

# Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings –  
safeguards for requested persons

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## **EXECUTIVE SUMMARY**

The report describes and analyses national practices regarding procedural safeguards in European Arrest Warrant proceedings prescribed by the Council Framework Decision on the European Arrest Warrant (EAW) in connection with the legal framework for procedural rights in criminal proceedings. The report summarizes the legal standards in Slovakia and brings information about the application of legislation in practice which was gained throughout field research involving interviews with representatives of judicial authorities and lawyers experienced in EAW proceedings.

### **Right to information**

This section deals with the national legislation related to the provision of information in the EAW proceedings and its application in practice. Mainly the following rights were explored in the research: information about the right to a lawyer, the right to interpretation and translation, the possibility to consent and the right to be informed about the content of EAW.

The findings of the report show that in compliance with the law the judicial authorities provide information to the requested persons about their procedural rights and the EAW procedure, both in orally and writing. They also use standardized paper form which contains so called Letter of Rights of the person requested under the EAW. However, the research has detected that there are differences in the practical provision of information at different police departments. Sometimes at the initial phase, upon arrest some police officers may instead hand out paper forms intended for provision of information in general criminal procedure. Differences were also recorded in how detail the police officers explain that procedural rights to the requested persons.

Later in the proceedings, the information about the procedural rights is provided repeatedly at various stages of procedure and judicial authorities make sure information was provided and some of them also if it was understood. The judicial authorities also rely to a large extent on the defence counsels of the requested persons whose participation in the proceedings is mandatory to explain the information about the procedural rights and about the EAW procedures to their clients.

### **Right to interpretation and translation**

This section describes the national legal standards in provision of interpretation and translation to persons requested under the EAW. Based on the research, this section brings information on usual practice in provision of interpretation and translation and about the issues and challenges related to application of this right in practice.

The authorities pay attention consistently to ensuring both interpretation and translations to the requested person who declares not to understand Slovak language. They also want to avoid the procedural errors in proceedings which could happen if the requested person is not provided with interpretation and translation. They also consider it important tool to make sure a person understood their procedural rights, as well as for mutual communication. If person cannot understand Slovak the authorities cannot move on with the EAW procedure, thus the interpreter is always ensured. The challenge is though the availability of official interpreters at a short notice, especially right after the person is arrested.

The most important documents, such as the Letter of Rights, the decision on remanding to detention, the content of the EAW, the decision on the execution of EAW, are also translated for the requested person and provided in written translation. However, sometimes this right is fulfilled by the provision of oral interpretation of the content of documents, due to time constraints connected with ensuring translation in specific language. Defence counsels may utilize services of the interpreter present during the procedural step or ensure their own interpretation. The need to use interpreter for communication with the client placed in detention presents further challenges.

### **Right to access to a lawyer**

The national context for access to a lawyer in the EAW proceedings is described in this section.

Slovak legislation requires mandatory representation of the requested person by the defence counsel. The requested person is informed about this right at the initial phase of the EAW procedure, upon arrest, though they are not explained what it means, not provided with information on how to go about realizing this right.

The right to having the defence counsel and accompany the requested person in every procedural step in the EAW proceedings applies from the very initial phase until the very end. The authorities admitted various level of their activity when assisting the requested person with finding and contacting the lawyer. In practice, most of the requested persons do not choose their own lawyer, they let the judicial authorities to appoint them one from the list of attorneys provided by the Slovak Bar Association.

In the EAW procedure, the requested person has the right for dual representation, which means they could also request appointment of the defence counsel in the issuing state. The Letter of Rights handed over to the requested person does not contain this information. However, interviews confirmed the authorities tend to inform the requested person about it, but they do not provide any assistance in finding a lawyer in the issuing Member State (MS). Still, the role of Slovak authorities in this case is of a mere messenger. The appointment of the defence counsel in the issuing MS is up to the authorities of that state.

The interviews detected challenges in the quality of legal representation. The requested persons are appointed their defence counsel based on a random selection from an online tool. The appointment though does not require their previous knowledge or experience with the EAW procedure, which has a significant impact on the quality of their representation.

#### **Issuing and execution of the EAW – factors considered**

This part of the report explores what role plays proportionality in the EAW procedure and deals with specific factors which may have an impact on the practice of issuing and/or executing an EAW. Research confirmed that the authorities follow the legal requirements stipulated by the European Arrest Warrant Act (EAWA) when it comes to issuing of the EAW. The law provides that even if the legal requirements are met, the EAW should not be issued, if it would be too disproportional. The authorities recognize proportionality as important tool for making sure the EAW proceedings are not wasted for trivial criminal activity. There is not any remedy or specific legal procedure enabling the requested person to demand the cancellation of the EAW already issued. Its disproportionality may be claimed by the requested person, but there is no guarantee that such argumentation would be taken into account and would lead the issuing court to withdrawal of the EAW.

Within the research, the interviewees were asked to elaborate on whether the factors like proportionality, right to a fair trial, detention condition and individual situation of the requested person are considered by the judicial authorities in the EAW proceedings as factors weighing in favour on execution or non-execution of an EAW. The findings show that when executing the EAW, the EAWA is very strictly followed by judicial authorities. The judicial authorities have not too many options not to execute the EAW since they need to follow EAWA which is very strict, and they also believe that they must respect the principle of mutual trust in cooperation between EU MSs and cannot interfere with the jurisdiction of another MS. However, the representatives of judicial authorities also mentioned the important jurisprudence of the CJEU which they have to take into account when considering the execution of EAW.

## INTRODUCTION

The report is based on the desk research and field research conducted in the first half of 2022. The field research involved nine interviews with lawyers and representatives of judicial authorities (prosecutors and judges) experienced in EAW proceedings.

### ○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

The respondents of the research were identified and recruited mainly based on communication with relevant institutions and public authorities. Foremost, the national authorities, education institutions, NGOs and other relevant institutions were approached to facilitate contact with potential respondents who have the necessary expertise. We have reached out to the Ministry of Justice of the Slovak Republic, General Prosecution Office, Judicial Academy, Slovak Bar Association, Supreme Court of the Slovak Republic and other institutions. They proposed a concrete interviewee or provided another contact that was utilized for the identification of the interviewees.

Some of the interviewees were identified also based on the personal contacts of the experts conducting the fieldwork and drafting the report.

Before starting with the fieldwork, all interviewers got familiar with the desk research conducted prior to the interviews. They also studied the relevant legislation and respective documents. All the involved interviewers possess broad expertise in conducting the field research, so there was no need for further instruction on how to carry out interviews.

### ○ SAMPLE AND DESCRIPTION OF FIELDWORK

All the interviews were carried out face-to-face. Most of the respondents were communicative. From the interviews, it was evident that the interviewees possess broad expertise in the EAW proceedings and related fields of law. Most of the interviews took around 90 minutes.

The interviews were conducted between May and July 2022. The interviews with prosecutors and judges took place at the premises where they work. The interviews with lawyers were conducted in various places, their offices, cafés, etc.

As for the interviews with lawyers, the interviewees were from various regions (Bratislava and Košice region) and besides their practice as defence lawyers, some of them also had other professional experiences, one of them is a teacher at the university, and another cooperates with the Constitutional court as a law expert and consultant. All the participating lawyers were speaking about their experiences in the EAW proceedings as the defence counsels of the persons arrested in Slovakia based on the EAW issued by other Member States (further only as “MSs”), some of them also represented persons requested under the EAW issued by Slovakia

As for the category of judges and prosecutors, the sample was quite diverse involving two prosecutors of regional prosecution offices, a prosecutor of the General Prosecution Office, and two judges, one of them working at the regional court and one at the Supreme Court of the Slovak republic. Originally, we were supposed to conduct four interviews with representatives of judicial authorities, but during communication with potential respondents, we managed to arrange five interviews.

The mentioned sample composition allowed us to cover a broad range of experiences in various regions and at various levels of judicial authorities.

Once the interviewees agreed to be interviewed, they were very willing to answer the questions, however, not each of them was able to report their experiences and perception of the EAW proceedings in the same detail.

Defence lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 5

**Table 1: Sample professionals**

| Code | Group          | Expertise in the EAW proceedings   | Gender |
|------|----------------|--|--------|
| 1    | Defence lawyer | Defence lawyer experienced in EAW proceedings when Slovakia is an execution state, active in academia          | M      |
| 2    | Defence lawyer | Defence lawyer experienced in EAW proceedings when Slovakia is an executing as well as issuing state           | M      |
| 3    | Defence lawyer | Defence lawyer experienced in EAW proceedings when Slovakia is an executing state                              | F      |
| 4    | Defence lawyer | Defence lawyer experienced in EAW proceedings when Slovakia is an executing state                              | F      |
| 5    | Prosecutor     | Prosecutor of the regional prosecution office that deals with cases when Slovakia is an executing state        | M      |
| 6    | Prosecutor     | Prosecutor of the regional prosecution office that deals with cases when Slovakia is an executing state        | M      |
| 7    | Judge          | Judge of the regional court, has experiences with cases when Slovakia is an executing as well as issuing state | M      |
| 8    | Prosecutor     | Prosecutor of the General Prosecution Office   | F      |
| 9    | Judge          | Judge of the Supreme Court   | M      |

○ **DATA ANALYSIS**

All the conducted interviews were processed into reporting template. The reporting templates also included verbatim quotes from the interviews to illustrate the most important points.

For every interviewee, the main points to each topic discussed during the interview were highlighted and subsequently summarized into analysis.

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

The report covers the five main topics related to the procedural rights of the persons requested under the EAW. The topics involve: 1. The right to information, 2. The right to interpretation and translation, 3. The rights to a lawyer, 4. Selected themes relating to issuing and executing the EAW and 5. Digital and technical tools used in the EAW proceedings. In the case of each topic, first, the legal standards on the national level are mentioned. Then the research findings about the implementation of procedural rights and other related topics in practice are presented. The presentation of the field research findings is followed by a discussion about the impact of the application of the legislation in EAW proceedings and practice in these proceedings on the procedural rights of requested persons. Special attention is paid to challenges and good practices relating to the EAW proceedings.

## RESEARCH FINDINGS

### 1. Right to information

#### a. Legal overview

#### **Legal standards regarding the right to information**

If persons against whom a European Arrest Warrant (further only as “EAW”) has been issued are arrested by the police authorities in the territory of the Slovak Republic, they must be informed of the reasons for their detention. The general reasons for detention are sufficient, such as existence of EAW, which country issued it, and the purpose of the detention. The detained persons should also be informed of their rights according to the *European Arrest Warrant Act* (further only as “EAWA”).<sup>1</sup>

The general list of rights of the requested person according to the EAWA<sup>2</sup>:

- The right to a mandatory representation by a defence counsel in EAW proceedings,
- The right to an interpreter and a translator in EAW proceedings in accordance with the rules on use of interpreters and translators in criminal procedure,<sup>3</sup>
- The right to choose a defence counsel in the issuing State in accordance with the law of that State for the purpose of providing assistance to the defence counsel representing the requested person in the EAW proceedings in the territory of the Slovak Republic.
- The right to contact with the defence counsel, correspondence and visits in detention, if the requested person has been remanded in preliminary detention or detention pending surrender in accordance with the legal rules on the execution of detention in criminal procedure.<sup>4</sup>

Later in the process of preliminary examination, the public prosecutor conducts a hearing with the requested person, informs the requested person of the content of the EAW and provides them with a copy of the EAW. If the EAW is in a language which the requested person does not understand, they have the right to have the content of the EAW translated, of which public prosecutor provides information.<sup>5</sup> Provided that it does not affect the fairness of the proceedings, the interpretation of the EAW will suffice.

Upon delivery of the original of the EAW with a translation into the Slovak language, the public prosecutor will further inform the requested person of the possibility of consenting to surrender and renouncing the application of the principle of speciality and of the consequences of such declarations. The information about these rights of the requested person is also be provided in writing and, if necessary, accompanied by an adequate explanation.<sup>6</sup>

A Slovak citizen and a person habitually resident in the territory of the Slovak Republic who is requested for the purpose of execution of a custodial sentence to a MS which has implemented a

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<sup>1</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 13 (1).

<sup>2</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 14.

<sup>3</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28 and 29.

<sup>4</sup> Slovakia, [Detention Execution Act](#) (*Zákon o výkone väzby*), Act No.221/2006 Coll. as amended, 15 March 2006.

<sup>5</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 19 (2).

<sup>6</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 19 (3).

*Council Framework Decision on Mutual Recognition and Enforcement of Criminal Sentences*<sup>7</sup>, has the right to request transferring the execution of the sentence to the Slovak Republic.<sup>8</sup> The public prosecutor will also inform them about the possibility and the consequences of such disagreement. Such request is made in writing after the hearing before the public prosecutor in the presence of the defence counsel. Such declaration may not be revoked.<sup>9</sup>

The public prosecutor will also inform the requested person of the possibility of obtaining the decision imposing the custodial sentence for execution of which they are requested. This applies if a person had not personally participated in such proceedings in the issuing state, neither the decision imposing the sentence nor the official information about the hearing had been delivered to them. In this situation the requested person has the right to request for the provision of a copy of the decision imposing the sentence.<sup>10</sup>

### **Application of the speciality rule**

Provisions regarding the application of the “speciality rule” are contained in Section 31 of the EAWA. They are in principle identical to provisions of the Article 27 of the EAW Framework Decision. Speciality principle means that a person who was surrendered from another MS (further as “MS”) on the basis of an EAW may not be prosecuted, convicted or have their personal liberty restricted in the issuing State for criminal offences committed prior to surrender other than to which the EAW applied.<sup>11</sup>

The exceptions from the speciality principle align with the grounds stipulated by Article 27(1) and (3) of the 2002 EAW Framework Decision.<sup>12</sup> The requested person can renounce the principle of speciality in proceedings in the executing State in general or in relation to specific criminal offences committed prior to surrender to the Slovak Republic. The requested person can renounce the speciality principle also after their surrender to Slovakia. The speciality rule can also be overpassed by the additional consent of the judicial authority of the executing state with the prosecution of other criminal offences committed prior to the surrender.

If the surrendered person has not renounced the principle of speciality in the executing state, the court which issued the EAW will hear the person in the presence of their defence counsel and inform them again about the possibility of renouncing it and consequences of such a course of action. If the surrendered person renounces the application of the principle of speciality, the court draws up a record with them specifying the criminal offences to which the waiver applies, waiver may not be revoked.<sup>13</sup>

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<sup>7</sup> Council of the European Union (2008), [Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union](#), OJ 2008 L 327

<sup>8</sup> Slovakia, [Act on mutual recognition and enforcement of judgments imposing criminal sanctions involving deprivation of liberty In European Union](#) (*Zákon o uznávaní a výkone rozhodnutí, ktorými sa ukladá trestná sankcia spojená s odňatím slobody v Európskej únii*), Act no. 549/2011 Coll. as amended, 2 December 2011.

<sup>9</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 19 (4).

<sup>10</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 19 (9).

<sup>11</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 31 (1).

<sup>12</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 31 (2).

<sup>13</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 31 (3).

If a person is to be prosecuted for a criminal offence committed prior to the surrender, which was not the subject of the original EAW, did not renounce speciality rule and none of the exceptions of the speciality rule applies, the Slovak court should ask the executing judicial authority for additional consent with the prosecution. The same applies if the person is to serve a custodial sentence imposed by a Slovak court prior to the surrender, which was not included in the original EAW. The additional consent has the same effect as renunciation of the principle of speciality. The request of the executing State to take over the prosecution of surrendered person for criminal offences committed on its territory prior to surrender by the Slovak authorities can also be understood as an additional consent of the executing state. It also effectively removes the speciality rule preventing criminal prosecution in Slovakia.<sup>14</sup>

### ***Legislation safeguards relating to effective provision of information***

The provisions of Criminal Procedural Code (further as “CPC”) apply as a subsidiary source of rules in EAW proceedings. The law enforcement authorities and the court are always obliged to inform the accused of their rights and to give them a full opportunity to exercise them. The information must be adequately explained, where necessary.<sup>15</sup>

If the requested person has been detained or arrested, the law enforcement authorities are obliged to provide them with a written information about their rights regarding restriction of personal freedom, without undue delay. The fact of provision of information is recorded in the case file and the written Letter of Rights is handed over to the requested person in writing. The requested person has the right to keep this information with them throughout the period of restriction of personal liberty.<sup>16</sup> In practice the law enforcement authorities use a Letter of Rights relating to the EAW proceedings which is handed over to the requested person at the moment of arrest for the first time. This Letter of Rights has been developed by the General Prosecutors Office, but it is not identical with model Letter of Rights for the persons arrested under EAW contained in Handbook on how to issue and execute EAW, but most of the rights from it are covered. The Letter of Rights is based on rights under Section 14 of the EAWA (except for the right to dual representation) and contains additional information about procedure and possibility to consent to surrender and renounce speciality principle and request for execution of the imprisonment sentence in Slovakia.

The mandatory representation by a defence counsel can be understood as an additional safeguard provided for by the law in order to make sure that the requested person understands the nature of the proceedings and their rights and obligations in these proceedings effectively. Specifically in the EAW proceedings, the declaration of the requested person of the consent to the surrender and renunciation of the application of the principle of the speciality<sup>17</sup> must be done in writing and in the mandatory presence of the defence counsel.<sup>18</sup> This requirement serves as a specific tool to make sure that the information was provided effectively and decision of the requested person to grant consent

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<sup>14</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 32.

<sup>15</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 34 (4).

<sup>16</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 34 (5).

<sup>17</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 19 (3).

<sup>18</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 44 (2).

was given freely. The Supreme Court requires “*express renunciation of the application of the principle of speciality and in this manner the surrendered person must also be informed.*”<sup>19</sup>

Additionally, in the proceedings before the criminal court, the principle of equality of the parties (the accused person on one side and the public prosecutor on the other side) is applied.<sup>20</sup> This principle applies also in the EAW proceedings, once the public prosecutor hands the case over to the court. Of course, the public prosecutors are in the position of the state authority and have access to information which give them certain advantageous position. In order to effectively make sure the equality is observed, both parties must have access to the same information.

### **Available remedies**

There are no special rules in the EAWA what should be done in case of insufficient provision of information to the requested person. In general, complaint mechanisms according to the CPC may be applicable. According to the CPC, the accused has the right to request the public prosecutor to **review the procedure of the police officer.**<sup>21</sup>

The **potential violations of procedural rights of the requested persons can be remedied** by means of raising objections on flaws in procedural conduct in the course of the EAW procedure before the decision in EAW is taken.

A decision of the Regional Court on the execution of an EAW can be challenged at the Supreme court solely on the grounds for refusal to execute the EAW pursuant to Section 23(1) of the EAWA. However, only the prosecutor can base the complaint against the decision of the regional court on the ground that the decision to execute the EAW was in breach of the EAWA. The complaint of the requested person cannot be based merely and sufficiently on the ground of lack of the access to procedural rights or insufficient or lack of provision of information on rights in EAW procedure.<sup>22</sup>

The individual complaint to the Constitutional court which oversees observation of basic human rights and freedoms could also be used, but in practice it would be difficult to achieve non-surrender or the remedy, since the Constitutional court is slow in its decision making, even for granting preliminary measures in such cases.

The Office of the Public Defender of Rights may be contacted by anyone who believes that their fundamental rights and freedoms have been violated in the proceedings, decision-making or by lack of action of a public authority in violation of the rule of law or the principles of a democratic state governed by the rule of law.<sup>23</sup> The competence of the Public Defender of Rights does not extend to the decision-making powers of the investigators of the Police Force, the Public Prosecutor's Office<sup>24</sup>, however, the lack of access of the requested person to their rights may be examined by the Public Defender of Rights.

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<sup>19</sup> Slovakia, Supreme Court of the Slovak Republic (*Najvyšší súd Slovenskej republiky*), no.5 Tdo 51/2012, 6 September 2012.

<sup>20</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 2 (14).

<sup>21</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 210.

<sup>22</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 22(7) and (8).

<sup>23</sup> Slovakia, Public Defender of Rights Act (*Zákon o verejnom ochrancovi práv*), Act No.564/2001 Coll. as amended, 4 December 2001, Section 11(1).

<sup>24</sup> Slovakia, Public Defender of Rights Act (*Zákon o verejnom ochrancovi práv*), Act No.564/2001 Coll. as amended, 4 December 2001, Section 3(2).

## b. Right to information in practice

### ● Provision of information (when, how by whom)

Based on the research findings, in practice, the provision of information about the procedural rights to requested persons is following. Upon arrest, the requested persons are mainly informed by the police officer about the reasons for their arrest, that they have the right to be assisted by a lawyer, to be provided with interpretation and translation if they do not understand Slovak language and that the decision about their remand in detention will be taken in a short time. Later in the proceedings, they get more detail information about the EAW procedure provided by the prosecutor as well as their defence counsel. Thus, the extent of provided information may differ at various stages of the EAW proceedings.

Right upon arrest, the requested persons are provided with information by the police officer (except of cases when the requested person is already in the detention). The police officer provides the information in oral and written form and minutes from the arrest are produced containing the information about the provision of information about the rights of the requested person. The requested persons are asked to sign the minutes and declare that they understood the provided information. The minutes are subsequently put into the case file. According to a prosecutor involved in the research, each police unit should have the Letter of Rights relating to the EAW proceedings which is handed over to the requested person. This Letter of Rights has been developed by the General Prosecutors Office.

