

Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings – safeguards for requested persons

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EXECUTIVE SUMMARY

Right to information

The Cooperation in Criminal Matters with the Member States of the European Union Act stipulates the information that must be provided to the requested person upon arrest. In practice, the requested persons are informed about their rights in writing and orally. The requested persons arrested in Slovenia are informed about the contents of the European Arrest Warrant (EAW) against them. They are also informed about what consenting to their surrender entails and about the 'speciality rule'.

Right to interpretation and translation

In accordance with the Cooperation in Criminal Matters with the Member States of the European Union Act, the requested person has the right to translation in accordance with the provisions of the Criminal Procedure Act (CPA). Interview findings show that in practice, requested persons who are foreign nationals are always provided with interpretation. The courts are responsible for the assessment and appointment of an interpreter but since an interpreter is always appointed, no particular assessment mechanism or criteria are in place. Practical issues such as providing court interpreters for certain languages were identified. In such cases, the courts appoint interpreters that are used by the police or other persons who speak the language. In practice, interpretation is conducted in person. Interviewees identified documents that are always provided in a language a requested person understands. Such documents include the EAW, any court decision in the executing country against which the person has a right of appeal, the minutes of the EAW hearing, and court decisions from the issuing country. The outcomes of the field research indicate that interpretation for consultations with a lawyer is provided by a state-appointed interpreter. However, some of the lawyers interviewed were not aware of this and used their own interpreters.

Right to access to a lawyer

In accordance with the Cooperation in Criminal Matters with the Member States of the European Union Act, the requested person must have a defence counsel appointed during the entire surrender proceedings. The requested persons are always informed about the right and provided with a lawyer. However, courts do not inform the requested persons that they can benefit from the assistance of a lawyer in the Member State that issued the European Arrest Warrant. In most EAW proceedings, the lawyer is appointed *ex officio* by the court and requested persons almost never hire lawyers on their own. As representation by a lawyer is mandatory in EAW proceedings, requested persons always have their lawyer present at hearings. Interview findings indicate some issues regarding the setting of the first lawyer-client consultation when the lawyer is appointed *ex officio* by the court. Namely, meetings take place right before the hearing in the court hallway. The lawyers reported that their role in EAW proceedings is much more limited than in regular criminal proceedings. In EAW proceedings the lawyer informs the requested person about the proceedings, the consequences of consent and the grounds that may prevent the surrender. If the person does not consent to surrender, the lawyer then obtains procedurally relevant information that may prevent it. While the courts when executing EAWs do not support the person in finding a lawyer in the issuing state, the lawyers interviewed considered cooperation between the lawyers in both countries to be beneficial.

Issuing and execution of the EAW – factors considered

Interview findings indicate that EAW is only issued if detention is ordered due to the risk of absconding (evading the proceedings), and not due to any other reasons. Proportionality is an important factor in issuing the EAW, as it is taken into account already in the decision-making regarding detention, which serves as the basis for issuing the EAW. Proportionality is less important in the execution of EAWs,

where the main focus is on the legal requirements for executing the EAW. The principle of mutual trust was emphasised both in relation to the proportionality factor and detention conditions. Interview findings show that raising any concerns pertaining to detention conditions and the respect for the right to a fair trial is the role of the defence. As to executing judgements issued in trials in absentia, the legally prescribed conditions were emphasised. Possible humanitarian reasons related to the COVID-19 pandemic did not seem to have significant impact on the execution of EAWs as the surrenders were temporarily postponed only in the very beginning of the pandemic (March 2020).

INTRODUCTION

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

When preparing for the fieldwork and identification of respondents, the Peace Institute's previous experience in securing interviews with judges, lawyers and prosecutors were considered.

To recruit prosecutors, a request was issued to the Supreme State Prosecutor's Office of the Republic of Slovenia, asking to interview two state prosecutors with experience in issuing/executing EAWs. The State Prosecutor's Office of the Republic of Slovenia quickly responded with the contact details of two district state prosecutors available for the interview.

Regarding judges, several District Courts were approached. In one case, the request was rejected and in another it was explained that the court was experiencing staff shortages and scheduling would be difficult. Eventually, positive responses were received from judges from two separate District Courts.

Regarding the lawyers, the Slovenian Bar Association was approached, to ask for their suggestions for four lawyers with experience in representing clients subjected to the EAW. Some of the Peace Institute's existing contacts among lawyers were also used to identify lawyers with the necessary experience. Through the Peace Institute's pre-existing contacts four interviews with lawyers were obtained. The Slovenian Bar Association explained that they lack information on which lawyers frequently represent clients in EAW cases, as the in most EAW cases, the lawyers are appointed *ex officio*. This means that they are appointed from a list of on-duty lawyers (that are on duty on a particular day). As a result, many lawyers never get such a case or get very few cases which is why they do not feel comfortable participating. It was also challenging to identify lawyers with experience in issuing EAWs. One of the interviewees had experience from having previously worked at a court and another was involved in a case after the person in question had already been surrendered to Slovenia as the issuing state.

○ SAMPLE AND DESCRIPTION OF FIELDWORK

Defence lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 4

Table 1: Sample professionals

| Code | Group | Expertise in European Arrest Warrants | Gender |
|------|----------------|---------------------------------------|--------|
| 1 | Defence lawyer | Yes | M |
| 2 | Defence lawyer | Yes | M |
| 3 | Defence lawyer | Yes | M |

| | | | |
|---|----------------|-----|---|
| 4 | Defence lawyer | Yes | M |
| 5 | Prosecutor | Yes | F |
| 6 | Prosecutor | Yes | M |
| 7 | Judge | Yes | M |
| 8 | Judge | Yes | F |

All interviewees were offered the option to be interviewed either in person or online. All but two interviewees opted for an in-person interview. The in-person interviews were conducted at the interviewees' offices. The two online interviews were carried out via Zoom.

The interviews were between 53 and 100 minutes long, on average 70 minutes. The interviewees were asked at the beginning of the interview how much time they had. When interviews were over 60 minutes long, it was confirmed if the interviewees were still comfortable continuing the interview.

All interviewees agreed to the recording of the interview. All interviewees were very open and willing to share information and their experience with EAW proceedings, showing that the appropriate level of trust was established.

○ DATA ANALYSIS

The data was collected via small-scale desk research, including a legal and policy overview and a small-scale social fieldwork research consisting of semi-structured interviews with judicial authorities and defence lawyers engaged in issuing and executing European arrest warrants. Both parts of the research were guided by the desk research template and interview reporting templates and the questions defined therein. The questions addressed the procedural rights of the requested persons in the EAW proceedings: right to information, right to translation and interpretation, the right to access to a lawyer. The questions also pertained to the factors taken into account by the authorities when issuing/executing EAWs (proportionality, right to a fair trial, conditions of detention, individual circumstances, etc.). First, the desk research report was prepared. Then the recruitment of respondents and interviews took place. After each interview, an interview reporting template was completed. Both tools helped to organise the collected data. Finally, the analysis of the findings was carried out in accordance with the topics and questions outlined in the final report template provided by FRA. The results were used to draft the final report.

○ BRIEF OVERVIEW OF THE REPORT'S CONTENTS

The report addresses the procedural rights of requested persons in EAW proceedings conducted in Slovenia: the right to information, the right to translation and interpretation, and the right to access to a lawyer. The report also addresses the factors taken into account by the authorities when issuing/executing EAWs (proportionality, right to a fair trial, conditions of detention, individual circumstances, etc.). The last part of the report is dedicated to the use of digital and technological tools in EAW proceedings.

On the outlined topics, the report contains a summary of the desk research, including a short legal and policy overview, and the results of the interviews.

RESEARCH FINDINGS

Laws governing EAW proceedings in Slovenia

In Slovenia, European Arrest Warrant proceedings are regulated by the Cooperation in Criminal Matters with the Member States of the European Union Act (hereinafter: the Act).¹ Where issues of cooperation in criminal matters are not regulated under this Act, the provisions of the Criminal Code and the Criminal Procedure Act apply *mutatis mutandis*.² In accordance with national case-law, “the provisions of the Criminal Procedure Act apply subsidiarily, i.e., only to issues not specifically covered by the Cooperation in Criminal Matters with the Member States of the European Union Act”.³ Where the CPA applies subsidiarily, all rules must be applied in accordance with their ‘nature’, namely in line with the values underpinning the EAW system and the Act.

Speciality rule

In Article 12, the Cooperation in Criminal Matters with the Member States of the European Union Act (hereinafter: the Act) lays down the speciality rule.

The speciality rule is binding for the national authorities, irrespective of whether Slovenia is the issuing and the executing Member State. A requested person surrendered to the Republic of Slovenia or to another Member State, may therefore not be prosecuted, sentenced, or detained in order to execute a sentence or an arrest warrant for any other criminal offence committed prior to the surrender other than the one for which the person was surrendered; such person may also not be deprived of liberty, or surrendered to another Member State, or extradited to a third country for any other reason, unless otherwise provided by the Act.⁴

The Act lists derogations from the speciality rule:⁵

- if the requested person, having had the opportunity to leave the territory of the Republic of Slovenia, has not done so within 45 days of his or her final discharge, or has returned to the Republic of Slovenia after leaving;
- if only a fine is prescribed for the other criminal offence which the person committed prior to being surrendered;
- if the person expressly waived the applicability of the speciality rule prior to, or after, being surrendered;
- if measures involving deprivation of liberty would not be imposed in the course of the criminal proceedings;
- if the person is to be subject to a penalty or measure which does not involve deprivation of liberty, especially a fine or some alternative measure, even if such penalty or measure could cause a restriction of liberty;
- if the Member State which surrenders the person agrees to the prosecution, execution of sentence, or surrender to another Member State for another criminal offence committed by such person prior to their being surrendered.

¹ Slovenia, [The Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

² Ibid. Article 2(3).

³ Slovenia, Supreme Court of the Republic of Slovenia (*Vrhovno sodišče Republike Slovenije*), Ips 3598/2019, 13 June 2019.

⁴ Article 45 of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁵ Article 46 of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

1. Right to information

a. Legal overview

In Article 19(1), the Cooperation in Criminal Matters with the Member States of the European Union Act stipulates that upon arrest, the police must instruct the requested person that he or she is being deprived of liberty on the basis of a warrant and inform the requested person as to which state is requesting his or her arrest and surrender and for what reason.

The person must be immediately notified:

- that he or she is not obliged to make any statement;
- that he or she has the right to the immediate legal assistance of a defence counsel of his or her own choosing;
- that he or she has the right to choose a lawyer in the issuing state who can assist the defence counsel in the effective exercise of his or her rights by providing information and advice;
- that on the person's request a competent authority must notify the person's next-of-kin of his or her deprivation of liberty;
- if the requested person is not a national of the Republic of Slovenia, he or she must also be notified of the fact that on his/her request, a competent authority must also notify a consulate of the person's country of nationality of the deprivation of liberty.

Police officers must bring the arrested person before a competent investigating judge immediately, or at the latest within 24 hours of arrest.⁶ The investigating judge must also inform the requested person of the above listed rights and notify the person of the contents of the warrant.⁷ At the hearing, the investigating judge must also instruct the person of the possibility of consenting to the surrender.⁸

At the hearing, the investigating judge must instruct the requested person that consent to surrender is voluntary, and irrevocable once given, and must warn the person that if he or she consents to surrender, a decision will be taken in summary proceedings within 10 days.⁹

The investigating judge must also inform the requested person about the meaning of the speciality rule and instruct them on the fact that the person may waive the application of this principle, on the consequences of such waiver, and on the fact that the waiver is voluntary and may not be revoked (Article 21(3) of the Act).¹⁰

The Act does not require any special form for the provision of the necessary information, but only stipulates who is responsible for providing the information and which information is to be provided.

⁶ Article 19(21) of the Cooperation in Criminal Matters with the Member States of the European Union Act (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), 23 May 2013.

⁷ Article 20(1) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), 23 May 2013.

⁸ Article 20(2) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), 23 May 2013.

⁹ Article 21(1) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), 23 May 2013.

¹⁰ Article 21(3) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), 23 May 2013.

The Criminal Procedure Act (hereinafter: CPA) on the other hand, prescribes that a suspect who has been deprived of liberty must be informed in writing of his or her rights.¹¹ In 2014, the CPA was amended with the aim to transpose the Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.¹² The amendment introduced an Annex to the CPA specifying the information that must be communicated in writing through a Letter of Rights.¹³ However, the rights explained in this Annex belong to persons deprived of their liberty in general and the Annex does not include procedural rights of particular relevance for requested persons in EAW proceedings, such as the right to dual legal representation. It also does not contain an explanation about the possibility of consenting to the surrender or the meaning of the speciality rule. The preparatory materials of the cited amendment do not mention implementation of the Directive on the right to information with regards to EAW.¹⁴

The Cooperation in Criminal Matters with the Member States of the European Union Act does not have such an Annex.¹⁵ Its Article 2(4) lists EU legislation that the Act regulates the mutual recognition and execution of orders issued by judicial authorities in accordance with (including the Directives 2013/48/EU on the right of access to a lawyer in criminal and EAW proceedings and (EU) 2016/1919 on legal aid in criminal and EAW proceedings). Directive 2012/13/EU on the right to information in criminal proceedings is not listed among them.

Providing information about the 'speciality rule' - Slovenia as the executing Member State

The investigating judge must instruct the requested person on the meaning of the speciality rule, on the fact that the person may waive the application of this principle, on the consequences of such waiver, and on the fact that the waiver is voluntary and may not be revoked.¹⁶

If the requested person consents to being surrendered, they must express their consent and potential waiver of the application of the speciality rule before the investigating judge. The above-mentioned legal instruction, the consent, the waiver of application of the speciality rule, and the person's statement that the consent and waiver has been given voluntarily and in the presence of a legal counsel, must be entered in the minutes of the hearing.¹⁷ The decision on surrender by consent must include the indication that the requested person waived the application of the speciality rule or,¹⁸ if the requested person does not waive the application of the speciality rule, the decision must also contain an indication that the requested person may not be prosecuted, serve a sentence, or be

¹¹ Article 4(5) of the [The Criminal Procedure Act \(Zakon o kazenskem postopku\)](#), 29 September 1994.

¹² Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142.

¹³ Slovenia, [Act Amending the Criminal Procedure Act \(Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku – ZKP-M\)](#), 21 November 2014.

¹⁴ Slovenia, [Draft Act amending and supplementing the Criminal Procedure Act \(Predlog Zakona o kazenskem postopku\)](#), 22 October 2014.

¹⁵ Slovenia, [The Cooperation in Criminal Matters with the Member States of the European Union Act \(Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije\)](#), 23 May 2013.

¹⁶ Article 21(3) of the [Cooperation in Criminal Matters with the Member States of the European Union Act \(Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije\)](#), 23 May 2013.

¹⁷ Article 21(4) of the [Cooperation in Criminal Matters with the Member States of the European Union Act \(Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije\)](#), 23 May 2013.

¹⁸ Article 22(1)(d) of the [Cooperation in Criminal Matters with the Member States of the European Union Act \(Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije\)](#), 23 May 2013.

surrendered to another Member State for a criminal offence other than the one forming the basis for the EAW, when such an offence has been committed prior to surrender.¹⁹

Providing information about the 'speciality rule' - Slovenia as the issuing Member State

A person surrendered to the Republic of Slovenia may waive the applicability of the speciality rule before a national court conducting criminal proceedings for a criminal offence committed prior to the surrender, or before an investigating judge of a court which has the jurisdiction to execute a sentence or to conduct surrender proceedings.²⁰

A person surrendered to Slovenia is to be instructed on the meaning of the speciality rule, the consequences of such waiver, and on the fact that the waiver is voluntary and may not be revoked. A surrendered person without legal counsel must be instructed that he or she has the right to appoint a legal counsel of his or her own choosing.²¹ This legal instruction, waiver of application of the speciality rule, and the person's statement that the waiver has been given voluntarily must be entered in the record. If the person was not given such legal instruction, or if the legal instruction was not entered in the record, the court may not base its decision on the statement of the surrendered person.²²

If a person surrendered to Slovenia does not waive the application of the speciality rule, the court must request consent from the Member State which surrenders the person to prosecute, sentence or surrender such person to another Member State for another criminal offence committed prior to their being surrendered.²³

Remedies

The Act stipulates that if the investigating judge does not provide the person with the above-described legal instruction, or if such legal instruction is not entered in the record, a national court may not, when executing EAW, base its decision of surrender on the statement of the requested person.²⁴

The requested person, his or her legal counsel, or a state prosecutor may appeal the decision on surrender before a non-trial panel of a district court within 24 hours (decision on surrender by consent) or 48 hours (decision on surrender without consent) of the order being served to them.²⁵ The Act does not provide any details regarding the grounds for appeal. However, the CPA prescribes that decisions of an investigating judge may be challenged for, among others, a substantive violation of the provisions on criminal procedure.²⁶

Making a decision based on a statement of the requested person who was not provided with the required legal instruction would constitute a substantive violation of criminal procedure provisions in

¹⁹ Article 23(3) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

²⁰ Article 47(1) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

²¹ Article 47(2) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

²² Article 47(3) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

²³ Article 47(4) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

²⁴ Article 21(5) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

²⁵ Articles 22(5) and 23(7) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

²⁶ Article 403(1) in connection to Article 370(1) of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

accordance with Article 371(1)(8) of the CPA, which prohibits basing a judgment on evidence obtained in violation of constitutionally enshrined human rights and fundamental freedoms, **on evidence on which a judgment may not rest** in accordance with the provisions of the CPA, or on evidence obtained on the basis of such inadmissible evidence.²⁷ This ground for appeal is part of the CPA's exhaustive list of circumstances where a substantive violation of criminal procedure provisions is always deemed to exist, as it is considered that it in any case negatively affects the decision, thus making it unlawful or irregular (this is also called in criminal legal theory an absolute substantive violation of criminal procedure provisions). Case-law, relevant to the violations of the cited provisions of the CPA, exists particularly in relation to the right against self-incrimination. The Higher Court in Ljubljana stated that: *"Before a suspect can knowingly, intelligently and willingly make any (potentially self-incriminating) statement, he or she must be aware of his or her fundamental rights or legal safeguards in criminal proceedings. This applies in any event, i.e., absolutely, whatever the content of the statement obtained (by the police) in the absence of adequate legal instruction."*²⁸ The Supreme Court of the Republic of Slovenia established that: *"The provision [...] requires the exclusion of information collected by the police from a suspect before he was (without having been) informed pursuant to [...] CPA [...] It is irrelevant whether or not the police were already obliged to inform the (future) suspect of his rights under [...] the CPA. However, this does not mean that there is a violation under Article 371(1)(8) of the CPA. This violation is only present if the judgment is based on evidence obtained in breach of the evidentiary prohibition."*²⁹

b. Right to information in practice

- Provision of information (when, how by whom)

All interviewees agreed that persons arrested on a European Arrest Warrant in Slovenia are informed about their rights upon arrest. They all deemed that the police inform the requested person of their rights at the moment of arrest. However, they stressed that they do not have direct insight in the police stage of the proceedings as they are involved in the process only after the police bring the requested person before the investigating judge. All interviewees agreed that all requested persons are always informed about their rights by the investigating judge.

