

# Social Fieldwork Research (FRANET)

## European Arrest Warrant proceedings – safeguards for requested persons

**Czechia**

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## **EXECUTIVE SUMMARY**

### **Right to information**

In Czechia, requested persons are provided with information in several stages of the criminal proceedings against them. The information is provided from various sources, beginning from the time of the arrest. The information given concerns the rights of arrested persons and contains the rights that are specific to the EAW. Persons are provided with a large amount of information and it may be difficult for them to fully understand their rights, especially if these are not given to them in writing. In some languages only oral translation is provided, as a written Letter of Rights is available only in a limited number of languages. Some information is emphasised more than other information. For instance, the speciality rule is explained in detail and the authorities make extra efforts to ensure that persons are fully aware of the implications of consenting to surrender. Other information, such as the right to dual representation is not emphasised and may get lost in the large amount of details.

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

Persons who do not speak Czech have access to an interpreter throughout the entire duration of the criminal proceedings. There is no systematic assessment for the need for an interpreter, but in practice interpreters are always provided – the only exceptions can be persons who are Slovak speakers and who understand Czech exceptionally well. The language competence of the authorities conducting the proceedings is not relevant – an interpreter is always summoned. Interpreters are available also for rare languages and for consultations with a lawyer. Only certain key documents are translated, but persons have the right to request the translation of other documents into their native language.

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

Persons have the right to be assisted by a defence lawyer from the beginning of the criminal procedure, and free of cost defence lawyers are available for persons who can prove that they are unable to cover the costs involved. The participation of the defence lawyer in the procedure is set by national law and therefore mandatory; any steps in the criminal procedure taken against the person without their defence lawyer present would be faulty and would have to be repeated. Defence lawyers are either chosen by the persons themselves or appointed by the state. However, unless a person already knows a defence lawyer, they cannot choose one freely, as they have no way to find information about available defence lawyers online or offline once they are arrested and detained (and thereby deprived of access to phone/internet). State-appointed defence lawyers are chosen randomly by the court from a list of defence lawyers who have signed up for the duty and there is no guarantee that a given defence lawyer has any experience with EAW cases. The defence lawyer's most important role is to provide information to the person, find out further information about the facts of the case and ensure that the surrender takes place only if it is in the best interests of the person. Defence lawyers routinely consult with their clients in private and can consult with or visit the person in detention without limitations. When Czechia is an issuing State, no systematic efforts are made by Czech authorities to ensure that the arrested person has a defence lawyer from the issuing State. Regardless of whether Czechia is an issuing or receiving State, contact between defence lawyers is rare.

### **Issuing and execution of EAWs – factors considered**

Czech authorities mostly issue EAWs as a measure of last resort. From the procedural point of view, the issuance of an EAW must be preceded by a thorough national investigation and an assessment of proportionality conducted primarily by the state prosecutor and secondarily by the court. When they execute EAWs issued in other MSs, Czech authorities tend not to challenge an EAW, even if the individual situation of the requested person would merit challenging the warrant. The extent to which

proportionality issues can be effectively raised remains unclear. As long as formal requirements are fulfilled, the person is usually handed over to the issuing MS even if the authorities have doubts about the rightness of the handover. Detention conditions are not considered and the right to a fair trial is not considered unless there is a clear indication of a possible breach of rights.

### **Digital and technological tools in EAW proceedings**

The uptake of digital technologies is currently moderate, but research participants advocated for increased digital technology use. The authorities have a strong preference for in-person interrogations, but interrogations with the online participation of foreign (issuing) authorities may also take place. Interpretations is almost always provided in person, but consultations with the defence lawyer sometimes take place via an online platform. There is little acknowledgement of the potential negative effects of the use of digital tools on the rights of requested persons.

## INTRODUCTION

As part of its social field research FRANET conducted five interviews with defence lawyers providing services as defence lawyers (L1, L2, L3, L4, L5) and four interviews with judges and state prosecutors (J1, J2, J3, J4). Based on the interviewee's preference all interviews were conducted face-to-face, although the option to conduct the interviews online was presented to the interviewees.