If the police authorities do not have the needed language version of the Letter of Rights, they can reach out to the regional prosecution to provide the version the requested person understands.

Later in the proceedings, a hearing of the requested person by the prosecutor in the presence of the defence counsel takes place during which the prosecutor provides the requested person with more detailed information about their rights and the EAW procedure. The prosecutor informs them about the content of EAW, details of the EAW procedure, the possibility to consent with surrender to the issuing MS and its consequences, also explains to them the application of speciality rule and other aspects of the EAW proceedings.

Based on the research findings, the usual practice is that the requested persons are provided with information in written and oral form. As already mentioned, the police officers as well as prosecutors use a paper form (Letter of Rights) containing basic information about the EAW procedure and the rights of the requested person. This form prepared by the prosecution should be available in various languages so they can use a language version the requested person understands. However, other practices were detected by the research, when a lawyer experienced in EAW proceedings alleged that the police officers would use standard forms on the procedural rights in criminal proceedings and not the form for EAW proceedings when arresting a person based on the EAW. One of the prosecutors mentioned that he has prepared a form used for informing the requested person about the EAW procedure and their rights from his own initiative. This may show that in practice there may be differences among various regional police departments and prosecution offices in how they inform the requested person upon arrest about their rights and the details of EAW procedure.

### ● Information about rights

The research participants shared their different experiences on how extensive the information provided to the requested person right upon arrest is. According to one of the interviewed prosecutors, the requested persons receive only necessary basic information about the reason for their arrest, their right to a lawyer and their right to interpretation and translation. According to other

research participants, right upon arrest, the requested persons receive information about all their procedural rights in the proceedings which is almost two and even more pages long. This information was provided by a judge of the regional court and one of the participating lawyers.

The information provided upon arrest is given to the requested persons in writing so that they could keep the document and is also read to them by the police officer. However, a lawyer participating in the research thinks that given the length of the document, the police officers do not explain anything to the requested person, they just hand them over the paper form containing information about their rights.

*The authorities that detain them give them a paper, a Letter of Rights on 3-4 pages, and have them sign it. It's in the Slovak language and no one explains the rights to them personally, maybe some "rookie" police officer. (Defence Lawyer, Slovakia)*

*Orgány, ktoré ich zadržia, im dajú papier, zoznam práv na 3-4 strany a dajú im to podpísať. Je to v slovenskom jazyku a nikto im osobne nevysvetluje práva, možno nejaký „nováčik“ policajt. (obhajca, Slovensko)*

Later in the proceedings, the requested persons are informed in more detail about the EAW procedure, the content of EAW, that they can give consent to be surrendered and its consequences and the application of the speciality rule. This is happening mainly during the hearing of the requested person by the prosecutor in the presence of the defence counsel. According to a prosecutor of the regional prosecution office, the requested persons are provided during this hearing with very detailed information, however, they cannot counsel with their lawyer during this hearing. Therefore, it is important that the requested person is provided with the information by their defence counsel before this hearing takes place which is not always the case given the little expertise of many lawyers in the EAW proceedings (for details read chapter 3).

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

|                     | YES |                               |        |  | NO | Don't know/remember | Did not answer |
|---------------------|-----|-------------------------------|--------|--|----|---------------------|----------------|
|                     |     | In writing (Letter of Rights) | Orally | In writing (Letter of Rights) and orally |    |                     |                |
| <b>Lawyer 1</b>     | X   | -                             | -      | X  | -  | -                   | -              |
| <b>Lawyer 2</b>     | X   | -                             | -      | X  | -  | -                   | -              |
| <b>Lawyer 3</b>     | X   | -                             | -      | X  | -  | -                   | -              |
| <b>Lawyer 4</b>     | X   | X                             | -      |  | -  | -                   | -              |
| <b>Prosecutor 1</b> | X   | -                             | -      | X  | -  | -                   | -              |
| <b>Prosecutor 2</b> | X   | -                             | -      | X  | -  | -                   | -              |
| <b>Judge 3</b>      | X   | -                             | -      | X  | -  | -                   | -              |

|                     |   |   |   |   |   |   |   |
|---------------------|---|---|---|---|---|---|---|
| <b>Prosecutor 4</b> | X | X | - |   | - | - | - |
| <b>Judge 5</b>      | X | - | - | X | - | - | - |
| <b>Total</b>        | 9 | 2 | 0 | 7 | 0 | 0 | 0 |

● Information about the EAW – content and procedure

According to the participants of the research, the requested persons are informed about the content of EAW. Right upon arrest, the provided information is very short, the requested person is only informed that they have been arrested based on the EAW. At that time, the police and prosecution do not usually have the complete EAW, they have only a record that an EAW has been issued.

The requested person is informed about the content of EAW later in the proceedings when the EAW is delivered to the prosecutor. The requested person is also provided with the content of EAW in writing, a copy of the EAW is handed over to the requested person. The translation of the EAW is also provided to the requested person; however, it takes a certain time to produce the translation.

According to a prosecutor participating in the research, even if the prosecution receives the complete EAW, all the details about the nature of the crime are very rarely included in the EAW. However, the prosecutor considers it to be important to know the details of the crime to be able to inform the requested person about what crime they are prosecuted for (or was sentenced for).

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

|                     | YES |            |        |                       | No | Don't know/remember | Did not answer |
|---------------------|-----|------------|--------|-----------------------|----|---------------------|----------------|
|                     |     | In writing | Orally | In writing and orally |    |                     |                |
| <b>Lawyer 1</b>     | X   | -          | -      | X                     | -  | -                   | -              |
| <b>Lawyer 2</b>     | X   | X          | -      |                       | -  | -                   | -              |
| <b>Lawyer 3</b>     | X   |            | X      |                       | -  | -                   | -              |
| <b>Lawyer 4</b>     | X   | X          | -      |                       | -  | -                   | -              |
| <b>Prosecutor 1</b> | X   | X          | -      |                       | -  | -                   | -              |
| <b>Prosecutor 2</b> | X   | -          | -      | X                     | -  | -                   | -              |
| <b>Judge 3</b>      | X   | -          | -      | X                     | -  | -                   | -              |
| <b>Prosecutor 4</b> | X   | -          | -      | X                     | -  | -                   | -              |
| <b>Judge 5</b>      | X   | -          | -      | X                     | -  | -                   | -              |
| <b>Total</b>        | 9   | 3          | 1      | 5                     | 0  | 0                   | 0              |

- Information on consenting to surrender

For the first time, the information about consenting to surrender is provided to the requested person in writing upon arrest as part of the paper form used for instructing the requested persons about their rights in the EAW proceedings (Letter of Rights). However, the information provided upon arrest may differ from case to case as was already mentioned above.

Later, the information is provided again by the prosecutor during a hearing with the requested person. According to the participants of the research (mainly prosecutors), it is necessary to explain to the requested person in detail what consenting to surrender means since this issue has a significant impact on the proceedings and the following steps taken within it. The requested persons are also provided with information about the speciality rule. According to a prosecutor participating in the research, in Slovakia, the usual practice is to explain both issues to the requested persons since the requested person is asked to take a position in both.

*Yes, they are informed in great detail about this, among other things, because the Slovak Republic did not automatically link the consent to surrender to the consent to renounce the principle of speciality, which in itself evokes the need for a very good explanation. Yes, it is explained in great detail. Both the principle of speciality and consent to the surrender. And it's caught in the minutes, which means it's always in the minutes and it's then reviewable. (Prosecutor, Slovakia)*

*Áno, veľmi podrobne, sú informované o tom, okrem iného aj preto, lebo Slovenská republika súhlas s vydaním automaticky nespojila so súhlasom vzdania sa zásady špeciality, čiže to samo osebe evokuje tú nevyhnutnosť veľmi kvalitného vysvetlenia. Áno je to vysvetľované veľmi podrobne. Aj zásada špeciality, aj súhlas s vydaním. A je to podchytené do zápisnice, to znamená, že vždy je to aj v zápisnici a je to následne preskúmateľné. (prokurátor, Slovensko)*

One of the participating lawyers reported that she explains the issue of consenting to surrender to clients in practical terms. According to interviewee, the whole EAW procedure is very formal, and the requested person will be extradited to the issuing MS in any case. If the requested persons do not consent to surrender it would only mean that they will spend a longer time in the cell.

*As long as the procedural conditions are met, and the criminal offence involves the sentence of over two years and the offence is punishable under our criminal law – it basically doesn't matter whether the requested person consents to surrender or not. If the person requested under EAW does not consent, the court will consent for them. I inform them that their stay in detention will be extended to months that they will spend in a cell. (Defence Lawyer, Slovakia)*

*Pokiaľ sú splnené procesné podmienky, za trestný čin je trestná sadzba nad dva roky a trestný čin je trestný podľa nášho trestného práva, je v podstate jedno, či vyžiadaná osoba súhlasí s odovzdaním alebo nie. Ak osoba vyžiadaná podľa EZR nesúhlasí, rozhodne za ňu súd. Vysvetlím im, že sa to predĺži na mesiace, ktoré strávia v cele (obhajca, Slovensko)*

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

|          | YES | NO | Don't know/remember | Did not answer |
|----------|-----|----|---------------------|----------------|
| Lawyer 1 | X   | -  | -                   | -              |
| Lawyer 2 | X   | -  | -                   | -              |
| Lawyer 3 | X   | -  | -                   | -              |

|              |   |   |   |   |
|--------------|---|---|---|---|
| Lawyer 4     | X | - | - | - |
| Prosecutor 1 | X | - | - | - |
| Prosecutor 2 | X | - | - | - |
| Judge 3      | X | - | - | - |
| Prosecutor 4 | X | - | - | - |
| Judge 5      | X | - | - | - |
| Total        | 9 | 0 | 0 | 0 |

● Understanding of information

According to a prosecutor involved in the research, the effective provision of information is a necessary precondition of the next steps in the EAW proceedings. At the same time, not only the information must be provided to the requested persons, but they also need to understand the information about their rights in the EAW proceedings.

According to other interviewed prosecutors and judges, the requested persons mostly understand the information provided about their rights during EAW proceedings since the judicial authorities try to ensure that the information is provided and explained to the requested persons. The judges and prosecutors also rely on the defence counsels of the requested persons to explain the provided information to the requested persons if anything is unclear. A judge participating in the research, when taking decision about remanding of the requested person into detention, examines whether the requested person understands the provided information. Another judge explained that the requested person is instructed in detail about their rights by prosecutor and the requested persons also sign that they were provided with the instruction about rights and that they understood the information.

*How many times we (judges) do ask and check if the requested person really understands it (the Letter of Rights), at least the basic information, because it is clear that you will not explain everything to that person, these are legal matters. It is difficult to explain legal matters to an uneducated person, (who is) not a lawyer, but we should give them the instruction in such a form, so that in basics they know why they are detained, what will happen to them, and based on what. (Judge, Slovakia)*

*Koľkokrát sa ešte my (sudcovia) pýtame a overujeme si, či ozaj tomu rozumie, aspoň tomu základu, lebo jasné, že tomu človeku nevysvetlíte všetko, to sú právne veci. Nevzdelanému človeku, neprávnikovi, ťažko vysvetlíte právnické veci, ale treba mu dať to poučenie v takej forme, aby minimálne aspoň v tých základoch vedel, že prečo je zadržaný, čo sa sním bude diať, na základe čoho to je. (sudca, Slovensko)*

The lawyers participating in the research, when compared to the judges and prosecutors, are rather sceptical about whether the requested persons understand all the information about their rights. The information provided to the requested person is quite limited at the moment of their arrest, for instance, the requested persons are informed about their right to a lawyer but are not informed about all the practical details related to finding a lawyer. Upon arrest, the situation is very stressful for the requested persons, therefore their ability to understand the information at this moment might be very limited.

*To sum it up, from formal point of view, if requested persons have signed the receipt of the Letter of Rights, they are considered to have understood their rights, but I am not convinced that they understand it completely, mainly because the legal language used in these proceedings [on EAW] is complicated. (Defence Lawyer, Slovakia)*

*Ak by tom to mal zhrnúť, z formálneho hľadiska, ak je osoba podpísaná pod poučením o svojich právach, tak sa má zato, že svojim právam rozumela, ale fakticky nie som o tom presvedčený, že na sto percent tomu všetkému rozumie a to napríklad aj z toho dôvodu, že ten právnický jazyk v tomto konaní je komplikovaný. (obhajca, Slovensko)*

According to the interviewees, there is no system adopted for examining whether the requested person understands the information about their rights. The judicial authorities have the duty to provide information to the requested person but do not need to examine if the requested person understands as mentioned by one of the lawyers.

It can also be discussed, to what extent the provision of information to requested persons is effective, which means, whether the requested persons really know about their rights and understand the provided information. The research findings show that the provision of information could be very effective but could be also quite formal. The view presented mainly by the participating lawyers is that the right to information of the requested person has been respected formally, which can be also verified in the case file, but the person is not informed in detail or does not understand the information.

According to the participants of the research, there are big differences among the ability of requested persons to comprehend the provided information. The strategies mentioned by the participants to overcome this barrier in provision of information involved:

- a. the judicial authorities rely on the defence counsels to explain to the requested all the provided information,
- b. the information about the rights and EAW proceedings is provided repeatedly to the requested person during the EAW proceedings,
- c. a detailed examination of whether the person understands Slovak in written and spoken form,
- d. provision of only the necessary and basic information to the requested person,
- e. explaining some aspects of EAW proceedings, for instance the renouncing of application of speciality rule, in a very practical manner.

Other differences among the requested persons were also mentioned, some of them do not even read the information about their rights as observed by one of the lawyers, others are trying to get familiar with the law and read the respective legislation which was mentioned by one the judges.

#### c. Additional best practices or challenges

Challenges mentioned by the research participants:

- Time constraints in the EAW proceedings – the procedural acts within the EAW proceedings must sometimes take place in a very short time, for instance the decision about remanding the requested person into detention must be taken within 48 hours (in case of acts of terrorism within 96 hours) after the arrest.

As for the provision of information to the requested persons following best practices were mentioned by the research participants:

- Standard paper forms for informing the requested persons about their rights (written Letter of Rights of the requested person in the EAW proceedings). The General Prosecution has developed a sample Letter of Rights that should be specifically used if a person is arrested based on the EAW. The Letter of Rights is also available in various language versions. By developing this Letter of Rights, the General Prosecution tried to make the process of provision of information to the requested persons more standardized and to ensure that they are informed about the EAW procedure and their procedural rights properly and on time.
- Explaining the rights in a very practical manner – as mentioned by the prosecutors participating in the research, they try to explain the EAW procedure to the requested person in a very practical manner using the facts of their case and examples to illustrate to them what consequences it would have if they consented to be surrendered (or not) and if they renounced the application of the speciality principle. This is done during the hearing of the requested person by the prosecutor so that the requested person is capable to declare their position regarding the surrender to the issuing state and the application of speciality principle.

#### d. Discussion of findings

In Slovakia, the legislation specifies the procedural rights of the requested person in the EAW proceedings, mainly by EAWA and CPC. However, the legislation does not specify all the practical details about how the information should be provided. The provision of information in the EAW proceedings is secured, however, in practice there may be differences from case to case. The requested persons receive the information in oral and written form at various stages of the proceedings. The prosecution has taken steps to make the provision of information more standardized by using a written form containing the basic information about the EAW procedure and the procedural rights of the requested persons (Letter of the Rights). However, differences in practice were recorded in terms of whether the police officers use a specific EAW form for informing the requested person or they use other paper forms intended for provision of information in the criminal detention proceedings. Differences were recorded also in the way the information is provided, whether the prosecutors/police officers put stress on written or oral provision of information and to what details they explain the provided information to the requested person.

The first information provided to the requested person involves the important aspects of the EAW proceedings, however, as the research participants point out, the situation is so stressful for the requested person that they are not able to understand all provided information and its consequences. Later, the requested person is informed by the prosecutor in more detail, however, at that time the requested person already needs to be aware of their rights since they are asked to declare their position during the hearing with the prosecutor, mainly whether they agree to be surrendered to the issuing MS and about the application of speciality rule. Therefore, the requested person needs to have opportunity to discuss with their defence counsel the strategy during the proceedings, as well as other issues the requested person may have before the hearing with prosecutor takes place. Given the short time limits (for instance, the decision about remanding the requested person in detention must be taken usually within 48 hours after arrest) and the lacking expertise of the many lawyers in the EAW proceedings (for more detail see the section 3 of this report), this may result in a situation when the requested person does not fully understand all the information about EAW proceedings and about their procedural rights.

## 2. Right to interpretation and translation

### a. Legal overview

#### ***Legal standards relating to provision of interpretation and translation***

The requested person has the right to an interpreter and a translator in EAW proceedings.<sup>25</sup> The rules according to the *CPC* on use of interpreters and translators in criminal procedure apply accordingly in proceedings on EAW. If the requested persons declared that they did not know the language in which the proceedings are conducted (Slovak language), they have the right to an interpreter and a translator.<sup>26</sup>

If they declared that they do not understand or speak Slovak language in which the proceedings are conducted, an interpreter is appointed for the requested person<sup>27</sup>. If it is necessary to translate a written statement or a document, a translator is appointed.<sup>28</sup> The requested person can also use the interpreter appointed for communication with the defence counsel, but it must be done in direct connection with a procedural step conducted by authorities, in relation to submission of a remedy or other procedural submissions.<sup>29</sup>

The authorities can appoint the interpreter also if they find out that the linguistic abilities of the requested person are not sufficient to exercise their rights properly in Slovak language, despite the declaration that the person understands Slovak.<sup>30</sup>

Where a requested person chooses a language for which there is no interpreter/translator in the list or listed interpreters/translators are not available, but the matter cannot be delayed, the law enforcement authority or court will appoint an interpreter/translator for the official language of the country of which the requested person is a citizen or a resident and which language they understand.<sup>31</sup> The *CPC* enumerates documents which must be mandatorily translated in writing for the accused in the criminal proceedings. In the EAW procedure accordingly, the requested person will be provided with a written translation of the EAW, the order remanding preliminary or surrender detention, the decision of the court on execution of EAW and the decision on appeal.<sup>32</sup> They are informed of the right to expressly renounce the right to translations and of the consequences of renouncing it. The translation of the decision and its delivery must be ensured by the authority which issued the document.<sup>33</sup>

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<sup>25</sup> Slovakia, [European Arrest Warrant Act](#) (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 14(2).

<sup>26</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 2(20).

<sup>27</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28.

<sup>28</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(4).

<sup>29</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(1).

<sup>30</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(2).

<sup>31</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(3).

<sup>32</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(4).

<sup>33</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(4).

The written translation of additional documents is provided as well at the request of the requested person, or even without such a request, if the authority before which the proceedings are conducted considers it is necessary to guarantee a fair trial, in particular for the proper application of the rights of the defence. This rule would not apply if the requested person expressly declared that they do not require a translation of such a document after being informed of their rights. The written translation is also not necessary if such a document or its essential contents may be orally interpreted to the requested person, provided that it does not affect the fairness of the proceedings. This fact is recorded in the written record from the procedural act in such a way that it is clear whether the entire document has been translated or which part thereof.<sup>34</sup>

Specific regulation of the EAW proceedings according to Section 19(2) of the *EAWA* requires that the requested person is informed about the content of the EAW and provided with its copy. If the EAW is drawn up in a language which the requested person does not understand, they have the right to have it translated. The public prosecutor informs the requested person of the right to a translation of the EAW. However, according to the *EAWA* the oral interpretation may suffice instead of translation, provided that the fairness of the proceedings would not be prejudiced. This provision is transposed from Art.3 (7) and (8) of the Directive 2010/64/E<sup>35</sup> and was adopted in the process of implementation of the EU law. It is not the first time we have observed that the implementation of the EU secondary legislation may lower the standards for protection of human rights, which had already been established in Slovakia before the harmonization. Before the transposition written translation was always required.

If a person was arrested, they are provided with the translation of the information on their rights without undue delay.<sup>36</sup> If a translation of the information is not available, the information will be interpreted for them orally. If the police detected a person in the territory of the Slovak Republic for whom an EAW or an SIS alert has been issued, they will arrest them. Police informs the arrested person of the reasons for their detention and their rights pursuant to Section 14 of the *EAWA*.

If it is not possible to provide an interpreter for a language which the requested person understands sufficiently, or if the physical presence of an interpreter is not required to guarantee a fair trial and in cases, interpretation may, in justified cases, be provided by means of technical equipment designed for the transmission of images and sound (videoconferencing equipment).<sup>37</sup>

### **Available remedies**

The general complaint mechanism is applicable. If the authority before which the proceedings are pending refuses to grant a request for translation/interpretation, the requested person can lodge a complaint. The complaint is against the public prosecutor, the police authority or the judge whose decision resulted in lack of access to interpretation/translation. It is examined by the respective superior authority.

The Office of the Public Defender of Rights may also be contacted with the complaint and request to intervene in order to protect human rights of the complainant.

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<sup>34</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(7).

<sup>35</sup> Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

<sup>36</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(9).

<sup>37</sup> Slovakia, [Criminal Procedural Code](#) (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(8).

