decisions regarding the EAW, digitalisation would also save time, the processes would be faster and cheaper “and more rational.”

One interviewed defence lawyer claimed that **digitalisation increases speed, it simplifies the procedure, and it allows job cuts**. One prosecutor explained that many digitalisation tools have already been established (e.g. alarm system, online hearings, consultations and information exchanges online). New technologies allow data to be evaluated faster and more thoroughly. The prosecutors can carry out the entire clarification procedure remotely, and the interpreter also participates remotely. One lawyer also claimed that during the pandemic and with restrictions, digitalisation was a huge plus because the person could be interviewed at a distance and the need for an EAW may become irrelevant: the person might explain the circumstances and it would be clear that it might be easier to transfer their case to the appropriate state.

However, according to one prosecutor, **if language translation is involved, remote meetings would be qualitatively worse**. This prosecutor also stated that online interrogations are qualitatively less effective than face-to-face interrogations – *“this means that the question of whether they understood what was explained – what that specialty rule is, it is not just a formal check mark – online interpretations are not the same [as face-to-face interrogations].”* One interviewed defence lawyer also doubted that digitalisation could open new opportunities [for remote meetings], because direct communication with the requested person is more effective. Another lawyer also stated that digitalisation might not be beneficial in the EAW processes where language translation would be needed.

Some interviewees saw benefits in digitalisation that could mean **the possible reduction in the number of EAWs issued and reducing costs**. For example, one prosecutor firmly believed that digitalisation may lead to fewer EAWs being issued: *“it’s already happening.”* This prosecutor also explained that there were cases when Lithuanian officials have requested online interrogations instead of an EAW, but the parties issuing the EAW had not agreed to such proposals. One interviewed defence lawyer also stated that the possibility of video interviews could be very useful. Therefore, it might be not necessary to forcefully move the person from one location to the other and *“later think whether it was worth doing it.”* Another interviewed defence lawyer said that digitalisation is one of the main arguments that defence lawyers always raise if there is a need: *“Let’s say a chicken had been stolen and now the person needs to be extradited because of that?”* According to the lawyer, the procedure itself costs money, and all these costs have to be paid for by someone: *“If the person can be interviewed by a human being simply by switching on a computer, then it’s better to do it this way.”*

One prosecutor also mentioned that the EAW is an extreme measure and explained that digitalisation may be beneficial in allowing other ways to investigate the case (by questioning online etc.) and solve the cases in other ways rather than issuing EAW. However, one of the judges was **sceptical regarding digitalisation leading to fewer EAWs** being issued: *“only if the detained person is so disposed or willing then yes [digitalisation] may lead to fewer EAWs being issued [...] but if the person is not willing, they will find ways to avoid the procedure,”* and added that *“if the person is in Lithuania (locally) it is possible to bring them by force, impose a fine for non-participation.”*

One interviewed defence lawyer correctly stated that the main question with regard to digitisation is **how to ensure the identity of the person**. With digitalisation it should be possible to identify the person and, above all, to establish that the person is alone in the room, that they are not using some

kind of assistance. There are different technical instruments, such as spoofers, and the distance involved only makes it easier to use them.

Table 13: Use of digital tools, interview findings.

Interviewees per Country	Conducting EAW hearings (when an executing state)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing state).	Communication with involved foreign authorities (both executing – issuing states).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing state)	Facilitating access to a lawyer in the executing Member State (when an issuing state)
LAWYER 1	YES	-	-	-	-	-	-
LAWYER 2	-	-	-	-	-	-	-
LAWYER 3	-	-	-	-	-	-	-
LAWYER 4	YES	-	-	-	-	-	-
JUDGE 1	YES	YES	NO	YES	YES	NO	NO
JUDGE 2	YES	YES	NO	YES	YES	NO	NO
PROSECUTOR 3	YES	YES	NO	YES	YES	NO	NO
PROSECUTOR 4	YES	YES	NO	YES	YES	NO	NO
TOTAL	6	4	4	4	4	4	4

c. Discussion of findings

Under the CCP, **procedural actions, such as questionings etc., can be carried out using electronic communication technology (videoconferencing), only under exceptional circumstances.** Under the CCP, with some exceptions, the **interpreter can participate in most of the criminal proceedings remotely**, via digital tools. **In court hearings remote participation is only allowed by court decision**, in exceptional circumstances. **Documents can be served digitally in criminal proceedings** by the investigating law enforcement institutions, prosecutors, and courts to lawyers, as well as to other participants of the proceedings, if the latter have agreed to be served digitally and provided the required contact details have been provided. Lawyers and other participants of the proceedings also have the right to serve documents to law enforcement institutions, prosecutors, and courts digitally.