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

All nine interviews were conducted by a legal expert with a degree in law, who also prepared the legal overview for this research. Interviewees were recruited via personal and professional networks, through the Czech Bar Association, and through written and telephone inquiries with specific courts and state prosecution offices. The recruitment process was protracted and there was a general sense of distrust towards the research, especially by judges and state prosecutors. With respect to defence lawyers (Defence lawyers) the main challenge experienced by FRANET was that defence lawyers specialising in EAW cases are not registered in any specific database, and presumably, there are no such defence lawyers, as such specialisation would be too narrow. Defence lawyers who have at least some experience with EAW cases had to be identified either on a random basis or based on a personal recommendation. Several potential interviewees who initially expressed interest in participating in the research delayed interviews or entirely cancelled them either due to the summer holidays or because FRANET did not provide the questions in advance. One state prosecution office and two courts expressed the opinion that focus interviews would be more effective and refused to provide individual interviews.

Two defence lawyers who were interviewed within this research had only very limited experience – both had only had a single case of an EAW. There are several reasons for this. First, EAW cases comprise only a small fraction of the overall number of cases processed by the courts. Second, in most EAW cases, the defence lawyers are appointed by the court (*ex officio defence lawyers*), and the court's list is not confined to defence lawyers who are specialised in EAW cases – or even (solely) to criminal defence cases. This means that in Czechia overall not many lawyers have extensive experience with EAW cases (as these are assigned randomly by the courts and only comprise a small fraction of the cases assigned by courts, and as such are very rare). This was also the reason why many of the defence lawyers approached did not want to provide an interview – they felt that their experience and expertise was too limited. Only one defence lawyer in our sample had had up to six EAW cases, but even they had had their last EAW case in 2016. An additional (fifth) interview was conducted with defence lawyer to increase the sample. This defence lawyer proved to be very experienced with EAW cases, and they mostly served in EAW cases as a chosen defence lawyer. They were approached to represent a person arrested in Czechia by colleagues from the issuing State who represented the person there.

As for the sample of judges and state prosecutors, it was challenging to identify those who were specialised in handling EAW cases (especially in the case of those that handle the EAW cases in which Czechia is the issuing State). The judges and state prosecutor from specialised departments had merely theoretical knowledge of the procedures in which Czechia is the issuing State, especially with respect to assessing the proportionality of the issuance of EAWs. After a protracted search, a state prosecutor with extensive experience in issuing EAWs was interviewed, as well as a judicial trainee who serves as an assistant to a judge who issues EAWs. These interviewees had extensive experience with the procedure of proportionality assessment, but in turn their ability to contribute to the sections on the right to information, translation, and a lawyer were limited.

○ **LIMITATIONS OF THE FIELDWORK**

There were two major limitations to the data acquired during the fieldwork. Firstly, many of the questions target the practical aspects of an arrest, but all of the interviewees emphasised that they had never personally experienced an EAW arrest, as the arrests are almost exclusively done by the police (theoretically, a state prosecutor may conduct an arrest, too, but such instances are very rare). The first interrogation is also usually conducted by the police, although in some cases it is done by the state prosecutor. The implication is that the interviewees could not provide first-hand experience (regarding, e.g., informing the arrested person about their rights), and they often shared only their assumptions. A police official with experience in EAW cases was consulted via telephone and email to explain some of the practical aspects surrounding the right to information and the right to translation/interpretation. Where relevant, the information provided by this source is incorporated into the country report.

Another limitation was that the interviewees often admitted that they did not know or simply did not recall all the details the interviewer asked them about the EAW process. A typical example was the list of rights that persons arrested under the EAW are informed of – different interviewees mentioned different rights, and the final list compiled by FRANET does not seem to be exhaustive. To complicate matters further, it seems that different authorities provide slightly different details to requested persons regarding their rights. It was not possible for FRANET to access the Letter of Rights to verify the content of the information provided at various stages of the proceedings.