It seems that in general, the requested persons are informed about their rights both orally and in writing. It was mentioned that the police have information brochures (Letter of Rights) that are given to the requested persons upon arrest.

"When you are arrested, you have to be informed in writing, you have to be given a decision on the deprivation of liberty, and then there is this period of 48 hours when the person

²⁷For example, Article 227(10) 403(1) of the [Criminal Procedure Act](#) stipulates that If the accused person has not been instructed about their rights referred to in paragraph two of this Article (right against self-incrimination and right to a lawyer), or if the instruction provided and the statement of the defendant concerning their right to a defence counsel are not entered in the record, or if the interrogation was conducted in contravention of the provisions of paragraph eight (prohibition of using force, threats or any similar means of extorting a statement or confession from a defendant) or nine (interrogation in the absence of a lawyer) of this Article, the court may not rest its decision on the accused person's deposition.

²⁸ Slovenia, Higher Court in Ljubljana (*Višje sodišče v Ljubljani*), V Kp 58301/2012, 31 March 2016.

²⁹ Slovenia, Supreme Court of the Republic of Slovenia (*Vrhovno sodišče Republike Slovenije*), I Ips 17977/2018, 15 April 2021.

requested has to be taken to an investigating judge, habeas corpus logic, that any arrest lasting more than 48 hours has to be decided by the judicial branch.” (Lawyer, Slovenia)

[“Ko se vzame prostost, vas morajo pisno obvestiti, morate dobiti odločbo o odvzemu prostosti, potem pa je ta rok 48 ur, ko mora biti zahtevana oseba biti prepeljana k preiskovalnemu sodniku, logika habeas corpus, da mora o vsakem odvzemu prostosti, ki traja več kot 48 ur, odločati sodna veja oblasti. «]

Once the person is brought before the investigating judge, the latter provides the information orally. This oral instruction is then recorded in the minutes of the hearing.

“The instruction must be contained in all documents produced by the authority before whom the proceedings are pending. The documents containing the suspect's statement must include the instruction, all of which has been communicated to the suspect. So that it can be proved in later proceedings (that the instruction has been provided).” (Prosecutor, Slovenia)

[Pouk pa mora biti vsebovan tudi v vseh dokumentih, ki jih sproducira organ, pred katerim teče postopek. V vsaki izjavi osumljenca je naveden tudi pouk, vse o čemer je bil osumljenec poučen. Tako da se v kasnejšem postopku da izkazati (da je bil pouk podan).”]

- Information about rights

The interviewees mostly stated that the requested persons are informed of all their rights under the national law (the Cooperation in Criminal Matters with the Member States of the European Union Act in conjunction with the Criminal Procedure Act) and did not list the exact rights. However, some interviewees emphasized rights such as the right to a lawyer, the right to an interpreter, the right not to make any statement, and the right to inform a third person/consulate about the arrest.

“In these cases, and this is usually already in the final phase, when the hearing is over, when a certain measure is also ordered [...] at that stage the judge always asks about informing the relatives or the consulate. The judge tries to take care of this already in the courtroom [...]. So, the judge calls the phone number that the person provides and then, with the help of an interpreter, informs the relatives that the person has been arrested, for example the mother in Germany. The consulate, I think, is informed in writing, formally [...] In my experience, the requested persons often refuse to inform the consulate. Sometimes they even refuse to inform the relatives.” (Prosecutor, Slovenia)

[»V teh zadevah, to pa je po navadi že v sklepni fazi, ko je narok končan, ko je tudi določen ukrep odrejen [...]. v tisti fazi vedno sodnik vpraša glede obvestitve svojcev ali konzulata, skratka, že v sami dvorani se poskuša za to poskrbet. Tako da sodnik zavrti številko, ki mu jo oseba da, in sodnik s pomočjo tolmača obvesti sorodnike, da je ta oseba prijeta, npr. materi v Nemčijo. Konzulat mislim, da se sicer obvešča pisno, po formalni poti [...]. Po mojih izkušnjah zahtevane osebe obveščanje konzulata velikokrat zavrnejo. Včasih zavrnejo tudi obveščanje svojcev.«]

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

| | L 1 | L 2 | L 3 | L 4 | J 1 prosec utor | J 2 prosec utor | J 3 judge | J 4 judge | Total |
|-----|-----|-----|-----|-----|-----------------------|-----------------------|--------------|--------------|-------|
| YES | X | X | X | X | X | X | X | X | 8 |

| | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|
| In writing (Letter of Rights) | - | - | - | - | - | - | - | - | |
| Orally | - | - | - | - | - | - | - | - | 0 |
| In writing (Letter of Rights) and orally | X | X | X | X | X | X | X | X | 8 |
| NO | - | - | - | - | - | - | - | - | 0 |
| Don't know/remember | - | - | - | - | - | - | - | - | 0 |
| Did not answer | - | - | - | - | - | - | - | - | 0 |

- Information about the EAW – content and procedure

The interviewees all stated that the requested persons arrested in Slovenia are informed about the contents of the EAW issued against them. A prosecutor emphasised that deprivation of liberty is one of the most serious interventions in the person's rights and each requested person is told why they have been arrested and brought before an investigating judge (Prosecutor, Slovenia).

All interviewees reported that the requested persons are informed by the investigating judge. A prosecutor also mentioned that the police already inform the requested persons about the basic elements of the EAW that can be obtained from the Schengen System (Prosecutor, Slovenia).

A prosecutor reported that a copy of the EAW is handed over to the person before the hearing. If the EAW has not yet been translated, judicial detention (for a maximum of 48 hours) is ordered for the purpose of providing a translation. Once the warrant has been translated, the requested person and their lawyer are given time to read it (Prosecutor, Slovenia).

The investigating judge always explains at the beginning of the hearing which country and which authority has issued the EAW, and for what reason and in relation to which criminal offence it has been issued. A judge stated that at the first stage of the proceedings, the information is provided orally (Judge, Slovenia). Another judge emphasised that the requested persons are always represented by a lawyer, and that the defence counsel is always provided with the documents and consequently so is the requested person (Judge, Slovenia).

“My experience is that the act is described in the warrant. So that the conditions for surrender can also be verified, and that the historical event that they are being charged for can be understood, the qualification under the law of the issuing state, the defence counsel can verify whether the conditions for compliance are met.” (Lawyer, Slovenia)

[»Jaz imam izkušnjo, da je dejanje opisano v nalogu. Da se lahko tudi preveri pogoje za predajo, da se razume historičen dogodek, ki se jim očita, kvalifikacija po pravu izdajateljice, zagovornik lahko preveri ali so podani pogoji za ugoditev.«]

One lawyer confirmed that their clients receive the EAW but stressed that **how well the request is substantiated depends on the issuing state, their legal system and standards** (Lawyer, Slovenia). The lawyer explained that in one of their cases the content of EAW was very summarized and that the

reasoning can be very short, for example: “We are requesting the person because an indictment related to xy criminal offence is filed in Lithuania.” In such case, the lawyer only learns about the actual content of the charges after the issuing state later submits additional documentation. However, there is a time gap between the arrest (and the form being served to the client) and the issuing state sending additional documentation. The interviewee mentioned that only after receiving such documentation can a lawyer actually start working on the case.

Another lawyer mentioned that their clients are informed about the content of the EAW and about which criminal cases it is based on. However, the documents from the casefile from the issuing state are not handed to their clients. The lawyer makes a request to access these documents but in practice they may be difficult to obtain (Lawyer, Slovenia).

“I request access to the case file in the issuing state but it is difficult to get it. For example, if EAW is related to a final judgment in Italy, I request that the whole file be made available so that we can see whether all their rights have been respected in the related criminal proceedings and we can then perhaps argue that they have been tried in absentia, that the case is not yet final, etc. It must be proven that the conditions for EAW are met.” (Lawyer, Slovenia)

[»Zahtevam vpogled v spis države izdajateljice, težko ga je dobiti. Na primer, če je ENP povezan s pravnomočno sodbo Italije, zahtevam, da se cel ta spis pridobi, da skupaj pogledava, ali so bile upoštevane vse njegove pravice v povezanem kazenskem postopku in potem lahko argumentirava, da mu je bilo sojeno v odsotnosti, da zadeva še ni pravnomočna, itd. Mora biti dokazano, da so izpolnjeni pogoji za ENP«]

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

| | L 1 | L 2 | L 3 | L 4 | J 1 prosec utor | J 2 prosec utor | J 3 judge | J 4 judge | Total |
|-------------------------------------|----------|---|---|---|-----------------------|-----------------------|--------------|--------------|----------|
| YES | X | X | X | X | X | X | X | X | 8 |
| In writing | - | - | - | - | - | - | - | - | 0 |
| Orally | - | - | - | - | - | - | X | - | 1 |
| In writing and orally | X | - | - | - | X | X | - | X | 4 |
| NO | - | - | - | - | - | - | - | - | 0 |
| Don't know/remem ber | - | - | - | - | - | - | - | - | 0 |
| Did not answer | - | X (whet her in writing or orally) | X (whet her in writing or orally) | X (whet her in writing or orally) | - | - | - | - | 3 |

- Information on consenting to surrender

All interviewees stated that the requested persons are always informed about what consenting to their surrender entails and are also always informed about the ‘speciality rule’.

The information is provided by the investigating judge, as part of the general legal instruction at the beginning of the hearing.

The question of whether the person will consent to surrender was viewed as a most important matter of the hearing before the investigating judge, as the procedure will in such case be faster and will take a summary form (Judge, Slovenia).

One lawyer stressed that **it is important that the requested person is fully aware of the possible consequences of their consent to surrender and that their lawyer should ensure that this is the case** (Lawyer, Slovenia).

„In any case, it is the role of the lawyer to explain even more. It is one thing to just read something, especially in such a stressful situation... I have stressed this here because consent means a certain waiver of certain procedural guarantees. When someone in distress or under psychological pressure waives a certain right because he thinks he is going to settle the case, here it is important to really process the consequences. Instruction is one thing, the other is the consequences in the concrete case. What it means to go to a particular country, even if it is the EU, and have a procedure there, given the accusation, as to what he can expect there. I think that cooperation between lawyers in different Member States is important.” (Lawyer, Slovenia)

[“V vsakem primeru je vloga odvetnika, da vse še bolj pojasni, eno je kaj prebereš, sploh v taki stresni situaciji... Tu sem to poudaril, ker gre pri privolitvi za neko odpoved določenim procesnim jamstvom, kdaj se kdo v stiski ali pod psihološkim pritiskom odpove določeni pravici, ker misli, da bo zadevo uredil, tu je pomembno res predelat posledice. Eno je pouk, drugo so pa posledice v konkretni zadevi. Kaj pomeni iti v določeno državo, tudi če je EU, in imeti tam postopek, glede na očitek, kaj lahko tam pričakuje. Mislim, da sodelovanje med odvetniki v različnih državah članicah pomembno.»]

One lawyer mentioned that the court always correctly explains both the consent to surrender and the ‘speciality rule’. **However, the ‘speciality rule’ is complex.** Even with the lawyer who provides additional explanations present, the person is in a stressful situation and may be overburdened with the amount of information received and complexity of the ‘speciality rule’ (Lawyer, Slovenia).

“What is complicated is the “speciality rule”, which is conceptually problematic. The judge tries to explain and the lawyer tries to explain, but in the end the client almost never (fully) understands what it means. This is why it is simply better not to consent to surrender, to buy some time to clarify matters both with the client and the issuing state that subsequently sends additional documentation.” (Lawyer, Slovenia)

[“Tisto, kar je zakomplicirano, pa je načelo specialnosti, ki je že konceptualno problematično. Se sodnik trudi razložiti in se zagovornik trudi razložiti, kaj pomeni, stranka pa na koncu skorajda nikoli ne razume, kaj naj bi to pomenilo. Zato je bolje preprosto se ne strinjati z izročitvijo, preprosto, da kupiš nekaj časa, da razčistiš s stranko kot tudi z organi izdajateljice, ki naknadno pošljejo dodatno dokumentacijo, kaj je na stvari.”]

Another interviewed lawyer expressed their opinion that the ‘speciality rule’ is one of the ‘biggest controversies’ of the EAW proceedings (Lawyer, Slovenia). The lawyer referred to one of their cases where Germany was the issuing state. The main issue for the proceedings in Slovenia as the executing state was the question regarding for which specific crimes Germany was seeking the surrender of its citizen. The person was charged with a large number of crimes of a pecuniary nature. However,

Germany only sought surrender for some of these offences, all the while including some of the evidence relating to other offences in the EAW. Therefore, it was difficult to know for which cases the person was being surrendered. **In the lawyer’s opinion, the described example shows that the ‘speciality rule’ can in practice be very easily circumvented.**

“It is like a chain, a cascade of procedures, where you are surrendered just for the offence, we said we want you for, but then we will circumvent that. Or the person will be surrendered, tried and once they have done their time, they will arrest them again”. (Lawyer, Slovenia)

[»To so kot neki verižni, kaskadni postopki, v prvem koraku te izročimo za dejanje za katerega smo rekli, da te hočemo, potem bomo pa to itak povozili. Ali pa ga predamo, mu sodijo, ko odsedi, ga pa spet primejo.«]

Two lawyers expressly stated that they never advised a waiver of the ‘speciality rule’.

It was reported by a judge that the requested persons often consent to surrender but never renounce the ‘speciality rule’ (Judge, Slovenia).

“This is written in the minutes, first of all it says that he is informed of (the possibility to consent) and that he states that he agrees or disagrees with the surrender. Then he has to sign under this statement. And then that he is not renouncing the specialty rule. I mean, maybe somebody agrees to the surrender, or quite a few of them do, but I do not know if anybody has ever renounced the specialty rule.” (SI/J4).

[»To piše v zapisniku, najprej piše, da se ga seznanijo (z možnostjo soglasja k predaji) in da pove da se strinja s predajo, ali da se ne strinja in potem se mora tam podpisat. In da se ne odpoveduje specialnosti... Mislim, s predajo se mogoče še kdo strinja, oziroma jih je kar nekaj takih, specialnosti pa ne vem, če se ji je že kdo odpovedal.«]

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

| | L 1 | L 2 | L 3 | L 4 | J 1 prose cutor | J 2 prose cutor | J 3 judge | J 4 judge | Total |
|--------------------------------|-----|-----|-----|-----|-----------------------|-----------------------|--------------|--------------|----------|
| YES | X | X | X | X | X | X | X | X | 8 |
| NO | - | - | - | - | - | - | - | - | 0 |
| Don’t know/remember | - | - | - | - | - | - | - | - | 0 |
| Did not answer | - | - | - | - | - | - | - | - | 0 |

- Understanding of information

The majority of interviewees, the judges, prosecutors and lawyers alike deemed that the requested persons in general understand the information provided. Only one lawyer expressed the opinion that the requested persons do not always understand the provided information – referring to the before mentioned complexity of the ‘speciality rule’ (Lawyer, Slovenia).

“Yes, I think they understand, the principles are quite clear. That if you are surrendered, you can only be prosecuted for the act that led to your surrender. It's nothing complicated and they understand.” (Judge, Slovenia)

[“Ja, mislim, da razumejo, načela so dokaj jasna. Da te lahko v primeru predaje preganjajo samo za dejanje, zaradi katerega si bil predan. Ni nič kompliciranega in razumejo.»]

However, the interviewed prosecutors and two lawyers also agreed that the courts are very diligent and make sure that the requested persons understand the information. A prosecutor mentioned that the investigating judges are experienced and know if the requested persons actually understand (Prosecutor, Slovenia). **If it seems that the requested persons do not understand, the judge suggests a break that allows additional time for them to consult their lawyer.**

A judge confirmed that they examine and explain information until the requested person understands (Judge, Slovenia).

“Yes, actually I check if he understands. But he has a defence counsel who also explains. I think they understand, I don't have the feeling that they don't.” (Judge, Slovenia)

[“Ja, dejansko preverim ali razume. Pa saj ima tudi zagovornika in se zmenita. Mislim, da razumejo, nimam občutka, da ne bi.»]

One lawyer mentioned that the courts are even more diligent in explaining the rights in EAW proceedings than regular detention hearings (Lawyer, Slovenia). The lawyer argued that there is in regular detention hearings an interest for the domestic court to take on a more active role, while when executing EAWs, there is more distance, as the criminal offence was not committed in Slovenia. This allows the investigating judge to take on a stronger role as an independent guarantor of the rights of the requested person. The investigating judge is thus more willing to provide additional instruction and explain concepts.

„The EAW proceedings, as I see them, provide an even higher level of legal safety. The essence of the individual's protection is pursued more in this procedure, the individual is informed better, there is more willingness to explain and so on.“ (Lawyer, Slovenia)

[“ENPP postopki, kot jih jaz vidim, zagotavljajo celo višjo stopnjo pravne varnosti. Bolj se zasleduje bistvo zaščite posameznika v tem postopku, bolje se ga informira, več je neke pripravljenosti do pojasnjevanja, itd.”]

Two lawyers disagreed with this assessment. One lawyer stated that the judicial authorities do not actively check if the persons understood (Lawyer, Slovenia).

“But the judicial authorities do not check if they understood in a very active way. The court asks if you understand the information, if you say yes, that is it, they do not check in any way if you really did. If you say no, then they ask what was not understood. I have the impression that when people come before the court, this is such an authority that the persons do not even dare to say that they do not understand. They give some hint that they did not understand, and then it is my role as a lawyer to explain to them. If the lawyer is there, it is not such a problem, and in EAW proceedings a lawyer is mandatory.” (Lawyer, Slovenia)

[“Sodišče ne preverja na aktiven način, ali so razumeli. S vpraša, ali ste rezumeli informacije, če rečeš, ja, je konec, ne preverjajo ali ste res razumeli. Če rečeš ne, potem vprašajo kaj niste razumeli. Občutek imam, da ko ljudje pridejo pred sodišče, je to taka avtoriteta, da niti ne upajo reči, da ne razumejo. Dajo nek namig, da niso razumeli, potem pa je moja vloga kot odvetnika, da jim razložim. Če je odvetnik zraven, niti ni tak problem, v ENP postopkih pa je tako ali tako obvezen.»]

The second lawyer deemed that it is important for the courts that the instruction is given and that it is on the record. However, they allowed for the possibility that this is so due to the mandatory presence of a lawyer and the court relying on the lawyer to make sure that the person understands (Lawyer, Slovenia). **With the mandatory legal representation in EAW proceedings, interviewees generally emphasised the role of the lawyer in making sure that the requested person understands the information provided.**

Both interviewed prosecutors stated that the **role of the state prosecutor in EAW proceedings is more oriented towards the protection of legality, as they are not representing the issuing state nor are they a party to the proceedings in the classical sense.** Thus, the state prosecutor can assess whether the person has been sufficiently informed and understood the information. They can also take action and warn the court about the requested person not understanding information.