Regarding fundamental rights benefits digitalisation would allow defendants **avoid difficulties with becoming stressed from arrivals and transfers** to and from the courtroom and between different cities, would **save the time of defendants, lawyers and courts**, thus, processes would become faster. The requested persons would have **more time to prepare for court hearings** and **more time to communicate with the defence lawyers**. Furthermore, it **would enable access to information and sharing of information**.

However, digitalisation **may reduce opportunities to listen to a person directly** and therefore, might affect human rights protection negatively. There can also be **difficulties if the requested persons are not able to use the computer technology**. It **would not be possible to enforce a court sentence on the offenders if they are not present**. **Direct communication allows viewing the non-verbal communication** of the defendant. **If language translation is needed, remote translation is considered qualitatively worse**. **Online interrogations are also considered qualitatively less effective**. Digitalisation **might require more technically equipped premises, may mean job cuts** in judicial institutions, and **technical difficulties** (from learning to use new technologies and “*technology overload*” to cyber security issues).

Digitalisation of documentation in EAW proceedings is viewed positively as it allows faster sharing of information, access to the case- file by all parties and **easier communication between central and regional level judicial authorities** in other localities (towns, municipalities etc.). Some interviewees saw benefits in digitalisation that could mean **the possible reduction in the number of EAWs issued and reduced costs**.

CONCLUSION

This report presents the findings on procedural safeguards for persons requested in the European Arrest Warrant proceedings in Lithuania. The information presented in this report was collected through a combination of desk research and interviews with lawyers, judges and prosecutors in Lithuania. The analysis in the report covered the following areas: the right to information, right to interpretation and translation, right of access to a lawyer, issuing and execution of the EAW and use of digital and technological tools in EAW proceedings.

1. Right to information

Although the **right to information is enshrined in the Lithuanian CCP, it does not specify what rights must be explained to the requested person.** On the one hand, the **requested persons receive a standard form of a Letter of Rights, obtain oral information that explains their rights and, with the help of the officers of the detention centre get acquainted with the content of EAW and its procedure.** On the other hand, the research findings suggest certain inconsistencies in practice. For example, a **person held in custody has the right to access all the material that exists at a given moment, including the EAW, and a copy of the translated version of the EAW is normally handed to the person within 48 hours of their arrest.** Nevertheless, **in practice, the arrested persons are sometimes informed about the EAW's content and procedures only after being transported to a detention centre.** Second, **time-consuming bureaucratic procedures, including the coordination of the EAW procedure between central and territorial authorities, hamper the right to provide the detainee with written information** on the translated content of the EAW. Third, **as regards the interpretation of the information, this is sometimes dealt with rather formally at the hearing.** Fourth, **the requested persons can also be victimised,** as the research findings suggest, that those who are “not the first time” arrested are perceived by the judges as already familiar with the EAW procedures. Finally, **as regards the Letter of Rights, if a person does not have a general understanding of the law, it may be difficult for them to understand what the letter says.** In short, although the right to information is provided, it is nevertheless recommended that these inconsistencies and practices hampering the right to information are eliminated.

Regarding the information on consenting to surrender **the requested persons are informed about what consenting to surrender entails in detail as well as the simplified EAW procedure** by the general prosecutor during the first meeting with the arrested person. **The speciality rule is explained separately.** When informed requested persons are asked whether they consent or not to the surrender. Although the **CCP does not establish a special procedure for challenging failure to provide EAW-related information about procedural rights, nor does it establish specific consequences for failure to provide information about the EAW or the requested person's procedural rights,** the research findings suggest that the responsible authorities, especially general prosecutors, take care to ensure that the rights are understood. Efforts are made to explain the information to the arrested persons. Although issues of understanding may arise if a person speaks a less well-known foreign language.

2. Right to interpretation and translation

Under the CCP, participants of the criminal proceedings who do not speak Lithuanian have the right to use their native language or another language they know throughout the proceedings, and they **have a right to be assisted by an interpreter.** However, it is up to the investigating officer, prosecutor or court dealing with the person to determine in “the shortest possible time” whether the person knows Lithuanian and whether an interpreter is necessary to ensure that the person properly exercises

their rights and understands the proceedings. No specific procedure for determining this is established in law. **Efforts to provide translation services are made and translation is always available when needed.** The courts and police have funding for these translators, and even in some places English and Russian translators are working full-time in the courts. The **right to a translator is assessed by the officials who are carrying out the procedural steps.** However, **written translation is certainly not always provided.**