○ **SAMPLE AND DESCRIPTION OF THE FIELDWORK**

Defence lawyers:

Requested: 10, completed: 5

Judges/prosecutors:

Requested: 15, completed: 4

**Table 1 Sample professionals**

<b>Group</b>	<b>Gender</b>	<b>Experience with an EAW</b>
Defence lawyer	male	Several EAW cases as <i>ex officio</i> defence lawyer in the issuing State
Defence lawyer	female	One case of EAW as <i>ex officio</i> defence lawyer in the issuing State
Defence lawyer	male	Six EAW cases as <i>ex officio</i> defence lawyer in the issuing State
Defence lawyer	female	One case of EAW as <i>ex officio</i> defence lawyer in the issuing State
Defence lawyer	male	A few EAW cases per year, mostly as a chosen defence lawyer; limited experience with serving as <i>ex officio</i> defence lawyer from the issuing State
Judge	female	Regularly serves in EAW cases (issuing State), but EAW cases do not make up the majority of her agenda
Prosecutor	female	Regularly serves in EAW cases (issuing State)
Prosecutor	male	Regularly serves in EAW cases (issuing State)



Judge assistant (judge-in-waiting)	female	Regularly serves in EAW cases (issuing State)
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The interviews on average lasted one hour and thirty minutes, the longest interview lasted for over three hours and the shortest interview lasted 42 minutes. The interviews took place between 15 April and 14 September 2022 in Prague. In general, interviewees were open and willing to answer questions and share their experiences; most interviews were conducted in an amicable atmosphere. Whenever interviewees did not have personal experience with respect to the specific questions asked, they shared their assumptions about the processes in question, while at the same time emphasising that these were assumptions. If it was clear that a given topic does not fall within the interviewee's competence, the question was skipped in order not to alienate the interviewee.

- **DATA ANALYSIS**

Seven out of the nine interviews were transcribed verbatim. The interviews were recorded, and the data protection policy was shared with all the interviewees. Reporting templates were filled out with respect to every interview, in which the most important issues were summarised, and quotes were included.

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

This report focuses on the procedural safeguards in EAW proceedings in Czechia. It analyses the implementation of the EAW Framework Decision in the national contexts and foregrounds the practical aspects and implementation of the EAW in Czechia. The report is based on desk research and legal analysis, which outline the current policy context and legal provisions in Czechia concerning the procedural rights of persons requested in EAW proceedings, and on fieldwork research, which consisted of nine interviews with lawyers and judges/state prosecutors who have experience with EAW. It is part of a comparative study conducted by FRA in the following EU MSs: Cyprus, Estonia, Luxembourg, Malta, Belgium, Croatia, Czech Republic, Finland, Hungary, Ireland, Latvia, Lithuania, Portugal, Slovakia, Slovenia, Sweden, Italy, and Spain.

## RESEARCH FINDINGS

### 1. Right to information

#### a. Legal overview

In Czechia, the procedural rights of persons who are deprived of their liberty (including persons requested on the basis of an EAW) are safeguarded in general by the Charter of Rights and Fundamental Freedoms<sup>1</sup> (*Listina základních práv a svobod*; the human rights bill supplementary to the Constitution that has the authority of a constitutional law), and in detail by the Code of Criminal Procedure (*zákon o trestním řízení soudním*, commonly abbreviated as *trestní řád*),<sup>2</sup> which also serves as the *lex generalis* procedural code for EAW proceedings. The procedure of EAW proceedings is set out in the Act on International Judicial Cooperation in Criminal Matters (*zákon o mezinárodní justiční spolupráci ve věcech trestních*, hereinafter the 'Act on International Cooperation'),<sup>3</sup> the *lex specialis* procedural code governing various forms of international judicial cooperation in criminal matters. The EAW Framework Decision, including the special rights it introduces, is transposed into Czech law by the Act on International Cooperation.