The available remedies are similar to the remedies relating to breach of the right to provision of information as mentioned under previous chapter.

b. Interpretation and translation in practice

● Provision of interpretation (decision and means)

The research findings show that the requested persons are provided with interpretation and translation in the EAW proceedings if they do not understand the Slovak language. Usually, they are provided with interpretation right upon arrest, an interpreter is called to be present at the police department, so that the police officers are able to inform the requested person about why they were arrested, and restricted on their freedom, based on what grounds and what their rights are. The police also use the instruction on rights of the requested person (pre-formulated paper forms so-called Letter of Rights) which is available in several language versions. If they do not have a suitable language version, they can reach out to the prosecution to provide the language version the requested person understands, or they arrange for an interpreter to be present to interpret the instruction for the requested person as mentioned by one of the interviewed prosecutors. According to a judge of regional court, the interpretation of the provided information is very usual practice and the minutes from the arrest contain a record that the information was interpreted for the requested person.

If it comes to who is the authority deciding on the appointment of the interpreter/translator to the proceedings, according to a judge, right upon the arrest and if the police detect that the requested person does not understand the Slovak language, they inform the prosecutor who submits a request to the court to appoint the interpreter to the proceedings.

According to the prosecutors as well as judges participating in the research, if it shows up that the requested person lacks the understanding of Slovak language or their understanding is very limited, the interpretation and translation are automatically provided, no one evaluates whether it is needed or not.

*If the person declares that he does not understand Slovak, he automatically gets an interpreter. In EAW proceedings, this is usually not a problem, because usually it is a language for which we have enough interpreters, if it is an international arrest warrant, it is more complicated, but with EAW it is not a problem. (Judge, Slovakia)*

*Ak osoba vyhlási, že nerozumie slovensky, tak automaticky dostane tlmočníka. V rámci európskeho zatýkacieho rozkazu to obvykle nie je problém, lebo zvyčajne ide o jazyky, na ktoré máme dostatok tlmočníkov, ak ide o medzinárodný zatýkací rozkaz a nejaké africké krajiny, tak je to zložitejšie, ale pri EAW to nebýva problém. (sudca, Slovensko)*

The lawyers confirmed this information except for one of them according to whom the requested persons must ask for interpretation and translation if they do not understand the provided information, it is not automatically provided. According to another lawyer, the interpretation and translation is provided also in cases when the requested persons declare that they understand, but if the court finds out that their understanding of the language is insufficient, the interpreter/translator is appointed to the proceedings. This is to ensure that the procedural rights of the person are met and cannot be later challenged.

Based on the research findings, the prosecution and courts pay a lot of attention to the need for interpretation and translation. According to a prosecutor of the regional prosecution, it is because the interpretation (as well as translation) is a fundamental right of the requested person, therefore it is

provided. Another prosecutor stressed that it is necessary not only to provide the requested persons with information, but also ensure that they understand. So, if the persons do not speak Slovak, the prosecutor takes care to secure the interpretation for them, since otherwise later in the proceedings the defence counsel could appeal against the procedure as being unlawful.

According to the lawyers participating in the research, the interpretation and translation are provided, and this right is sufficiently respected in Slovakia, since otherwise, if the person does not understand the written and as well as spoken form of the language, it could be challenged by the requested person and result in procedural errors.

If it comes to the language to which the interpretation and translation for the requested person are provided, the research participants were not united in this issue. Most of the research participants said that the interpretation and translation are provided into the language the requested person understands. However, according to one of the interviewed judges, the interpretation is provided into the language of the country the requested person is a national. If they do not understand the official language of their country, then the situation is dealt with individually. According to one of the lawyers, passive knowledge of the language is enough to provide information in that language, it does not have to be their mother tongue neither the official language of their country. Contrary to this statement, according to a prosecutor of regional prosecution, it is necessary that the requested person understands the written, as well as the spoken form of the language, since otherwise their procedural rights cannot be fully respected in the EAW proceedings and the proceedings cannot move forward. The usual practice is that the interpreter is personally present, the use of online interpretation is very rare. The online interpretation is technically possible; however, the judicial authorities do not have the means to ensure the privacy of the counsel between the requested person and the defence counsel in connection with the procedural act taken. Another problem is that the courts are not adequately equipped with the technical devices for online interpretation as mentioned by one of the interviewed judges. An online interpretation of the Letter of Rights provided to the requested person was mentioned by one of the prosecutors participating in the research, but this was rather an exception that deviates from the usual practice.

- Translation of documents

According to the research findings, it is usual that the requested persons get the translation of the Letter of Rights in a language version they understand. However, as mentioned in section one of this report, the practice at police departments may differ. According to one of lawyers participating in the research, the police officers do not actively offer other language versions of the document, first they provide the document in Slovak. If they found out the person does not understand, they provide the version in other languages.

At the moment of the arrest, it is not possible to provide translation of other documents since the EAW is not available at that moment and there is a very short time period within which the decision on remanding the requested person into detention must be taken. Therefore, the usual practice is that the person is provided with the written Letter of Rights (if available in respective language version), or the Slovak version of the document is interpreted for them.

Later in the proceedings, the translation of documents is provided for the requested person. According to a prosecutor participating in the research, each decision against which the requested person can appeal must be translated for the requested person.

According to interviewed judges, the respective provisions of the CPC apply when it gets to the issue of what documents must be translated for the requested person during the EAW proceedings. The most important documents produced within the EAW proceedings that must be translated involve:

the Letter of Rights, the decision on preliminary and extradition detention, the decision about execution of EAW, the EAW itself.

A lawyer participating in the research thinks that the requested person is entitled to receive the translation of all official documents produced within the proceedings, at least they should be provided with interpretation of those documents. Beside the documents that must be translated for the requested person, the requested person can request for the translation of any other document produced within the proceedings. According to another lawyer, the translation of documents is provided, however, the problem lies in the short time limits within the EAW proceedings, thus it is not always possible to produce the translation on time.

- Interpretation of consultations with lawyers

In practice, the interpretation of consultation of the requested person with their defence counsel is ensured mainly during the procedural act taken within the proceedings as mentioned by one of the interviewed prosecutors. This means that the prosecutor ensures interpretation during the procedural acts conducted by the prosecution. The court ensures the interpretation during the hearing at the court. The judges usually create space for the requested person to consult with their defence counsel in the presence of an interpreter who provides the interpretation. During these procedural acts, the interpretation of the consultation of the requested person with their defence counsel is secured. This is a usual practice that was mentioned by most of the research participants.

*I can only ensure interpretation during my procedural acts; the interpreter is there at the disposal also for the requested person and his attorney during their counsel. But if the attorney wants to visit the client in the detention, this is up to them to claim these expenses according to his tariff as an appointed legal representative or to agree with the client on reimbursement. (Prosecutor, Slovakia)*

*Pokiaľ ide o procesný úkon, ja zabezpečím tlmočenie, a tam umožním aj poradu klienta s advokáta počas tohto úkonu, ale akonáhle je to vaša porada s klientom, to si účtujete vy podľa vašich taríf, ak ste boli ustanovený, alebo podľa dohody s klientom. (prokurátor, Slovensko)*

As for the interpretation of the counsel in the detention centre, it is up to the defence counsel to arrange the presence of an interpreter during the session with the requested person. According to the judges and prosecutors, when visiting the requested person in detention the defence counsel can arrange the interpretation and subsequently claim the expenses to be reimbursed by the state. In their view, it is not the role of the judicial authorities to arrange the interpretation of the consultation the defence counsel is having with the requested person in detention.

According to the lawyers participating in the research, it is particularly challenging to arrange the interpretation of the consultation in the detention centre. Foremost, the consultation is not taken in direct connection with a procedural act taken within the proceedings and then also prior to the visit to the detention centre, the prosecutor must approve the interpreter to take part in the session, thus it is for the defence counsel more complicated to arrange.

Another problem mentioned by one of the lawyers is whether the defence counsel is appointed by the state or by the requested persons themselves. If the defence counsel is appointed by the court, then the interpreter interprets the conversation between the defence counsel and the client and then claims the costs of interpretation to be reimbursed by the court. However, if the defence counsel is appointed by the requested person themselves it is very likely that the court will reject the claim to reimburse the costs of interpretation.

Because of the mentioned barriers, the requested persons and their defence counsels try to find at least one common language they both understand. Thus, the interpreter is not needed for the

communication, which is seen as an advantage since the interpretation prolongs the whole communication. Another lawyer experienced in EAW proceedings also tries to rely on their own language skills since direct communication is easier in practice.

#### c. Additional best practices or challenges

Following challenges were reported by the research participants:

- The interpreters/translators are often unavailable - The official interpreters/translators must be registered in an official list of interpreters and translators run by the Ministry of Justice. Some of them are registered as interpreters, but many are registered only as translators, some are registered as both. However, in practice, it is difficult to find an available interpreter who would be available to come and interpret during the procedural act taken within the proceedings. The official list contains little or no interpreters for less common oriental languages.
- Time constraints in the EAW proceedings – After the arrest and during the EAW proceedings, the requested person can ask for the translation of the documents, however, not always it is possible to arrange the translation of all documents before the court decides on the remand to detention because of the short time limits or before a specific procedural act is taken within the proceedings.
- Online interpretation is not used in practice – As mentioned by the research participants, the problem is to ensure the privacy of the counsel between the requested person and the lawyer.
- Insufficient technical equipment at the courts – The courts are not adequately equipped with technical devices to ensure online interpretation and online communication.

Based on the research, following best practices can be mentioned:

- Careful assessment of understanding of the language – As mentioned by one of the prosecutors, the prosecutors pay attention to the issue whether the requested person understands Slovak in written and spoken form, if not, the interpretation/translation is provided. This is viewed as very important since otherwise if it shows up that the person is lacking sufficient knowledge of the language and was not provided with interpretation/translation, it can result in procedural errors.

#### d. Discussion of findings

The research findings show that the judicial authorities apply the legislation specifying the right to interpretation and translation in the EAW proceedings consistently. Most of the research participants considers respecting the right to interpretation and translation important since otherwise, it can lead to procedural errors in the proceedings and decisions taken within the proceedings can be appealed. It is also seen as important to ensure that the requested persons understand the information about the EAW procedure and their rights, otherwise the EAW proceedings cannot move forward, probably

mainly because the requested persons are asked to declare their position regarding the issue of their surrender to the issuing MS and the application of speciality rule.

Based on the research, several differences in practice and challenges regarding the interpretation and translation were recorded. Upon arrest, the interpretation for informing the requested person is used and translated Letter of Rights is provided. As mentioned in section one of this report, police departments should use the Letter of Rights for the person requested under the EAW which is available in several language versions. However, they do not always have the respective language version thus the interpretation of the instruction is provided. This, however, means, that the interpreter must be arranged very quickly within a very limited period of time.

The need for interpretation and translation is not evaluated by the judicial authorities, once it is detected that the requested person's understanding of Slovak is insufficient, the interpretation and translation are provided as reported by most of the research participants. The interviewees were not united on the issue of into what language the interpretation and translation are provided, they mentioned that it is provided into the language of the country of which the requested person is a national and also that it is provided into the language, the requested person understands. The interviewees did not provide more detailed information on how this issue is assessed and resolved in practice which may indicate that there are differences in practice that may have an impact on the sufficient and effective provision of information to the requested persons.

As for the challenges related to the right to interpretation and translation in the EAW proceedings, the research participants mentioned that it is challenging to ensure the translation of documents within the short time limits in the EAW proceedings. Further, it is difficult to ensure the interpretation of the counsel between the requested person and their defence counsel in the detention centre, therefore the defence counsels try to communicate with their clients without interpreter relying on their own language skills. The online interpretation is very rare and is problematic since the judicial authorities are not able to ensure the privacy of the counsel between the lawyer and the client. The technical equipment at the courts is also insufficient to enable online interpretation.

### 3. Right to access to a lawyer

#### a. Legal overview

In extradition as well as in surrender proceedings, the law requires **mandatory representation by a defence counsel**.<sup>38</sup> This means that it is not sufficient for the requested person to represent themselves, they must have a defence counsel. The mandatory representation can be understood as an additional safeguard provided for by the law in order to make sure that the requested person understands the nature of the proceedings and their rights and obligations in these proceedings effectively, including their declaration of consent and its consequences. The defence counsel makes sure all the procedural rights of the requested person are fully respected and already in the preparatory proceedings is authorized to make motions on behalf of the requested person, to file applications and appeals on their behalf, to inspect the case files and to take part in the proceedings before the court, and in accordance with the provisions of the *CPC* in any procedural step in which the requested person has the right to take part.<sup>39</sup> The requested person has the right to consult with the defence counsel, including during procedural acts carried out by a law enforcement authority or a court. If the requested person is detained, they may speak to the defence counsel without a third person being present.<sup>40</sup>

The most important declarations of the requested person in the EAW procedure must be done in mandatory presence of the defence counsel, such as declaration of consent with the surrender, on renunciation of the speciality principle<sup>41</sup>, consent with the further surrender to another MS<sup>42</sup>, and non-consent with execution of the imprisonment sentence in another MS.<sup>43</sup>

The requested persons are **informed on their rights** at the time of their arrest by the members of the Police Corps.<sup>44</sup> This information includes rights of the requested person pursuant Section 14 of the *EAWA*, which includes the right to be assisted by a defence counsel and the right to dual representation. This is the information which is provided to the requested person immediately upon arrest and is recorded in the written minutes from the arrest signed by the requested person. The information is again repeated to them by the prosecutor later.

According to Section 37(3) of the *CPC*<sup>45</sup> the accused must have a defence counsel in extradition/surrender proceedings. Also, according to Section 14(1) of the *EAWA* in EAW proceedings, the requested person must have a defence counsel. Thus, in cases when Slovakia is an **executing state**, **the mandatory representation by the defence counsel** applies.

Mandatory representation is primarily ensured by the appointment of the defence counsel by the requested person themselves. If the requested person does not have a defence counsel in EAW

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<sup>38</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 502 (3).

<sup>39</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 44 (2).

<sup>40</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 34(1).

<sup>41</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 21(1).

<sup>42</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 33(2).

<sup>43</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 19(4).

<sup>44</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 13(1).

<sup>45</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 37 (3).

procedure, they are given a time-limit for the appointment of a defence counsel. If no defence counsel is appointed within that period, they are appointed a defence counsel without delay by the judge by means of a programme of the Ministry of Justice, which ensures random and uniform appointment of ex officio defence counsels.<sup>46</sup>

The right to choose a defence counsel and the content of the defence rights are regulated by the provisions of the Sections 34 to 44 of the *CPC*, which apply in EAW proceedings accordingly. Only attorney registered with the Slovak Bar Association may act as a defence counsel.<sup>47</sup> The requested person is expected to choose a defence counsel by authorizing the attorney in writing. They may also choose more than one defence counsel in the same case or substitute an appointed defence counsel with another one of their own choice.<sup>48</sup>

The timeliness of the appointment of the defence counsellor is the primary responsibility of the requested person. The requested person can appoint a defence counsel from the very first moment of the EAW procedure. The authorities take initiative into their hands only if the requested person has not appointed one themselves. The role of authorities in appointment of the defence counsel is thus subsidiary.<sup>49</sup> The representation by the defence counsel takes effect from the moment of delivery of the power of attorney or of the measure appointing the defence counsel to the public prosecutor or to the court.<sup>50</sup>

Provided that the requested person has insufficient means to pay for the costs of the defence they are entitled to a **free defence or a defence at reduced costs**. Upon request the judge will appoint the requested person a defence counsel from among the attorneys. The insufficient means must be proved by the requested person latest at the time of the decision on the payment of costs of criminal proceedings, but not later than 30 days after they have been served with the measure appointing the defence counsel.<sup>51</sup> If it is later established in the course of the proceedings that the requested person has sufficient means to pay for the costs of the defence, or if the requested person fails to establish the entitlement to a free defence within the time limit given, the appointment of the defence counsel for free will be revoked.<sup>52</sup> The requested person may keep a defence counsel appointed, but the state will require reimbursement of the costs of the defence.

The timeliness of the appointment of defence counsel free of charge is again primary responsibility of the requested person and depends on the timeliness of their request. The requested person may choose a defence counsel and replace the defence counsel appointed by the court. The appointed defence counsel should take over the defence without delay.<sup>53</sup>

The requested person also has the right to a **dual representation in the EAW proceedings**. In addition to a defence counsel in the executing state, they may choose a defence counsel also in the **issuing**

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<sup>46</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 40(1).

<sup>47</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 36(1).

<sup>48</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 39.

<sup>49</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 36(4).

<sup>50</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 36(5).

<sup>51</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 34(3) and 40(2).

<sup>52</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 40(6).

<sup>53</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 40(5).

**state** in accordance with the law of that state.<sup>54</sup> The defence counsel in issuing state is appointed in order to provide assistance to the defence counsel representing the requested person in the proceedings on execution of the EAW in the territory of the Slovak Republic.

If the requested person wishes to apply this right, the public prosecutor informs the judicial authority of the issuing state without delay. The exercise of this right by the requested person in the issuing state does not, however, affect the time limit for decision about the execution or non-execution of the EAW and the time limit for execution of the surrender.

If Slovakia is an **issuing country** and the requested person has not chosen or has not been appointed a defence counsel in the criminal proceedings pending in the territory of the Slovak Republic, the judicial authority of the executing State may notify the Slovak court which issued the EAW that the requested person would like to apply the right to appoint a defence counsel for the territory of the Slovak Republic. This defence counsel will assist the defence counsel in the EAW proceedings in the executing State. In this situation the Slovak court provides the requested person, through the competent authority of the executing State, without undue delay with the list of the defence counsels who are listed with the Slovak Bar Association for this purpose. The possibility to appoint the defence counsel free of charge or at the reduced cost (at the expenses of the state) for a person who does not have sufficient economic means, does not apply in this situation though.<sup>55</sup>

If the **interpreter/translator** is appointed by the public prosecutor or a judge at the request of the requested person, they are also expected to interpret for the consultation between the requested person and the defence counsel. The use of the state appointed interpreter is, however, only possible during or in direct connection with a procedural step, in relation to submission of a remedy or other procedural submissions.<sup>56</sup>

Representation by the defence counsel in EAW proceedings is mandatory, thus the requested person cannot be legally denied the right to have an attorney appointed for this purpose. If nevertheless it happened, **potential violations of procedural rights of the requested persons can be remedied** by means of raising objections on flaws in procedural conduct in the course of the EAW procedure before the decision on EAW is taken, based merely and sufficiently on the ground of lack of the access to procedural rights/right to the defence counsel (in the executing, issuing state or in both) in EAW procedure.

A decision of the regional court on the execution of an EAW can be challenged at the Supreme court solely on the grounds for refusal to execute the EAW pursuant to Section 23(1) of the EAWA. However, only the prosecutor can base the complaint against the decision of the regional court on the ground that the decision to execute the EAW was in breach of the EAWA. The complaint of the requested person cannot be based merely and sufficiently on the ground of lack of the access to procedural rights/right to have a defence counsel (in the executing, issuing state or in both) in EAW procedure.<sup>57</sup> The Supreme Court of the Slovak Republic decides on the complaint in closed session.<sup>58</sup>

The Office of the Public Defender of Rights may be contacted by anyone who believes that their fundamental rights and freedoms have been violated in the proceedings, decision-making or by lack of action of a public authority in violation of the rule of law or the principles of a democratic state

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<sup>54</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 14(3).

<sup>55</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 5(10).

<sup>56</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28.

<sup>57</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 22(7) and (8).

<sup>58</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 22(7) and (8).

governed by the rule of law.<sup>59</sup> The competence of the Public Defender of Rights does not extend to the decision-making powers of the investigators of the Police Force, the Public Prosecutor's Office<sup>60</sup>, however, the lack of access of the requested person to their procedural rights may be examined by the Public Defender of Rights.

The request for assistance with appointment of the defence counsel can be also communicated to the Slovak Bar Association.

There are no specific rules governing the **cooperation between the lawyers in cases of dual representation**. Accordingly, the rules of the *Act on Profession of Attorneys*<sup>61</sup> and of the *Attorney's Rules of the Bar*<sup>62</sup> would apply. They regulate obligations of the attorneys (defence counsels) to their clients, rules of substitution by another attorney or taking over the case of another attorney. These rules could be a useful guidance regarding the cooperation between these lawyers during dual representation.

**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 MS and informed of this right? |     |  |
| Slovakia   | YES |  |

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

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

## **b. Right to access to a lawyer in practice**

- Information about legal assistance (including on dual representation)

Based on the interviews, the findings show that the requested person is always formally informed about the right to be assisted by a defence counsel in EAW procedure immediately upon arrest by the police. The information is later repeated by the prosecutor. According to the interviewed lawyers, this is done only formally in writing. According to the judges and prosecutors, the authorities also explain orally what this right includes. One lawyer and one prosecutor claimed that this information is provided either in writing or interpreted orally. The written Letter of Rights is facilitated by means of the written minutes from the interview with the requested person, which includes all the information provided to the requested person and the requested person is asked to sign the written minutes as a means of confirmation of the fact that they have been provided with the information necessary. All

<sup>59</sup> Slovakia, Public Defender of Rights Act (*Zákon o verejnom ochrancovi práv*), Act No.564/2001 Coll. as amended, 4 December 2001, Section 11(1).

<sup>60</sup> Slovakia, Public Defender of Rights Act (*Zákon o verejnom ochrancovi práv*), Act No.564/2001 Coll. as amended, 4 December 2001, Section 3(2).

<sup>61</sup> Slovakia, *Act on Profession of Attorneys* (*Zákon o advokácii*), Act No.586/2003 Coll. as amended, 4 December 2003.