“It happens that the requested person says, yes, I understand, and the judge is in that moment writing something down or looking away, but I see from the person's expression that something is not clear to him, and I point it out to the judge. Then things are further clarified, also with the help of the defence counsel, the defence counsel himself jumps in in such situations.” (Prosecutor, Slovenia)

[“Zgodilo se je, da privedena oseba reče, ja, razumem, sodnik pa si takrat nekaj zapisuje, gleda stran, jaz pa po izrazu osebe vidim, da ji nekaj ni jasno in na to opozorim sodnika. Potem se stvari dodatno pojasnjujejo, tudi s pomočjo zagovornika, zagovornik že sam v takih situacijah vskoči.«]

“We do not go and check, for example, by having a special interview with the person to make an assessment (if the person understood), we do not do that. Our role is different, but if state prosecutors are considered as guardians of legality, we should pay attention. Or if a state prosecutor notices that a person at the hearing does not understand, that he/she takes action.” (Prosecutor, Slovenia)

[»Da bi šli drugače preverjati, recimo da bi izvedli poseben intervju z osebo s tem namenom (da bi preverili, ali oseba razume), to ne. Naša vloga je drugačna, a če se državni tožilec smatra za varuha zakonitosti, bi moral biti na to pozoren. Oziroma če vidi, da oseba na naroku ne razume, da ukrepa.»]

c. Discussion of findings

The law requires that the instructed person be informed of their rights both by the police upon arrest and by the investigating judge. Findings demonstrate that in practice, the law is implemented, and the requested persons are informed about all rights stipulated by the law both orally and in writing.

The interviewees all stated that the requested persons arrested in Slovenia are informed about the contents of the EAW against them. Findings demonstrate that the requested persons in Slovenia are also provided with the EAW form itself. One lawyer underlined that how well the request is substantiated depends on the issuing state. Sometimes the reasoning can be very short, providing limited information on the content of the EAW. Another lawyer mentioned that the documents from the issuing state's casefile may in practice be difficult to obtain.

All practitioners agreed that the requested persons are informed about what consenting to their surrender entails and about the 'speciality rule'. Two interviewed lawyers stressed that the 'speciality

rule' is complex and therefore difficult to understand. In some cases, it is also challenging for the lawyers to verify that the rule is respected.

The majority of interviewees believed that the requested persons in general understand the information provided and that the courts sufficiently ensure that the requested persons understand the information. Two lawyers deemed that provision of information by the court is more of a formality and that it is up to the lawyer to make sure the person has understood the information. The role of the lawyer in this respect was generally emphasized.

2. Right to interpretation and translation

a. Legal overview

In accordance with Article 17(2) of the Act, the requested person has the right to translation in accordance with the provisions of the CPA. If the requested person so demands, the warrant must be translated in writing into the person's language or into another language the person understands.

Article 8 of the CPA stipulates the rules regarding interpretation and translation in criminal proceedings. The parties have the right to use their own language in investigative and other judicial acts or at the main hearing in the manner prescribed by the CPA.³⁰

If an investigative or other judicial act or a hearing is not carried out in the language of the parties, the interpretation of their statements and or the statements of others must be provided, as well as the translation of documents and other written evidence essential for the exercise of their rights (essential documents). For suspects and accused persons this means in particular indictments, summonses, all decisions on the deprivation of liberty, judgments, and court decisions on the exclusion of evidence, on the rejection of motions for evidence and on the disqualification of judges.³¹

The CPA does not expressly regulate who should decide on the necessity of interpretation and translation. However, from the provision of Article 8(3) of the CPA it is understood that the responsibility lies with the court, namely, in the case of EAWs, the competent investigating judge. In accordance with the cited Article, the court may, upon a motion of the party, decide that, given the specific circumstances of the case, in addition to essential documents, also other written material or acts should be interpreted or translated in order to ensure the fulfilment of guarantees or the exercise of rights in the proceedings.³²

The CPA also prescribes that the parties must be informed of the right to translation and interpretation. If the person concerned knows the language of the proceedings, he or she may voluntarily and expressly waive the right to translation or interpretation of a particular investigative and other judicial act or part of the main hearing or certain judicial or other documents. The instruction and the waiver are noted in the record.³³

Manner of providing interpretation

The CPA stipulates that translation and interpretation is provided by a court interpreter. If there is no court interpreter available for a particular language, the court may, *ex officio* or on the motion of the state prosecutor or the police, appoint another suitable person who speaks the foreign language for which there are no court interpreters or there are too few, to provide translation or interpretation.³⁴

Neither the Cooperation in Criminal Matters with the Member States of the European Union Act nor the Criminal Procedure Act prescribe any further rules governing the provision of interpretation. Namely, the subject matter is governed by the Court Experts, Certified Appraisers and Court

³⁰ Article 8(1) of the CPA of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

³¹ Article 8(2) of the CPA of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

³² Article 8(3) of the CPA of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

³³ Article 8(6) of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

³⁴ Article 8(7) of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

Interpreters Act (*Zakon o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*)³⁵ and Rules on court experts, certified appraisers and court interpreters (*Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*).³⁶ However, neither prescribe detailed rules on the provision of interpretation, nor mention the use of digital tools. The Rules merely stipulate that the court interpreters must carry out their work regularly, diligently, in accordance with the rules of science and profession, accurately and to the best of their knowledge.³⁷

Quality of interpretation

Court interpreters are appointed by the Ministry of Justice (*Ministrstvo za pravosodje*). If the candidates applying to the Ministry's public call fulfil the legally prescribed conditions (appropriate education and work experience), they are referred to a specific competence test that includes tests on their knowledge of the target language and practical ability and experience, as well as their legal knowledge.³⁸ Regular proficiency testing of court interpreters is conducted every five years by a council of experts.³⁹ The council of experts may, on the basis of substantiated grounds showing doubt as to whether the conditions of professional knowledge and practical competence for the performance of the duties of an interpreter have been met, propose that the Minister of Justice order a court interpreter to re-take a specific test.⁴⁰

Regarding the quality of interpretation and translation, the CPA provides for the possibility for the parties to lodge an objection during the carrying out of investigative and other judicial acts or at the hearing, if they consider that the interpretation or translation is not appropriate because it does not facilitate the fulfilment of guarantees or the exercise of rights in the proceedings.⁴¹

Remedies

The requested person, their legal counsel, or a state prosecutor may appeal a decision on surrender before a non-trial panel of a district court within 24 hours (decision on surrender by consent) or 48 hours (decision on surrender without consent) of the order being served on them. The Act does not prescribe any details regarding the grounds for the appeal. However, the CPA prescribes that the decisions of the investigating judge may be challenged on the basis of, among others, a substantive violation of the provisions on criminal procedure.⁴² The CPA lists a number of circumstances where a substantive violation of criminal procedure provisions is always deemed to exist (absolute substantive violation of criminal procedure provisions). Denying the parties the right to use their language during the proceedings and to follow the course of the hearing in their language - contrary to their request – is an absolute substantive violation of criminal procedure provisions.⁴³ As stated by the Constitutional

³⁵ Slovenia, [The Court Experts, Certified Appraisers and Court Interpreters Act](#) (*Zakon o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*), 20 December 2018.

³⁶ Slovenia, [The Rules on court experts, certified appraisers and court interpreters](#) (*Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*), 20 December 2018.

³⁷ Article 2(1) of the [Rules on court experts, certified appraisers and court interpreters](#) (*Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*), 20 December 2018.

³⁸ Articles 5(1) and 10(1) of the [Rules on court experts, certified appraisers and court interpreters](#) (*Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*), 20 December 2018.

³⁹ Article 22(1) of the [Rules on court experts, certified appraisers and court interpreters](#) (*Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*), 20 December 2018.

⁴⁰ Article 23(1) of the [Rules on court experts, certified appraisers and court interpreters](#) (*Pravilnik o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih*), 20 December 2018.

⁴¹ Article 8(5) of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

⁴² Article 403(1) in connection to Article 370(1) of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

⁴³ Article 373(3) in connection to Article 370(1) of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

Court of the Republic of Slovenia, “the minutes must record the entire legal instruction, as well as the suspect's or accused person's statement. Failure to provide either the instruction or the record of the instruction and the accused's statement may constitute a substantive violation of criminal procedure provisions laid down in the second Article 371, paragraph 2, of the Criminal Procedure Act (i.e., if this violation affected the possibility of his defence). However, if the court acts contrary to the suspect's or accused's explicit request to use his/her own language and to follow the main hearing in that language, it commits an absolute fundamental violation of the provisions of criminal procedure under Article 371(1)(3) of the CPA.”⁴⁴

b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

All interviewed practitioners stated that requested persons who are foreign nationals are always provided with interpretation. Four of the interviewees stressed that interpretation is always provided even if the person understands (some) Slovenian (Prosecutor, Judge, Lawyers, Slovenia).

“As far as I know, the court always engages a court interpreter even where there is even the slightest possibility, that the person will not understand the proceedings in Slovenian language. But my cases always involved foreign nationals where it was clear that interpretation was necessary.” (Lawyer, Slovenia)

[“Kar jaz vem, sodišče vedno pritegne sodnega tolmača, kadar obstaja vsaj majhna verjetnost, da oseba ne bo razumela postopka v slovenskem jeziku. Vendar sem jaz vedno delal s tujci, kjer je bilo jasno, da je ta potreben.”]

A judge further explained that denying the requested persons the right to use their language during the proceedings is considered an absolute substantive violation of criminal procedure provisions.⁴⁵ Another judge also explained that interpretation is always provided because this is in line with the case law of the Supreme Court (Judge, Slovenia).

Both interviewed judges stated that because an interpreter is always appointed, no assessment mechanism or criteria are required.

“There is no need (for a special way of assessment) because we stick strictly to this (always appointing an interpreter). There have been some Supreme Court decisions regarding interpretation, so nobody is playing with this.” (Judge, Slovenia)

[»Ni potrebe po (nekem posebnem načinu ocenjevanja), ker se tega strogo držimo (vedno uporabimo tolmača). Je bilo nekaj tudi odločb Vrhovnega sodišča v zvezi s tem, tako da se s tem nihče ne igra.«]

“We always appoint an interpreter, we have experience in such cases. As long as (the requested person) is fine with (the use of Slovenian language), it is fine, but at one point (the requested person) is no longer fine with it and they appeal. And then it doesn't go through (at the higher instance and the decision is annulled due to substantive violation of the criminal procedure rules).” (Judge, Slovenia)

⁴⁴ Slovenia, Constitutional Court of the Republic of Slovenia (*Ustavno sodišče Republike Slovenije*), Up-1023/06-31, 3 July 2008.

⁴⁵ Article 373(3) in connection to Article 370(1) of the [Criminal Procedure Act](#) (*Zakon o kazenskem postopku*), 29 September 1994.

[»Mi vedno postavimo tolmača, imamo že izkušnje iz takih zadev. Dokler je (zahtevani osebi) v redu (uporaba slovenskega jezika), je v redu, ko pa mu ni več, se pa pritoži, potem pa to ne gre skozi (na višji instanci pride do razveljavitve zaradi bistvene kršitve pravil kazenskega postopka).«]

That there is no special assessment mechanism was confirmed by an interviewed prosecutor who stated that the investigating judge can assess the need for interpretation and see very quickly that the requested person does not understand the language well, therefore no special criteria are needed (Prosecutor, Slovenia). A lawyer also mentioned that the court always appoints an interpreter if there is any doubt about the person understanding the language or if a lawyer asks for one. In their experience, the request for an interpreter has never been refused. In their opinion, the court prefers to appoint an interpreter rather than have the matter argued in a higher court (Lawyer, Slovenia).

“(The requested persons) say they understand, but by the third question about personal data it is clear that they no longer understand. And then it is all over, and it is not right to go on. Criteria? No, there is no criteria. You quickly see that the person does not understand [...]. Then the judge stops and calls an interpreter.” (Prosecutor, Slovenia)

[»(Zahtevane osebe) Rečejo, da razumejo, a pri kakšnem tretjem vprašanju o osebnih podatkih pa že ne razume več. In takrat se vse konča, tudi ni prav, da bi se nadaljevalo. Merila? Ne merila ne obstajajo. Vidiš, da človek ne razume, saj to kar hitro vidiš [...]. Potem se sodnik ustavi in pokliče tolmača.«]

One interviewed lawyer stated they do not identify any systemic problems in providing interpretation, but that there are some practical issues like ensuring interpreters for certain languages (Lawyer, Slovenia). This issue was reported also by other interviewees - Baltic languages, Romanian, Portuguese and Swedish were mentioned in this regard.

A judge explained that in such cases, **where the court interpreters are not available, they appoint interpreters that are used by the police or other persons who speak the language** (Judge, Slovenia). Other interviewees confirmed that when there are no sworn court interpreters available, judges use unofficial interpreters, who are then sworn in by the judge (Prosecutor, Slovenia). This is necessary as the time frames and deadlines in EAW proceedings are short. According to the judge, the possibility of providing courts with links or lists of interpreters in other countries has been discussed for a long time, but this has not happened yet.

“It would be very nice if the Ministry of Justice could give us some links so that we could do it through other countries. I don't see any problem in doing it that way (remotely). The deadlines are very tight - then you improvise, in cases where they are not there, you also help yourself with people who are not sworn court interpreters, who we know, the police know, then we swear them in. Especially in this first phase of the hearing. For the written translation we get a court (sworn) interpreter. We have suggested to the Ministry that there should be a list of external interpreters from other countries that we could use, but they have not set this up yet, and we have been discussing this for a long time.” (Judge, Slovenia)

[“Zelo bi bilo dobro, če bi Ministrstvo za pravosodje dalo kakšne povezave, da bi mi preko drugih držav lahko to delali. Ne vidim nobenega problema v tem, da bi na ta način to naredili (oddaljeno). Roki so zelo kratki – potem improviziraš, v primerih, ko jih ni, pomagaš si tudi z nezapriseženimi tolmači, za katere pač vemo, jih policija pozna, potem jih mi zaprisežemo. V tej prvi fazi zaslišanja sploh. Za pisno prevajanje že dobimo sodnega (zapriseženega) tolmača.

Predlagali smo, da bi bil pri Ministrstvu za pravosodje nek seznam zunanjih tolmačev, iz drugih držav, ki bi jih lahko uporabljali, pa tega zaenkrat niso vzpostavili, o tem se že dolgo pogovarjamo.«]

All interviewed practitioners reported that in their experience interpretation in EAW proceedings is conducted in person (and not via videoconference).

„They provide interpretation in person [...] Exceptionally, perhaps, they would translate remotely, but not in principle. In my cases, this has not happened. Because of the interaction between the interpreter and the detained person, it is easier in person. At least the three of us should be in the same place. Otherwise, it could lead to a violation of rights. They must be allowed to use the language they understand in court. It must be ensured 100 percent. Otherwise, there really can be violations and misunderstandings.“ (lawyer, Slovenia)

[»Tolmačijo osebno [...] Morda izjemoma, da bi prevajal oddaljeno, a načeloma ne. V mojih primerih se to ni zgodilo. Zaradi interakcije med tolmačem in priprtim, lažje je osebno. Vsaj mi trije bi morali biti na istem mestu. Sicer lahko pride do kršenja pravic. Njim mora biti omogočeno, da na sodišču uporabljajo jezik, ki ga razumejo. To mora biti stoprocentno zagotovljeno. Drugače res lahko pride do kršitev in nesporazumov.«]

However, a lawyer reported that in one of their non-EAW cases, the interpreter interpreted a main hearing remotely (Lawyer, Slovenia).

“In the courts, videoconferencing is now technically well organised, both for the parties and for the interpreters, it is possible to connect via videoconferencing.“ (Lawyer, Slovenia)

[“Na sodiščih je sedaj sodelovanje preko videokonferenc tehnično dobro urejeno, tako za stranke kot za tolmače, je omogočena povezava preko videokonference.«]

A prosecutor mentioned that it is important that the interpreter is physically present at the same location as the requested person, even if the hearing is conducted remotely, as this facilitates interpretation (Prosecutor, Slovenia).

However, a judge stated that they would not object to using remote interpretation in cases where there is an issue with ensuring an interpreter for a particular language (Judge, Slovenia).

One of the interviewed lawyers also saw remote interpretation as a solution to this problem. Although using an interpreter from another country who does not speak Slovenian creates another set of issues. Namely, using relay interpretation may create problems regarding the accuracy of the interpretation (Lawyer, Slovenia).

“However, remote and relay interpretation is a lesser evil than having a person here whom we do not understand, and they do not understand us.“ (Lawyer, Slovenia)

[»Vseeno pa je oddaljeno in relejsko tolmačenje manjše zlo, kot če imamo tu človeka, ki ga ne razumemo in on nas ne razume.«]

- Translation of documents

All interviewed practitioners stated that some documents are always provided in a language a requested person understands. There was some variation in the answers as to which documents these should be. The following documents were mentioned:

- **EAW:** The EAW itself is always provided in a language the requested person understands;
- **All court decisions in the executing state against which the person has a right of appeal** are always translated in full;
- **Minutes of the hearing (including the legal instruction)** unless the person waives this right. However, the hearing, including the legal instruction, is simultaneously interpreted by an interpreter;

“The judge explains to the person that everything has been translated simultaneously and asks whether or not he wants the minutes translated. They usually want a translation of the minutes. Except for those who are angry and uncooperative, they refuse everything, but they are very few. Mostly people expect it to happen sooner or later.” (Prosecutor, Slovenia)

[“Sodnik pa mu pove, da je bilo vse sproti prevajano in naj pove, ali želi prevod zapisnika ali ne. Pa po navadi hočejo tudi prevod zapisnika. Razen tistih, ki so jezni in nekooperativni, ti zavrnejo vse, je pa malo takih. Večinoma ljudje pričakujejo, da se bo enkrat zgodilo.«]

- **Court decisions in the issuing state (which are the basis for issuing an EAW**, e.g. a detention order). According to one of the lawyers, it is common practice for defence lawyers to request that this document is provided. Namely, the EAW form may refer to a criminal offence that Slovenian law does not regulate. The lawyer requests to be provided with a translated indictment and a copy of the issuing state’s penal code to establish the condition of double criminality (Lawyer, Slovenia);
- **Translation of any other document that a requested person asks for.**

Regarding the Letter of Rights, four interviewees (both interviewed prosecutors, two lawyers) mentioned that the police provide the persons with brochures (Letter of Rights) that are also available in foreign languages. However, they could not confirm the exact content of these brochures or whether the rights related to EAW proceedings specifically are included. While the court does not have such brochures of its own, the legal instruction provided orally by the investigating judge is included in the minutes of the hearing. As mentioned above, the minutes are then translated into the language the person understands, unless the person waives this right.

“Yes, the Letter of Rights is also an essential document, this obligation does not even have to be written down somewhere, it is common sense.” (Prosecutor, Slovenia)

[“Da, obvestilo o pravicah je bistveni del, niti ni treba, da je to nekje napisano, to je zdrava kmečka pamet.”]