In most cases, the arrests are conducted by the police. Regardless of the type of warrant, persons arrested in Czechia must be informed of the following rights (the list is not exhaustive):

- The right to counsel by defence lawyer, including the right to consult with defence lawyer privately and the right to require the defence lawyer's presence during interrogation. In EAW proceedings, the requested person must be mandatorily counselled by defence lawyer already in the initial (preliminary investigation) stage of the proceedings,<sup>4</sup> initiated immediately after the arrest;<sup>5</sup>
- The right to interpretation and translation, including the right of arrested persons who are foreign nationals to use their mother tongue when dealing with Czech authorities.<sup>6</sup> Interpreters are summoned by the authority involved in the criminal proceedings that is executing that particular step in the proceedings<sup>7</sup> to provide live interpretation of the proceeding or of relevant documents that are available only in the Czech language;

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<sup>1</sup> Czech Republic, Act No. 2/1993 Coll., Charter of Rights and Fundamental Freedoms (*Listina základních práv a svobod*). Article 37.

<sup>2</sup> Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 2(13): *The person against whom criminal proceedings are conducted must be instructed in every stage of the proceedings about their rights enabling them to fully exercise their defence, and so that they may choose a Defence lawyer; all authorities involved in criminal proceedings are obliged to enable the full exercise of such rights.*

<sup>3</sup> Czech Republic, Act No. 105/2013 Coll., on International Judicial Cooperation in Criminal Matters (*Zákon o mezinárodní justiční spolupráci ve věcech trestních*).

<sup>4</sup> Czech Republic, Act No. 105/2013 Coll., on International Judicial Cooperation in Criminal Matters (*Zákon o mezinárodní justiční spolupráci ve věcech trestních*). Section 14(1)b).

<sup>5</sup> That is a major difference from the usual procedure, as only selected arrested persons must have a mandatory counsel already in the preparatory stage of the proceedings. Confer Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 36(1)-(3).

<sup>6</sup> Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 2(14).

<sup>7</sup> Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 28(1).

- The right to be notified of one's rights. The law stipulates that a written template/notification of rights is handed out to arrested persons.<sup>8</sup> The template is available in several foreign languages (English, German, French, Russian), and if the arrested person does not speak Czech or any of the other languages above well, they must be provided with a written translation in their mother tongue or best language without undue delay.<sup>9</sup>

In addition to these rights, persons arrested based on an EAW have special rights, such as:

- The right to be informed about the content of the EAW;<sup>10</sup>
- The option to consent to surrender to the issuing MS, including the right to be informed of its implications and to be informed that by agreeing to surrender the requested person renounces the speciality rule;<sup>11</sup>
- The right to choose a defence lawyer in the issuing State; the right to receive information from the issuing State facilitating one's choosing of a defence lawyer in the issuing State.<sup>12</sup>

The information on the special rights with respect to the EAW is also provided as a template, which is available in the following languages: English, Polish, Bulgarian, Hungarian, Ukrainian, Vietnamese, Russian, and Arabic.<sup>13</sup>

b. Right to information in practice

- Provision of information (when, how by whom)

In Czechia, **all authorities that come into contact with the requested person have an obligation to provide information** to them both verbally and in writing (as confirmed by a judge). Arrests are normally conducted by the police, which is the first authority that must provide information upon the arrest. All interviewees emphasised that they have never been personally present during an arrest, and thus the data they provided in this research on what, when, and how arrested persons are informed by the police is based on assumptions and on the case file. According to a judge, audio recordings are not available about the arrest, only about the court proceedings, and thus it is not possible to corroborate the information the police provides during an arrest. The pre-hearing interrogation is normally conducted by the state prosecutor, who is also obliged to provide the person with information on their rights. If the police conducts the first interrogation, they again have the obligation to provide information to the person on their rights. The person's defence lawyer as well as the judge are further sources of information, which means that **altogether four authorities provide information on the person's procedural rights.**

From the interviews it seems that the defence lawyer primarily provides oral information, and the judge also provides oral information. According to a state prosecutor the idea behind providing information from multiple sources and several times during the proceedings is that as the process

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<sup>8</sup> Written form is only set for notification of 'basic' rights of an arrested person; there is no form set for notification of rights of the addition rights set for persons arrested on the basis of an EAW. Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 33(6).