<sup>62</sup> Conference of the attorneys, *Attorney's Rules of the Bar of the Slovak Bar Association*, 11 June 2021.

interviewees understand this as a formality, which must be observed. The level of explanation or understanding depend on individual authorities and individual requested person.

*The requested person is also instructed during the first interrogation recorded in the minutes, so it is also available in a written form, and it is being retold to them. What I said, the first (information after their arrest), which they get in writing, this is really just the first information at the beginning of their restriction of personal liberty, to know why they are restricted and what their other rights are. (Prosecutor, Slovakia)*

*On je poučený pri prvom zápisničnom výsluchu, takže tam to má aj v písomnej podobe, aj je mu to prerozprávané. To čo som hovorila, tie prvé informácie, čo dostane písomne, to je naozaj len prvá informácia, aby vlastne bol od prvopočiatku jeho obmedzenia osobnej slobody vedel, prečo je obmedzená a aké má ďalšie práva. (prokurátor, Slovensko)*

Despite the fact that the law requires that the requested person is informed specifically also about the right to request for the defence counsel in the issuing state, the Letter of Rights which was mentioned by interviewees and obtained from one of the interviewed prosecutors does not mention this specific right.<sup>63</sup> This is possibly because this specific right was included in the EAWA as of 1 January 2017 and the Letter of Rights had been drafted before this date, which is also confirmed by the interviewee (prosecutor) who claimed to have developed the Letter of Rights. The mentioned prosecutor and also a judge of the regional court reported that the information is provided orally during the first questioning and is recorded in the minutes from this interview.

Most of the interviewees (8 out of 9) confirmed that they believed the authorities formally inform the requested person of this right, but still most of them expressed doubts about the implementation of this right in practice. For example, one lawyer who confirmed formal provision of information on dual representation, raised concerns whether the requested persons are openly informed of the right to have the defence counsel in both executing and issuing state. On the contrary, another lawyer expressed opinion that the requested person is told that they have the right to choose the lawyer in the issuing state only once they had been surrendered there.

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

|              | <b>YES</b> | In writing | Orally | In writing and orally | <b>NO</b> | <b>Don't know/remember</b> | <b>Did not answer</b> |
|--------------|------------|------------|--------|-----------------------|-----------|----------------------------|-----------------------|
| Lawyer 1     | x          | x          | -      | -                     | -         | -                          | -                     |
| Lawyer 2     | x          | x          | -      | -                     | -         | -                          | -                     |
| Lawyer 3     | x          | x          | x      | -                     | -         | -                          | -                     |
| Lawyer 4     | x          | x          | -      | -                     | -         | -                          | -                     |
| Prosecutor 1 | x          | x          | x      | x                     | -         | -                          | -                     |
| Prosecutor 2 | x          | x          | x      | -                     | -         | -                          | -                     |
| Judge 3      | x          | x          | x      | x                     | -         | -                          | -                     |
| Prosecutor 4 | x          | x          | x      | x                     | -         | -                          | -                     |
| Judge 5      | x          | x          | x      | x                     | -         | -                          | -                     |
| Total        | 9          | 9          | 6      | 4                     | 0         | 0                          | 0                     |

<sup>63</sup> It is a specific Slovak list of rights according to EAWA, does not refer to the recommended list of rights according to Annex II of the Directive 2012/13/EU about the right to information.

**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 MS? |     |    |                     |                |
|---|-----|----|---------------------|----------------|
|   | YES | NO | Don't know/remember | Did not answer |
| Lawyer 1  | x   | -  | -                   | -              |
| Lawyer 2  | x   | -  | -                   | -              |
| Lawyer 3  | x   | -  | -                   | -              |
| Lawyer 4  | -   | x  | -                   | -              |
| Prosecutor 1  | x   | -  | -                   | -              |
| Prosecutor 2  | x   | -  | -                   | -              |
| Judge 3   | x   | -  | -                   | -              |
| Prosecutor 4  | x   | -  | -                   | -              |
| Judge 5   | x   | -  | -                   | -              |
| Total   | 8   | 1  | 0                   | 0              |

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

The research participants shared various experiences on the issue of whether the requested person is provided assistance with the appointment of the defence counsel, if Slovakia is the executing state. In practice the authorities only provide the requested person with the information about the right to be represented by a lawyer. The way how they find the lawyer depends only on the requested person. The arrested person has no access to the internet and restricted access to the phone, they have the right to use phone under the conditions set by the law, as reported by the lawyers as well as representatives of judicial authorities. If requested person wants to find a lawyer themselves, the police or prosecutor provides them with a cell phone to call. According to prosecutors and judges it is recorded in the minutes from the arrest that the requested person was allowed to call their lawyer. According to the lawyers it depends on the individual willingness of the authorities how much time, space and assistance they would provide to the requested person in order to get hold of the lawyer of their own choice.

According to some interviewees (lawyers as well as judges and prosecutors), the authorities do not provide the requested person with the list of attorneys to appoint their lawyer. As mentioned by one judge and two prosecutors, if a requested person asks for the list of attorneys, the authorities will provide them with the list. One of the mentioned prosecutors would let the requested person to pick few attorneys and even facilitates the phone calls to selected attorneys. Another prosecutor would allow the requested person to use the internet in prosecutor's office to search for lawyers. One interviewed prosecutor uses his own form for choosing/appointing a lawyer which he sends to the requested persons in detention, where they indicate whether they choose a lawyer (and whom), whether they want the prosecutor to reach out to the lawyer and find out if the lawyer agrees with the representation or they indicate they need the state to appoint them a lawyer. One lawyer who has mostly experience being appointed by the state as a defence counsel in EAW proceedings, stated it is not believable that the requested person would randomly choose one of the lawyers from the list of attorneys. According to the mentioned interviewee, the requested persons prefer to leave it to the state to appoint the defence counsel. This is confirmed by one of the prosecutors who stated that 98 percent of the requested persons do not have ambition to find the lawyer by themselves.

*All of this happens before the lawyer enters the case. That is, we know when we're appointed by the state and thus obviously the requested person didn't choose a lawyer alone. We learn that we've been appointed from the judge or from the prosecutor. But how that person is instructed on how they can choose a lawyer, whether they are allowed to access a list of lawyers through the Slovak Bar Association on the computer, I don't know. I honestly can't imagine that the person would randomly choose one of them like this. In my opinion, a prosecutor can recommend a lawyer, if they know that a certain circle of lawyers expressly specializes in the international or EAW proceedings. That the prosecutor can recommend the defence counsel, as long as the requested person has the resources for a lawyer, the prosecutor can put them in contact, I don't see any problem with that. But for the most part, I think they leave it to the states to appoint defence counsels. (Defence Lawyer, Slovakia)*

*Toto je všetko čo sa deje na úrovni pred tým, ako advokát vstupuje do konania. Čiže my vieme, keď sme ustanovený štátom, že zrejme si nezvolil obhajcu sám. Dozvieme od sudcu alebo od prokurátora, že sme boli ustanovení. Ale to, že akým spôsobom je poučená tá osoba, že ako si môže zvoliť toho obhajcu, že či mu je umožnené pristúpiť k nejakému zoznamu advokátov cez slovenskú advokátsku komoru na počítači, úprimne neviem si to predstaviť, že by si námatkovo vybral nejakého z nich. Podľa mňa môžu odporučiť prokurátor ak vie, že nejaký okruh advokátov sa vyslovene špecializuje na tieto medzinárodné konania alebo konania o EZR. Že mu vie odporučiť že pokiaľ má prostriedky na advokáta vie dať na neho kontakt, nevidím v tom problém. Ale prevažne si myslím, že to nechávajú na ustanovenie štátom takýchto obhajcov. (obhajca, Slovensko)*

If the requested persons cannot reach their attorney immediately or after some time given, then judge appoints them the defence counsel in order to satisfy the legal requirement of mandatory representation in EAW proceedings. According to a prosecutor of regional prosecution, when the prosecutor submits the motion for detention to the judge, they also submit a motion to appoint a lawyer, so at the time of the detention the requested person already has a defence counsel. The name of the appointed attorney is nowadays generated by the technical means through random selection, which means a judge obtains the name of the attorney to be appointed as a defence counsel automatically by electronic means, as mentioned by most of the research participants. It used to be a practice that the requested person could have chosen which attorney they wanted the state to appoint to them. Some lawyers believed it was no longer possible, but other interviewees stated that the prosecutor or judge can use this random online generator or try to contact and appoint the attorney whom they know as already experienced in EAW proceedings. Several interviewees (lawyers as well as judges) believed the random selection by state generator resulted in the worsening of the quality of legal aid provided by the defence counsels appointed by the state, since the selection is random and does not take into account the expertise in EAW procedure, thus some randomly appointed attorneys may not even have sufficient knowledge in criminal law.

In cases when the requested person is appointed the defence counsel, they can anytime decide to change and appoint the one of their own choice and the state assigned attorney is revoked. The defence counsel appointed by the requested person is understood to take up the legal representation with the legal effects from the moment when the power of attorney is delivered to the authorities as mentioned by the representatives of judicial authorities (judges and prosecutors). One prosecutor alleged that individuals are better secured access to their procedural rights and appointment of a defence counsel is much quicker in procedure on EAW than in regular criminal procedure.

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

| Is assistance provided in appointing a lawyer in the issuing MS when execution proceedings are ongoing? (When your country is an executing state) |     |    |                             |
|---|-----|----|-----------------------------|
| Interviewees  | YES | NO | Didn't know/answer/remember |

|              |   |   |   |
|--------------|---|---|---|
| Lawyer 1     | - | x | - |
| Lawyer 2     | - | x | - |
| Lawyer 3     | x | - | - |
| Lawyer 4     | - | x | - |
| Prosecutor 1 | - | - | x |
| Prosecutor 2 | - | x | - |
| Judge 3      | - | - | x |
| Prosecutor 4 | - | x | - |
| Judge 5      | - | x | - |
| Total        | 1 | 6 | 2 |

As far as it concerns the role of the defence counsel, all interviewees agreed that the defence counsel is a kind of guide of the requested person in the EAW proceedings, informs the requested person on the steps within the proceedings, consults with them the statements to the authorities beforehand, inspects the case file and provides the information to the requested person, interprets the law to them. The lawyers can point to the procedural errors of the authorities as well as they should oversee the observance of the procedural rights of the requested person.

All interviewees confirmed that the requested person has the right to meet with their lawyer at any time and at any stage of the proceedings. A prosecutor of the regional prosecution stated that the prosecutor's office has interrogation rooms which can be used by the requested person to consult their defence counsel in private.

The placement of the requested person in the detention may pose a challenge due to technical and time constraints in detention facility, but the room for consultation in confidentiality must be provided as mentioned by lawyers as well as judges and prosecutors. Most of the research participants also reported that the requested person has the right to have their lawyer present at all the hearings/interrogations in the course of the proceedings. The procedural act can be carried out without the presence of the defence counsel only if the requested person would agree. The exception is hearing at the initial stage, when it is only being decided if motion for detention will be submitted by the prosecutor, since the requested person does not have the attorney at this stage yet. According to one of the prosecutors, if they do have an attorney, of course the attorney can be present at the initial stage as well. If the lawyer falls ill or has another obstacle in their participation and reports it immediately, another lawyer is appointed, or substitute is sent. The right to defence is applicable since the moment of the arrest until the end of the EAW proceedings.

According to the interviewed lawyers, the role of the defence counsel also involves psychological support provided to the requested person as well as facilitation of communication of the requested person with their family members. Some of the interviewed judges and prosecutors also think that the defence counsel should help the requested persons to communicate with their relatives, find a lawyer in the issuing MS as well as explain to the requested persons some issues related to the EAW proceedings such as the application of the speciality rule.

According to one of the lawyers the possibilities for legal help are relatively limited. The right to defence means that all possible remedies are used in order to effectively defend the requested person and their rights and in order to present their argumentation vis-a-vis the matter but does not necessarily mean the surrender can be prevented. Another lawyer considers the EAW procedure is so strictly formalized that there is almost no chance for the requested person not to be surrendered to the issuing MS. If the requested person does not consent with the surrender, they will only spend more time in detention and will be surrendered anyway at the end.

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

In practice, there are two such situations in which the requested person may need to be assisted with the appointment of the defence counsel in issuing state. In the first situation, Slovakia is an executing state, and the requested person may need assistance of the Slovak authorities in finding a lawyer in the issuing state. In the second situation, Slovakia is an issuing country seeking surrender to Slovakia of a person who wants to apply the right for the dual representation and thus have a lawyer appointed also in Slovakia.

Two interviewed lawyers denied that the Slovak authorities, as authorities of executing country, would help the requested person to arrange for a defence counsel abroad, because "they don't have any information", or because authorities may not be motivated to improve the position of the requested person by having more lawyers and thus being equipped with better legal services. Another lawyer claimed that the clients are advised that they can be presented with the list of lawyers in the issuing country from which they can choose, for example a link to a website, where they could find an attorney in issuing state. If the requested person is, however, placed in detention, it may be impossible to apply this right for them without assistance. Slovak defence counsel can help them with this. If they do not choose a lawyer themselves, they will be appointed one by the issuing state. According to one of the lawyers, the lawyer in executing country can also try to represent the requested person in the issuing state, however, having the lawyer knowledgeable of the legal practice in the issuing state would be better. One of the interviewed lawyers rejected the possibility of having dual representation in both Slovakia and issuing country. This lawyer believed they are informed of possibility to have a defence counsel in the issuing country only after they had already been surrendered to the issuing country.

Overall interviewed representatives of the Slovak judicial authorities confirmed they do not provide the assistance with appointment of the defence counsel in the issuing state. One prosecutor stated they play a mere role of the messenger. If the requested persons inform Slovak authorities that they want to appoint the lawyer in the issuing country, authorities must immediately notify the judicial body in the issuing country, but their role is finished at this point. It is the responsibility of the authorities of the issuing country to facilitate the appointment of the defence counsel in the issuing MS. On the contrary one judge claimed the state does not get involved at all, that it is up to the requested person to contact the authorities of the issuing state. One prosecutor said the Slovak authorities do not provide assistance for the requested person with finding a defence counsel in the issuing state for time reasons as well as because the requested person already has a defence counsel in the criminal proceedings running in the issuing MS. Some of the interviewed prosecutors and judges reported not to have any experience with the requested person who would require the assistance with the appointment of the defence counsel in the issuing state. The requested person usually already knows some attorney in the issuing state or their defence counsel in Slovakia or relatives would help them.

According to several research participants (of both categories), the assistance with finding a defence counsel in the issuing MS is not necessary, since in reality the requested person has often already appointed themselves or has been appointed the defence counsel by the state for the purpose of the ongoing criminal procedure in the issuing MS. The mentioned interviewees reported that if a person is requested by Slovak authorities for surrender for the purpose of the criminal prosecution, then they get to have a defence counsel in the criminal proceedings already running in Slovakia. They also believe that this should not be a problem in other EU countries, hence the right to defence in criminal matters is guaranteed. The more serious crime the person is charged with, the more likely it is that the person is already assisted by a defence counsel in the issuing MS as emphasized by one of the

interviewed prosecutors. One of the lawyers admitted the possibility of having dual representation in both Slovakia and issuing country only if the proceedings are against the fugitive.

It was also mentioned that according to the law if the requested person has no defence counsel in Slovakia, the executing country will request Slovak authorities for assistance and Slovak authorities will send the authorities in the executing country the list of the defence counsels listed in the Slovak Bar Association.

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

| Is assistance provided in appointing a lawyer in the issuing MS when execution proceedings are ongoing in another MS? (When your country is an issuing state) |     |    |                             |
|---|-----|----|-----------------------------|
| Interviewees  | YES | NO | Didn't know/answer/remember |
| Lawyer 1  | -   | -  | x                           |
| Lawyer 2  | -   | -  | x                           |
| Lawyer 3  | -   | -  | x                           |
| Lawyer 4  | -   | -  | x                           |
| Prosecutor 1  | -   | -  | x                           |
| Prosecutor 2  | -   | -  | x                           |
| Judge 3   | -   | -  | x                           |
| Prosecutor 4  | -   | -  | x                           |
| Judge 5   | -   | -  | x                           |
| Total   | 0   | 0  | 9                           |

The role of the lawyer in EAW proceedings in the issuing MS is viewed by the research participants similar to the role of the lawyer in executing MS. If a person is requested for surrender for purpose of criminal prosecution, the requested person needs a defence counsel immediately in the respective criminal procedure, where the merits of the case are examined. The EAW is only a procedural aspect of such a process, ensuring the presence of a person for the purpose of criminal prosecution as explained by one of the lawyers.

The attorney assesses whether the requested person will continuously be remanded in detention, if surrendered, informs them what kind of criminal acts they are allegedly guilty of, what possible defence strategies they have, what sanctions may be possibly imposed to them, what remedies they have to prevent conviction or to be released from the detention.

According to one of interviewed prosecutors, the defence counsel in the issuing state should communicate with the defence counsel in the executing state which is happening in many cases. One of the judges also mentioned that the defence counsel in issuing state should also communicate with the authorities of the issuing state. Several respondents (of both categories) think that the lawyer in the issuing state can gather additional evidence if the person is requested for surrender for the purpose of an ongoing criminal proceeding and this could lead to the release of the client.

One interviewed prosecutor expressed he does not know what in practice can be provided additionally by an attorney in the issuing state to influence the decision of the authorities of the executing country on surrender. The reasons for refusal of surrender are enumerated in the law, and all factual information needed for this decision they have from the judicial authority of the issuing state.

- Communication between the lawyers in both states

The legislation expects that the defence counsel appointed to the EAW proceedings in the executing MS and the defence counsel in the criminal proceedings in the issuing MS would communicate

together. One of the interviewed prosecutors thinks it is about the willingness of those two lawyers to communicate together. The cooperation works mainly in serious cases, as well as if the cooperation involves lawyers from Czech and Slovak Republic. In case of other countries, it is rather exceptional.

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

The Letter of Rights as obtained from one of the interviewed prosecutors is silent about the possibility to have the free-of-charge state-funded defence counsel. The requested persons are informed though that if they do not appoint the defence counsel themselves within certain time limit, they will be appointed one by the state. There were differences recorded among the research participants on the issue of whether the information of free legal aid is provided to the requested persons or not. Some interviewees (lawyers as well as prosecutors) believed that also information about possibility of free legal aid is included in provision of information at the beginning of EAW procedure, one of the prosecutors reported this is not contained in the Letter of Rights handed over to the requested person upon arrest.

Most of interviewees claimed that the right to a defence lawyer includes the free legal aid in case the requested person has insufficient funds and requests for it. One interviewed lawyer believed that the appointment of free legal aid by the court is desirable option for many requested persons. Another lawyer believes that the requested person is not entitled for free legal aid in EAW procedures at all.

If the defence counsel is appointed by the court, the defence counsel provides legal representation at the expense of the state which reimburses the costs of the defence counsel. Subsequently, the state recovers the paid costs from the requested person. The costs are not recovered from the requested person in case the person is entitled to a free of charge defence or the defence for a reduced price. In practice, however, when the person is surrendered to the issuing MS, the chances that the paid costs will be recovered from the requested person are very low as mentioned by one prosecutor and one judge.

Slovak legislation allows a person with access to free defence or defence for a reduced price to be provided with free legal aid (or legal aid for a reduced price) if they request for it. However, they need to prove that they have no sufficient financial means to cover the costs of the legal representation. If Slovakia is an executing state, this would apply accordingly. At the same time, however, the law specifically excludes the possibility of appointment of the free of charge defence counsel as assistance to the defence counsel in an executing state, provided that Slovakia is the issuing state. Still, one of the lawyers expressed opinion that the appointment of the free-of-charge defence counsel in the issuing state is a mere theoretical possibility, but in reality, difficult to implement.

*Q: Are they also informed that they can be provided with free legal aid by the state if the state appointed them a defence lawyer?*

*A: Yes, I think that it is in the information about rights as well. If they can't afford it, yes. The issue of free of charge assistance is very interesting. If there is an appointed counsel ex officio, and the person at the end of the trial is convicted, the court orders them to cover the costs of the procedure including the costs of the legal representation by the ex officio counsel, unless the convicted person is in material need and can't afford it. It is therefore debatable whether it's free. And in the case of an EAW, if the court decided about its execution, the analogy applies to those proceedings and the surrendered person is ordered to cover the costs of the EAW procedure. The question of enforcement is another matter, unfortunately in practice the cost usually ends up most often with the state. Often, we are unable to arrive to any other end. (Defence counsel, Slovakia)*

*Q: Sú informovaní aj o tom, že im môže byť poskytnutá v prípade ustanoveného obhajcu bezplatná právna pomoc zo strany štátu?*

*A: Áno, aj to tam myslím je. V prípade, že si to nemôže dovoliť, áno. Otázka bezplatnosti je veľmi zaujímavá. V prípade, že je ustanovený obhajca ex offio, a osoba na konci konania je odsúdená, ona potom dostane preplatiť tie trovy konania a aj právneho zastúpenia ex offio obhajcom, jedine že by bola v materiálnej núdzi a si to nemôže dovoliť. Je to také diskutabilné, či je to zadarmo. A v prípade EZR, ak je vydaná, tak to analogicky platí aj na tieto konania a je mu určená povinnosť hradiť trovy. Otázka vymáhania, je ďalšia vec, to žiaľ v praxi skončí najčastejšie na štáte. Často sa nevieme dopracovať k ničomu. (obhajca, Slovensko)*

**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                                     | NO | YES   | NO |
| Lawyer 1                     | -                                       | x  | -   | -  |
| Lawyer 2                     | x                                       | -  | x   | -  |
| Lawyer 3                     | .                                       | -  | -   | -  |
| Lawyer 4                     | x                                       | -  | -   | -  |
| Prosecutor 1                 | x                                       | -  | -   | -  |
| Prosecutor 2                 | x                                       | -  | -   | -  |
| Judge 3                      | x                                       | -  | -   | -  |
| Prosecutor 4                 | -                                       | -  |   | -  |
| Judge 5                      | x                                       | -  | -   | -  |
| Total                        | 6                                       | 1  | 1   | 0  |

- Remedies

According to some interviewees (lawyers as well as prosecutors) there are no remedies available in Slovakia if the requested persons were not informed about their right to dual legal representation. If the requested person signed the document confirming that they had been informed about this right, then it is understood as a proof that they were in fact informed about this issue.