The problem of not having enough translators for some languages is also present in the translation of documents. However, both interviewed judges reported that the courts also use foreign translation agencies. For example, to translate a document first from a foreign language for which a local translator cannot be found into another foreign language, and then from that language into Slovenian. Both judges who reported on this practice mentioned that such a solution is not possible for the provision of interpretation, as there is not enough time. Other means described in the previous section are therefore used to provide interpretation.

- Interpretation of consultations with lawyers

The outcomes of the field research indicate that the interpretation of the consultations with a lawyer is provided by a state-appointed interpreter. However, the experiences of the interviewed practitioners vary.

How interpretation of the first consultation between the requested person and their lawyer takes place depends on the type of representation. Interviewees reported that a requested person usually meets their court-appointed *ex officio* lawyer for the first time just before the hearing - when the person is brought before the investigating judge. The judge allows them the time for consultation before the hearing begins. At this stage, the interpreter who interprets the hearing is already present and they go through the documents together (Prosecutor, Judge, Slovenia).

However, one lawyer reported that **it is not clearly determined when the work of the interpreter (engaged by the court for the hearing) starts and what their duties are.** The majority of interpreters are willing to assist the requested person and the lawyer before the hearing starts, but some are not that prepared to help (Lawyer, Slovenia).

“Eighty percent of interpreters understand that their role is to help. This means that you can ask them to interpret your conversation with the client just before the hearing starts – you go to a corner and talk. But I had an experience when the court interpreter stepped to another side of the hallway and clearly indicated that her job is only to interpret at the hearing. This is a problem [...] Luckily, I was able to communicate with my client without her. If not, perhaps I should then go to the judge and ask her to instruct the interpreter to assist me. Or hire my own interpreter and then notify the costs to the court... I do not know.” (Lawyer, Slovenia)

“Osemdeset odstotkov sodnih tolmačev šteje, da je njegova naloga pomagati in ga skupaj s stranko odpelješ v nek kot, kjer se s pomočjo tolmača s stranko pogovarjaš. Se je pa že zgodilo, da se je tolmačka vidno postavila na drugo stran hodnika in nekako dala vedeti, da je njeno delo le to kar prevaja na naroku. To je problem [...] Na srečo je stranka govorila srbsko in sva se lahko sporazumela. Če se ne bi, bi se moral najbrž obrniti na sodnico, da bi tolmački povedala, da je njena dolžnost tudi to, da tolmači moj posvet s stranko. Ali sam angažirati tolmača in prigrasiti stroške... ne vem.”]

Regarding consultations that take place after the hearing, if the requested person is put in detention, both interviewed judges explained **that the court provides (and pays for) an interpreter that accompanies the lawyer while visiting their client in detention.** One of the interviewed lawyers confirmed that a court appointed interpreter accompanies them to detention for consultations with the requested person. **The issue is that a court appointed *ex officio* lawyer is not free to visit their client with the interpreter as often as they like as the court may not cover all the costs. Therefore, they need to plan the visits carefully to be reimbursed** (Lawyer, Slovenia).

“Yes (the consultations with a lawyer interpreted by a state-appointed interpreter). The problem is that the court does not acknowledge every visit in detention and we have to plan carefully when I can go visit them. I cannot just go to see how they are. When there is some procedural action, when we get some decision that we are going to appeal against, that is when we meet together with the interpreter. That interpreter is paid by the court. But the court will not pay it just for any visit, there must be some good reason. So, we are a little bit limited here. You have to provide an explanation (a reason for the visit) so that the court pays you as a court-appointed lawyer as well as the (court appointed) interpreter.” (S/L/4)

[“Da (posvetovanja z odvetnikom tolmači tolmač, ki ga zagotovi država). Problem je, da nam sodišče ne prizna vsakega obiska v priporu, moram skrbno načrtovati, kdaj grem k njemu. Ne morem kar iti, da malo vidim, kako je. Ko se zgodi kakšno procesno dejanje, ko dobiva kak sklep, zoper katerega se bova pritožila, takrat se dobimo skupaj s tolmačem. Tega tolmača plača sodišče. Ampak sodišče ga ne bo plačalo za vsak prihod ampak morajo biti neki tehtni razlogi. Tako da smo tukaj malo omejeni. Obrazložiti moraš (razlog za obisk), da sodišče plača tebe kot odvetnika (po uradni dolžnosti) kot tudi tolmača.«]

However, **two of the interviewed lawyers did not know if the court provides a state-paid interpreter for lawyer-client consultations that take place outside of the court building, in detention.** One of them mentioned that they did not have any experience of the state covering these costs because they have arranged the interpretation themselves. They expressed their belief that the law does not provide for this option and that the court does not cover these costs (Lawyer, Slovenia).

“What we have done is that the client has paid for the interpreter himself, or we have made quick use of that interpreter who was waiting outside the courtroom before we went into the hearing and said a few words.” (Lawyer, Slovenia)

[“Smo naredili tako, da si je stranka sama plačala prevajalca, ali pa smo na hitro izkoristili tega tolmača, ki je čakal pred sodno dvorano, preden smo šli na narok in še kakšno besedo spregovorili.]

One lawyer reported that one interpreter is usually appointed for the entire case and interprets all the hearings and consultations (Lawyer, Slovenia). Another lawyer criticised this practice that the interpreter who interprets a confidential conversation between the client and the defence lawyer is also interpreting court hearings in the same case. **They explained that the state should provide a separate interpreter for the defence to prevent psychological contamination that may lead to a breach of confidentiality** (Lawyer, Slovenia). **The lawyer mentioned a good practice in a non-EAW case where the court granted them a separate interpreter for the pre-trial phase of the proceedings.**

“I find it problematic that the interpreter who interprets a confidential conversation between the client and the defence lawyer is in principle the same one who translates in court. Not that I would question the interpreter’s respect for confidentiality, and that may be a little questionable too, but the conversation between the defence lawyer and the client is one of the most confidential consultations known to the law. Because the defence lawyer has to know everything that is important for the defence and is not obliged, nor even allowed, to pass it all on. If the same person who interprets the statements before the court is interpreting the consultation, you have to rely on their respect for confidentiality. The other thing is that, despite that respect, there can be psychological contamination. When you have heard some content in a confidential conversation, when you are going to translate some related content that does not have the same context, you might translate it in that context that came from the confidential conversation.” (Lawyer, Slovenia)

[„Problematično se mi zdi, da tolmač, ki tolmači zaupni pogovor med stranko in zagovornikom načeloma isti, ki prevaja pred sodiščem. Ne ker bi dvomil v spoštovanje njegovo zaupnosti, pa tudi to je lahko malo vprašljivo, vendarle je pogovor med zagovornikom in stranko eden najbolj zaupnih pogovorov, ki jih pravo pozna. Ker mora zagovornik izvedet vse, kar je pomembno za obrambo in ni dolžan, niti ne sme, vsega predajat naprej. Če prevaja ista oseba, ki prevaja izjave pred sodiščem, se moraš zanašati na njeno spoštovanje zaupnosti. Druga stvar pa je, da je kljub spoštovanju lahko psihološko okužena. Ko si slišal neko vsebino v zaupnem pogovoru,

ko boš prevajal neko s tem povezano vsebino, ki pa nekega konteksta nima, boš prevajal v tem kontekstu, ki izhaja iz zaupnega pogovora.«]

A prosecutor explained that they observed a practice of duty lawyers who replace each other before their formal appointment as *ex officio* lawyers, so that a lawyer who speaks at least one common language with the requested person is appointed. This is also facilitated by the judge who prior to the hearing calls all the parties and checks who will attend (Prosecutor, Slovenia).

One of the lawyers also mentioned that if there is a language they can communicate in with the requested person, they do not wish to bring an interpreter with them to the detention as the communication is thus faster and easier. The requested person is also usually more relaxed if they are alone (Lawyer, Slovenia).

c. Discussion of findings

The law stipulates that the requested person has the right to translation and interpretation. Findings demonstrate that the law is well implemented in practice as all interviewed practitioners stated that requested persons who are foreign nationals are always provided with interpretation. Although there are no specific criteria or mechanisms for the assessment of the need for interpretation, the Supreme Court caselaw resulted in the effective provision of interpretation. This is ensured even if the requested person speaks (some) Slovenian.

The findings show that the main issues in providing interpretation are of a practical nature. Namely, in Slovenia there are too few court interpreters for some languages, which creates difficulties in the short time frame and deadlines prescribed in EAW proceedings. The courts in such cases use non-court interpreters and swear them in for the purpose of the hearing. While the practitioners report that the interpretation is provided in person, courts now possess the necessary technical equipment to carry out remote interpretation.

All interviewed practitioners stated that there are documents that are always provided in a language a requested person understands. The following documents were mentioned: EAW; all court decisions in the executing state against which the person has a right of appeal; minutes of the hearing (including the legal instruction); court decisions in the issuing state (which are the basis for issuing an EAW, e.g. a detention order); translation of any other document that a requested person asks for. While the police have brochures (Letter of Rights) that are also available in foreign languages, the court does not have its own information materials - the legal instruction is provided orally by the investigating judge and is included in the minutes of the hearing.

Interviewed judges reported that the courts also use foreign translation agencies to translate documents when there are not enough translators for a certain language. For example, a document may be translated first from a foreign language for which a local translator cannot be found into another foreign language, and then from that language into Slovenian.

The findings demonstrate that the interpretation of private consultations with lawyers is provided by a court-appointed interpreter. However, it seems that this obligation of the court to provide interpretation is not clearly communicated with all lawyers as some are not aware that they can obtain a court-paid interpreter for visits with their clients in detention. Similar lack of clarity can be found in

relation to the interpretation of the first consultation right before the hearing, when the requested person meets their court-appointed lawyer for the first time. Although findings show that interpreters who are appointed to interpret the hearing also assist the lawyer-client consultations before the hearing starts, it seems that this obligation is not clearly regulated.

3. Right to access to a lawyer

a. Legal overview

In accordance with Article 17(1) of the Cooperation in Criminal Matters with the Member States of the European Union Act (hereinafter: the Act),⁴⁶ the requested person must have a defence counsel appointed during the entire surrender proceedings, or from the first hearing on the surrender until the execution of the surrender. If the requested person does not choose a defence counsel, the investigating judge shall appoint one *ex officio*. The requested person must be informed about the right to a lawyer immediately upon deprivation of liberty by the police. This instruction must include information about the right to choose a lawyer in the issuing state who can assist the defence counsel in the effective exercise of their rights by providing information and advice.⁴⁷

If the requested person, when brought before the investigating judge, states that he or she wishes to exercise the right to choose a lawyer in the issuing Member State, the investigating judge must immediately inform the competent authority of the issuing state. The investigating judge then provides the requested person with information received from the competent authority of the issuing state to facilitate the choice of a lawyer, including information on eligibility for free legal aid (Article 17(3) of the Act).⁴⁸ This obligation of the investigating judge is relatively new, as it was added to the Act with the amendment adopted in 2021.⁴⁹ In the preparatory materials of the amendment it was explained that this provision is necessary for the implementation of the Directives 2013/48/EU on the right of access to a lawyer in criminal and EAW proceedings and (EU) 2016/1919 on legal aid in criminal and EAW proceedings.⁵⁰ The document refers to the obligations under Article 10(4) of the Directive 2013/48/EU (the right of access to a lawyer in European arrest warrant proceedings) and Article 5 of the Directive (EU) 2016/1919 (legal aid in European arrest warrant proceedings).

With the same amendment, a new Article 43.a was also added to the Act, which regulates the right to a lawyer when Slovenia is the issuing state. In accordance with Article 43.a(1), the arrested person has the right to legal assistance by a lawyer who can assist the defence counsel in representing the requested person in the executing state by providing information and advice. The requested person is entitled to such assistance free of charge under the conditions and in accordance with the procedure laid down by the law governing legal aid.⁵¹

⁴⁶ Slovenia, [The Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁴⁷ Article 19(1) of the [The Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁴⁸ Article 17(3) of the [The Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁴⁹ Slovenia, [The Act Amending the Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o spremembah in dopolnitvah Zakona o sodelovanju v kazenskih zadevah z državami članicami Evropske unije – ZSKZDČEU-1C*), 1 June 2021.

⁵⁰ Slovenia, Draft Act amending and supplementing the Cooperation in Criminal Matters with the Member States of the European Union Act (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije, EVA 2020-2030-0061*), 18 December 2020.

⁵¹ Slovenia, [The Legal Aid Act](#) (*Zakon o brezplačni pravni pomoči*), 31 May 2001.

Remedies

If the investigating judge does not provide the person with the legal instruction, including on the right to choose a lawyer in the issuing state, or if such legal instruction is not entered in the record, a national court may not base its decision on surrender on the statement of the requested person.⁵²

As legal representation in EAW proceedings is mandatory, denial of access to a lawyer is considered an absolute substantive violation of criminal procedure provisions.⁵³ The requested person, his or her legal counsel, or a state prosecutor may on this ground appeal the decision on surrender before a non-trial panel of a district court within 24 hours (decision on surrender by consent) or 48 hours (decision on surrender without consent) of the order being served on them. A panel of five judges of the Supreme Court of the Republic of Slovenia renders a decision on the appeal.⁵⁴

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? | | |
|--|----------|----|
| Country | YES | NO |
| Slovenia | X | |

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) |
|-------------------------------------|---|---|
| Country Slovenia | YES | YES (Assistance is free of charge under the conditions and in accordance with the procedure laid down by the law governing legal aid) |

b. Right to access to a lawyer in practice

- Information about legal assistance (including on dual representation)

Interviewees discussed the right to information regarding access to a lawyer in the part of the interview related to right to information (please see Section 1.b on Right to information in practice). Interviewees stressed that in EAW proceedings, legal representation is mandatory. The investigating judge will not only inform the requested person about their right to a lawyer, but also appoint one *ex officio* if the person does not have a lawyer.

“Nothing happens in court (in EAW proceedings) without a lawyer. If the person is already brought to court and the lawyer is not there yet, I do not even approach the person. I think it

⁵² Article 21(5) of the [The Cooperation in Criminal Matters with the Member States of the European Union Act \(Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije\)](#), 23 May 2013.

⁵³ Article 371(1)(3) of the [Criminal Procedure Act \(Zakon o kazenskem postopku\)](#), 29 September 1994.

⁵⁴ Article 33 of the [Cooperation in Criminal Matters with the Member States of the European Union Act \(Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije\)](#), 23 May 2013.

is correct that any communication with the requested person takes place only when their lawyer is present.” (Prosecutor, Slovenia)

[“Na sodišču se (v EAW postopkih) nič ne dogaja brez odvetnika. Če zahtevano osebo že privedejo na sodišče, odvetnika pa še ni tam, jaz do osebe niti ne pristopam. Menim, da je za vsakršno komunikacijo korektno, da je prisoten zagovornik.«]

“Yes, the person is informed, and must have a lawyer from the start [...] First we ask whether he already has a lawyer, as a rule he does not, then we appoint one *ex officio*.” (Judge, Slovenia)

[“Ja, oseba je obveščena, prijeta oseba mora imeti že od vsega začetka odvetnika) [...] Najprej vprašamo, ali že ima svojega odvetnika, praviloma ga nima, potem mi postavimo zagovornika po uradni dolžnosti.«]

Regarding provision of information on legal aid, one interviewed judge explained that since legal representation is mandatory under the law, they do not refer these persons to the legal aid system, but appoint a lawyer *ex officio* from the list of on duty lawyers (Judge, Slovenia). Another judge mentioned that in EAW proceedings, a lawyer is almost always appointed *ex officio* and only few requested persons arrange a lawyer themselves (Judge, Slovenia). The interviewed lawyers all agreed that information on legal aid is not relevant in EAW proceedings as an *ex officio* lawyer is provided, which has priority over legal aid.

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

| | L 1 | L 2 | L 3 | L 4 | J 1 prosec utor | J 2 prosec utor | J 3 judge | J 4 judge | Total |
|---------------------------------|-----|-----|-----|-----|-----------------------|-----------------------|--------------|--------------|----------|
| YES | X | X | X | X | X | X | X | X | 8 |
| In writing | - | - | - | - | - | - | - | - | 0 |
| Orally | - | - | - | - | - | - | - | - | 0 |
| In writing and orally | X | X | X | X | X | X | X | X | 8 |
| NO | - | - | - | - | - | - | - | - | 0 |
| Don't know/ remember | - | - | - | - | - | - | - | - | 0 |
| Did not answer | - | - | - | - | - | - | - | - | 0 |

Information on dual representation

Both interviewed judges stated that the court does not inform the requested persons that they can benefit from the assistance of a lawyer in the Member State that issued the European Arrest Warrant. One interviewed prosecutor mentioned that the right to the assistance of a lawyer in the issuing state is implemented in the national law and is part of the set of information that must be communicated to the requested person. However, they did not have any information on how this works in practice. Another interviewed prosecutor stated that they have never witnessed any instruction on dual representation being provided to the requested person. However, they were involved in a case where the person also received assistance from a lawyer in the issuing state. Similarly, all interviewed lawyers reported that instruction on dual representation is never provided.

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? | | | | | | | | |
|---------------------|---|-----|-----|-----|-----------------|-----------------|-----------|-----------|-------|
| | L 1 | L 2 | L 3 | L 4 | J 1 pro-secutor | J 2 pro-secutor | J 3 judge | J 4 judge | Total |
| YES | - | - | - | - | - | - | - | - | 0 |
| NO | X | X | - | X | - | X | X | X | 6 |
| Don't know/remember | - | - | X | - | X | - | - | - | 2 |
| Did not answer | - | - | - | - | - | - | - | - | 0 |

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

Access to a lawyer

Interviewed judges and prosecutors reported that in **the majority of EAW proceedings, the lawyer is appointed *ex officio* by the court and requested persons almost never hire a lawyer on their own.** The interviewed prosecutors did not know whether the requested persons are provided with a list of available lawyers when they do not wish to be represented by the *ex officio* appointed lawyer and seek to hire a lawyer of their own.

"I would not know (if authorities provide them with a list and contact details of available lawyers) but I would say that the duty of the state is exhausted in making sure that a defence lawyer is available, but the rest goes beyond the limits of what the state can do." (Prosecutor, Slovenia)

["To pa ne bi vedela (ali jim organi zagotovijo seznam in kontaktne podatke odvetnikov, ki so na voljo), bi pa rekla, da se dolžnost države izčrpa pri tem, da je zagovornik na voljo, ostalo pa presega meje, do koder država lahko vpliva."]

One of the judges explained that in case a requested person wished to retain a particular lawyer, they would call the lawyer from the judge's office and the person would talk to the lawyer in the judge's presence about whether the lawyer is willing represent them. The court, however, does not have a list of lawyers from which a person can choose (Judge, Slovenia).