The **interpreter can participate in most of the criminal proceedings remotely**, via digital tools, except in instances where direct participation of the interpreter is necessary for the person receiving the interpretation to properly exercise their rights and understand the proceedings. However, **remote translation due to technical issues is regarded as less effective and less efficient.** There are **no specific measures for verifying the quality of interpretation** in official documents and **no specific criteria under which the need for interpretation is assessed** as the **need for translation is most likely assessed subjectively** i.e. the requested person is simply asked whether they need a translation. On the other hand, judges and prosecutors claim that **the need for translation is always taken into account** because the defence lawyers *“are checking this carefully”* and *“this is where the defence lawyers look first for loopholes [in the EAW process].”* In case of translation from and into **less commonly spoken languages**, a translator appointed by public authorities might not be available and of sufficient quality and the defence will need to hire a translator from outside, at **extra costs for the requested person.**

There is **no special procedure for challenging the failure to provide interpretation or translation** to a requested person, even though the Supreme Court of Lithuania has established that **failure to provide translation of essential case documents, like court decisions, can be considered a fundamental breach of criminal proceedings** and if it breaches the person’s right to defence, and can be a basis for retrial. Regarding the **translation of the documents**, only a limited amount of information is provided, and the documents are only translated orally. The **translation of the documents and the content of the case file** (the latter is provided in Lithuanian language only) **may be arranged only if a request to provide translation was raised by the person.** However, because of the lack of a formal procedure for challenging the failure to provide interpretation or translation (as mentioned above), the practical possibilities of complying with such requests could be applied with certain limitations.

3. Right of access to a lawyer

Persons are provided with information regarding the right to access a lawyer (including dual representation). The information is provided with both in oral and written form. The requested person can choose their own defence lawyer. Otherwise, a lawyer is appointed by the state.

Legal aid in the executing State is in line with the State's legal framework. **There are many ways in which a detained person can find a lawyer, individually or with the help of others.** If they cannot find a lawyer themselves, they are assigned a state-funded defence lawyer. **To exercise their right to a lawyer of their own choosing, the detained person has the right to a phone call.** However, **gaps in the enforcement of rights exist.** For example, **detained persons do not have access to the internet,** and authorities do not provide them with a list of possible lawyers.

Interview findings suggest that general criteria regarding the right to legal assistance are met and procedures are followed. The lawyer's assistance to the person requested includes providing information, clarifying the legal situation, advising on the next steps in the defence, filing applications with the court and appealing the decision. **Persons can meet and consult their lawyers in person at various stages of the procedure.**

Legal assistance in the issuing state (access, consultations, lawyer's tasks), is described in the Letter of Rights. Digital tools can be a practical help in choosing and contacting a lawyer in the issuing Member State. Other practical means available for choosing and contacting a lawyer in the issuing state were similar to those of choosing a lawyer in Lithuania. Nevertheless, Lithuanian national authorities do not seem to provide assistance by facilitating the appointment of a legal aid lawyer in the Member State issuing the EAW. Providing the help, could help to exercise the right to legal assistance in the issuing state.

Regarding communication between the lawyers in both states, interviewed professional reflected upon the fact that there is no special legal regulation or guidance on lawyers' cooperation in the executing and the issuing Member States. This is something that still needs to be practically and legally elaborated.

4. Issuing and execution of the EAW

Under the CCP, when deciding on whether to issue an EAW, the issuing institution, the Prosecutor General's Office or the regional court, **must assess whether the surrender of the person in question complies with the principles of proportionality and cost-effectiveness** of the proceedings with regard to the seriousness and scale of the offence, and the personality of the suspect or the accused person. More detailed regulation on issuing EAWs, including assessing their proportionality, is provided in the "Rules for issuing a European arrest warrant and receiving a person under a European arrest warrant" (the EAW Rules), jointly adopted by the Ministry of Justice and the Prosecutor General. The grounds for mandatory and optional non-execution of an EAW are governed by the Criminal Code.⁵⁵ There are no specific grounds in the Criminal Code for refusing an EAW due to conditions of detention or risks to fair trial rights in the issuing Member State. However, there is a general ground for **mandatory non-execution of an EAW when the surrender of the requested person "would violate fundamental human rights and (or) freedoms."** There is **no procedure in the CCP or the EAW Rules for challenging the EAW** or requesting the withdrawal of an EAW.

However, **lawyers, judges and prosecutors expressed diverging opinions on the proportionality issue.** The issue of EAW can be challenged on the basis of proportionality concerns and such arguments would be considered by the courts. However, the **lawyers** claimed that **proportionality is often overlooked or not assessed**, and the issue of proportionality may be **taken into account only if the defence lawyer raises the issue of proportionality and provides necessary evidence** and the authorities often take a formal approach and do not consider proportionality on their own initiative. The lawyers also claimed that proportionality can be taken into consideration when the arrested person agrees to appear before the court of the requesting country without implementing the EAW. **Prosecutors** stated that **proportionality is the key factor** and that the main principles of the EAW are cost-effectiveness and proportionality, whereas **judges** on the contrary stated that **proportionality is not the most significant factor**, called it a **subjective factor** and stressed the importance of the duration of time left until the sentence is served.