As mentioned by one lawyer and one prosecutor, it is improbable that Slovakia as an executing state could be blamed for the issuing state not fulfilling the obligation to ensure the state appointed attorney in the issuing state. The interviewed prosecutors and judges said they have never dealt with such situation. One of the judges confirmed that provision of information is repeated throughout the procedure and at last the court examines the provision of information again during the hearing at the court. If such a thing happened, in the view of the representatives of judicial authorities, the situation would be resolved by making sure the requested person has lawyers in both countries immediately or by granting the procedural rights omitted. If there is a lack of action on the side of the issuing state, the prosecutor can send an urgency to the issuing state and ask them again to cooperate.

Another group of interviewees (mainly lawyers) stated that generally the requested persons can object breaches of their procedural rights, such as provision of wrong information, lack of information on their right to be assisted by a defence counsel. If, nevertheless, a decision is made by the court or the public prosecutor's office, they are entitled to lodge an appeal against it, whether it is a complaint or an appeal, in which the requested persons must justify why they consider that their rights have been violated, and which rights in particular.

According to one of the interviewed prosecutors, there are several criteria that could be considered when looking at the seriousness of the breach of the right of the requested person to be assisted by a lawyer in the issuing MS. Before making decision on merits, the authorities should try to find out and evaluate what the expectations of the requested person from the appointment of an attorney in an issuing state are and why direct cooperation of an attorney in issuing state is important and if it is crucial for the case of the requested person, if it can influence the final decision in merits.

When looking at the available remedies, in case Slovakia is an executing state, one of the judges stated that this is problematic in our legislation because the decision to execute an EAW can only be appealed by the requested person claiming that a mandatory ground for refusal has not been applied in the case. The requested person cannot, in principle, challenge merely the violation of the procedural rights. Paradoxically, the prosecutor can do that, but it is not common. According to the mentioned judge, these particular provisions of legislation have been criticized by the law experts. The legislation should be amended to provide more balanced regulation. Either both parties in the proceedings should have this option, or none of them. According to the mentioned judge, they draw attention to this and hope that this disparity will be removed in a new law on international judicial cooperation, which should address international warrants and EAW in separate legal code.

One of the interviewed lawyers mentioned they have never observed it being corrected through a constitutional complaint as a possible legal remedy. The Constitutional Court could establish that there has been a violation of fundamental rights and freedoms, but at the same time they had to admit it could not prevent the surrender of a person.

According to one interviewed judge, the role of the court is to supervise the observance of the procedural rights of the requested person. The court is competent to step in if a person is not satisfied with their appointed defence counsel and review the performance of this defence counsel. The performance of the defence counsel is understood as poor, if they are not responding to situations which require responding procedurally, they have not seen the requested person for a long time and otherwise are not fulfilling their obligations. In cases of extreme failures, the court steps in and changes the appointed defence counsel. On the other hand, it could be a form of obstruction on the side of the lawyer, since it takes a long time to find a new lawyer as mentioned by the interviewed judge.

### c. Additional obstacles or challenges

The most important challenge identified by almost all of the interviewees is the lack of attorneys specializing in EAW in Slovakia and the fact that cases are often assigned to attorneys who are not sufficiently knowledgeable about the EAW, sometimes even with a lack of criminal law experience.

One of the lawyers admitted that even a high number of attorneys who specialize in criminal law have never encountered the situation of implementation of EAW. One interviewed judge attributed this problem to the fact that the online tool provided by the Ministry of Justice for assignation of attorneys as defence counsels does not provide information on the specialisation of the attorneys. The interviewee as a judge tries to look for a lawyer who is willing to come to an act carried out within the proceeding but who is already experienced in the EAW proceedings. The experienced lawyer may provide the requested person with the assistance of a higher quality.

*We have a circle of people (lawyers) who do it (EAW proceedings) and, I confess, I would rather take a lawyer whom I know to have already been involved in some proceedings and I see that they also have some overview compared to someone completely unknown, for whom I have no guarantee that they will provide the legal assistance to requested person as it should be. When an unknown lawyer comes, they have no idea, because in such a short time from when I reach out to them until when the act takes place, sometimes the act is taking place the next day, they will not have time to study it. (Judge, Slovakia)*

*Máme taký okruh ľudí (právníkov), ktorí sa tomu venujú (konaniam o EZR) a priznám sa, radšej priberiem takého obhajcu, ktorý viem, že už sa zúčastnil na niektorých veciach a vidím, že má aj nejaký*

*prehľad ako nejakého úplne neznámeho, u ktorého nemám záruku, že tej vyžiadanej osobe poskytnú tú právnu pomoc ako má. Keď príde nejaký neznámy, on ľudovo povedané "nemá šajnu", lebo za ten krátky čas, od kedy ho ja oslovím dokedy prebehne ten úkon, niekedy ten úkon prebehne hneď na druhý deň, si to nestihne naštudovať. (sudca, Slovensko)*

Another judge stated it would be beneficial if certain specialisation of lawyers in EAW was required to be assigned to EAW cases (knowledge of EAWA, CPC, the EAW Framework Decision, Framework decision on transfer of proceedings in criminal matters and other related EU law, as well as the case law of the Supreme Court, the ECtHR and CJEU and international bilateral agreements relevant to the proceedings).

One of the lawyers stated that this could be a challenge also for other professions and recommended joint lectures on this topic for all professions (judges, prosecutors, attorneys by for example Judicial Academy).

From point of view of lawyers, they are often very busy, and it is challenging for them to respect the dates of hearings set by the authorities (for instance the date of a hearing scheduled by the court). It would certainly help if attorneys would have access to electronic files in criminal matters, as it is done in civil proceedings and communicate electronically by sending an email or filing it through a state portal. This is already a possibility, but it has to be followed by physical filing in a paper form.

The interviewees (mainly lawyers) also mentioned that the communication of the defence counsel with their clients is challenging if the interpretation is needed (please see chapter 2 of this report).

#### d. Discussion of findings

The right of the requested person to be assisted by the lawyer in the EAW proceedings stems from legislation and according to the interviewed judges, prosecutors and lawyers it is a very important procedural right.

In practice, several issues have been observed that may interfere with enjoying this right by the persons requested under the EAW fully.

First of all, as reported by the research participants, the initial information provided to the requested person upon arrest on the right to a lawyer is very limited. The persons are informed that they are entitled to find a lawyer, however, there is little assistance provided to them in how to find and contact the chosen lawyer. The practice involves a lack of information about the possibilities to find a lawyer, as well as restrictions of the communication possibilities (the requested persons are not allowed to use the internet, they can call, but only once). The requested persons are also not informed in detail about what it entails to have their own lawyer, or a lawyer appointed ex officio and about the details of having access to legal aid free of charge or for a reduced price. Even if the deviances from these practices have been recorded, for instance a prosecutor providing access to the internet and contacts to lawyers and facilitating the communication with the lawyers, it is evident from the research findings that the access to information about legal assistance and assistance with finding and contacting the chosen lawyer are limited. These shortcomings may lead to the situation, as mentioned by one of the interviewed prosecutors, that most of the requested persons do not have the ambition to find their own lawyer, they let the judicial authorities appoint the defence counsel ex officio.

Another problem identified by the research participants is the lacking expertise of many lawyers in the EAW proceedings who agree to represent the requested person even if they are not experienced enough in the EAW proceedings. The defence counsels appointed ex officio are selected based on an online tool provided by the Ministry of Justice, which however does not enable to choose a lawyer with expertise in a certain field, specifically in EAW proceedings. Given the fact that the role of the

defence counsel is seen as important by the research participants, the low quality of the assistance and lack of expertise may have a serious impact on the situation of the requested person within the proceedings. The judicial authorities, for instance, rely on the defence counsels to explain the EAW procedure to the requested person, to provide them with information before the procedural steps are taken within the proceedings as mentioned in section one of this report.

The information about the dual legal representation in the EAW proceedings is not always provided to the requested person. The authorities do not provide any assistance in finding a lawyer in the issuing state because in their opinion the proceedings running there is out of their competence, or they believe that the requested person already has a lawyer in the criminal proceedings in the issuing state. Then also, as mentioned by one of the interviewed lawyers, the judicial authorities want the EAW proceedings to proceed quickly and smoothly, then they are not motivated to provide the information about the right to dual legal representation since this could improve the position of the requested person in the EAW proceedings.

If the legal assistance provided within the EAW proceedings lacks a certain standard and is not provided adequately and these shortcomings are detected by the judge or prosecutor, the defence counsel of the requested person can be replaced by another one. As mentioned by one of the interviewed judges, the requested persons themselves cannot challenge the breach of their procedural right to have a lawyer, this can be done only by a prosecutor which is seen as a legal shortcoming of the current legislation on the national level. However, representation by a defence counsel in EAW proceedings is mandatory.

#### 4. Issuing and Execution of the EAW

##### a. Legal overview

#### Slovakia as an issuing state

**Slovak court can issue an EAW** for a criminal offence punishable under the Slovak law with sentence of imprisonment with a maximum duration of **at least twelve months**.<sup>64</sup> They can also issue an EAW in cases, where surrender should be requested for the execution of a custodial sentence if the term of the imprisonment imposed or the remainder of it is **at least four months**. Several sentences should be calculated together.<sup>65</sup>

Another condition for issuance of an EAW is that a domestic or international **arrest warrant** or a **decision by which a custodial sentence** has been finally and enforceably issued for the same criminal offence.<sup>66</sup> The court issues a domestic arrest warrant, if one of the grounds for criminal detention is given<sup>67</sup>, but the person cannot be summoned, brought before the court or arrested and their presence at the interrogation or other procedural act thus cannot be ensured.<sup>68</sup> Therefore, if there is a **presumption that the accused or convicted person may be or has been located in another MS** and it is necessary to request for their presence, the judge will issue an EAW in respect of them.<sup>69</sup>

If a EAW is issued for surrender of a person to serve a custodial sentence, which was adopted against them in absence, the EAW additionally contains also information on the manner in which the right to defence in the proceedings has been secured.<sup>70</sup> If any of the criminal offenses for which surrender is sought can be assigned to one or more of the categories under Article 2(2) of the *EAW Framework Decision*, the court will indicate this fact in the EAW.<sup>71</sup>

The details of the surrender of the person are arranged by the SIRENE bureau or INTERPOL unit. The authority which took possession of the surrendered person will deliver them to the court, whose judge issued the warrant, without delay. This court will, within 24 hours, decide about remanding them in preliminary detention, release them or hand them over to the competent court.<sup>72</sup>

**Proportionality Principle** is contained in Section 5(3) of the *EAWA*: *“The court shall not issue an EAW, if before its issuance it is obvious that the surrender of a person from abroad would result in harm disproportionate to the importance of the criminal proceedings or to the consequences of the offence.”* The court which issued the EAW will **revoke** it, if the grounds on which it had been issued, ceased to exist or if the court subsequently finds that such grounds have not existed. An EAW issued at the

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<sup>64</sup>Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 4(1)(a).

<sup>65</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 4(1)(b).

<sup>66</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 5(2).

<sup>67</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 71: grounds for criminal detention: risk of absconding, collusive behaviour or continuing in criminal activity

<sup>68</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 73.

<sup>69</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 5(1).

<sup>70</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 5(6).

<sup>71</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 5(7).

<sup>72</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 8.

request of the public prosecutor should be revoked by the court also at the request of the public prosecutor.<sup>73</sup>

The requested person may **challenge the issuance** of the EAW in Slovakia by claiming the reasons for its issuance<sup>74</sup> never existed or have ceased to exist requesting the court which issued it to revoke it. The proportionality principle provides for additional grounds for challenging the issuance and requesting revocation of an EAW, if before the issuance of the EAW it must have been obvious that the surrender of a person from abroad would result in harm disproportionate to the importance of the criminal proceedings or to the consequences of the offence.<sup>75</sup>

The *CPC* contains proportionality provision<sup>76</sup>, which applies to revocation of the international warrant, identical with the above provision in Section 5(3) of the EAWA, which stipulates situations in which EAW should not be issued. The *CPC* proportionality provision in addition adds examples of circumstances, which should be taken into account, such as age, social status or family circumstances of the requested person. These are not enumerated in the EAWA proportionality provision but could serve as an interpretation tool also when evaluating proportionality of issued EAW.

Before the surrender, the requested person may also request **guarantees** from the Slovak Republic via executing state. The EAWA specifies only two concrete situations of guarantees. The executing State can make the surrender of a person for criminal prosecution to the Slovak Republic conditional upon guarantee that the Slovak authorities would allow them to serve any imprisonment sentence imposed by the Slovak court in the executing State. The second situation relates to reservation of the executing state towards the proceedings in Slovakia, which preceded the imposition of the imprisonment sentence. Such person must be heard by the Slovak court. If the person agrees to serve the sentence imposed, the court can order the sentence to be carried out. However, if a requested person does not consent, the Slovak court cancels the judgement imposing this sentence to the extent necessary, decides about detention at the same time and the criminal proceedings will continue on the basis of the original indictment.<sup>77</sup> If the executing State has surrendered the person to the Slovak Republic based on guarantees provided, these guarantees must be observed.<sup>78</sup> If the Slovak court, which issued the EAW, decides on the granting of such a guarantee, they must examine if granting such guarantee would be in accordance with the legal order of the Slovak Republic.<sup>79</sup>

### **Slovakia as an executing state**

According to Section 4 par. 2 of the *EAWA* the EAW **can be executed** in Slovakia:

- a) if it has been issued for the **purpose of criminal prosecution** of an act which is a criminal offence punishable by a sentence of imprisonment with a maximum of **at least twelve months** and
- b) if it has issued for the **purpose of executing a custodial sentence** already imposed for a criminal offence in the length of **at least four months**. Multiple sentences or unspent remainders of multiple sentences are calculated together.

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<sup>73</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 6(1).

<sup>74</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 4(1) and Section 5(2).

<sup>75</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 5(3).

<sup>76</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 492 (1) (d).

<sup>77</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 9(4).

<sup>78</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 9(1).

<sup>79</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 9(2).

Another condition for execution of EAW is that the act is considered a criminal offence both under the law of the Slovak Republic and the law of the issuing State. Where surrender is sought for an offence under one or more of the categories of criminal offences referred to Article 2(2) of the *EAW Framework Decision* punishable in the issuing State by a custodial sentence of at least three years, the executing judicial authority should not examine whether the offence is punishable under the law of the executing State.<sup>80</sup>

The EAW has **the same effects** on the territory of the Slovak Republic as the **arrest warrant** issued by the Slovak authorities according to the *CPC*.<sup>81</sup> If an arrest warrant has been issued, the arrest will be carried out by members of the Police Corps, Military Police or armed members of the Financial Administration. If it is necessary for the execution of the warrant, they can also conduct the search the residence. The members of the Police force are obliged to immediately inform the responsible public prosecutor about the arrest. The public prosecutor notifies the judicial authority of the issuing state about it.

The public prosecutor must either release the requested person within 48 hours (in case of terrorism related offences within 96 hours) from the arrest or submit the motion to remand a person in preliminary detention to the judge. The motion must be accompanied by the EAW or the SIS alert.<sup>82</sup> The judge of the regional court will interrogate the person and decide whether to remand them in preliminary custody or to release them within 48 hours from receiving them and the prosecutor's motion for remand them in custody. Together with the decision to release the person from detention the judge can also adopt appropriate measures or restrictions to secure the presence and cooperation of the requested person in the EAW.<sup>83</sup>

The regional public prosecutor's office in whose district the requested person has been arrested is competent to initiate the EAW proceedings. The public prosecutor informs the police authorities about the EAW and orders them to find or to arrest a person. Police authority may also identify a person who is requested based on EAW in the framework of its own police activity. In such situation the police authority detains a requested person and immediately informs a regional public prosecutor according to the place of detention who is competent to carry out the preliminary examination. If the requested person was released from detention, the competence to act in the EAW proceedings passes to the regional public prosecutor's office in whose district the person resides or is staying.

The General Prosecutor's Office of the Slovak Republic conducts preliminary examination of the alerts in SIS II and reduces their list to those which are enforceable according to the law in the Slovak Republic. If the General Prosecutors office finds that an alert is not in accordance with the legal order, international obligations or important interests of the Slovak Republic, or in accordance with the Agreement on the implementation of the Schengen Agreement, they will ask SIRENE to **mark the alert**. The marking of the alert constitutes an obstacle to the detention of the person. On the basis of the alert so marked, only a search can be carried out for the purpose of establishing the whereabouts of the person, but a person cannot be arrested.<sup>84</sup>

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<sup>80</sup>Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 4(3).

<sup>81</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 4(7).

<sup>82</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 13.

<sup>83</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 15(2).

<sup>84</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 12.

The regional public prosecutor competent in the individual case will also conduct a **preliminary examination of the EAW**. The aim of the preliminary examination is to establish whether the legal conditions for the execution of the EAW are met.<sup>85</sup>

According to the Supreme court of the Slovak Republic *“the preliminary examination is aimed at finding out and document procedurally the factual and legal conditions for surrender of the requested person to a foreign country by methods prescribed by the law or to ensure additional documentation necessary in order to decide about the execution of the EAW. In this phase it is not possible for the court to examine all legally relevant considerations which are factually and legally important for the decision of the court on execution of the EAW.”*<sup>86</sup>

The further procedure depends on the fact whether the requested person **consents to the surrender** based on the EAW or not. If the consent with the surrender is given, the regional public prosecutor is authorised to decide about the execution of the EAW and surrender the requested person to the issuing state. If the requested person disagrees with the surrender, provided that the conditions for surrender are met, the public prosecutor must submit the proposal to execute the EAW for decision of the regional court.

The public prosecutor can decide about the execution of the EAW in the **simplified procedure**, only when the requested person consented with the surrender. The public prosecutor must inform the requested person about the consequences of such a consent and about the consequences of the renunciation of the application of the speciality rule.

The law requires for the public prosecutor to prepare a written record about the granting of the consent by the requested person in the presence of their defence counsel and the interpreter. The record contains the information about the declaration of the consent with the surrender as well as the declaration of the consent or non-consent with the renunciation of the speciality rule. After the requested person’s consent was recorded in this manner, provided that the legal conditions for execution of the EAW are met, the public prosecutor has 10 days to decide about the execution of the EAW. The law does not allow any remedy against the decision of the public prosecutor on execution of the EAW.

If the requested person **disagrees with the surrender** to the issuing state, but the conditions for execution of the EAW are met, the public prosecutor submits the case to the regional court for its examination and decision. The court must decide within 60 days from the arrest of the requested person. The requested person and the defence counsel are given an opportunity to express their position towards the execution of the EAW.

The court will decide to refuse execution of the EAW, if there are mandatory grounds for refusal of the EAW<sup>87</sup>. There are additional reasons according to Section 23(2) of the EAWA, which are optional. In these optional situations it is within the discretion of the judicial authority deciding on the execution of the EAW, whether it should or should not be executed on the territory of the Slovak Republic vis-à-vis the requested person.

**Mandatory reasons<sup>88</sup> for refusal** of the execution of the EAW are identical to the grounds according to the article 3 of the EAW Framework Decision. The court must refuse execution of the EAW in these situations:

- provided that the Slovak law allows for prosecution of the offence for which the EAW was issued in Slovak Republic, but it is completely covered by an amnesty granted in Slovakia,

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<sup>85</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 19(1).

<sup>86</sup> Supreme Court of the Slovak Republic, no. 4Tost 39/2015.

<sup>87</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 23(1).

<sup>88</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 23(1).

- the executing judicial authority found out that the criminal proceedings in another MS against the requested person for the same act has resulted in a final conviction judgment which has already been enforced, is currently being enforced or can no longer be enforced under the law of the MS in which it was issued,
- the requested person is not criminally responsible for the conduct for which the EAW was issued under the law of the Slovak Republic for reasons of age.