*"Theoretically, the person could be in the prison facility and would call the lawyer from there, but it is a waste of time. He comes here (to the court), he wants a particular lawyer, we call him. If (the lawyer) is not there at that moment, he can call him from the prison, but if they do not agree (to take over the defence), we appoint an *ex officio* lawyer." (Judge, Slovenia)*

[»Teoretično bi ga lahko peljali v zapor in bi klical odvetnika od tam, a to je izguba časa. On pride sem (na sodišče), hoče imet določenega odvetnika, ga pokličemo. Če (odvetnika) tisti trenutek ni, ga lahko kliče še iz zapora, če pa se ne dogovorita (za zastopanje), pa ga postavimo po uradni dolžnosti.«]

Another judge reported that sometimes when a person wishes to hire a lawyer on their own, the court gets a request to allow a one-off visit of a lawyer in detention where they meet with the requested person to see if the lawyer will take the case (Judge, Slovenia).

Two interviewed lawyers reported that **the detention facilities provide the requested persons with a list of lawyers.** However, all interviewed lawyers agreed that the person usually chooses a lawyer based on recommendations from other detainees or that their families assist them with hiring a

lawyer. Two lawyers expressed their opinion that the requested persons do not receive much support from the authorities in this regard.

“I wouldn't say they have much assistance from the authorities, they would tell them where to find the contact information, nothing more. The authority does its job if it appoints an ex officio lawyer, but if someone wants to retain their own... That is a bit of a guess, but I think that the system, the authority, does not bother with that, because the ex officio lawyer has been provided.”

[“Ne bi rekel, da bi prejel veliko pomoči od organov. Povedali bi, kje si lahko to najde, več pa ne. Organ opravi svoje, če postavi odvetnika po uradni dolžnosti, če pa si ga nekdo hoče vzeti sam... To malo ugibam, a mislim, da se sistem, organ s tem ne ukvarja, saj je zagotovil zagovornika po uradni dolžnosti.«]

Presence at the hearings and lawyer-client consultations

All interviewees agreed that as representation by a lawyer is mandatory in EAW proceedings, the persons always have their lawyer present at hearings. No specific issues were identified in this area.

One judge mentioned that due to mandatory presence, the court accommodates and adapts the scheduling of the hearings so that the lawyer can attend (Judge, Slovenia).

“I don't see any problems. It works fine. I am mixing it up, EAW, extraditions and ordinary detention cases, but I think there was one time in one (EAW) case that an appointed lawyer went on holiday and we needed to serve them with an extension of detention, so we had to appoint another lawyer just for that. A lawyer can also go on holiday. But usually there is no problem with them attending hearings.” (Judge, Slovenia)

[»Ne zaznavam nekih težav. V redu funkcionira. Jaz to mešam, ENP, tiralice in navadne priporne zadeve, ampak mislim, da je bilo enkrat v eni (ENP) zadevi nekaj, da je šel postavljeni na dopust in smo morali vročiti podaljševanje pripora, zato smo morali vmes drugega odvetnika postaviti, samo da smo lahko vročili. Tudi odvetnik gre lahko tudi na dopust. Ampak po navadi ni težav in pridejo na naroke.«]

As the majority of requested persons are represented by *ex officio* appointed lawyers, the interviewees explained how the first meeting and consultation between the person and their appointed lawyer takes place. **All interviewees confirmed that the first meeting takes place when the person is brought to the investigating judge for the hearing. They meet right before the hearing starts in the hallway in front of a courtroom.** A lawyer explained that they have no special room for consultation available at the court and they talk in the hallway outside the courtroom (Lawyer, Slovenia).

“The first consultation usually takes place in the hallway before the courtroom. The police bring him there [...] It has happened before that they have asked to have the consultation inside the courtroom, because there is a table there, so they could have a look at the documents in peace and the rest of us have left the room.” (Judge, Slovenia)

[“Prvo posvetovanje se običajno zgodi na hodniku pred sodno dvorano. Policija ga tja pripelje [...] Se je že zgodilo, da sta zaprosila za razgovor v dvorani, ker je tam miza, da sta v miru prelistala, mi ostali pa smo se umaknili iz prostora.«]

While one lawyer commented that the court allows sufficient time for consultation before the hearing (Lawyer, Slovenia), another commented that because these are fast proceedings with short deadlines

there is not enough time to study the case and discuss with the client, and that there is not enough information about the case (Lawyer, Slovenia).

After the hearing, the lawyer gets a permanent pass to visit the person in detention. Both interviewed judges explained that the lawyer can visit the person as many times as they want and the court does not interfere in the number of visits. However, one of the judges commented that they may not allow the lawyer “to go to the person in detention every day, for no particular reason, only to get paid more (from the state budget)” (Judge, Slovenia). One of the lawyers also mentioned that they have to plan visits carefully and link it to a certain procedural event (such as a decision that may be appealed) in order to be reimbursed (Lawyer, Slovenia).

Assistance provided by a lawyer

The lawyers commented that the main task of the lawyer is to provide information, inform the requested persons about their rights and keep them informed about the progress of the proceedings.

„As a defence lawyer, I am interested in what the client wants. If he objects to surrender, then it is a relatively legally technical task to fight the surrender. There are not that many facts that I have to clarify with my client. The most important thing is to inform them of their rights and the course of the procedure, to get basic information about the procedure for which the surrender is sought and what it is that the client wants. If they do not want to be surrendered you try to get that result if that is possible.” (Lawyer, Slovenia)

[»Mene kot zagovornika zanima kaj stranka želi. Če nasprotuje predaji, potem je relativno pravno tehnično opravilo, da se boriš zoper predajo. Ni toliko dejstev, ki bi jih moral razčistiti s stranko. Najbolj pomembno je, da jo seznaniš s pravicami in potekom postopka, dobiš osnovne informacije o postopku, zaradi katerega se zahteva predaja, in kaj je tisto, kar stranka želi. Če želi, da se ne preda, da veš v kateri smeri skušaš doseči rezultat, če je to možno.«]

Two lawyers stated that their **role in EAW proceedings is much more limited than in regular criminal proceedings**. One of them commented that it is extremely difficult to contradict the statements of the issuing authority. In their opinion it is important that the lawyer informs their client about the proceedings, consequences of consent and the grounds that may prevent the surrender. Lawyers must also obtain legally relevant information, for example, that the requested person have already been punished for the crime in question (Lawyer, Slovenia). The other explained that what can be done is to cast some doubt on the credibility of the documentation provided by the issuing state, which is difficult to do. **The lawyer stressed that it is important for the defence counsel to have the assistance of a lawyer from the jurisdiction requesting surrender** (Lawyer, Slovenia).

Another lawyer stated that they propose to the court to obtain the case file from the issuing state and to have it translated to see if the person’s rights have been respected. Namely, the persons often claim procedural issues such as that judgments were issued in their absence, that they were not summoned to the main hearing or that their appeal was not decided upon (Lawyer, Slovenia).

“Whenever I get anything from the court that I have to react to I talk to the person - decision on extending their detention, any order against which they have a right of appeal. To discuss whether we will appeal and why. The requested person is in charge of the procedure, not me. I do not go beyond their will, I only advise them.” (Lawyer, Slovenia)

[“Kadar koli dobim karkoli od sodišča, na kar moram odreagirat, da se z njim pogovorim - podaljšanje pripora, izdaja kakršnegakoli sklepa zoper katerega ima pravico do pritožbe. Da se

dogovoriva, ali se bova pritožila in zakaj. Zahtevana oseba vodi postopek, ne jaz, ne grem preko njegove volje, jaz mu samo svetujem.«]

Assistance provided in appointing a lawyer in the issuing Member State

As explained above in the section “Information about legal assistance”, the courts do not inform the requested persons that they can benefit from the assistance of a lawyer in the Member State that issued the European Arrest Warrant.

Interviewees either expressly stated that the authorities do not assist the requested persons in appointing a lawyer in the issuing state or did not have information about it.

Although all interviewed lawyers reported that instruction on dual representation is never provided, they all had experience in representing requested persons who had a lawyer in the issuing state. However, they mentioned that these were lawyers that the persons already knew from before and they did not hire them specifically for the EAW proceedings. One lawyer mentioned that their cooperation with a lawyer from the issuing state is a method of the attorney’s work that seeks to get the best result for the client and that the state does not help with finding a lawyer in the issuing country (Lawyer, Slovenia).

A judge also stated that **the court does not support the person in finding a lawyer in the issuing state. In their opinion, the court is surrendering a person under the national law and is not aware of the terms of access to a lawyer in another Member State; therefore, providing a person with certain rights at the expense of another Member State would be beyond their jurisdiction** (Judge, Slovenia). The judge also mentioned that no requested person has ever expressed a wish to contact a lawyer in the issuing state. In one case that they are aware of, the person arranged the lawyer in the issuing state on their own.

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 |
| L 1 | | | X |
| L 2 | | X | |
| L 3 | | | X |
| L 4 | | X | |
| J 1 (prosecutor) | | | X |
| J 2 (prosecutor) | | | X |
| J 3 (judge) | | X | |
| J 4 (judge) | | X | |
| Total | 0 | 4 | 4 |

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

Interviewed judges and prosecutors did not have much insight into the assistance provided by lawyers in the issuing state. One prosecutor assumed that the communication mostly takes place between the lawyer in the issuing state and the defence counsel in the executing state (Prosecutor, Slovenia).

Interviewed lawyers did not have any experience providing legal assistance as lawyers in the issuing state. They only had experience in cooperating with lawyers from the issuing state in EAW cases where

Slovenia was the executing state. They all deemed that having assistance of a lawyer from the jurisdiction requesting surrender is important and useful. One of the lawyers mentioned that the lawyer in the issuing state accessed the file in that country (Lawyer, Slovenia). Another explained that the lawyers in the issuing state give opinions on procedural issues such as limitation period for enforcing a sentence; they can also challenge detention decisions and provide information on detention conditions that may put the client at risk in case of surrender (Lawyer, Slovenia).

“Sometimes things are complicated. In one case concerning one of the Baltic states (as an issuing state), a Dutch citizen was requested due to alleged fraud committed in another country to the detriment of a citizen of the issuing state. Which means that nobody had enough information. I asked our court to obtain more documentation - to establish whether the issuing state has jurisdiction. My task is to check whether the procedural prerequisites are met. In the absence of information, the client engaged a lawyer in the issuing state who liaised with me, I then requested the Slovenian court to order the issuing state to supply additional documentation, and the local lawyer accessed the case file and tried to find out whether the documentation was already in there, to then find out what it was all about.” (Lawyer, Slovenia)

[“Včasih so stvari zakomplicirane. V eni zadevi je baltska država zahtevala nizozemskega državljanca, ki naj bi v neki tretji državi izvedel goljufijo na škodo državljanca države izdajateljice. Kar pomeni, da nihče ni imel dovolj informacij. Jaz sem od našega sodišča zahteval, naj pribavi več dokumentacije. Da bi se ugotovilo ali je sploh podana pristojnost države izdajateljice. Moja naloga je, da preverim, ali so procesne predpostavke sploh podane. Ob pomanjkanju informacij je stranka angažirala odvetnika v državi izdajateljici, ki se je povezal z mano, jaz sem potem od slovenskega sodišča zahteval da izdajateljici naloži, da dobavi dodatno dokumentacijo, tamkajšnji odvetnik pa je vpogledoval v spis in poskušal ugotoviti, ali se dokumentacija že nahaja v spisu, da bi potem ugotovila, zakaj gre.”]

At first, I was sceptical about the benefit of taking on a lawyer in the issuing country, but experience has shown that it is very useful. Why? Because that lawyer had the opportunity to make contact with the issuing authority and to agree on the course of action in the issuing country. They practically agreed on a penalty. The issuing authority was only fulfilling the bare minimum (regarding the content of the EAW), so there is a lot of supplementing (the supporting documentation), a lot of delaying [...]. And that time was used by the client to get a lawyer who then negotiated with the prosecution and, once there was a certain degree of likelihood that their agreement would be accepted, my client informed me that he now consents to surrender. After that, it went rather fast. The man sat in our custody for two months, only to be surrendered and brought before a judge (of the issuing country), where the prosecutor then requested that he be punished with a fine.” (Lawyer, Slovenia)

[“Jaz sem bil skeptičen, kaj je korist tega, da vzameš še odvetnika v državi izdajateljici, pa se je skozi izkušnje izkazalo, da je to zelo koristno. Zakaj? Zato ker je imel ta odvetnik možnost navezat stik z odreditvenim organom in se dogovoriti za potek postopka v izdajateljici. Praktično so se dogovorili za kazen. Veliko je bilo nekega ravnanja v izdajateljici, ki zadosti zgolj minimumu, zato je veliko dopolnjevanja, zavlačevanja [...]. In ta čas je velikokrat pomenil, da je stranka dobila odvetnika, ki se je dogovoril s tožilstvom in ko je prišlo do določene stopnje verjetnosti, da bo ta dogovor sprejet, je mene moja stranka obvestila, da se strinja z izročitvijo in potem je šlo zelo hitro. Človek je dva meseca sedel v našem priporu, da je bil nato izročen in priveden pred sodnika (države izdajateljice), kjer je tožilec zahteval potem denarno kazen.”]

“In all such proceedings, it is important for the lawyer (in the executing state) to have the assistance of a lawyer from the jurisdiction requesting surrender. In my experience, whenever I have been able to work with someone from that country, the results have been better.”
(Lawyer, Slovenia)

[»V vseh teh postopkih je za odvetnika pomembno, da ima pomoč odvetnika iz jurisdikcije, ki izročitev zahteva. Po mojih izkušnjah, kadarkoli sem lahko sodeloval z nekom iz te države, so bili rezultati boljši.«]

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 |
| L 1 | | | X |
| L 2 | | | X |
| L 3 | | | X |
| L 4 | | | X |
| J 1 (prosecutor) | | | X |
| J 2 (prosecutor) | | | X |
| J 3 (judge) | | | X |
| J 4 (judge) | | | X |
| Total | 0 | 0 | 8 |

- Communication between the lawyers in both states

As mentioned in the previous sections, the courts do not inform the requested persons that they can benefit from the assistance of a lawyer in the Member State that issued the European Arrest Warrant. In accordance with the responses of the interviewees, the authorities do not assist the requested persons in appointing a lawyer and it seems that the authorities also do not facilitate communication. One prosecutor assumed that the communication mostly takes place between the lawyer in the issuing state and the defence counsel in the executing state (Prosecutor, Slovenia). The interviewed lawyers did not discuss the manner of their communication. One of the lawyers mentioned one of their cases where they had no direct contact with the lawyer in the issuing state. The latter merely sent over some documents (Lawyer, Slovenia).

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

In accordance with the law, legal representation is mandatory in EAW proceedings. Accordingly, the courts appoint a lawyer *ex officio* to all requested persons who do not have one. As explained by a judge, since legal representation is mandatory under the law, courts do not refer requested persons to the national legal aid system (Judge, Slovenia). The interviewed lawyers all agreed that information on legal aid is not relevant in EAW proceedings as an *ex officio* lawyer is provided, which has priority over legal aid.

Interviewed judges and prosecutors reported that in **the majority of EAW proceedings, the lawyer is appointed *ex officio* by the court and that requested persons almost never hire a lawyer on their own.** The interviewed prosecutors did not have any information about whether requested persons are provided with a list of available lawyers if they do not wish to be represented by the *ex officio* appointed lawyer and want to hire a lawyer of their own.

When Slovenia is the issuing state, the law stipulates that assistance for the purposes of procedures in the executing Member State is free of charge under the conditions and in accordance with the procedure laid down by the law governing legal aid.⁵⁵ However, the interviewees had no experience regarding legal assistance in Slovenia as the issuing state. Thus, the interview findings did not offer any information regarding the practical application of the cited legal provision.

Table 11: Cost-free legal assistance, interview findings

| Free of cost lawyer provided | When your country is an executing state | | When your country is an issuing state for the purposes of procedures in the executing MS (e.g. to assist the lawyer in the executing state) | |
|------------------------------|---|---|---|----------------|
| | YES | | | |
| L 1 | YES | | | No information |
| L 2 | YES | | | No information |
| L 3 | YES | | | No information |
| L 4 | YES | | | No information |
| J 1 (prosecutor) | YES | | | No information |
| J 2 (prosecutor) | YES | | | No information |
| J 3 (judge) | YES | | | No information |
| J 4 (judge) | YES | | | No information |
| TOTAL | 8 | 0 | 0 | 8 |

c. Additional best practices or challenges

Lack of specialisation

One of the interviewed lawyers expressed their opinion that in order to effectively protect the requested persons' rights, specialisation of lawyers (and also judges and prosecutors) should be ensured (Lawyer, Slovenia). As EAW proceedings are specific, only those who specialise in this procedure should offer legal representation. The issue is that on duty lawyers from the *ex officio* list are appointed in EAW cases, which in practice means that a lawyer rarely gets to work on an EAW case and is not always up to speed with recent developments (the interview findings show that the majority of the requested persons are represented by *ex officio* lawyers).

„Lack of specialisation. Only those who specialise in this procedure should represent. This would make the court's job easier. But it is impossible to do that, because even if there was specialisation available, not many lawyers would choose it, because there are not enough of cases to make it worthwhile. So, we do it as lawyers who are on the ex officio list, and once every few years you get one case. And then you learn it all over again because it has been a while, or something has changed in the meantime. You can never do your job 100 percent. It is the same problem for courts and prosecutors. If one court did all EAW cases for the whole of Slovenia, case law would be more uniform.“ (Lawyer, Slovenia)

[“Odsotnost specializacije je problem. Zastopati bi morali le tisti, ki so za ta postopek specializirani. S tem bi olajšali delo sodišču. A to je nemogoče izvest, ker tudi če bi bila specializacija, se ne bi veliko odvetnikov javilo, ker tega ni toliko, da bi se splačalo. Tako pa delamo to odvetniki, ki smo na seznamu po uradni dolžnosti in enkrat na nekaj let dobiš eno zadevo. In se takrat spet na novo učiš, ker je minilo nekaj časa ali pa se je vmes kaj spremenilo. Ne moreš svojega dela nikoli stoprocentno% dobro opraviti.

⁵⁵ Slovenia, [The Legal Aid Act](#) (Zakon o brezplačni pravni pomoči), 31 May 2001.

Isti problem je tudi za sodišča in tožilce. Če bi to za celo Slovenijo delalo eno sodišče, bi bila praksa bolj enotna.«]

Insufficient time for initial lawyer-client consultation

One lawyer mentioned that they could perform their role better if they had been given more time at the beginning of the proceedings to talk to their client. The lawyer also stated that *ex officio* lawyers should be able to visit their clients in detention as often as necessary and be paid for every visit. Namely, the courts should trust that when *ex officio* lawyers conduct visits to detention centres, they do so for necessary consultations with their client and not merely to receive a higher fee from the court. The courts should understand that as a lawyer they need to talk to their client more often and that it is also the person's right to see their lawyer when needed. The lawyer mentioned that in EAW cases, the lawyer is sometimes the only person the detainee has contact with (Lawyer, Slovenia).