<sup>9</sup> Czech Republic, Act No.141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 28(6).

<sup>10</sup> Czech Republic, Act No. 105/2013 Coll., on International Judicial Cooperation in Criminal Matters (*Zákon o mezinárodní justiční spolupráci ve věcech trestních*). Section 203.

<sup>11</sup> Czech Republic, Act No. 105/2013 Coll., on International Judicial Cooperation in Criminal Matters (*Zákon o mezinárodní justiční spolupráci ve věcech trestních*). Section 203(7).

<sup>12</sup> Czech Republic, Act No. 105/2013 Coll., on International Judicial Cooperation in Criminal Matters (*Zákon o mezinárodní justiční spolupráci ve věcech trestních*). Section 203(5) and 204(3).

<sup>13</sup> Information provided by the police of the Czech Republic via email on 29 September 2022.

unfolds, the person may change their mind about a certain issue, and therefore it is essential that they are continually reminded of their rights:

*'Information is given to the requested person at every occasion, this is what the law sets out. Which is right, because the requested person's attitude or [the case itself] is in a process of constant change. Obviously, the requested person may pay attention [differently] to the information given when they are in front of the court [as opposed to when he/she is given information by the police for the first time]. So basically every [authority] that meets with the requested person will provide information.'* (Prosecutor, Czechia)

*'To poučování té osoby se dává při každé příležitosti, zákon to tak prostě stanoví, a je to správně, protože ta věc se vyvíjí. Pochopitelně ta osoba může poučení věnovat úplně jinou pozornost v okamžiku, kdy je vyslychaná před soudem a tak dále. Takže každý, kdo se s tou osobou setká, tak jí poučí.'*

The interviewees generally agreed that **persons are provided with appropriate information in a timely manner**. A state prosecutor who is very experienced in EAW cases said that based on the case file he has never seen a case when the police would not provide information. At the same time, the interviewee raised the issue that there is no real method to verify whether the person truly read and understood the information provided:

*'I have never come across a situation where the person had not received sufficient information [upon arrest]. Of course, we could talk about how the police may give [the person] the written form and the person signs it without properly reading it first. But as a state prosecutor I cannot judge whether that's the case or not. But I have never seen a case file where a person did not sign that they had been provided with information.'* (Prosecutor, Czechia)

*'Nesetkal jsem se ve své praxi, že by osoba nebyla jako relevantně poučena. Samozřejmě můžeme se bavit o tom, že policejní orgán takhle předloží přetisk poučení a on to někdo podepíše a ten člověk si to pořádně nepřečte, ale tak to samozřejmě jako státní zástupce nevím, jestli to tak bylo nebo nebylo, ale ten člověk podepíše, že je poučen, ale že by ve spise nebylo poučení obviněného, podepsané tou osobou, tak s tím jsem se nepotkal.'*

Even among defence lawyers there was a general sense of satisfaction with respect to the dealings of the police with the arrested person. A defence lawyer confirmed that in his experience there are no shortcomings on the side of the police:

*'With respect to the content of the information [given by authorities] and whether or not [arrested persons] are informed, I think that there are no mistakes on the side of the state authorities in the criminal procedure. [Arrested persons] receive all necessary information and in the overwhelming majority of cases I saw the police behaved in the proper way towards them. In a perfectly appropriate way.'* (Defence lawyer, Czechia)

*'Ten obsah toho poučení a toho, jestliže jsou poučováni, tak tam jakoby si myslím, že chyba na straně orgánů činných v trestním řízení jako není žádná, tam v podstatě dostanou ty všechny potřebný poučení i jsem se ve velkém většině případů setkal s tím, že ta policie se k těm lidem chová velice korektně. Jó, velice korektně.'*

Another defence lawyer commented that although they are not present during the arrest, based on their first consultation with the person they can reasonably evaluate whether the person was provided with sufficient information upon arrest:

*'I start the consultation by asking how [the arrest] went, how long he had been arrested for and what he was told [by the authorities]. And whether he happened to sign anything. So that way we find out if the person has been provided information and about what.'* (Defence lawyer, Czechia)