**Additional mandatory grounds** for refusal of the execution of the EAW based on EAWA are following:

- the act for which the EAW was issued is not a criminal offence in relation to taxes, duties or currency under the law of the Slovak Republic and is not an act under Article 2(2) of the *EAW Framework Decision*. The execution may not be refused solely because the law of the Slovak Republic does not regulate the same kind of taxes or duties or does not contain the same provisions concerning taxes, duties, customs duties or currency as the law of the State of origin<sup>89</sup>.
- provided that the Slovak law allows for prosecution of the offence for which the EAW was issued in Slovak Republic, the executing judicial authority has established that the prosecution or the execution of a custodial sentence of the requested person is time-barred according to the Slovak law<sup>90</sup> or
- the court has recognised the decision on the basis of which the EAW was issued for purpose of its enforcement in the Slovak Republic, pursuant to a special regulation on recognition and enforcement of the criminal sanctions related to the deprivation of the liberty.<sup>91 92</sup>

**Facultative reasons for refusal**<sup>93</sup> of the execution of the EAW means that the court can refuse to execute the EAW, but it is up to the discretion of a judge, if:

- the requested person is prosecuted in the Slovak Republic for the same act for which EAW has been issued,
- the Slovak authorities have decided that for the offence for which the EAW was issued the prosecution should not be initiated or continued with, or a final decision has been given in another MS against the same person for the same offence, which prevents further proceedings,
- the executing judicial authority has information that proceedings in a third State<sup>94</sup> against the requested person for the same act resulted in a final conviction judgment which has already been enforced, is currently being enforced or can no longer be enforced under the law of the third State in which it was taken,
- the EAW relates to acts which under the law of the Slovak Republic are considered to have been committed partially or fully on the territory of the Slovak Republic, on board of a vessel flying the flag of the Slovak Republic or on board an aircraft registered in the Slovak Republic; the execution of EAW may also be refused in this case if the act is not a criminal offence under the law of the Slovak Republic<sup>95</sup>, or

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<sup>89</sup> This ground is facultative under the article 4(1) of the EAW Framework Decision.

<sup>90</sup> This ground is facultative under the article 4(4) of the EAW Framework Decision.

<sup>91</sup> Slovakia, Act on mutual recognition and enforcement of judgments imposing criminal sanctions involving deprivation of liberty in European Union (*Zákon o uznávaní a výkone rozhodnutí, ktorými sa ukladá trestná sankcia spojená s odňatím slobody v Európskej únii*), No. 549/2011 Coll. as amended, 2 December 2011.

<sup>92</sup> This ground is facultative under the article 4(6) of the EAW Framework Decision.

<sup>93</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 23(2).

<sup>94</sup> This ground is facultative under the article 4(5) of the EAW Framework Decision.

<sup>95</sup> Unlike with mandatory ground under Section 23(1)(d) the execution of the EAW could be refused based on the ground that the act is not a criminal offence in the Slovak Republic also for the acts under article 2(2) of the EAW Framework Decision.

- the EAW relates to acts committed outside the territory of the issuing State and the law of the Slovak Republic does not allow prosecution for the same acts if they were committed outside the territory of the Slovak Republic.

The last facultative ground for refusal involves **conviction in absentia**. If the EAW is issued for the purpose of execution of the imprisonment sentence and the requested person did not personally participate in the proceedings leading to the decision on imprisonment, the court may refuse to execute the EAW. This facultative ground could not be, however, used for refusal of execution of the EAW, in following situations, when the EAW states that, in accordance with the procedural requirements of the law of the issuing State, the requested person

- was informed of the date and place of the proceedings which led to the decision imposing the sentence, or it was otherwise clearly established that they were aware of the planned proceedings and informed that the judicial authority of the issuing State may issue a decision even without their participation in the proceedings, or
- being aware of the scheduled proceedings they authorized a legal representative to defend them in the proceedings, and the legal counsel defended them in the proceedings, or
- after having been served with the decision and expressly advised of the right to apply for a retrial or for an appeal they expressly stated that they will not lodge an application for a retrial or for an appeal against the decision, or has not lodged an application for a retrial or an appeal within the relevant time limit, or
- despite having not been served with the decision, will be served with it as soon as they are surrendered to the issuing State, and at the same time they will be expressly advised of the right to a retrial or to appeal and the time-limit for submitting an application for a retrial or for an appeal as set out in the EAW.<sup>96</sup>

The right to apply for a retrial or for an appeal must include the right of the person to participate, must enable re-examination of the merits of the case, including new evidence, and must offer possibility to lead to the annulment of the original decision and the adoption of a new one.

The fact that the requested person is a **citizen of the Slovak Republic** is not itself a ground for refusing execution of the EAW. The same applies in relation to a requested person who should under international law receive **the same treatment as citizens** of the Slovak Republic.<sup>97</sup> These categories and Slovak citizens can request for execution of the sentence in Slovakia.

Decision of the court on execution of the EAW may be **appealed** by both the requested person or the public prosecutor, and the appeal has a suspensive effect, which means that the appeal effectively delays validity and enforceability of the surrender. The legal grounds for appeal of the decision of the court on execution of EAW are limited. The requested person can appeal the decision of the court on execution of the EAW **only based on the legal grounds corresponding to mandatory grounds for refusal** of execution of the EAW.<sup>98</sup> The appeal of the public prosecutor against the decision of the court may be based both on the mandatory and **facultative grounds** for refusal of the execution of the EAW. Also, on the public prosecutor can submit the appeal **for procedural reasons**, on the ground that the decision of the execution of **the EAW has breached the provisions of the EAWA**. The appeals are decided by the Supreme court of the Slovak republic.

The court which decided about the execution of the EAW ensures that the steps necessary for the execution of the surrender of the requested person to the issuing state are conducted. The execution

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<sup>96</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 23(3).

<sup>97</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 23(4).

<sup>98</sup> Slovakia, European Arrest Warrant Act (*Zákon o európskom zatýkacom rozkaze*), Act no. 154/2010 Coll. as amended, 9 March 2010, Section 22(7).

of the surrender must take place latest on the 10th day following the day of the validity of the decision on execution of the EAW.

There is no provision in the EAWA, which would allow for margin of appreciation of the **proportionality** when it comes to the decision on execution or non-execution of the EAW by the Slovak court. Supreme court argues that the court should examine concrete facts of the case showing the existence of the real reasons to believe that the person will hide or abscond. The fact whether it is a foreigner, is staying legally in Slovakia, any kinds of relations in Slovakia, personal, family and property relations in Slovakia, the employment or any other income generating activity in Slovakia or criminal history (proportionality) should be taken into account, when deciding about the detention.<sup>99</sup>

There are no legal provisions in general which would explicitly allow for the right to a fair trial and conditions of criminal detention in the issuing state to be taken into account when deciding whether to execute an EAW issued by another MS.

#### **b. Issuing and Execution of the EAW in practice**

- Factors considered when issuing the EAW

##### **Legal requirements**

All interviews confirmed that the national authorities must respect the legal requirements stipulated by EAWA. Formal requirements are the existence of the classical decision on starting of the criminal prosecution or imposing custodial sentence as a result of the criminal conviction and of the domestic arrest warrant in accordance with the Section 73 of the CPC.

After the submission of the indictment, the main task of the court is to carry out all actions needed to finalize the proceedings and execute the ruling. Either there is a criminal prosecution going on and the person is needed to complete the prosecution, or the sentence has already been delivered and surrender need to be requested for the execution of the unconditional prison sentence.

The issuing of EAW against the person who escaped or tries to avoid the proceedings/execution of the sentence is viewed as an act necessary for ensuring the presence of the accused/convicted person. According to one of the judges, the court can also use other means, for instance, imposing the disciplinary fine on the accused person, or presentation of the accused person by police. The issuing the EAW is used in cases when, for instance, the address of the accused persons is unknown, they avoid being served by the court or continue in the criminal activities.

The EAW is already issued by the court as the last resort measure to ensure the presence of accused/convicted person. According to a judge of the regional court, the EAW is issued by the court in cases where there were already steps taken before the issuing of EAW. These steps involve: the police reports, the issuing of the arrest warrant, the evidence that the person does not stay at the place of their residence, the person does not collect letters from the court. These all facts are considered sufficient reasons for issuing the EAW against that person. Also, the court must have been the information that the accused is in one of the MSs.

According to one of the interviewed judges, there are proceedings during which the presence of the accused persons is not needed, or the accused person agreed with proceedings in their absence. The decision to conduct proceedings in absentia is very individual and depends on the assessment of every judge. The persons must be, however, guaranteed the right to be searched for, also if they were convicted in absentia and were not searched for before, they should be able to contest it.

According to one of the regional prosecutors, if search is not successful for 3 months or a half of the year, these are good reasons to believe that the person is abroad and to issue EAW or/and the

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<sup>99</sup> Supreme Court of the Slovak Republic, no. 4Tost 39/2015.

international arrest warrant. In order to confirm presence of the wanted persons abroad the authorities search for indications of their possible whereabouts in other countries, such as records from any airports, crossings of the borders etc. in cooperation with Interpol and SIRENE.

The law states for which offences and for what level of penalty the issuance of EAW is feasible and requires that the arrest warrant had been already issued. Therefore, factors to be considered are the act of the crime, its legal qualification, and whether it can be subsumed under the legal qualification of criminal acts listed in the EAWA, whether they meet the conditions for a possible penalty. According to one of the interviewed lawyers, since the EAW has a prescribed form, the judge who issues the EAW has to follow the form, having to state exactly those facts or having to tick exactly those details that are required. One of the judges mentioned that in practice, the EAW is issued by the court mainly in cases of persons who have a criminal past, who try to avoid the proceedings, since they face more severe punishment. In cases when the person is accused for the first time, or the case concerns a less serious crime, the EAW is usually not issued.

### **Proportionality 1**

As mentioned by the research participants (of both categories), one of the legal conditions for issuing of the EAW is also proportionality. Even if the legal requirements are met, the EAW should not be issued, if it would be too harsh of an interference, for example in case of less serious offenses. As for the issuing of EAW, the principle of proportionality, as well as the principle of restraint, should be both taken into account as mentioned by one the judges.

According to the interviewees (of both categories), in practice, when considering proportionality, the approach of the courts is individual and there may be differences in the extent to which judicial authorities in Slovakia take proportionality into account when issuing EAW. There are no interpretation tools for judges when it comes to proportionality, there are no rulings of the Constitutional Court to explain this question and provide opinion on how proportionality should be applied as mentioned by one of the lawyers.

Some interviewees (of both categories) stated that the proportionality is not always taken into account by respective authorities. One interviewed lawyer believed that the proportionality should be taken into account much more. On the contrary the interviewed prosecutor thinks that the Slovak judicial authorities pay a lot of attention to the proportionality factor. One interviewed judge stated that the courts have started to consider proportionality much more than they used to. Another judge said that the EAW is not issued based on the will of the judge but based on conditions predefined by the law.

When issuing the EAW, the proportionality or purposefulness of the interference with the right to privacy is weighed by the seriousness of the criminal activity, a penalty that may be imposed in case of surrender, length of time since the crime was committed (could make severity of the crime relative) and its consequences. The court must also evaluate what kind of criminal offense it would be, whether there is a public interest in prosecuting it, if a person does not have any strong bonds abroad for which they should not be surrendered to Slovakia. The court should also take into account the age or consider if the case cannot be resolved in any other manner, such as handing over of the criminal prosecution to another MS. All these aspects are considered by the court as it was mentioned by research participants of both categories.

Another factor which was mentioned by the representatives of judicial authorities is the prospect of arrest of the wanted person, prospect of their conviction and of imposing a non-conditional sentence of imprisonment, as well as of mutual economy of the seriousness of the criminal offence and the costs of the surrender.

According to one judge, in case of the less serious crimes the EAW is not issued even if the offence falls into the categories of crime specified by the Framework decision. This is the usual practice unless the time factor is encountered which means that the criminal proceedings are extended because the person is not available for a longer time. In such cases, the issuing of EAW is also possible for a less serious crime because of the length of the criminal proceedings.

Another judge mentioned that proportionality can also play a role in situation when a person has evaded the prosecution. The court can consider that the presence of the accused is not necessary, and the proceedings can end without them. It has to be balanced against the fact that these can also be offences under the catalogue of the EAW Framework Decision. The mentioned judge offered an example of evading the alimony obligation, which in many countries is not even a criminal offence. When the United Kingdom was still in the EU it was a big problem to get someone surrendered for the prosecution of this criminal offence in Slovak republic. The UK emphasized the principle of proportionality. Now, as one interviewed prosecutor stated, they would not issue an EAW for a person who allegedly committed a criminal offence of neglecting payment of the alimony.

Some interviewees (of both categories) understand proportionality as already translated to the conditions of law stating in which situations it is reasonable for the state to require that the person is criminally prosecuted or serves the sentence. According to one lawyer, for example, if the sentence conditions are formally met, then proportionality is no longer a consideration.

The interviewed regional prosecutor informed that in their practice, if the district prosecutor's office is considering issuing the EAW, it consults it with the regional prosecutor's office first, and the regional prosecutor's office does take proportionality into account. If they find issuing of EAW would not be proportionate, they recommend not to issue EAW, and their recommendation is binding for the district prosecutor's office. The interviewee though could not say with certainty this practice is applied at every prosecutor's office. The interviewed prosecutor who is part of the authority supervising the EAW proceedings revealed that the prosecution has been criticized for this practice by EU authorities for that it slows down the whole process and they had to make amends and make the process quicker.

*It was precisely we, as the Slovak Republic, who took proportionality into account, so we followed a two-level system when issuing (European) arrest warrants, meaning that the superior prosecutor's office approved whether or not a motion would be filed in the individual case. We have been very criticised by the European Union institutions for slowing down the whole process, so basically yes, these factors are being taken into consideration, but we have adapted the process itself to speed up the whole proceedings. (Prosecutor, Slovakia)*

*Práveže my sme proporcionality brali mimoriadne do úvahy, ako Slovenská republika, takže sme pri vydávaní zatykačov išli dvojlevelovým systémom, to znamená, že nadriadená prokuratúra schvaľovala, či bude v danej veci podaný návrh, alebo nebude podaný návrh. Boli sme veľmi skritizovaný orgánmi Európskej únie, že spomaľujeme celý proces, takže v zásade áno, sú tieto faktory brané do úvahy ale samotný proces sme prispôbili tomu, aby predsa len bolo zrýchlené celé to konanie. (prokurátor, Slovensko)*

### **Challenging the issue**

Apparently, none of the interviewees has many experiences with challenging issuance of the EAW or raising objections against it by the requested person. Some of them stated it would be also important what the concrete facts of the case would be as well as what would be the argumentation that the proportionality was not respected.

Some interviewees of both categories admitted that the person concerned may challenge the issuing of the EAW on the grounds of disproportionality, stating that the application in practice would be up to the attorney of the requested person in the issuing state who should try to work towards cancellation of the EAW. Other respondents of both categories were of the opinion that there is no remedy which can be used to challenge issuance of the EAW, concluding that proportionality grounds are strictly for the judge to consider and decide if the EAW is issued or revoked.

*They can challenge it (the issuing of EAW) but basically, we cannot do anything about it. Once the warrant is issued it is binding for us. That is when Slovakia is the executing country. But if it happened here, that a court issues EAW, the person is arrested somewhere else and wants to challenge issuing of the EAW, then it is solely the judge's discretion whether they revoke the EAW or not. Because the*

*judge cannot guarantee a remedy against the decision to surrender a person. That is not up to the requested person. It is done in preliminary criminal proceedings at the request of the prosecutor. It is the court's right to revoke it, but there is no remedy. (Prosecutor, Slovakia)*

*Napadnúť to (vydanie EZR) môže, ale v zásade, my s tým nevieme nič robiť. Keď je zatykač vydaný, sme ním viazaní. To je v prípade, že Slovensko je vykonávací krajina. Ale keby sa to stalo u nás, že nejaký súd vydá EAW, zadržia osobu inde a ona to teraz bude namietajú, tak je to už len na uvážení toho sudcu, či odvolá alebo neodvolá EAW, lebo on nevie garantovať opravný prostriedok proti rozhodnutiu o vydaní. To nie je viazané na tú osobu. To je v prípravnom konaní na návrh prokurátora, je to právo súdu, ale nie je tam možnosť podania opravného prostriedku. (prokurátor, Slovensko)*

According to the representatives of the judicial authorities (prosecutors as well as judges), they cannot imagine how the issuing of EAW could be appealed because of the proportionality concerns. There is no specific appeal procedure, nor it is clear at which stage of the proceedings the requested person would object lack of proportionality of an EAW. They also think there is no reason for proportionality concerns, since the EAW is not issued based on the will of the judge, but it is preceded by some of the already mentioned legal conditions. One of the prosecutors wondered that if the formal conditions for issuance of the EAW were met what would then the requested person challenge.

In the view of the interviewed lawyers, the requested person would not be able to challenge the issuing of an EAW on proportionality grounds, since proportionality is not listed in the law among the conditions that need to be considered. In other words, the requested person could challenge the issuing of the EAW because of proportionality concerns, but the judicial authority would probably not deal with it. However, there are other issues the requested persons can raise, for instance they could comment on the nature of the offence, raise their objections that they had no knowledge of their conviction in the issuing country, that their rights to participate in the proceedings were violated, whether they have been served with any documents in their own hands and appropriateness of the punishment. If the condition of the length of sentence or of double criminality would not be met, the requested person could challenge it. Hypothetically, it could also be argued that the offence should have been treated differently so that it would not meet the conditions of the minimum sentence.

- Factors considered when executing the EAW

## **Proportionality 2**

According to most of the research participants, it is not possible for the requested persons to appeal against execution of the EAW issued in another MS on the grounds of disproportionality. The issuance of the EAW is the responsibility of the issuing state, and the requested persons should raise their objections there.

As mentioned mainly by the prosecutors and judges, Slovak authorities follow the principle of international cooperation and of the trust between the EU MSs, so they believe they cannot interfere with the jurisdiction of another MS. According to the respondents, the goal of the EAW is to make the procedure quicker and simpler and to ensure the protection of the EU space from crime. The EAW should make it the easiest and enable the EU countries to surrender the person wanted for the criminal prosecution in another MS. One of the interviewed prosecutors expressed opinion that in practice some of the MS consider proportionality in the executing state which is not within the meaning of the Framework decision as well as not in line with the principles of good practical application.

The research participants mostly believe that the law does not allow authorities of the executing state to examine proportionality of the issued EAW. The authorities do not ascertain conditions for issuance of the EAW, they only examine the rights of the requested persons, reasons for their detention and in the second stage if there are mandatory or facultative reasons for refusal of surrender. If there is no reason to refuse surrender, then the requested person is surrendered. There is no reason offered by

the law which says that the surrender could be refused if it is minor, marginal or disproportional or for mitigating reasons. One of the judges, though, admits there is relatively small margin of discretion not to carry out an EAW.

Another reason mentioned by research participants (of both categories) on why the authorities of the executing state cannot consider the proportionality concerns is that the judge only has an EAW file and cannot see the whole file (of the criminal proceedings). Therefore, they cannot examine whether all procedural rights of the requested person in the issuing state have been observed, especially in situation when the papers from the issuing state confirm that they have been observed. They cannot examine new evidence which has not been used in the previous procedure in the issuing state. New evidence can only be used to renew the procedure in the issuing state.

On the other hand, the research participants also mentioned several situations in which the proportionality is/should be taken into account by authorities of the executing state. According to one of the prosecutors, the judgments of the CJEU taking into account proportionality concerns in the issuing state could only be used by the person who had already been surrendered to the issuing state. This would be situation when they want to complain that the EAW should not have been issued against them, and about the fact that the execution of EAW resulted in their harm in a form of a damaged reputation etc. One of the judges alleged that proportionality in executing state is usually challenged in connection with the length of the detention or disproportionality of the punishment.

In lawyers' view, the competent authorities would pay attention to the proportionality issue, if they wanted, but they have no obligation to deal with it. If the Slovak authority received an EAW issued by another MS and formally everything seems to be in compliance with the law, they would not search for obstacles to the execution of the EAW.

According to another lawyer the authority which issued the EAW should also examine proportionality, therefore the authorities of the executing country should also take into account if the requested person raised concerns about the proportionality of the EAW. Everyone has a family, social and working environments, and the decision on transferring them from one country and bringing them to another one should be done in a sensitive manner. So, it is not just about the nature of the criminal activity, but maybe also about examining whether there are no other possible instruments on how to achieve the goal.

*Can you imagine if the law enforcement authorities considered the proportionality objections to be so serious and strong that they would ask the issuing state to withdraw the warrant and rather use some other measure?*

*I cannot imagine that. But the state can revoke the EAW at any time, so it is possible. The question is whether that is implemented, I don't know, I haven't come across such a thing. But as far as we are talking materially about the basic pillars of the whole EAW procedure, proportionality is very important. (Defence Lawyer, Slovakia)*

*Viete si predstaviť, že by orgány činné v trestnom konaní považovali námietky ohľadom proporcionality za tak závažné a silné, že by žiadali štát pôvodu, aby ten zatykač radšej stiahol a využili nejaké iné opatrenie?*

*To si neviem predstaviť. Ale ten štát môže kedykoľvek EZR odvolať, takže možné to je. Otázka, že či sa to realizuje, neviem, s tým niečím som sa ešte nestretol. Ale pokiaľ sa bavíme materiálne o základných pilieroch celého EZR konania, proporcionality je veľmi dôležitá. (obhajca, Slovensko)*

As for the communication between the authorities of issuing and executing MS, they can be in informal communication at the level of the prosecutor's office. The prosecutor who lodged the motion for issuing the EAW liaises with the prosecutor in the executing country. It is individual, and the human factor enters this issue very significantly. It depends on what objections the requested person makes and whether authorities need additional information. However, according to one of the prosecutors

there is no mechanism for the authorities of the executing state to propose the use of other measures to replace the EAW.