Reduced fee for *ex officio* lawyers

Two lawyers problematised the fee that an *ex officio* lawyer receives for representing clients in all mandatory defence cases (including EAW cases). Namely, the fee for an *ex-officio* lawyer is half of the regular lawyer's fee.

„The lawyer is always present, in practice, I do not see problems. What is not fair is that the fee that the ex officio lawyer receives from the state is half of the regular lawyer's fee. But I do not even do many of these cases, I am on the duty list more through a combination of certain circumstances, I see it as paying a debt to society.“ (Lawyer, Slovenia).

[“Odvetnik je vedno prisoten, v praksi, ne zaznavam teh težav. Ni pa pravično, da je nagrada, ki je odmerjena odvetniku po uradni dolžnosti, polovica siceršnje odvetniške tarife. A jaz niti ne delam veliko teh zadev, sem na seznamu bolj po spletu nekih okoliščin, gledam na to kot na nek dolg družbi.«]

d. Discussion of findings

The law prescribes mandatory legal representation in EAW proceedings which means that all requested persons must be represented by a lawyer. If a person does not have a lawyer, the court must appoint one *ex officio*. All interviewed practitioners agreed that *ex officio* lawyers are appointed routinely, and that the system of mandatory legal representation has priority over legal aid.

Despite the legal requirement that the requested persons must be informed about the right to dual representation it seems that in practice information is not provided. Seven of the interviewed practitioners stated that this information is not provided in practice. One interviewee only mentioned that this is a legal requirement but was not aware of how it is enacted in practice.

Interviewees stressed that the majority of requested persons are represented by *ex officio* lawyers. It seems that there is not much attention placed on assisting the requested persons in finding a lawyer if they wish to retain their own. However, the detention facilities provide detainees a list of lawyers and their contact details. But this list is not provided by courts. An interviewed judge indicated that they would help the person make contact with a chosen lawyer if they did not wish to be represented by the *ex officio* lawyer and wanted to hire (and pay for) their own.

All interviewees agreed that as representation by a lawyer is mandatory in EAW proceedings, the persons have their lawyer present at hearings at all times. All interviewees confirmed that the first

meeting takes place when the person is brought to the investigating judge for the hearing. It seems that since their meetings take place in the hallway of the court, the sense of confidentiality of this consultation may be compromised. One lawyer also stated that they should have more time in the beginning of the proceedings to talk to the requested person. After the hearing, the lawyer receives a permanent pass to visit the client in detention. It seems that the courts who pay the costs of *ex officio* lawyers generally do not limit these visits. However, one of the interviewed lawyers mentioned that they have to plan visits carefully in order to be reimbursed. The lawyer also stated that the court should trust that the *ex officio* lawyer goes to detention for consultation with their client and not for financial gain, and therefore allow and reimburse the lawyer for more frequent visits to their client in detention.

The interviewed lawyers commented that the main task of the lawyer is to provide information, inform the requested person on their rights, and keep them informed about the progress of the proceedings. It was mentioned that the role of lawyers in EAW proceedings is much more limited than in regular criminal proceedings. The importance of having the assistance of a lawyer from the jurisdiction requesting surrender was underlined.

Despite the legal requirement that the courts facilitate appointment of a lawyer in the issuing Member State it seems that in practice assistance is not provided. The interviewees either expressly stated that the authorities do not assist requested persons in appointing a lawyer in the issuing state or they did not have information about it. It seems that the authorities in practice also do not facilitate communication with the lawyer in the issuing state.

Interviewed judges and prosecutors did not have much insight into the assistance provided by lawyers in the issuing state. Interviewed lawyers did not have any experience providing legal assistance as lawyers in the issuing state. They only had experience in cooperating with lawyers from the issuing state in EAW cases where Slovenia was the executing state. They all deemed that having assistance of a lawyer from the jurisdiction requesting surrender is important.

One of the interviewed lawyers stressed that a lack of specialisation is an issue. Usually, lawyers from the *ex officio* list represent persons in EAW cases, but in practice an individual lawyer gets EAW cases only rarely. As a result, lawyers are not familiar with possible developments in the field.

Two lawyers problematised the fee that the *ex officio* lawyer receives for representing clients in all mandatory defence cases (including EAW cases). Namely, the fee for *ex officio* lawyer is half of the regular lawyer's fee.

4. Issuing and execution of the EAW

a. Legal overview

Issuing of the EAW

Article 41 of the Cooperation in Criminal Matters with the Member States of the European Union Act (hereinafter: the Act) prescribes that a warrant may be issued based on the motion of a state prosecutor, or *ex officio*, if detention of an accused is ordered in the Republic of Slovenia for a criminal offence prosecuted *ex officio*, and punishable under the national criminal code by deprivation of liberty for a maximum period of at least one year, or for the purpose of executing a custodial sentence, safety measure or other measure involving deprivation of liberty of at least four months.⁵⁶

The national court conducting criminal proceedings, or the national court having jurisdiction for executing a sentence, issues a warrant on the form prescribed by the Act.⁵⁷

If a warrant is issued for the purpose of conducting criminal proceedings, the national court that issued the warrant may request permission from the executing judicial authority to question the requested person, or to surrender the person temporarily to the Republic of Slovenia for questioning or participation in a main hearing.⁵⁸

No specific legal provisions or guidance regarding proportionality when issuing an EAW could be identified. However, the authorities must always consider the principle of proportionality when deciding upon deprivation of liberty as this obligation derives from the Constitution of the Republic of Slovenia.⁵⁹

Execution of the EAW

Surrendering a person on the basis of a warrant is admissible if the warrant is issued for a criminal offence punishable in the ordering State by deprivation of liberty for a maximum period of at least one year, or for the purpose of enforcing a custodial sentence, safety measure or other measure imposed by a criminal court involving deprivation of liberty for at least four months, and if the act for which surrender is requested is also considered a criminal offence under the Slovenian Criminal Code (double criminality).⁶⁰

Double criminality is not verified if a warrant is issued for a criminal offence punishable under the law of the ordering Member State by deprivation of liberty for a maximum period of at least three years, and if such criminal offence is classified under the law of such State as one of the 32 criminal offences listed in the Act, for example, participation in a criminal organisation, terrorism, trafficking in human beings, murder, grievous bodily injury, etc.⁶¹

If the surrender of a person is admissible because it pertains to one of the above mentioned criminal offences listed in the Act, surrender may also be granted with regard to other criminal offences which, under both the law of the issuing State and the law of the executing State are punishable by

⁵⁶ Slovenia, [The Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁵⁷ Article 42(1) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁵⁸ Article 44(1) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁵⁹ Article 2 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991.

⁶⁰ Article 9(1) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁶¹ Article 9(2) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

deprivation of liberty or a safety measure or other measure imposed by a criminal court, but does not meet the above cited condition of the prescribed minimum penalty of one year (accessory surrender).⁶²

The law prescribes both mandatory and optional grounds for refusal of surrender.⁶³

Trial in absentia

The right to a fair trial is enshrined in Articles 22 (Equal Protection of Rights) and 23 (Right to Judicial Protection) of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*).⁶⁴

The Act stipulates the conditions under which a warrant issued for the purpose of executing a custodial sentence or another measure that includes deprivation of liberty can be enforced even if the requested person was not present at the trial.⁶⁵

- the person was duly summoned in good time and thus notified of the expected date and venue of the trial on the basis of which the decision was issued. Or if such person was actually in any other manner officially notified of the expected date and venue of the trial and the person was at the same time warned of the fact that a court would issue a decision even in the person's absence, or
- the person was notified of the date and venue of the trial at which his or her lawyer, whether of the person's own choosing or provided by the court, was present and defended the person, or
- if, after the person was served with a decision and expressly notified of the right to a retrial or appeal in which such person has the right to participate, such person expressly stated that he or she would not contest the decision, or did not request a retrial, or file an appeal within the relevant time-limit.

A warrant may also be enforced if it states that the person was not served in person with the decision under the procedural requirements determined by the national law of the ordering State, but that they will be served with such a decision in person immediately after surrender. At such time the person should be expressly notified of the right to a retrial or appeal in which the person has the right to participate. The person should also be notified of the time limit within which they must request a retrial or file an appeal, as provided by the European Arrest Warrant.⁶⁶ If a warrant was issued under the described conditions, and the person did not receive an official notice of criminal proceedings prior to such time, the person may request a copy of the judgment. The issuing authority must, immediately upon being notified of such a request, ensure that the requested person receives a copy of the judgment via a national court. The person receives a copy of the judgment for information purposes only, and this will not constitute an official serving of the judgment, nor will it have any effect on time limits related to the request for a retrial or for filing an appeal.⁶⁷

⁶² Article 9(4) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁶³ Articles 10 and 11 of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁶⁴ Slovenia, [The Constitution of the Republic of Slovenia](#) (*Ustava Republike Slovenije*), 23 December 1991.

⁶⁵ Article 13(1) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁶⁶ Article 13(2) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁶⁷ Article 13(3) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

The Constitutional Court of the Republic of Slovenia (*Ustavno sodišče Republike Slovenije*) decided a case of a Slovenian national who was found guilty of two offences of tax evasion in Romania and sentenced to four years of imprisonment.⁶⁸ Romania had requested Slovenia to surrender the appellant on the basis of a European Arrest Warrant for the purpose of serving the sentence imposed on him. The Constitutional Court held that the position of the two Slovenian courts, that Romania had given adequate assurances under Article 13(2) of the Act (Prerequisites for executing a warrant issued on the basis of a trial in absentia) that the appellant would upon surrender be granted a retrial, was manifestly erroneous and constituted a violation of the right under Article 22 of the Constitution. Neither the EAW in question nor the documentation subsequently obtained included clear and concrete assurances from the Romanian judicial authorities that (1) the judgment on which the EAW was based would be served on the appellant immediately after his surrender for the purpose of execution of the sentence, (2) the appellant would be informed of his right to request a retrial, this time in his presence, and (3) that he would be informed of the time limit within which he may request a retrial – as required regarding trial in absentia by the Article 13(2) of the Act. The mere mention of the Romanian court that a person who has been tried in absentia may, in accordance with Romanian law, request the reopening of the criminal proceedings, including an annexed translation of certain provisions of the Romanian Criminal Procedure Act, does not, in the Constitutional Court's view, constitute the those guarantees.

Principle of proportionality

In general, the authorities must always consider the principle of proportionality when deciding upon the deprivation of liberty as required by the Constitution of the Republic of Slovenia.⁶⁹ The provisions of the Act regarding the ordering of detention indicate that the same must be done when ordering detention in EAW proceedings. Article 24(2) of the Act prescribes that for the purpose of successfully conducting surrender proceedings against a requested person, the investigating judge decides whether to order detention of the requested person or any of the other measures to ensure that the person attends proceedings. To order any such measure, circumstances must exist which indicate that there is a risk of the requested person absconding. The investigating judge makes such a decision on the basis of a decision issued by the ordering judicial authority, or a motion of a competent state prosecutor, all by applying, *mutatis mutandis*, the provisions of the Act regulating criminal procedure.

The detention may only be ordered due to the risk of absconding and the investigating judge must assess whether he or she will order detention or any other more lenient measure to ensure the presence of the requested person in the proceedings. The principle of proportionality must therefore also be taken into account as a fundamental guiding principle in the procedure of detention for the purpose of surrender.⁷⁰

Postponement of surrender due to humanitarian reasons

The Act prescribes the possibility that the surrender of a requested person may exceptionally be temporarily postponed for serious humanitarian reasons, in particular if it is possible that the surrender will seriously threaten the life or health of the requested person. The surrender must take place as soon as these grounds have ceased to exist. When this is the case, the investigating judge

⁶⁸ Slovenia, Constitutional Court of the Republic of Slovenia (*Ustavno sodišče Republike Slovenije*), Up-531/19, 4 July 2019.

⁶⁹ Article 2 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991.

⁷⁰ Šugman Stubbs, K. (2008), *Evropski nalog za prijetje in predajo - primerjalno-pravni in nacionalni vidiki*, Ljubljana, Inštitut za kriminologijo pri Pravni fakulteti v Ljubljani.

notifies the ordering judicial authority and agrees on a new method, time or place of the surrender, which must take place within the following 10 days.⁷¹

b. Issuing and execution of the EAW in practice

- Factors considered when issuing the EAW

Legal requirements

Interviewed judges and prosecutors had some experience in issuing the EAW, although one of the prosecutors mentioned that they had experience when they were working as a court clerk (Prosecutor, Slovenia). One of the judges mentioned that to their knowledge Slovenia does not issue many EAWs (Judge, Slovenia). Only one interviewed lawyer had some experience in issuing an EAW, while others stated that they lacked such experience.

The interviewees discussed the conditions prescribed by the law. One prosecutor mentioned that the minimum sentence requirement is set rather low and as a result, the majority of cases fall within this scope (Prosecutor, Slovenia). Another prosecutor explained that it is the issuing of detention order that is procedurally demanding in Slovenia - there must be a precise reasoning of reasonable suspicion, the grounds must be given and explained, and the measure must be justified as necessary and proportionate. Once all these prerequisites are established, the issuing of an EAW is more or less of a formality (Prosecutor, Slovenia). One of the judges expressed a similar opinion, holding that once the conditions for detention are met, the EAW can be issued. However, an **EAW is only issued if detention is ordered due to the risk of absconding (evading the proceedings), and not due to any other reasons**, such as the risk of repeating the offence (Judge, Slovenia).

Another judge explained that the Cooperation in Criminal Matters with the Member States of the European Union Act (the Act) stipulates that a detention order is the basis for issuing an EAW. However, in their opinion, this detention order is issued slightly outside of the general legal framework for detention orders in the Criminal Procedure Act. Namely, for the purpose of EAW, the detention order is issued without hearing the person, since an EAW cannot be issued without having a detention order as a basis. However, the judge explained that once the person is surrendered, they assess and decide on the detention order again – this time in accordance with the Criminal Procedure Act (Judge, Slovenia).

Proportionality

All interviewed judges, prosecutors and the lawyer having experience in issuing the EAW agreed that proportionality is an important factor in issuing an EAW. Namely, proportionality is taken into account already in the decision regarding the detention order, which then serves as the basis for issuing an EAW. The interviewees agreed that an EAW is issued in cases where it is absolutely necessary. One judge mentioned that they take into account the seriousness of the offence and would not issue an EAW for crimes such as theft or fraud (Judge, Slovenia).

Other possible factors

Interviewees discussed whether the real prospect of the arrested/requested person being sentenced to imprisonment after a trial could be a possible factor when deciding on issuing an EAW. The agreement among all interviewees was that this should not be a factor. One prosecutor stated that

⁷¹ Article 35(3) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

taking such an element into consideration would be prejudicial and that justifying a decision on such grounds should lead to the judge's disqualification (Prosecutor, Slovenia).

Challenging the issue

All interviewees agreed that the requested person could challenge the detention order that was the basis for issuing the EAW and not the issuing of EAW itself. Proportionality concerns could be one of the essential grounds for appeal, as it is an essential element for ordering detention (Prosecutor, Slovenia).

- Factors considered when executing the EAW

Proportionality

Interviewed judges and prosecutors all agreed that if the prescribed conditions for the execution of the warrant are fulfilled surrender will be ordered. **One judge commented that the minimum sentence requirement is set very low, but regardless, the surrender is ordered if the conditions are met. The principle of mutual trust among Member States was underlined as a key principle. The same judge viewed EAW proceedings as more of a formality** (Judge, Slovenia). Both interviewed judges mentioned that they contact the issuing authority to clarify and supplement the EAW so that they receive all information necessary for processing the EAW.

"I had a case where Romania requested a man who cut down some spruce tree, the damages were €300. It is not for me to judge now, it is up to them to do it. It is my task to assess if all the conditions are there. The condition of minimum sentence has been met, and if they consider that it is reasonable to issue an arrest warrant, then so be it." (Judge, Slovenia)

[»Imel sem primer, ko je Romunija zahtevala nekega človeka, ki je podrl smreko, škode je bilo za 300 eur. Ni zdaj na meni, da presojam, to je njihova stvar. Moja naloga je, da presodim, ali so vsi pogoji podani. Pogoj minimalne zaporne kazni, ta pogoj je bil izpolnjen in če oni ocenjujejo, da je smiselno izdati nalog za prijetje, potem pa naj.]

Three interviewed lawyers confirmed that the courts do not take into account any proportionality concerns but merely focus on the legal requirements for executing the EAW. Similarly as one of the judges, one lawyer mentioned that the judiciary view the proceedings for executing the EAW as a formality (Lawyer, Slovenia). Two lawyers mentioned that the exchange of information between Slovenian courts executing the EAW and the issuing authority only takes place regarding additional documentation needed to assess the fulfilment of formal legal requirements. One lawyer mentioned that in three of their cases over the last two years they have always fought against surrender, and in all three cases the surrender was refused because of the legal requirements (Lawyer, Slovenia). All of them involved Slovenian citizens. In two cases, proceedings were already initiated in Slovenia for a related offence and both domestic proceedings also included the part of the case the issuing state wanted to prosecute. In the third case the statute of limitations would already have applied under the Slovenian law. The lawyer still deemed that the courts would react to cases of obvious disproportionality. However, they also mentioned that they do not have any experience of Slovenian authorities contacting the issuing authority to discuss any proportionality issues (Lawyer, Slovenia).

"They do not deal with proportionality concerns, not in my experience. I would be surprised if they contacted the issuing authorities to discuss the possibility of withdrawing the EAW. The legislation itself is written under the assumption that these countries trust each other. Even if something like that were to come to light, I doubt anyone would address it." (Lawyer, Slovenia)

[»Se ne ukvarjajo s tem, po mojih izkušnjah ne. Presenetilo bi me, če bi stopili v kontakt s temi državami glede možnosti umika naloga. Sama zakonodaja je napisana pod predpostavko, da si te države med sabo zaupajo. Tudi če bi se pokazalo kaj takega, dvomim, da bi se kdo tega dotaknil.«]

“In my cases, they only acquired more information through the prosecutor's office of the issuing state. But they did not get in touch to discuss matters, it was only through official channels and letters. It did not happen that the two judges would talk to each other. It was more the matter of seeking additional information.” (Lawyer, Slovenia)

[«V mojih primerih so le preko tožilstva druge države pridobivali podatke. Niso pa stopili v stik, da bi se pogovarjali, šlo je po uradni poti, z nekimi dopisi. Da bi se dva sodnika slišala, to pa ne. Bolj je šlo za iskanje dopolnitev.«]

Conditions of detention

Two lawyers explained that the courts do not consider detention conditions *ex officio* but leave it to the defence to raise the concern. All interviewed judges and prosecutors confirmed that this is a role of the lawyer. The prosecutor also mentioned that they are not familiar with any case where the prosecution would raise the concern regarding the detention conditions in the issuing state. One lawyer had no such experience but deemed that due to the principle of trust between Member States, the conditions should raise very serious concerns to be taken into account (Lawyer, Slovenia).