*'s ním začnu rozhovor s tím, že se ho ptám, jak to probíhalo, jak dlouho tam je a co mu řekli, a tím, a jestli případně něco podepsal, a tím i zjistíme, jestli a jak byl případně poučen. Další věc je u toho poučení, je to často formální. Ten člověk dostane do ruky papír, to jsou listy, třeba tři, čtyři listy, aby si to přečetl, a ještě to na něj u toho vypálí ten policista, který ho poučuje, vysvětluje mu, co tam je. Já chápu, že to je velmi jako otravné pro toho policistu, protože to je rutina, musí to dělat u každého, takže se nad tím víc nezamýšlí, ale nemyslím si, že by ten výsledek byl jakkoliv efektivní a že by ten člověk byl opravdu řádně poučen.'*

**Information is provided both in writing and orally, but templates are available only in certain languages.** There are two templates: one general template used for all arrests, and one specific to EAW cases. The police hand out a written (general) template in Czech for Czech speakers, and the template is also available in authorised translation in several languages – the interviewees mentioned English, German, French, and Russian. The EAW-specific template is available in English, Polish, Bulgarian, Hungarian, Ukrainian, Vietnamese, Russian, and Arabic.<sup>14</sup>

A police officer explains the person their rights in Czech, as the entire proceedings are conducted in Czech. If the person indicates that they are not fluent in Czech, the police is obliged to call in an interpreter (see section 2 below). The interpreter translates the templates orally and both the person and the interpreter must sign that the person received information on their rights. There was some disagreement about the types of interpreters who can be used during the arrest and the police hearing. Some interviewees said that only certified judicial interpreters can be used, while a defence lawyer said that due to time pressure the police may resort to using any type of interpreter (which, however, would not be in accordance with the law). If the person does not speak Czech or any of the languages in which the template is handed out, a certain amount of time may pass between the arrest and the time the person's rights are interpreted to them. This time may be longer if the person speaks a language for which interpreters are not easily available.

- Information about rights

As none of the interviewees had first-hand experience with EAW arrests, many noted that they may not recall all the rights that requested persons are informed about. Based on the interviews there is no reason to believe that the persons are not provided with sufficient information about their rights, including their EAW-specific rights. Only one interviewee, a state prosecutor was able to recount the full list of rights that persons are informed about – the other interviewees either mentioned only some rights or were unable to recount them in detail. According to this state prosecutor (1) the person has the right (but no obligation) to testify, and should they decide not to testify there will be no negative consequences; (2) the person has the right to choose their legal counsel, but should the person not choose defence lawyer the court will appoint one *ex officio*; (3) the embassy of the person's citizenship is notified; (4) the person has the right to use the speciality rule.

A state prosecutor noted that one of the most important points in providing information is that the person understands not only their rights, but also the nature of the EAW – specifically, the fact that

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<sup>14</sup> Information provided by the police of the Czech Republic via email on 29 September 2022.

the interrogation is focused not on the crime itself, but the person’s viewpoint on the EAW. Defence lawyer held a similar opinion:

*‘[Persons] are informed about their rights, and especially about the fact that they are not obliged to testify, but also [they are told] about the subject of the criminal prosecution, including the fact that the prosecution is not about whether or not they are guilty or what type of crime they committed, but about whether there is sufficient reason to hand them over to the [issuing authorities].’ (Defence lawyer, Czechia)*

*‘Jsou poučováni o tom, co, jaký jsou jejich práva jakoby, jsou tam poučováni zejména o tom, že nejsou povinni vypovídat, že co je podstatou toho řízení, že to řízení v podstatě není o tom, že by se nalézala ta vina nebo posuzoval se ten skutek, ale jenom o tom, jestli je ta důvodnost toho předání, nebo ne.’*