Another prosecutor stated they would contact authorities of the issuing state with request to cancel the EAW, if the requested person died. Or if in the process they have learnt that a requested person has limited mental capacity evidenced by the ordered expert psychiatric opinion. In such case it is not possible to continue any procedure with this person, but it is up to issuing state to act upon the EAW. If it is an EAW for the execution of the sentence and the person has citizenship or habitual residence in Slovakia, the person may request that the execution of the sentence be carried out in Slovakia as mentioned by one of the judges.

### Conditions of detention

According to the research participants, when deciding on the execution of the EAW the Slovak authorities do not usually consider the detention conditions in the issuing MS. It is not their duty to assess the legal situation in another MS. This view stands on the principle of mutual recognition of judicial decisions in criminal proceedings stemming from the Treaty of European Union and on the principle of mutual trust among MS based on the case law of the European Court of Justice. The interviewees believe that the EU MSs should be on a certain level economically and thus also in terms of detention standards. Therefore, considering the detention conditions in the issuing MS should not play any role in the EAW proceedings.

*This is more what those old European states are doing in relation to the new EU. For example, Britain towards Romania or Hungary, because that objection has often been raised. But it would have to be an objection that someone is defending themselves by saying that they would not have adequate conditions in detention in that country. That is being examined. But less so under the EAW. Rather, it is in cases of international arrest warrants, where a warrant is issued with the reservation that certain conditions of detention must be met. But in the EAW that does not happen because it is presumed that those basic conditions are met by the MSs. But it is a fact that this issue has been raised by the old states vis-à-vis the Eastern European ones. But I have not seen that we would have refused to carry out an EAW because of detention conditions. (Judge, Slovakia)*

*Toto skôr robia tie staré európske štáty vo vzťahu k novým EU. Napríklad Británia voči Rumunsku alebo Maďarsku, lebo tá námietka často padala. Musela by byť ale taká námietka, že niekto sa bráni, že nebude mať vo väzbe v danej krajine adekvátne podmienky. To sa skúma. V rámci EAW ale menej. Skôr je to pri medzinárodných zatykačoch, kedy sa vydáva zatykač s výhradou, že musia byť splnené určité podmienky väzby. Ale pri EAW sa to nedeje, pretože sa predpokladá, že tie základné podmienky členské štáty spĺňajú. Ale je fakt, že túto otázku otvorili staré štáty voči východoeurópskym. Ja som ale nezaregistroval, že my by sme odmietli vykonať EAW kvôli podmienkam vo väzbe. (sudca, Slovensko)*

All interviewed representatives of judicial authorities though stated that the detention conditions are not assessed, unless it is a country to which extensive jurisprudence of EU Court of Justice applies, mainly when it comes to cases of the surrender of the requested person for serving the sentence. One prosecutor informed about the breakthrough judgment in relation to Romania, where a report by some EU agency alleged that the conditions in Romanian prisons are not in accordance with European standards on protection of human rights with regards to the number of persons per one square meter, that they are overcrowded. Another prosecutor mentioned Hungary and Romania<sup>100</sup>. Also, one of the lawyers knew such a situation might arise if the requested person were to be surrendered to Romania. The interviewed lawyers also mentioned that if the requested persons are defending themselves against the execution of EAW by saying that they would not have adequate conditions in detention in

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<sup>100</sup> With reference to the case Aranyosi et Caldaru (C404/15 and C/659/15PPU).

that country, defence lawyers do not ascertain this information, except for some publicly available information. They only have their clients' experiences from detention in issuing state. The statements of the requested person may be highly subjective. Lawyers do not have access to sufficient information regarding conditions of detention in issuing states. They can only present these concerns of the requested person to the prosecutor or judge.

The representatives of judicial authorities also do not have enough information neither on the detention conditions nor on the conditions of serving the sentence in other MSs. If there was a need to assess detention conditions, the authorities would ask relevant court in the issuing MS to provide some safeguards that the required standards for execution of detention or imprisonment would be met vis-a-vis a requested person, as mentioned by two of the interviewed prosecutors. The information from the issuing state though cannot be trusted in such situations according to one of the prosecutors, therefore they would request the General Prosecutors Office for the guidance<sup>101</sup> and/or for securing report from our embassy or consulate office about the observance of human rights in (for example Romanian) prisons, specifically in the particular prison. This cannot result in authorities of the issuing state cancelling the EAW, but it could help that this EAW will not be executed in the territory of the Slovak Republic. One of the judges mentioned that most commonly they execute EAW from the Czech Republic, Austria, Hungary, where the conditions are standard and familiar to most Slovak authorities.

None of the interviewees heard of the FRA database on detention. One of the interviewed prosecutors noted though that at the end how much weight would be afforded to FRA reports would depend on the individual judge. According to this prosecutor, the judges will be more likely to accept the opinion of the Slovak embassy or Ministry of Justice as trustworthy compared to FRA agency of the EU, which could be labelled as a "third sector" and not independent. This prosecutor went further imagining that if they used it as a binding source, they may be questioned why they relied on this source and challenged if their decision was not arbitrary. The mentioned prosecutor would appreciate if the Ministry of Justice or the General prosecutor's office adopted some common rules on how to work with the FRA recommendations in Slovak criminal law.

### **Rights to a fair trial (rule of law)**

According to most of the research participants of both categories, the Slovak authorities do not have the duty to consider the procedural rights of the requested person in the issuing MS. They are limited to consider whether the EAW is formally in compliance with the law (as it was already said above). The procedural rights of the requested person in the issuing MS should be guaranteed by the authority of the issuing MS and not by the executing MS. In general, it is presumed that the fundamental procedural rights are observed, since it is based on EU legal standards. Both interviewed regional prosecutors stated that the MS should trust each other that procedural rights are observed, and this issue should not be subject of consideration or assessment.

Other interviewees (a judge and a prosecutor) explained that the procedural rights are also not addressed, since the lack of procedural rights thereof is not the legal ground for refusal of execution of EAW. The authorities do not have the capacity to assess objections that are directed against the proceedings, and to get familiar with the legislation of the MS in question. They do not have the capacity to understand all individual legislative regulations or procedural rights in other MS that are dramatically different and sometimes incomparable. Objections related to the lack of procedural rights in the criminal procedure in the issuing MS must be addressed by the surrendered person in the issuing state.

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<sup>101</sup> With reference to recently issued Common guidance on how to proceed in cases of extradition procedures vis-a-vis Ukraine, Russia, Belarus from the General Prosecutors Office, and of the guidance addressed to the courts issued by the Ministry of Justice.

In the view of a judge of the regional court, the issuing MS has to include certain procedural guarantees in the EAW form. From the information included in the EAW, this interviewee finds out for example that the requested person was sentenced in absentia, what the crime was, what the sentence was, what the reasons for issuing the EAW were, if the requested person was asked to present themselves, when the requested person can ask for conditional release or other procedural matters. The interviewee also thinks that authorities have usually all the necessary information about the criminal proceedings in the issuing MS which they need to deal with in the case as the authority of the executing MS.

Two interviewed prosecutors mentioned that they would have to consider the observation of procedural rights in case of Poland, because of the concerns about the rule of law after broadly criticized re-organisation of the Polish judicial system. The prosecutor from the oversight body explained that the jurisprudence of the CJEU requires the MSs to consider the issue of respecting the procedural rights in Poland. The scope of the rights that should be considered is already specified by the case law of the CJEU. The General prosecutor's office tries to guide the subordinate prosecutor's offices in line with the actual jurisprudence of the European Court of Justice. The mentioned prosecutor claimed that the answer, whether they do examine procedural rights in the issuing state or not, depends on which MS is in question. According to the interviewee, this practice developed based on the jurisprudence of the European Court of Justice, but it developed contrary to one of the important principles of mutual cooperation and mutual trust in criminal proceedings.

One of the lawyers stated that maybe authorities are using one eye to also take into account the right to a fair trial reflecting on the jurisprudence of the CJEU. Another lawyer claimed that he would not say that it is just a formality of checking the statutory requirements. As a matter of fact, there is also an interrogation by the judge who has an opportunity to ask both the defence lawyer and the prosecutor whether the defendant's procedural rights have been respected.

As for the execution of EAW against a person convicted in absentia, all interviewees reported that the Slovak authorities will assess whether all aspects of the proceedings in absentia, which are required by the Slovak provisions on the proceedings against the absconded, have been complied with, including having a legal representative in the criminal proceeding. The authorities usually have to ask for additional information from the issuing state in order to get information missing in the EAW, for purpose of verification or for examination of the objections raised by the requested person. As soon as it is revealed that requested person does not even know that there are any proceedings against them in the issuing country, the authorities in the executing country inform them that if they are surrendered to the issuing country, they have the right to submit an appeal against such proceedings or request a retrial as mentioned by the interviewed lawyers.

The law states exactly all conditions and situations which needs to be examined in order for authorities to refuse execution of the EAW, when it involves conviction in absentia. And the law regulates exceptions for these situations, but also safeguards which may result in non-application of the exceptions. If sufficient safeguards are provided by the issuing state the EAW can be executed, despite the fact that the person has been convicted in absentia. According to the prosecutor overseeing the EAW proceedings, the Slovak authorities consider such a case in line with the Framework decision no. 299/2009, which also amended the EAW Framework decision no. 584/2002. The form of EAW has been changed based on this, and it requires that the Slovak authorities must consider this situation. According to one of the lawyers, the judge who ultimately decides, whether or not that person is surrendered, has to examine details of the preceding procedure in which the sentence was imposed. The judge would ask for the full text of decisions based on which the person was convicted. The judge has to examine whether the act committed by the requested person in issuing country is also punishable under Slovak law, how it could be qualified in Slovakia. The names of the criminal offences do not have to match, but they are judged by their description and by the penal rate for such an offence, which is also indicative.

## Individual situation

The interviewed lawyers agreed that the Slovak authorities should consider the individual situation of requested person. Only one of the lawyers thinks that individual situation of the requested person is not assessed.

Usually, the defence counsel brings up such reasons of special consideration to the attention of the court or the prosecution. For instance, the family situation should be definitely taken into account, however, in practice the authorities also consider, if the information on the family circumstances is not tailored in favour of the requested person. Some exceptional humanitarian situations could have the same effect, but the interviewed lawyers did not have experience with anything like that.

Another lawyer mentioned health factors as those which may definitely influence the decision of the court, such as the pregnancy or some sickness, which must be treated for some time. According to this lawyer these could be the reasons for refusal of the execution of the EAW. When it comes to mental health issues, the particular state of mind and its relation to the purpose of the EAW would have to be examined. In Slovakia sanity is a condition for criminal liability, so it must be examined. If a person does not understand the purpose of the criminal procedure, this would result in interruption of the criminal prosecution. Interviewed prosecutors would order an expert opinion in order to assess whether the person was fit to be transported and therefore surrendered to the issuing MS.

*I'll tell you frankly, of course, the defence uses such reasons of special consideration, bringing them up for the court or the prosecution to consider. To consider the fact that the act happened, for example, a long time ago, that the person didn't even know that they had been being prosecuted there, that they should start serving the sentence and so on. Supposing that this person already starts a new life in the executing country, that they are already employed there or even married and have children, we would have pointed that out, I have had a case like that. And it didn't help. I think that they are taking this so strictly, legally, and that those circumstances are given less weight. (Defence Lawyer, Slovakia) Úprimne vám poviem, samozrejme, že obhajoba to využíva, takéto dôvody osobitného zreteľa, že nech to súd zväží alebo prokuratúra. Že treba zväžiť to, že ten skutok sa stal napríklad dávno, ani nevedel o tom, že tam bol stíhaný a že by mal nastúpiť na výkon trestu a podobne. Dajme tomu, že už v tej krajine vydávajúcej začne žiť nový život, už sa tam zamestná alebo sa dokonca ožení a má deti, tak poukazovali sme na to, aj som mala taký prípad. A nepomohlo to. Ja si myslím, že toto berú tak veľmi striktné, právne a že tie okolnosti sa už tak pomenej zvažujú. (obhajca, Slovensko)*

The lawyer, who did not think Slovak authorities pay attention to individual circumstances when considering execution of the EAW, expressed opinion that personal situation of the requested person (pregnancy, health condition, humanitarian grounds etc.) would on other hand have influence on the fact that the Slovak authorities would not keep a person in detention, but would let the requested person go free with a monitoring bracelet. However, as the interviewee explained such individual situation could not constitute a reason to suspend or deny surrender.

The interviewed prosecutors stated the law does not give them the framework for considering humanitarian reasons as grounds not to surrender the requested person. Both of the regional prosecutors mentioned the cases in which they felt the strong humanitarian side of the case, and eventually the case was resolved that as authorities in executing state they requested supporting documents from court in the issuing state, which were not provided on time. At the end the fact that the issuing state did not provide supporting documents on time was the legal ground for refusing the surrender of the person. According to one of prosecutors, individual factors can have influence, but usually only temporary. This depends on the attorney, whether the requested person would object all these factors. If the authorities know about these issues and have evidence about it, then they have to take it into account.

On the other hand, the prosecutor from the General prosecutor's office believes that the Slovak authorities consider the individual circumstances. In opinion of this prosecutor that the legal reason for taking into consideration also the individual situation of the requested person is that the EAW

Framework decision enables to issue of the EAW also for minor offenses, thus the situation of the requested persons must be considered in its complexity. The interviewee encountered such a situation several times, mainly in the case of women who were mothers of minor children or who were pregnant. In such a situation it is not adequate to surrender a person to the issuing MS.

The family circumstances are often raised as individual facts of the case, which the court is asked to take into account. One of the judges described the situation in which they took the individual grounds into account when deciding about the detention. The interviewee considered the rights of the child of the mother who was the requested person to be more important than remanding the requested person in detention. However, in the interviewee's view, the requested persons tend to present themselves in a better light and give promises for improvement, but in reality, they do not perform in the way to comply with them. The situation of every requested person must be very carefully considered.

Another judge believes that individual circumstances are definitely considered as a part of proportionality when issuing an EAW, but not in execution of the EAW. The judge provided the example: if someone is pregnant it is not itself a reason for refusal of execution of the EAW. But, when the EAW is issued, the authorities of the executing state must take that into account so that the intervention that is associated with surrender to Slovakia is not disproportionate vis-a-vis this pregnancy.

### **c. Additional best practices, challenges and recommendations**

Among challenges the issue of assessment of double criminality was mentioned. Some acts are not considered criminal offence in both countries of the same seriousness and the requested person can defend themselves disputing the qualification of their criminal offence as well as sentence which may be imposed in different EU MSs. Sentences in the issuing and executing state can sometimes differ to a great extent, such as, in example mentioned by one of the interviewed lawyers, in drug related offences the punishment of imprisonment imposed can differ in more than 15 years (4 years of imprisonment in Austria and 20 years of imprisonment in Slovakia).

There is no provision allowing authorities to refuse surrender on the grounds such as proportionality, procedural errors, detention conditions or individual circumstances of the requested person. If any of these play role, it is based on the most recent jurisprudence of the CJEU, but the research shows that even various stakeholders, either from authorities or from attorneys, who were selected for the interviews as specialists in the EAW proceedings in Slovakia, had only little knowledge of this jurisprudence. Even if the authorities had knowledge of the individual CJEU case which offered guidance on interpretation of the EAW Framework decision or procedural rights in these proceedings, the authorities tend to understand it as if it applied only case vis-a-vis this particular MS (rule of law and access to fair process mentioned in Poland and detention conditions in Romania), not as a general rule applicable in all future EAW proceedings. Some judges consider this a serious deviation from the principle of mutual trust between EU MSs which undermines the whole system of the EAW and common EU justice system, some evaluate it as "old EU MSs against the Eastern European MSs".

The interviewed prosecutors though informed that the General Prosecutors office holds regular meetings and prepares the overview of the most recent developments in the jurisprudence of the Supreme court, ECtHR or CJEU, if it is relevant for EAW or implementation of international arrest warrants in Slovakia. This service should enable all prosecutors dealing with the EAW to have the same base updated information and unify their approach to a certain degree, which is a good practice. Another potentially unifying practice mentioned was the prior consultation of the district prosecutors with the regional prosecution office before the decision to issue the EAW was taken.

The regional prosecution allegedly takes proportionality into account when making recommendation on this issue. We interviewed three representatives of prosecution out of which two reported this practice, one of them though adding that it was slowing down the whole process, for which we had been criticized by the EU.

There is no remedy or official procedure according to the law which would allow the requested person to challenge the issuance of the EAW and request its withdrawal.

The current legislation does allow the requested person to challenge the decision on execution of the EAW only for mandatory reasons for refusal of execution of the EAW. The facultative reasons for refusal of execution of the EAW, grounds based on procedural mistakes or breaches of the EAWA are reserved to be used as appeal grounds for the prosecutor only. One of the interviewees recommended unification of grounds for appeal against the decision on execution of the EAW for both parties to the procedure, the requested person and the public prosecutor, and thus ensuring their equality in the court procedure.

One judge raised the issue of insufficient personal staff of courts that could assist the judges in the EAW proceedings – search for the information, available interpreters/translators, look after that all the necessary information and documents that are to be delivered to the participants of the proceedings and who could do all the organization work related to the EAW proceedings since the communication creates a large part of the proceedings. The judge/court needs to persistently communicate with prosecution, with authorities of the issuing Member State, with the authorities of the state of origin, with SIRENE, police officers, Ministry of Justice, the prison facility, etc. and this creates an enormous workload that could be done by assistants, mainly the senior judicial clerks. Now, all those works are conducted by the judges themselves.

Another challenge is also the higher specialization of judges in the EAW proceedings. Now, the judges deal with the EAW proceedings besides other criminal proceedings at the regional courts. Both interviewed judges suggested that the district courts should be the first instance courts for the EAW proceedings and the regional courts should be the second instance court (compared to regional courts as the first instance court now, and the district courts not dealing with the execution of EAW at all).

#### d. Discussion of findings

All interviews confirmed that the national authorities must respect the legal requirements stipulated by EAWA. Even if the legal requirements are met, the EAW should not be issued, if it would be too disproportional, for example in case of less serious offenses. The interviewees explained in detail what factors play a role in the decision whether the EAW should be issued or not. Once it is issued, it may be difficult to challenge its issuance, there is no remedy against this decision. Of course, the requested person can raise objections, which must be examined, depending on stage of the procedure. The authorities recognize proportionality as an important tool for making sure that the EAW proceedings are not wasted for trivial criminal activity. Some interviewees understand proportionality as already translated to the conditions of law stating in which situations it is reasonable for the state to issue an EAW.

The approach of all the respondents is very strictly based on the law and the EAWA does not offer many provisions which would allow for the margin of appreciation when it comes to making decisions about execution or non-execution of the EAW. Slovak authorities follow the principle of international cooperation and of the trust between the EU MSs, so they believe they cannot interfere with the jurisdiction of another MS.

There is no provision in the law which would allow the authorities to refuse execution of the surrender on the grounds such as proportionality concerns over the issued EAW, procedural rights, right to a fair trial (with exception of the conviction in absentia), detention conditions in the issuing country or individual circumstances of the requested person. If any of these play the role, then it is based on the most recent jurisprudence of the CJEU vis-a-vis particular country against which it has been recognized there may be some issues, such as detention conditions in Romania or rule of law in Poland and Hungary.

## 5. Use of digital and technological tools in EAW proceedings

### a. Legal overview

There are no specific rules governing use of digital tools during the EAW proceedings in EAWA. The general rules of the CPC would apply.

Where the physical presence of an interpreter is not required to guarantee a fair trial and in cases when it is not possible to provide an interpreter for a language which the requested person understands sufficiently, interpretation may, in justified cases, be provided by means of technical equipment designed for the transmission of images and sound (videoconferencing equipment).<sup>102</sup>

Written documents and information may be transmitted between the law enforcement authorities and the court also in electronic form.<sup>103</sup> Submissions may be made also by electronic means signed with or without a qualified electronic signature. An electronic submission without a qualified electronic signature must be confirmed in writing or orally by minutes within three working days, otherwise the submission does not have any legal effect.<sup>104</sup> The law enforcement authorities and the court may serve documents on the accused and their defence counsel also by electronic means signed by a qualified electronic signature.<sup>105</sup>

The proceedings related specifically to the judicial cooperation may be initiated also on the basis of a request by a foreign authority received from them by telefax or other electronic means if they have no doubt as to its credibility and if the matter cannot be delayed. The original of the request must subsequently be submitted within a period specified by the requested authority unless that authority waives the requirement for submission of the original request.<sup>106</sup>

The CPC counts with the possibility that the main hearing is conducted by means of a videoconferencing device. It also outlines the rules on how the electronic form of the record from the main hearing is made and authorized.<sup>107</sup> The main hearing and, if it involves carrying out the evidence, also the public court session, must be recorded using technical equipment designed for audio recording. The recording is kept on a data medium which is a part of the case file; or may be stored also by other appropriate means.<sup>108</sup>

Where a person is to be questioned by means of a videoconferencing device,<sup>109</sup> appropriate notice of the time and the place of the questioning is announced to the defence counsel, or if he has no defence counsel, to the requested person, at least five working days in advance. The identity of the person to be questioned (interviewee) will be verified always in person at the place of interrogation and by a person who is in the same procedural position as the person who will conduct the interrogation. If the interrogation is conducted by a court, the identity may also be verified by an authorized employee of the court. If the interviewee is in detention, the identity may also be verified by a member of the Prison and Court Guard Corps. A written record is made from the verification of the identity of the

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<sup>102</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 28(8).

<sup>103</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 3(3).

<sup>104</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 62(1).

<sup>105</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 65(8).

<sup>106</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 483.