One of the judges stated that they have never had a case where a requested person or their lawyer argued that the detention conditions in the issuing state are inhumane. If such a case occurred, they would request information, either from the Slovenian Ministry of Justice or from the issuing state (Judge, Slovenia). Another judge reported of a case from Lithuania where the person claimed they were at risk due to detention conditions. The court examined all the evidence that the defence put on file. The court also reviewed the reports of the relevant international organisations. In the end, the person was surrendered.

“I had a case of Lithuania, regarding the situation in the prisons there, I had a big dossier on it in the end. I was printing European reports, reading articles... We were translating everything, how terrible it is in the prisons there... but in the end we surrendered him anyway.” (Judge, Slovenia)

[»Sem imela primer Litve, kakšno je stanje v zaporih tam, sem imela na koncu velik spis o tem. Evropska poročila sem si printala, brala članke... vse smo prevajali, kako je tam v zaporih grozno... ampak na koncu smo ga vseeno predali.«]

One of the lawyers reported of a (non-EAW) extradition case, where the court allowed the extradition of an Azerbaijani citizen to Kazakhstan. As the lawyer explained, the defence proved with a high degree of probability that torture was taking place in Kazakhstan prisons. The court then asked the Kazakh authorities to respond. They denied it and gave an assurance that their client would not be tortured. The court then concluded that there were no obstacles to extradition. The lawyer explained that they are mentioning this case, albeit not an EAW case, to express **doubt that, due to the principle of mutual trust, in any EAW case arguments pertaining to detention conditions could be successful, if even in such a case - supported by strong evidence, extradition could not be prevented** (Lawyer, Slovenia).

“I was appalled that our court allowed the extradition of an Azerbaijani citizen to Kazakhstan. We were two lawyers representing him and proved with a high degree of probability that

torture was taking place in Kazakhstan. We even submitted a video of someone being burned while in custody. Our court asked the Kazakhs to respond to this and they replied that it was not true, that it had happened in the past, but not in the last four years, and gave an assurance that they would not torture our client. Our court concluded that there were no obstacles to extradition. In the decision, it explained that the objections of the defence were disregarded because a certain Lieutenant Colonel of Kazakhstan (not even some independent authority) had stated that he would not be tortured. The court did not make any substantive assessment.”
(Lawyer, Slovenia)

[Bil sem zgrožen, da je v ekstradicijskem postopku naše sodišče dovolilo izročitev azerbajdžanskega državljana v Kazahstan. Dva odvetnika sva dokazala z visoko stopnjo verjetnosti, da v Kazahstanu prihaja do mučenja. Predložila sva posnetek, kjer so nekoga živega žgali. Sodišče je Kazahstancem pozvalo opredelijo. Odgovorili so da ni res, da je v preteklosti do tega prihajalo, zadnja štiri leta pa ne in dalo zavezo, da stranke ne bodo mučili. Naše sodišče je nato reklo, da ni ovir za ekstradicijo. V sklepu je pojasnilo, da ugovori obrambe niso upoštevani, ker je nek podpolkovnik iz Kazahstana (ne nek neodvisen organ) izjavil, da ga ne bodo mučili. Vsebinske presoje sodišče ni opravilo.]

Rights to a fair trial (rule of law)

When discussing the right to a fair trial as a factor when deciding on the execution of an EAW, the interviewees referred to provisions The Cooperation in Criminal Matters with the Member States of the European Union Act which prescribe the grounds for refusal of surrender, which the court must take into account.⁷² However, it was also mentioned by the prosecutors and judges, that due to the principle of mutual trust and common minimal standards in the EU, there is an assumption that the persons will receive a fair trial. One lawyer agreed that the rights to a fair trial are respected in the EU Member States (Lawyer, Slovenia). While one of the interviewed lawyers deemed that the courts in Slovenia do not consider procedural rights, two lawyers believed that the courts are obliged to take procedural rights issues into consideration. However, it was again (similarly, as regarding the conditions of detention) mentioned that the courts would not do so *ex officio* but that it is up to the defence to argue violations of procedural rights (Lawyer, Slovenia).

“These are somehow fundamental procedural barriers, which are already ingrained in the consciousness of every judge, every prosecutor. But to know how exactly these rights are interpreted in the issuing state... The law does not require such details. And again, we are back to the principle of mutual trust and recognition, if all states doubted each other, all these measures would be rendered meaningless.” (Prosecutor, Slovenia)

[“To so nekako temeljne procesne bariere, ki so že vsakemu sodniku, tožilcu vtisnjene v zavest. Da bi pa vedeli, kako točno se te pravice tolmačijo v državi izdajateljici... takih detajlov pa tudi zakon ne zahteva. In spet smo pri načelu medsebojnega zaupanja in priznavanja, če bi vsaka država dvomila v vsako drugo državo, bi vsi ti ukrepi postali obsoletni.«]

When asked about the requirements that the national courts consider in case the EAW concerns the execution of a conviction for a person tried in absentia, the interviewees referred to the conditions prescribed by the law.⁷³ One of the prosecutors mentioned that the most frequent claims made by the requested persons are in fact violations of their rights in connection with trial in absentia.

⁷² Articles 10 and 11 of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), 23 May 2013.

⁷³ Article 35(3) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), 23 May 2013.

(Prosecutor, Slovenia). A judge explained that the issuing state must give an assurance that the person may ask for a retrial. If the issuing authority does not include this statement, the court reminds them to submit it (Judge, Slovenia). The judge also questioned the effectiveness of such assurances, stating that anyone can easily state that they will ensure the right to a fair trial. The executing court's decision then states that they rely on the issuing authority's written statement. One lawyer stated that the court needs to assess the arguments regarding trial in absentia thoroughly, as higher courts are very vigilant about these rights in case of an appeal (Lawyer, Slovenia).

„It is necessary to establish why the trial was held in absentia and whether the proceedings were properly conducted in accordance with the law. A judge may write in the minutes that the summons was properly served or that attendance is not necessary, but it may turn out at the end that the person was not summoned or was not properly summoned, that they did not know about the hearing, or that they even informed the court about their absence, etc.” (Lawyer, Slovenia)

[»Treba je ugotoviti, zakaj je bilo sojeno v nenavzočnosti. Ali je bil postopek pravilno izpeljan v skladu z zakonom. Sodnik lahko napiše v zapisnik, da je bilo vabilo izkazano, da ni potrebna navzočnost, pa se lahko na koncu izkaže, da ni bil vabljen, da ni bil pravilno vabljen, da ni vedel za obravnavo, da je celo sodišče obvestil, da bo v tem obdobju odsoten, itd.«]

Individual situation

Interviewees mentioned that legitimate health reasons or pregnancy could lead to a postponement of surrender, but this does not affect the decision itself (Judge, Lawyer, Slovenia). A judge reported a case where the requested person suffered a seizure while in detention. The prison informed the court about the event, because in such a case, the court needs to change the location or institution where the detention is carried out (to e.g. the hospital). After the person was feeling better, they were surrendered (Judge, Slovenia).

“An investigating judge will pay attention to a pregnant woman and her conditions of accommodation/detention. Would it affect the final decision? No, it would not affect it, not at all. That's the way we are, the pregnant woman should be accommodated nicely, but then she can be surrendered to Afghanistan if need be.” (Lawyer, Slovenia)

[»Preiskovalni sodnik bo pozoren na nosečnico in njene pogoje pridržanja. Ali bi vplivalo na končno odločitev ali se izvrši nalog? Ne, to ne bi vplivalo, nikakor. Taki smo, za nosečnico je treba lepo poskrbeti in jo namestiti, a izročimo jo lahko tudi v Afganistan.«]

One lawyer deemed that individual circumstances are not taken into consideration. They mentioned a case of extradition (non-EAW case) where the person was seriously ill and was therefore not extradited. However, the lawyer believed that the result would have been different if it was an EAW case and that in such case the person would have been surrendered (Lawyer, Slovenia).

A judge reported of a case in which a specific family situation did not affect the decision to surrender (Judge, Slovenia).

„The other day we had a case of two Slovenian citizens, partners, sought by Italy due to drug-related crimes. We surrendered her but he had three proceedings pending here. The Senate decided to surrender him, but to postpone the surrender until these proceedings were completed. She went (was surrendered to Italy) immediately. But they had a small child, and to me that was quite... But that is not stipulated as a ground to deny surrender. For the child

this is really... But then again, you have to assess, because this could also be abused. You can have somebody that is going to have a child every two years just to avoid some procedure."

»Zadnjič smo imeli dva slovenska državljana, partnerja, iskala ju je Italija, droge. Njo smo predali, on pa je imel tu tri odprte postopke. Senat je odločil, da se preda, a da se predaja odloži, do zaključka teh postopkov. Ona je šla tako (je bila predana Italiji), imela sta še majhnega otroka, meni je bilo to kar... ampak to ni razlog, da ga ne predaš. Za otroka je res... ne vem, saj ne vem, to moraš tehtati, saj se da tudi izmikati, imaš tudi kakšno tako, ki bo imela vsaki dve leti otroka, da se bo kakšnega postopka izognila.«] (Judge, Slovenia)

Another lawyer reported that they have not had a case where individual situation of the requested person was formally assessed. But in one case they had the impression that the more advanced age of the person in question was taken into account (Lawyer, Slovenia).

"That is just my feeling, that if it had not been for those circumstances (if it had not been an older person), they would have looked at the matter differently. The surrender was denied, I would not say just because of that (because it was an older person), but it seems to me that this may be a psychological factor for the court. It is not just with the EAW cases, the court looks at the case as a whole, which is expressed in the reasoning of the decision." (Lawyer, Slovenia)

[»To je čisto moj občutek, da če ne bi bilo teh okoliščin (če ne bi šlo za starejšo osebo, bi drugače gledali na zadevo. Prišlo je do zavrnitve predaje, ne bi rekel da samo zaradi tega (ker je šlo za starejšo osebo), a se mi zdi, da je to lahko nek psihološki faktor za sodišče. Saj to ni samo pri ENP, sodišče pogleda zadevo kot celoto, kar je izraženo v obrazložitvi zadeve.«]

One lawyer thought that gender or pregnancy would not be considered. They provided an example where it should be considered: if is someone who would want to have an abortion and the surrender is requested by a state where abortion is prohibited. This should be taken into account by the court to ensure that the right to abortion is respected under Slovenian law. However, the lawyer had not encountered any such case (Lawyer, Slovenia).

Exceptional humanitarian reasons

Interviewees were mostly not familiar with any national caselaw taking into account exceptional humanitarian reasons. One of the prosecutors mentioned that during the pandemic, even in the beginning, there were only very brief delays in carrying out surrenders. After EUROJUST started collecting and publishing information from the Member States, the surrenders soon continued (Prosecutor, Slovenia).

However, one judge reported that in the beginning of the pandemic, they suspended two procedures where surrender was already decided but had not yet been carried out. In those cases, they used the legal provisions that provide for temporary postponement due to humanitarian reasons (Judge, Slovenia).⁷⁴

"At the beginning of the pandemic, I suspended two procedures where surrender was already decided but was not yet carried out. Right in the beginning, in March 2020. The flights were cancelled and they could not come to take the persons to the issuing state. I used the provision

⁷⁴ Article 35(3) of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), 23 May 2013.

that stipulates humanitarian reasons [...]. When they were able to come here to take the persons, because they always come, then we surrendered them.” (Judge, Slovenia)

[»Na začetku korone sem dva postopka prekinila. Dovoljena je bila predaja, ni pa še bil predan. Čisto na začetku, marca 2020. Potem so avioni nehali leteti in niso mogli prit ponj. Uporabila sem ravno ta razlog uporabila, določbo glede humanitarnih razlogov [...] Ko so lahko prišli ponj, ker vedno pridejo ponj, potem smo pa ga predali.«]

c. Additional best practices or challenges

Establishing identity of the requested person

One of the interviewed lawyers reported about an EAW case, in which the arrested person claimed in court that they had identical personal data to the person requested, but that it was not them. The judge was sceptical at first, but asked the requesting authority (UK) for photographs. The issuing authorities were not responsive and the judge told them that the person would be released within 24 hours if they did not give convincing information that this was the right person. Finally, they provided photos and it was established that the wrong person was arrested.

“Some things work, our authorities will not look at substance, proportionality, etc., because they do not have the courage to oppose a big EU country. But they are conscientious enough to carry out the procedure as it should be done.” (Lawyer, Slovenia)

[Ene stvari delujejo, ne bodo pa naši organi gledali vsebinsko, sorazmernosti, ipd., ker nimajo tega poguma, da bi oponirali veliki EU državi. So pa dovolj vestni, da se postopek izvede kot se mora.]

Detaining foreign nationals

One lawyer commented that the courts typically decide that every foreigner is a flight risk and automatically order detention. In their opinion, in many cases, this could be resolved by ordering a house arrest (Lawyer, Slovenia). Other two lawyers also confirmed that most foreign nationals are held in detention in Slovenia due to the risk of absconding and the absence of any ties to Slovenia. A judge also commented that in the majority of cases, the requested persons are detained, but that sometimes, the court will use alternatives, despite the fact that the Act does not prescribe them. However, they mentioned that alternatives, such as the obligation to report to a police station, is mostly used in cases where Slovenian citizens or foreign nationals who have resided in the country for decades and have a family there are requested. The reasoning is that the risk of absconding is present, but to a lower extent, making detention unnecessary (Judge, Slovenia).

“If you read the law (the Cooperation in Criminal Matters with the Member States of the European Union Act) these alternatives (to detention) are not mentioned, but we consider that all the more lenient measures (provided for by the Criminal Procedure Act) are also applicable here. Sometimes we also use the obligation to report (to a police station), but this is more used in cases of Slovenian citizens. Or even if he is a Macedonian citizen who has lived here for thirty years and has family here. If he has a job... You say that the risk of absconding is present, but to a lower extent so that this measure can be ordered.” (Judge, Slovenia)

[„Saj če greš brat ta zakon, to (alternative priporu) ni predvideno notri, a mi štejemo, da tudi tu pridejo v poštev vsi milejši ukrepi (določeni z ZKP). Včasih smo imeli tudi kakšno javljanje (na policijski postaji) a to bolj če je slovenski državljan. Ali pa tudi na primer, če je makedonski

državljan, ki tu živi trideset let pa ima tu družino. Takrat ponavadi odredimo javljanje. Če ima službo... Rečeš, da je begosumnost, a toliko nižja stopnja, da pride v poštev tudi ta ukrep.”]

“Another problem is the perception of flight risk in relation to EU citizens. I have had citizens of other EU countries in detention here and then it is argued that they are a flight risk because there is nothing to bind them to Slovenia. I found that controversial. If we have EAW available, it means that if that person is in another Member State and does not take part in the proceedings, he or she is accessible to the courts through EAW. In my opinion, this logic has not yet been accepted among the courts. It seems to me very controversial that a citizen of another EU Member State should be remanded in custody just because he does not live in that Member State. To justify the risk of absconding in this way. That is what we are arguing as a defence, that courts have EAW available - if the person does not attend proceedings, the court can issue an EAW and get them surrendered. Videoconferencing is another argument for why detention should not be imposed on EU citizens simply because they have no connection to the country where they are being tried.” (Lawyer, Slovenia)

»Drug problem je begosumnost pri državljanih EU. Meni je bilo sporno, da sem imel tu v priporu državljane drugih EU držav in se potem utemeljuje njihova begosumnost, ker jih nič ne veže na Slovenijo. Meni je bilo to sporno. Če imamo ENP to pomeni, da če je ta oseba v drugi državi članici in se ne udeležuje postopka, je preko ENP dosegljiva sodišči. Po mojem mnenju ta logika med sodišči še ni sprejeta. Zdi se mi zelo sporno, da se zoper državljana druge države članice EU odredi pripor samo zato, ker ne živi v tej državi članici. Da se begosumnost na tak način utemeljuje. Na to se kot obramba sklicujemo, da imajo na voljo ENP, če se oseba ne bi udeležila, lahko izdate ENP in jo lahko dobite nazaj. Videokonferenca pa je še en argument, zakaj se ne bi smeli izrekati pripori za državljane EU, samo zato, ker nimajo naveznih okoliščin v državi, kjer se jim sodi.«]

Differences in the content of EAWs among Member States

One prosecutor mentioned that, depending on the national systems, some warrants are very informative, while others are very scarce. The interviewee proposed as a good practice ensuring that the description of the offence corresponds to a summary of the facts, like a story summarising all the elements of the offence, because that is what the authorities will need if they have to check for double criminality (Prosecutor, Slovenia).

Fewer procedural guarantees

One lawyer expressed their opinion that the EAW procedure is relatively simplified and that the requested person has fewer procedural rights compared to non-EAW international extradition proceedings. According to the interviewee, these issues have not been overly problematised in Slovenian case-law (Lawyer, Slovenia).

“There are two tracks of surrender - one within the EU (Cooperation in Criminal Matters with the Member States of the European Union Act), the other outside the EU (on the basis of an international arrest warrant under the Criminal Procedure Act), which allows for more procedural guarantees for the persons to be surrendered.” (Lawyer, Slovenia)

[„Obstajata dva tira izročanja – eden v EU (Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije), drugi izven EU, na podlagi mednarodne tiralice po Zakonu o kazenskem postopku), ki omogoča več procesnih kvatel osebam ki se jih izroča.«]

The interviewed lawyer mentioned a case they brought before the Constitutional Court, which was related to the right to be heard. The District Court made a decision which was upheld by the High

Court, but which the lawyer succeeded in challenging before the Constitutional Court. This was based on that the High Court had in rejecting the appeal relied on a document, which had arrived from the issuing state, without giving the defence the opportunity to comment on it. The Constitutional Court therefore found a violation of the right to be heard. The lawyer commented that the relevant national law is based on certain international instruments which enable states to assist each other in criminal matters, but that these proceedings do not provide for all procedural safeguards (Lawyer, Slovenia).

„Both the Law on Cooperation in Criminal Matters with the Member States of the European Union and the Criminal Procedure Act are based in this part on international instruments requiring that states help each other in criminal matters, but these are procedures that do not foresee all procedural safeguards. What is essential for me, however, is that it is in these proceedings, nevertheless understood that the court which decides must respect all the safeguards provided by the Slovenian Constitution. Especially, of course, the right to make statements, to defend oneself, to use one's own language, etc.” (Lawyer, Slovenia)

[»Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije kot tudi Zakon o kazenskem postopku v tem delu temeljita na nekih mednarodnih aktih, da si države medsebojno pomagajo v kazenskih zadevah, gre za neke postopke, ki ne predvidijo čisto vseh procesnih kvitel. Kar se mi bistveno pa je, da se v teh postopkih vseeno zaveda, da mora sodišče, ki odloča, vendarle spoštovati vse kvitele, ki izhajajo iz slovenske Ustave. Najbolj seveda pravica do izjave, obrambe, uporabe svojega jezika, itd.«]

d. Discussion of findings

Regarding the issuing of the EAW, the interviewees mostly discussed the conditions prescribed by the law. All interviewed practitioners agreed that proportionality is key factor in issuing an EAW as it is considered already when ordering detention which then serves as the basis for issuing the EAW.