**Table 1: Are persons arrested on an EAW informed about their procedural rights?**

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Lawyer 5	Judge 1	Judge 2	Judge 3	Judge 4	Total
<b>YES</b>	X	X	X	X	X	X	X	X		<b>8</b>
In writing (Letter of Rights)										
Orally										
In writing (Letter of Rights) and orally	X	X	X	X	X	X	X	X		<b>8</b>
<b>NO</b>										<b>0</b>
<b>Don’t know/re member</b>										
<b>Did not answer</b>									X	<b>1</b>

- Information about the EAW – content and procedure

According to a judge, if a person is arrested based on an EAW, it is **mandatory for the police to tell the person that there is an EAW in place against them**. The same judge held that persons are informed about the contents of the EAW against them at all phases of the proceedings, but at the time of the arrest the police may not yet have the actual EAW at their disposal. Should they know that there is an EAW in place against the person (either because the police is planning an arrest or because during a police check it turns out that the person is wanted by authorities), the police can arrest the person without having immediate access to the EAW.

All interviewees confirmed that the **contents of the EAW as well as part of the case file are shared with the requested person**. If the EAW is already available, the police shares it with the person – if it is not available in the language the person speaks, its contents are interpreted to the person. If the EAW is not immediately available, then either the state prosecutor shares it with the person or the defence lawyer. A defence lawyer mentioned that if the warrant becomes available only when the defence lawyer starts the consultation then it is up to the defence lawyer to go through the warrant with the person. The same defence lawyer said that this scenario happened to them once, and that

he raised an informal complaint with the police saying that they cannot provide quality defence services if the EAW is not available in advance. In another EAW case the same defence lawyer claimed that the received EAW raised serious quality concerns, although the case in question took place a long time ago:

*'Sometimes [the EAW] is not fully available, often it [arrives] in very poor quality. I don't know what the situation is like now, but the last case I dealt with was six years ago (...) but [the CZ authorities received] this faxed version [of the EAW] that was of very poor quality. (...) Not that it wasn't possible to read it, but (...) it was grey, crumpled, it was hard to understand.'* (Defence lawyer, Czechia)

*'On třeba není někdy k dispozici úplně, často je v mizerný kvalitě; nevím, jak je to teď, jó, bavíme se prostě, já sám říkám, já mám poslední, tuším, šest let starej ten případ, takže to není úplně aktuální, ale měli nějaký faxový prostě sjetiny, který byly hodně nekvalitní.*

*A: Jako myslíte i možnosti to přečíst vůbec?*

*B: No bylo to opravdu hodně nekvalitní, byla to, jako ne že by to nešlo přečíst, ale prostě bylo to, já nevím, jak to popsat, prostě bylo to šedivý, pokřivený, blbě se to prostě četlo.'*

No other interviewees expressed concerns about the quality of the EAW.

**Table 2: Are persons arrested informed of the contents of the EAW against them?**

	Lawyer 1	L 2	L 3	L 4	L 5	J 1	J 2	J 3	J 4	Total
<b>YES</b>	X	X	X	X	X	X	X			<b>7</b>
In writing										
Orally										
In writing and orally	X	X	X	X	X	X	X			<b>7</b>
<b>NO</b>										<b>0</b>
<b>Don't know/remember</b>										
<b>Did not answer</b>								X	X	<b>2</b>

- Information on consenting to surrender

All the interviewees agreed that **persons are always informed about the speciality rule** and no interviewee mentioned ever encountering a case when the implications of consenting to surrender were not explained to the person. As with other types of information on rights, **information about consent to surrender is also provided by various sources and at various stages of the proceedings**. It seems that providing information on the speciality rule is of paramount importance to defence lawyers and for judges and state prosecutors alike. One defence lawyer said the following:

*'I think that [consent to surrender] is a really key issue, so all [of the stakeholders involved] truly explain it [to the person]. [The CZ authorities] have the obligation to explain it based on [national law], and defence lawyers must explain it as part of their responsibility. We have to make sure that the requested person understands this issue.'* (Defence lawyer, Czechia)