Regarding factors that are considered when issuing the EAW, interviewed defence lawyers, judges and prosecutors stated that **formal factors are taken into account: legal qualifications and the possibility of the surrender of a person for a criminal claim.** Other factors Lithuanian authorities take into account include conditions laid down by law on **whether or not that person may be surrendered,**

⁵⁵ [Criminal Code](#) (*Baudžiamasis kodeksas*), 26 September 2000, No. VIII-1968, with subsequent amendments. Article 9¹.

whether there are any obstacles to that, or whether it is a criminal or an administrative offence. The **length of the sentence** is also a factor taken into consideration.

When **executing the EAW**, according to lawyers, **the court procedures are very formal and enforcement authorities usually simply comply with the formal request.** The authorities can get in touch with the authorities of the issuing Member State to discuss the possibilities to withdraw the EAW and possibly use other measures if they have reasonable concerns.

Regarding **conditions of detention**, the authorities in Lithuania **do not always take into account or assess conditions of detention** in other countries unless the defence lawyer or the persons themselves raise such an issue and provide necessary facts and evidence. It is **more usual for Lithuanian authorities to receive questions about detention conditions in Lithuania than vice versa.** Lithuanian judicial institutions **have access to sufficient and reliable data regarding conditions of detention** in the EU and other countries and rely on available sources such as **official reports, databases, as well as witness statements, training, consultations, and possibilities to ask what the conditions are** (via cooperation tools with judicial institutions), **site visits to the detention centres** etc. However, the research findings suggest that the **individual situation of the requested persons** is assessed only if the defence lawyer or the persons themselves raise such an issue. There were no concerns raised **regarding the right to a fair trial and the situation of rule of law.**

5. Use of digital and technological tools in EAW proceedings

Under the CCP, **procedural actions, such as questionings etc., can be carried out using electronic communication technology (videoconferencing), only under exceptional circumstances.** Under the CCP, the **interpreter can participate in most of the criminal proceedings remotely**, via digital tools, except in instances where direct participation of the interpreter is necessary for the person receiving the interpretation to properly exercise their rights and understand the proceedings. **In court hearings, remote participation is only allowed by the court decision**, in exceptional circumstances, when it can be reasonably expected that this will speed up the proceedings, and the rights of the participants of the proceedings will be guaranteed. **Documents can be served digitally in criminal proceedings** by the investigating law enforcement institutions, prosecutors, and courts to lawyers, as well as to other participants of the proceedings if the latter has agreed to be served digitally and provided the required contact details. Lawyers and other participants of the proceedings also have the right to serve documents to law enforcement institutions, prosecutors, and courts digitally.

The research findings suggest that **digitalisation may have both positive and negative impacts** on guaranteeing and protection the fundamental rights of the defendants. First, digitalisation would allow defendants to **avoid stress and fatigue from transportation** to and from the courtroom and between different cities. Thus, requested persons **would avoid stress** and **would have more time to prepare for court hearings** and **to communicate with their defence lawyers.** Digitalisation would also **save the time of all parties:** defendants, lawyers and courts. Thus, **the process of the EAW would become faster and more efficient.**

The research findings suggest that digitalization would also **enable better access and sharing of information.** **The digitalisation of documentation** in EAW proceedings would ensure faster sharing of information, access to the case file by all parties etc. and **easier communication between central and regional level judicial authorities** in other localities (towns, municipalities etc.). Digitalisation could gradually lead to **a possible reduction in the number of EAWs issued** and **reduce costs.**

However, regarding fundamental rights benefits **some scepticism was expressed.** It may be beneficial in **allowing other ways than EAW to investigate and solve cases** (by questioning online etc.), however,

only if the detained person is willing to cooperate with judicial institutions this may lead to fewer EAWs being issued. The research findings suggest that **digital communication with the defence lawyers can be uncomfortable** for the requested persons for **psychological reasons**. **Digital means may reduce opportunities to listen to a person directly** and therefore, might affect human rights protection negatively as **face-to-face communication allows viewing the non-verbal communication** of the defendant. Remote **translation can be qualitatively worse, and online interrogations less effective**. There can also be **difficulties if the requested persons are not able to use the computer technology**. It was also pointed out that it **would be not possible to enforce a court sentence on the offenders if they are not present**. Digitalisation might also **require more technically equipped courtrooms**. It was also noted that digitalisation would mean **job cuts** and **technical difficulties**.