<sup>107</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 59(1) and (2).

<sup>108</sup> Slovakia, Criminal Procedural Code (*Trestný poriadok*), Act No.301/2005 Coll. as amended, 24 May 2005, Section 61a.

<sup>109</sup>

person being questioned and of the course of the questioning, which is signed by the interviewee and the person who verified the identity; the record forms part of the minutes of the interrogation.

The interviewee may, at any time during the course of the questioning, object to the quality of the visual or audio transmission. This fact must be noted in the minutes of the interrogation, without prejudice to the continuation of the interrogation if technical problems with the visual and audio transmission have been resolved.

The record will be presented to the accused at the end of the interrogation for reading, or upon request it will be read to them. If the interrogation is conducted by means of a videoconferencing device, the minutes should be read to the accused at his request. The accused has the right to request that the minutes be amended or corrected in accordance with his statements and should be informed about these rights.<sup>110</sup>

A witness who, by reason of his age, illness, physical or mental ailment, or other serious reasons cannot be interrogated in person, or a witness who is in custody or serving a custodial sentence, may be interrogated by means of a videoconferencing device, provided it is reasonable and sufficient with regards to the circumstances of the case. This applies as well if the witness, because of his or her residence abroad, is unable or unwilling to appear for questioning, but is willing to give testimony. In this case the competent authority of the foreign State will be asked to provide the necessary legal assistance.<sup>111</sup>

**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 MS (when an executing state) | Facilitating access to a lawyer in the executing MS (when an issuing state) |
|------------------------------|---|--|---|--|--|---|---|
| Slovakia                     | NO  | NO   | YES   | YES  | YES  | NO  | NO  |
| TOTAL                        | 0   | 1  | 1   | 1  | 1  | 0   | 0   |

b. Interview findings

**EAW hearings**

Most of the research participants never met with remote hearing in the EAW proceedings. Only one of the lawyers mentioned that remote hearings are sometimes used in EAW proceedings but could not provide any details of these cases.

<sup>110</sup> Slovakia, Criminal Procedural Code (Trestný poriadok), Act No.301/2005 Coll. as amended, 24 May 2005, Section 124(2).

<sup>111</sup> Slovakia, Criminal Procedural Code (Trestný poriadok), Act No.301/2005 Coll. as amended, 24 May 2005, Section 134(1) and (2).

### **Use of digital tools for interpretation**

According to all of the interviewees the usual practice is the personal presence of the interpreter. Using online tools and video-conferences in the public sector in Slovakia is broadly underdeveloped. Most of the respondents have not had the experience yet with the situation when interpretation in EAW proceedings would be ensured via teleconference.

*I've only met interpreters in person, normally they have been summoned to the prosecutor's office or court if need be. I know that such meetings can be conducted through video-conference, but I have not encountered that in the particular EAW proceedings. (Defence Lawyer, Slovakia)*

*Ja som sa stretla iba osobne, normálne bol prizvaný na úkon na prokuratúru alebo na súd ak je treba. Teda viem, že sa môžu takéto zasadnutia vykonávať aj prostredníctvom telemostu ale v konkrétnych týchto konaniach o EZR som sa nestretla s tým. (obhajca, Slovensko)*

One prosecutor reported about the situation when interpreter was not present at the place of arrest and in order to inform the arrested person of their rights they used interpreter on distance via teleconference, but this was rather an exception that deviates from the usual practice.

Interviewed judges have experience that if they cannot arrange for an interpreter in a given language at certain time and place, the video-conference is used by the court. In one case the interpreter was even in another country, for instance in Czech Republic, and the interpretation was ensured via an online tool. The court uses the online communication also when hearing the witnesses or when they need to communicate with imprisoned or detained persons.

According to one of the judges the problem with online interpretation is that the court does not have sufficient capacity. They only have two courtrooms with necessary technical equipment for online communication, which are shared by 80 judges of the regional as well as of the district court. The interviewee would very much welcome if the court was better equipped with the necessary technology for online communication.

One of the lawyers warned about the technical problems in the interpretation rooms in the centres for the execution of detention. In vast majority of cases the physical presence of the interpreter must be ensured because these facilities are unable to facilitate online communication with the interpreter.

### **Use of video conference for interrogations/hearings**

According to the one of the judges, even during pandemics, the online hearings have been dealt with minimally. In Slovakia, it is not usual that judges sit at home in front of a monitor. The whole EAW procedure can be done in writing, but the person has the right to be heard in court, so even during Covid it was normally done in the courtroom.

In general, video conferences have been introduced in Slovak courts for purpose of the criminal procedure (outside the EAW). According to one of the prosecutors and some of the lawyers, the challenges are not technical connection and equipment, but rather how to ensure the privacy of the counsel between the requested person and the attorney. When it comes to interviewing the witnesses, this is without major issues. But interrogating the accused or the requested person requires ensuring full respect for the right for confidential counsel with their defence attorney. If the procedural act is conducted in person at the premises of the court or the prosecution or the police, authorities could ensure privacy between the attorney and the client, because the others can distance themselves from the room. The attorney and the requested person can thus discuss the strategy over the case together with the interpreter who is obligated to maintain confidentiality. However, in case of teleconference this would not be possible since the video-conference would be recorded and so would be the counsel between the client and the attorney.

The insufficient capacities for using the online tools during interrogations and hearings were reported also by one of the prosecutors who explained that the capacity to benefit from the use of videoconferencing is limited by the fact that there are only four police specialists at the Police Unit of

Special Operations of the Police Corps who ensure the use of technical equipment for the whole territory of the Slovak Republic for each police or judicial unit.

Another problem is the lacking authenticity when using the online tools for hearing and interrogations as mentioned by one of the lawyers. The authenticity is diminished as a result of lack of immediacy. During Covid there were many of these videoconferences, it saved a lot of time. Many criminal hearings are now still taking place as a whole through the video-conference, but the immediate contact is missing.

The person is usually in detention, so if the defence counsel is in the courtroom, there is no way the attorney can confer with the client in private because it is being recorded and that would be illegal breach of the client-attorney privilege. The defence counsel must choose to be present in the detention centre with a client or in the courtroom. Some interviewed lawyers find this choice very challenging, since it is important to be there with the judge at the court at the moment when decision is being made, but at the same time the client in detention needs the support.

For judges, as mentioned by one the interviewed judges, the direct, immediate contact with the requested person is often very important in deciding the merits of a case. Losing the immediacy can compromise the fairness of the decision. The judge alleged they monitor how the requested persons react, whether they have notes, whether somebody is saying something to them, which allows the judge to make better decision.

#### **Remote examination of witnesses**

Some research participants of both categories agreed that the use of online tools to interview witnesses remotely results in decreased need of issuance of EAWs. During the pandemics the number of requests for legal aid from other MSs increased significantly. A foreign state can send a request through the Attorney General's office to interview the person. When it comes to interviewing the witnesses, this is without major issues. The problem arises at the moment when the charges are raised against the person and their procedural status and rights change. The person will provide the testimony and the other MS may continue with the criminal prosecution, so it may not need to issue EAW. According to one of the lawyers it is up to authorities if they are interested in interviewing people remotely or would prefer to use the instruments available through issuing EAW.

The prosecutor of the General Prosecutor's office though did not see any causal connection between digitization and the number of issued EAW.

#### **Use of digital tools for appointment and contact with the lawyer in issuing state**

Digital tools could play a significant role in enabling the access to information on the appointment of lawyer and legal aid. However, according to the lawyers the requested person needs some skills to be able to use these tools and must have access to digital tools. If a person is in detention, it also requires facilitation of the access to these tools by the authorities in detention. Then the question remains whether the respective authority would be willing to facilitate the use of the digital tools by requested persons. Some of the interviewed prosecutors and judges could not answer having no or very little information about this.

Using the online tools for communication of the requested persons with their lawyers is seen as challenging, but not impossible. The requested persons could benefit from using the online tools mainly when communicating with their lawyers in the issuing state. As mentioned by one of the lawyers, the technical devices must create a safe bridge, which would enable the requested person to communicate with the potential attorney in the issuing country. The communication of detainees is restricted, and they can only use facilitated communication under the control of authorities, most probably the prosecutor's office. Also, there must be someone else in the issuing country technically helping. This could be a great opportunity for ensuring the dual representation in reality in both issuing

and executing country. If a person is arrested on the territory of another MS, the attorney in the issuing state is immediately informed about it and the EAW procedure.

Authorities do not provide any assistance with finding, contacting and communicating with the lawyer in the issuing MS as mentioned by the representatives of judicial authorities. One of the prosecutors could imagine that the requested person would be provided with the list of lawyers in the issuing MS. Although neither this prosecutor has any experience in practice with any digital tools that could enable access to the lawyer in the issuing MS.

Generally, if it comes to digitization in terms of the provision of legal aid, then it is already in place to a certain extent, as reported by one of the lawyers. On the other hand, one of the judges could not imagine online consultations between client and lawyer, since there is a constant risk that someone can follow the course of that communication.

### **Use of digital communication**

According to the interviewed prosecutors the greater digitization would contribute to safe online transfer of EAW and other documents of high quality in an electronic form, which can be verified as genuine and cannot be questioned. The authorities in Slovakia thus would not have to wait for the original of the EAW or other documents. It shortens proceedings and limits the time that requested person's freedom is restricted. The current practice in Slovakia though is that the decision in the EAW proceedings is taken based on the original documents. The scan version of documents may be accepted, which is based on the jurisprudence of the Supreme Court, although it does not stem directly from the legislation. For example, if there is a short time limit before submission of motion for preliminary detention, a scanned original of EAW and documenting the path how this scanned original arrived through email would suffice.

One of the prosecutors evaluated that the impact of pandemics on the EAW proceedings was significant, the online communication was practiced much more than before. The prosecutors, who worked mainly with paper originals before, had to get used to working with electronic documents. There were times when only electronic communication was practiced. Some respondents, mainly lawyers, think differently. In their experience, the pandemics had significant impact on usage of digital tools and digitization, but in the EAW proceedings it has been minimal. One of the lawyers mentioned that during the pandemic, the EAW proceedings were delayed. Literally, if one had Covid then it was delayed, only custodial cases were dealt with. There were hearings, but really only in those cases, where the time limits were running.

According to one prosecutor Eurojust and SIRENE and some MSs want all documents exclusively in electronic version. Great Britain communicates through electronic platform EGRES with the whole world, but not with Slovak authorities, because they do not fulfil their security requirements. One of the interviewed lawyers thinks that the whole world is moving forward with digitization, but in Slovakia we still use the traditional way of communication via the post office. This lawyer also stated that in order to have security and GDPR concerns tackled it is needed that there are good experts employed by the Presidium of the Police Force. Another thing is that the clients still have to have the documents delivered into their own hands.

### **Electronic case files**

Some lawyers pointed out that it would be very useful for defence lawyers, if the digital tools could be used to enable them access to the electronic files, which at the moment is only possible for judicial or law enforcement authorities. The defence lawyers only have access to such information through the prosecutor's office or through the court by asking to see the file.

According to one of the prosecutors, although they have access to the electronic case file, it does not work.

One of the judges would appreciate broader digitization in EAW proceedings, mainly in communication with the authorities of issuing MS. Now, the communication with issuing MS takes place mainly through SIRENE in order to check certain information in the issuing MS. There is no other

option for the interviewee to communicate with the issuing MS besides SIRENE. The interviewee would appreciate, if also the contact points of the European Judicial Network were more active in communication and exchange of the information.

### Challenges and recommendations

According to one of the lawyers not only digital equipment but also digital competences are needed. The greater digitization requires that the staff will be trained how to use it. Mainly people of the age 50+ may encounter barriers regarding digitization. So, they would need practical training and education how to work with the new technologies.

One of the lawyers recommended building of a common European database of all EAW. It would improve the accessibility of information for the judicial and other authorities and finally also for the requested persons since they could receive information, if there has been more EAW issued against them. The common database would eliminate duplicates and the respective authority could review the database before issuing the EAW, if any other authority/MS have not issued the EAW in that matter.

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 MS (when an executing state) | Facilitating access to a lawyer in the executing MS (when an issuing state) |
|--------------------------|---|--|---|--|--|---|---|
| LAWYER 1                 | NO  | NO   | NO  | NO   | NO   | NO  | NO  |
| LAWYER 2                 | NO  | NO   | YES   | NO   | NO   | NO  | NO  |
| LAWYER 3                 | NO  | NO   | YES   | YES  | NO   | NO  | NO  |
| LAWYER 4                 | YES   | NO   | YES   | YES  | NO   | NO  | NO  |
| PROSECUTOR 1             | NO  | NO   | NO  | NO   | YES  | NO  | NO  |
| PROSECUTOR 2             | NO  | NO   | YES   | YES  | YES  | NO  | NO  |
| JUDGE 3                  | NO  | NO   | YES   | NO   | NO   | NO  | NO  |
| PROSECUTOR 4             | NO  | NO   | NO  | NO   | NO   | NO  | NO  |
| JUDGE 5                  | NO  | YES  | NO  | NO   | NO   | NO  | NO  |
| TOTAL                    | 1   | 1  | 5   | 3  | 2  | 0   | 0   |

### c. Discussion of findings

The EAWA contains no specific rules governing electronic communication or use of videoconferencing devices or other digital tools. Although all of the interviewees agreed that the digitization provides an important opportunity for making the EAW proceedings quicker and more effective, the reality does not reflect real effort to utilise this opportunity in Slovakia. The research participants could not agree, if the Covid pandemics have accelerated developments in this area. Some argues that the measures related to pandemics inspired unprecedented acceleration in use of the digital tools in the criminal proceedings in Slovakia, however, some said it had very little impact on EAW proceedings, which are very specific.

The interviews showed that the authorities see a great opportunity in digitization in a form of more frequent use of electronic communication, quicker exchange of information and access to electronic documents of undisputed authorized nature. However, currently, the authorities have little experiences with use of the digital tools, especially in interrogations and hearings with the requested person. The representatives of judicial authorities reported about the lack of sufficient capacity of the internet connection or technical equipment.

All of them agreed that the issue of ensuring full respect for the right of the counsel of the requested person with their attorney, while at the same time guaranteeing the confidentiality of their counsel, has not been resolved. When it came to the hearings conducted by means of the videoconferencing devices, it was the defence attorneys who found it challenging to ensure quality defence during the hearing, having to choose whether they will be present at the court in person or staying with their client in the detention centre. Each of these choices has its advantages and disadvantages.

The attorneys would definitely welcome use of the electronic case files and access to them through the government portal at any time, which would greatly improve access of the requested person to all information about their case and timely submissions.

## CONCLUSION

The report presents findings about the application of **the right to information** of the requested persons in the EAW proceedings in the national legislation and in practice in Slovakia. The right of requested persons to information is enshrined in the national legislation. The judicial authorities inform the requested persons about their procedural rights. In their view the EAW proceedings cannot move forward if the person is not properly informed about their rights.

The judicial authorities have taken steps to make the process of provision of information more standardized, however, in practice, differences were recorded in whether the police departments use a specific Letter of Rights for EAW proceedings or a general Letter of Rights used in criminal proceedings for informing the requested person, whether they put stress on written or oral provision of information and in how much detail they explain the procedural rights to the persons requested.

The view presented mainly by the lawyers is that the right to information of the requested person has been respected formally, which can be also verified in the case file, but from material point of view the requested persons are not always explained in detail or do not understand the information. These shortcomings are compensated in practice by judicial authorities relying on defence counsels who are expected to explain some aspects of the EAW proceedings to their clients before the procedural steps are taken within the proceedings. However, given the lacking expertise of many lawyers in the EAW proceedings, limited possibilities of communication between the lawyers and the requested persons, and barriers in ensuring the translation and interpretation of their communication this may lead to an insufficient and ineffective provision of information to the requested persons.

The report also presents findings about the **right to interpretation and translation** of the persons requested under the EAW. In Slovakia, the right to interpretation and translation in EAW proceedings is mentioned in the EAWA and further details are regulated by the CPC. The research findings show that the judicial authorities apply the legislation specifying the right to interpretation and translation in the EAW proceedings consistently. According to the prosecutors as well as judges participating in the research, if it shows up that the requested person lacks the understanding of Slovak language or their understanding is very limited, the interpretation is automatically provided.

According to the lawyers participating in the research, the interpretation and translation are provided. This right is sufficiently respected in Slovakia, since otherwise, if the person does not understand the written and as well as spoken form of the language, it could be challenged by the requested person and result in procedural errors.

The findings also show that the most important documents are translated for the requested person, some participants even think that the requested persons have the right to have translated all documents they ask for. The oral interpretation instead of written translation of the document seems to be preferred for practical reasons, the translation of documents may require much more time and the procedural time limits are running.

Another mentioned challenge related to the right to interpretation and translation is the problem of ensuring the interpretation for the communication between the defence counsels and requested persons who are placed in the detention centre. As mentioned by the research participants, the defence counsels very often rather rely on their own language skills when communicating with their clients. This may, however, raise doubts about the effectiveness of communication and provision of information (as mentioned above) and about the quality of legal assistance provided to the requested person. As for the usage of online tools for interpretation, they are applied very rarely since the judicial authorities are not able to ensure the privacy of the conversation between the defence counsels and their clients. The technical equipment at the courts is also insufficient to enable online interpretation.

The report also deals with the right of the requested persons to be represented by a lawyer in the EAW proceedings and their **access to a lawyer** in practice.

According to the national legislation, the right to defence is applicable from the moment of the arrest until the end of the EAW proceedings. As viewed by the research participants, it is a very important procedural right of the requested person in the EAW proceedings.

The requested persons are informed about this right immediately upon arrest. The information is included in the Letter of Rights which is handed over to the requested person (available also in various language versions). However, as the research findings show, the information about the right to be assisted by a lawyer is very limited at the moment of the arrest. The requested person is also not provided with information about the right to dual legal representation (it is not included in the Letter of Rights). The requested persons are not provided with information on all the practical details related to finding their own lawyer. They are usually not assisted with finding and contacting the chosen lawyer. It is very individual to what extent the right to be represented by a lawyer is explained by the authorities conducting arrest and understood by the requested person. This may lead to a situation when most of the requested persons do not have the ambition to find their own lawyer, they let the judicial authorities appoint the defence counsel ex officio for them.

As for the right to also have a lawyer in the issuing MS, most of the research participants believe that the requested persons are formally informed about this right, however, they expressed doubts about its implementation. The representatives of authorities confirmed that they do not provide any assistance with finding the lawyer in the issuing MS.

The most serious issue mentioned by almost all research participants is the provision of legal assistance by lawyers who do not possess sufficient expertise in EAW proceedings. This problem stems from the fact that there is a lack of lawyers who are experienced enough in the EAW proceedings. Another problem is that an online tool must be used by the judicial authorities to appoint the defence counsel ex officio which does not enable to choose a lawyer with a certain specialisation. Several interviewees (of both categories) believed the random selection by this online tool resulted in the worsening of the quality of legal aid provided by the defence counsels appointed by the state.

The requested person should point out the lack of provision of the information about the right to be assisted by a lawyer or lack of or delay in the appointment of defence counsel in course of the proceedings. After the decision on execution of the EAW has been taken already, these procedural mistakes are not sufficient grounds for challenging the decision of the judge with a petition to refuse execution of the EAW. Only prosecutor has the right to use the fact that the procedural rights have not been respected as a ground for an appeal. It was mentioned by one of the interviewed judges that the current legislation needs to be amended to enable requested persons to challenge the judicial decision for the breach of the procedural rights as the ground for appealing the decision of the court on execution of the EAW.

The report also presents findings about certain circumstances related to the **issuing and execution of EAW**. As the research findings show, in Slovakia, the EAW can be basically issued for every crime falling within the categories of crime mentioned by EAWA. However, in practice the judicial authorities consider several factors when deciding about issuing the EAW. For instance, whether there were other steps taken within the criminal proceedings that could ensure the presence of the prosecuted person and whether the issuing of EAW is not too disproportionate and not used in cases of less serious crime. There is not any remedy or specific legal procedure enabling the requested person to demand the

cancellation of the EAW already issued even if the requested person wanted to challenge its disproportionality.

Within the research, the interviewees were asked to elaborate on whether the factors like proportionality, right to a fair trial, detention condition and individual situation of the requested person are considered by the judicial authorities in the EAW proceedings as factors weighing in favour on execution or non-execution of an EAW. Slovak authorities follow the principle of international cooperation and of the trust between the EU MSs, so most often they are of the opinion they cannot interfere with the jurisdiction of another MS. The approach of authorities is very legalistic and the EAWA does not offer much space for margin of appreciation when it comes to this decision. There is no provision allowing authorities to refuse surrender on the grounds such as proportionality, procedural errors, detention conditions or individual circumstances of the requested person. If any of these play role, it is based on the most recent jurisprudence of the CJEU, but the research shows that even various stakeholders, either from authorities or from attorneys, who were selected for the interviews as specialists in the EAW proceedings in Slovakia had only a little knowledge of the CJEU jurisprudence.

As the findings of the report show, the **use of digital tools in the EAW proceedings** in Slovakia is underdeveloped and very rare. However, the research participants see a great opportunity in digitization of which the EAW proceedings could benefit significantly if applied. For instance, the digitization could enable more frequent electronic communication, quicker exchange of information and access to electronic documents of undisputed authorized nature. According to the lawyers, they would benefit from having access to electronic case files which would ultimately also improve the access of the requested persons to the information about their case.