Regarding the execution of an EAW, the legally prescribed conditions for surrender mostly relate to the minimum penalty requirement and, in some cases, stipulating the types of criminal offences for which surrender is admissible. The law does not expressly demand judges to assess possible concerns regarding proportionality, detention conditions, right to a fair trial and individual circumstances on the part of the requested person nor does it stipulate such considerations as grounds for refusal. Research findings show that in practice, the courts mostly focus on the legal requirements for executing an EAW and do not consider any proportionality concerns. That the judiciary views the proceedings for executing the EAW as a formality was mentioned both by judges and lawyers. The impact of the principle of mutual trust among Member States on the decision-making was stressed. The courts leave it to the defence to raise any concerns regarding detention conditions or the respect of procedural rights (fair trial). As relates to taking into account the individual situation of the requested persons, findings show that individual circumstances such as health concerns could possibly lead to a postponement of the surrender, but would not affect the decision itself. A case was mentioned, in which a specific family situation involving a small child did not affect the decision to surrender. Similarly, the COVID-19 pandemic did not considerably affect EAW proceedings. It was explained that surrenders were temporarily postponed due to exceptional humanitarian reasons only for a short time in the beginning of the pandemic (March 2020).

The interviewed practitioners mentioned additional issues, such as the automatic ordering of detention of foreign nationals who lack strong ties to Slovenia, and the differences in the amount and quality of reasoning and information provided in EAWs issued by different Member States. It was

mentioned that the EAW proceedings offer fewer procedural guarantees than the international extraditions carried out under the Criminal Procedure Act.

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

The Cooperation in Criminal Matters with the Member States of the European Union Act (hereinafter: the Act) stipulates that the competent national and foreign authorities communicate directly. A warrant and other documents concerning the implementation of this Act are forwarded in their original form, an authenticated copy, or in other written form by mail, fax, in electronic form or **by other secure technical means** which ensure that such documents are transmitted in a manner which ensures the appropriate protection of personal data with regard to the risk of it being exposed. Illegibility or non-recognisability must be ensured during transmission. Furthermore, the judicial authority enforcing such documents must be able to verify the authenticity of the sender and data.⁷⁵

The Act does not mention the possibility of conducting videoconference hearings in relation to EAW proceedings. The use of videoconferences is provided for by the CPA. During the pandemic, an amendment to the CPA was adopted which introduced the possibility of videoconferencing hearings. This includes not only the possibility of questioning the parties and witnesses by videoconference, but also of conducting the entire hearing by videoconference.⁷⁶ Even prior to this amendment, the CPA allowed or the possibility of using the videoconferencing system at certain stages of the proceedings for certain tasks. The amendment was adopted despite concerns expressed by the judiciary and the defence counsels that conducting entire hearings through videoconferencing could interfere with the established principles of the criminal proceedings, such the principle of immediacy. The legislator stated that the development of modern means of communication and the work of the courts require that the possibility of conducting hearings via videoconference be extended. The legislator further referred to the pandemic and the importance of this possibility in the case of situations where it would otherwise be impossible to carry out regular or normal work of the court in criminal cases.

In accordance with Article 244.a(2) of the CPA, the hearing of an accused person or witness may be conducted via videoconference if:

- it involves a protected person under the Act regulating the protection of witnesses and if his or her coming to the authority conducting the hearing would cause serious threat to his or her life or body, the life or body of persons in a close relationship with him or her, or of other threatened persons in accordance with the provisions of the Act regulating the protection of witnesses;
- it involves an anonymous witness and if his or her coming to the authority conducting the hearing would cause serious threat to his or her life or body, the life or body of persons in a close relationship with him or her, or of other threatened persons in accordance with the provisions of the Act regulating the protection of witnesses;
- the competent authority submitted a relevant request to another state in accordance with an Act or an international treaty; or
- it is not desirable or possible for the person to come to the authority conducting the hearing for other justified reasons.

⁷⁵ Article 6 of the [Cooperation in Criminal Matters with the Member States of the European Union Act](#) (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*), 23 May 2013.

⁷⁶ New Article 84a, amendment of Article 244a and new Article 304, [The Act Amending The Criminal Procedure Act](#) (*Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku – ZKP-O*), 17 december 2020.

A competent person representing the authority conducting the interrogation or another person authorised by this authority must be present with the accused person, witness or expert witness who is located in the territory of the Republic of Slovenia during the hearing via videoconference and must ensure the relevant identification of the person being heard. The defence counsel and security staff may also be present during such a hearing.⁷⁷

Where the accused person, witness or expert witness is in the territory of another country while being heard via videoconference for the purposes of domestic criminal proceedings, the competent authority that submitted a relevant request to another state must ensure that a competent person representing the competent authority of the foreign country concerned is present with the accused person, witness or expert witness in order to ensure the identification of the person being heard. The defence counsel may also be present during such hearing.⁷⁸

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) |
|------------------------------|---|--|---|--|--|---|---|
| Country | YES/NO | YES/NO | YES/NO | YES/NO | YES/NO | YES/NO | YES/NO |
| Slovenia | YES (CPA) | YES (CPA) | YES (CPA) | YES | YES | YES | YES |

b. Interview findings

The interviewees deemed that the digitalisation plays quite a significant role and that the EAW proceedings are quite digitalised in terms of information sharing. One prosecutor mentioned that there are many digitalisation projects taking place at EU level. In their opinion this can speed up the process, not only in terms of sending and receiving the EAWs, but also in terms of additional direct communication between countries or authorities (Prosecutor, Slovenia).

When it comes to using videoconference to conduct hearings remotely, interviewees agreed that it is better to have the requested person present at court. Similarly, this was mentioned regarding interpretation. Two lawyers mentioned that remote hearings could lead to a lower level of protection of rights of the requested persons. One of them argued that there is a certain risk for effective defence, if you have the prosecution, the court and the witnesses in one room and the person is only involved by videoconference (Lawyer, Slovenia).

⁷⁷ Article 244.a(5) of the The Criminal Procedure Act (Zakon o kazenskem postopku), 29 September 1994.

⁷⁸ Article 244.a(6) of the The Criminal Procedure Act (Zakon o kazenskem postopku), 29 September 1994.

“In my opinion, digitalisation has lowered the level of protection of the rights of the accused. Just yesterday we had a hearing by videoconference that was a good example. The defence counsel proposed adjournment because he had not had the opportunity to contact his client who was held in Austria. The judge simply asked: ‘How much time do you need, we will leave the room for that time.’ There are doubts about the confidentiality of the communication, because in Austria it is run by the state prosecution. The lawyer and the client would supposedly have privacy for this consultation, but we cannot know if the prosecution is recording the transmission. We only have their word.” (Lawyer, Slovenia)

[Digitalizacija je imela učinek na nižjo stopnjo varstva pravic obdolžencev. Včeraj smo imeli dober primer zaslišanja preko videokonference. Zagovornik je predlagal preložitve, ker ni imel možnosti stika s stranko, ki je bila pridržana v Avstriji. Sodnica je pavšalno vprašala. ‘Koliko časa rabite, bomo vsi šli ven za ta čas.’ Pojavi se dvom v zaupnost komunikacije, ker v Avstriji to vodi tožilstvo. Odvetnik in stranka naj bi se zaupno pogovarjala, mi pa ne vemo, ali tožilstvo prenos snema. Imamo le njihovo besedo.◀]

The Interviewees were also sceptical of digitalisation and remote hearings contributing to lowering the number of warrants. They argued that mostly the process is not only about conducting one hearing, but also about ensuring the person’s presence or even placing them in detention. Particularly when it comes to the enforcement of sentences, remote hearings would not have an effect. One judge mentioned that EAWs are issued in exceptional cases, when the authorities really do not know the whereabouts of a person. They use European Investigation Orders to conduct hearings before foreign authorities in the investigation phase, but the person needs to be present for the main hearing (Judge, Slovenia).

The interviewees reported that even during the pandemic, the hearings were conducted in person. Videoconferencing was sometimes used to remotely interrogate persons who were located in the (national) detention facility (Judge, Slovenia).

The interviewees saw the potential of digitalisation in secure and fast communication and an easier access to the files for the defence. Three interviewed lawyers mentioned that it would make their job much easier if the case file was digitalised and made accessible to everyone involved, including the defence. One lawyer deemed that this would benefit fundamental rights and it would contribute to the equality of arms, as the defence operates under a distinct information inequality (Lawyer, Slovenia).

“More than half the time I am like some secretary calling the court when I can see the file. It's a sham, I'm given some limited office hours to access it, and the prosecutor calls the court and just asks that a document is sent over, they do not have to go and access the file at the court.” (Lawyer, Slovenia)

[Več kot polovico časa sem kot neka tajnica, ki kliče na sodišče, kdaj lahko vpogledam v spis. To je zafrkavanje, meni dajo na voljo neke omejene uradne ure za vpogled, tožilec pa pokliče in reče, kaj naj mu pošljejo. Oni ne hodijo vpogledat v spis na sodišče.]

“The practical significance of digitalisation would be in introducing electronic case management, which to some extent already exists. But it would have to enable the lawyer to access the file without having to physically go to court. You would have a server, a secure data room through which you could access it - this would be important for both EAW and other criminal proceedings in Slovenia.” (Lawyer, Slovenia)

[»Praktičen pomen bi bil digitalizacije bi bil v zagotavljanju elektronskega vodenja spisov, kar v neki meri že je, ampak da ne bi bilo treba odvetniku iti na sodišče vpogledat v spis. Da bi se omogočil nek server, podatkovne sobe preko katerega bi to vpogledal - to bi bilo pomembno tako za ENP postopke kot sicer za kazenske postopke v Sloveniji.«]

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) |
|--------------------------|---|--|---|--|--|---|---|
| L 1 | Did not know | NO | Did not mention | Did not mention | NO | NO* | NO* |
| L 2 | NO | NO | Did not mention | Did not mention | NO | NO* | NO* |
| L 3 | NO | NO | Did not mention | Did not mention | NO | NO* | NO* |
| L 4 | Did not know | NO | Did not mention | Did not mention | Did not mention | NO* | NO* |
| J 1 (prosecutor) | Did not answer | Did not mention | Did not mention | YES | YES | Did not mention | Did not mention |
| J 2 (prosecutor) | NO | NO | Did not mention | YES | YES | NO* | NO* |
| J 3 (judge) | NO | NO | Did not mention | YES | YES | NO* | NO* |
| J 4 (judge) | NO | NO | Did not mention | Did not mention | Did not mention | NO* | NO* |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

*The interviewee answered in the section pertaining to the right to a lawyer that the courts do not assist in accessing a lawyer in the issuing/executing state.

e. Discussion of findings

Although the law provides for the possibility of using digital tools for conducting hearings, examinations and interpretation, it seems that in relation of EAW, these are not used in practice. The interviewees were sceptical about using remote hearings and examinations of persons as they considered it important to hear them in person. They were also sceptical of the potential of digitalisation to lead to fewer EAW cases as EAWs are used when it is necessary to ensure the person's presence.

While digital tools are used for facilitating communication and access to documents, the defence does not benefit from it and have to access documents and files physically.

CONCLUSION

The research findings show that while the legislation provides for the necessary legal foundations for guaranteeing the rights of persons subjected to the EAW, there are some practical issues which may affect the respect of these rights in practice.

Right to information

The law requires that both the police, upon arrest, and the investigating judge instruct the requested person on their rights. Findings demonstrate that in practice, the law is implemented and the requested persons are informed about all rights stipulated by the law both orally and in writing. The requested persons arrested in Slovenia are informed about the contents of the EAW against them. Findings show that the requested persons in Slovenia are provided with the EAW form in question. However, sometimes issues may arise related to EAWs which provide limited information, as how well the request is substantiated depends on the issuing state. It was mentioned that the documents from the **issuing state's casefile may in practice be difficult to obtain**. While the practitioners agreed that the requested persons are informed about what consenting to their surrender entails and about the 'speciality rule', it was also stressed that the **'speciality rule' is complex** and therefore difficult to understand. A lawyer also shared a case showing that the 'speciality rule' can in practice be circumvented. Another lawyer explained that they **advise their clients against consenting to obtain as much information as possible from the issuing state**. Interview findings show that the requested persons in general understand the information provided and that the courts sufficiently ensure that the requested persons understand the information. However, some lawyers found that the courts inform the persons as a formal requirement and leave it to the lawyer to make sure the person has understood the information.

Right to interpretation and translation

Findings demonstrate that the law is well implemented in practice as all interviewed practitioners stated that requested persons who are foreign nationals are always provided with interpretation. Although there are no specific criteria or mechanisms for the assessment of the need for interpretation, **the Supreme Court's caselaw has resulted in the effective provision of interpretation**. Interpretation is provided even when the requested person speaks (some) Slovenian language.

The main issue is that in Slovenia there are too few court interpreters for some languages, which creates difficulties in the context of the short time frame and deadlines prescribed in EAW proceedings. In such cases, non-court interpreters are sworn in and used to interpret the hearing. **Although the courts possess the necessary technical equipment to carry out remote interpretation, it is usually done in person. One judge commented that remote interpretation and using interpreters from other countries could be a solution where there are no local interpreters available. However, the courts would require support and contacts to suitable interpreters to use in such cases.**

While the interviewees did not problematise the availability of translation of documents, unlike the police, the court does not have its own Letter of Rights available in several languages. While the police provide their Letter of Rights to the persons upon arrest, the judiciary is not familiar with the contents. At the courts, the instruction is provided orally and entered into the minutes of the hearing. However, the person may waive the written translation of the minutes. It seems that it would be beneficial to **create and make available a Letter of Rights adapted to EAW proceedings in court**. The absence of interpreters for some languages also poses an issue to providing translation. **As a good practice, the interviewed judges reported that courts also use foreign translation agencies, for example, to**

translate a document first from a foreign language for which a local translator cannot be found into another foreign language, and then from that language into Slovenian.

Research findings show that the interpretation of private consultations with lawyers is provided by a court-appointed interpreter. However, it seems that this **obligation of the court to provide interpretation is not clearly communicated with all lawyers as some are not aware how to obtain court-paid interpreter for their visits of their clients in detention.** Similarly, it can be found that the obligation of the court to provide interpretation of the first consultation right before the hearing when the requested person meets their court-appointed lawyer for the first time is not clearly communicated with all lawyers. **Although findings show that interpreters who are appointed to interpret the hearing also provide assistance for the lawyer-client consultations before the hearing starts, it seems that this obligation is not clearly determined.** One lawyer problematised that the interpreter who interprets a confidential conversation between the client and the defence lawyer is in principle the same one who translates in court. **They explained that the state should provide (where possible – where there are sufficient interpreters available for the language) a separate interpreter for the defence to prevent psychological contamination that may lead to a breach of confidentiality.**

Right to access to a lawyer

In EAW proceedings, representation by a lawyer is mandatory. If a requested person does not have a lawyer, the court will appoint one *ex officio*. As reported by the interviewees, the majority of the requested persons are represented by an *ex officio* lawyer in the proceedings regarding the execution of EAWs. Therefore, in practice, the persons will be both informed and provided with a lawyer. **The main gap identified by the research was that courts do not inform the requested persons that they can benefit from the assistance of a lawyer in the Member State that issued the European Arrest Warrant. Courts also do not support the requested person in finding a lawyer in the issuing state, although both provision of information and support in the form of contacting the issuing state and transferring information from the issuing authority to facilitate the choice of a lawyer are guaranteed by the law.**

Research findings did not indicate any issues in ensuring the attendance of the lawyers at the hearings. However, it was found that the first consultation of an *ex officio* lawyer with their client takes place when the person is brought to the investigating judge for the hearing. It seems that **since their meetings take place in the hallway of the court, these consultations can seem rushed and the sense of confidentiality of this consultation may be compromised.** While it seems that the courts, who pay the costs of *ex officio* lawyers, mostly do not limit visits by the lawyer in detention, ***ex officio* lawyers may have to plan visits to their clients carefully to ensure that they will be reimbursed.**

A lack of specialisation was also stressed. In practice, individual lawyers, who are part of the on-duty list from which *ex officio* lawyers are being appointed, rarely get an EAW case. As a result, they are not familiar with possible new developments in the field. It was indicated that a solution could be a **list of specialised lawyers that would be primarily appointed in EAW cases.**

The low fee received by an *ex officio* lawyer for representing clients in all mandatory defence cases (including EAW cases) was problematised. The fee for an *ex officio* lawyer is half of the regular lawyer's fee.

Issuing and Execution of the EAW

Research findings show that both when issuing and executing EAWs, the legal provisions stipulating the conditions are the main factor the authorities take into account. When issuing EAWs, the legal requirement regarding the minimum sentence is set rather low and as a result, the majority of cases fall within this scope. Proportionality is important and is taken into account already when deciding about ordering detention which then serves as the basis for issuing the EAW.

The research findings indicate that the court assessment when executing EAWs does not reach beyond the list of requirements stipulated by the law. Proportionality concerns are not considered if all conditions for executing the EAW are fulfilled. One lawyer's assessment was that EAW proceedings offer fewer procedural guarantees than the international extradition proceedings carried out under the Criminal Procedure Act. The impact of the principle of mutual trust among Member States on the decision-making was stressed throughout. It seems that as a result, the courts also do not consider detention conditions or the respect for procedural rights (fair trial) *ex officio* but leave it to the defence to raise such concerns. As relates to taking into account the individual situation of the requested person, circumstances such as health reasons could lead to a postponement of the surrender, but would not affect the decision itself. Specific family situations of the requested persons do not seem to be a factor that would prevent surrender. Similarly, the COVID-19 pandemic and related humanitarian concerns did not considerably affect the EAW proceedings.

A lawyer mentioned a case demonstrating the court diligently verifying the identity of the arrested person. The person claimed that this was a case of mistaken identity and although the personal information matched, the court demanded additional proof from the issuing authority. When the latter was initially unresponsive, the court threatened to release the person within 24 hours if they did not provide convincing information that this was the right person.

The interviewed lawyers criticized the fact that detention is always ordered against foreign nationals who lack strong ties to Slovenia. **One lawyer indicated that alternatives should be considered.**

Use of digital and technological tools in EAW proceedings

Although the law provides for the possibility of using digital tools to conduct hearings, examinations and interpretation, it appears that in EAW proceedings these are not often used in practice. The practitioners assessed that there is limited potential for reducing the number of EAW proceedings through the use of digital tools, as EAWs are used when it is necessary to ensure the person's presence. The interviewees also cautioned against the excessive use of remote hearings, as they considered it very important for the court to have the requested person physically present during the hearing. While digital tools are used for facilitating communication and access to documents, the defence does not benefit from this development and continues to have to access documents and files physically. **The lawyers proposed that a file-sharing tool be enabled to allow lawyers to remotely and safely access the entire file in electronic form.**