*'Tohleto je zrovna, tohleto je zrovna věc, která je zřejmě úplně klíčová, takže ji opravdu vysvětlujeme všichni. Oni to mají přímo, oni to mají vlastně, je to přímo v tom zákonu o mezinárodní justiční spolupráci, že jo, takže tam oni to za povinnost mají mu to vysvětlit; no a*

*my to máme v rámci běžný povinnosti obhájců, prostě potřebujem se ujistit, že ten dotyčnej to chápe.'*

One state prosecutor noted that it is so automatic for authorities to provide information on the speciality rule that they provide this information even to Slovak citizens, to whom this rule does not apply. Czechia and Slovakia have a mutual agreement based on which the speciality rule is automatically forfeited unless the person's permanent address is in the other executing country (other exceptions apply).

**Table 3: Are the requested persons informed about what consenting to their surrender entails?**

	Lawyer 1	L2	L3	L4	L5	Judge 1	J2	J3	J4	Total
<b>YES</b>	X	X	X	X	X	X	X			<b>7</b>
<b>NO</b>										<b>0</b>
<b>Don't know/remember</b>										
<b>Did not answer</b>								X	X	<b>2</b>

- Understanding of information

All judges and state prosecutors interviewed as part of this research claimed that in general **persons understand the information provided to them by the authorities, including the speciality rule**. Some concerns about the amount of information provided and the methods the authorities use to check the persons' understanding of the information provided were raised. A defence lawyer pointed out that upon arrest persons are provided with a large amount of information, which may be difficult for the person to comprehend and process. The same defence lawyer was critical of both the amount of information persons are provided with and the complexity of the information provided:

*'[An] issue is the information given, which is often just a formality. The person gets a piece of paper, it's sheets of paper, three or four sheets, so the person needs to read it. And while they are reading it, a police officer starts explaining it to them. I mean, I understand that it's a nuisance for the police officer because it's a routine procedure, he has to do it the same way with [every arrested person], so he doesn't really give it much thought, but I don't think that the result [of the verbal information provided] is in any way effective and that the requested person truly understands the information given.'* (Defence lawyer, Czechia)

*'s ním začnu rozhovor s tím, že se ho ptám, jak to probíhalo, jak dlouho tam je a co mu řekli, a tím, a jestli případně něco podepsal, a tím i zjistíme, jestli a jak byl případně poučen. Další věc je u toho poučení, je to často formální. Ten člověk dostane do ruky papír, to jsou listy, třeba tři, čtyři listy, aby si to přečetl, a ještě to na něj u toho vypálí ten policista, který ho poučuje, vysvětluje mu, co tam je. Já chápu, že to je velmi jako otravné pro toho policistu, protože to je rutina, musí to dělat u každého, takže se nad tím víc nezamýšlí, ale nemyslím si, že by ten výsledek byl jakkoliv efektivní a že by ten člověk byl opravdu rádně poučen.'*

Both state prosecutors/judges and defence lawyers view the **role of the legal defence lawyer as a safeguard that ensures that the person has a sufficient level of understanding of the information provided**. A defence lawyer further confirmed that the defence lawyer's role is essential in making sure that the person understands the information given:

*'It happens quite often that the requested person knows, for instance, that he has a problem (...). He tries to explain that basically he didn't commit any crime or that it's all quite*



*complicated. And [the speciality rule] must be explained to them. This is my work as a defence lawyer – I try to explain to them what the [speciality rule] means, I try to explain the risks involved of being prosecuted for all crimes [not just the one for which the EAW was issued].’  
(Defence lawyer, Czechia)*

*‘Stává se dost často, že nějaký, že nějaký ten předávanej, že v podstatě on ví třeba, že někde má nějaký problém v nějaký zemi, ale snaží se vyjadřovat k tomu skutku, co se tam mělo udát. On prostě samozřejmě nechce tam bejt vydanej, že jo, on většinou to ty lidi, oni tam jako úplně do tý země nechtěj, takže se to snaží vysvětlit, že vlastně tam nic neudělal, že to je celý nějaký jako zamotanější (...), tak to jako je potřeba jim to vysvětlit jako. To je třeba úloha moje jako obhájce, já když to dělám, tak se snažím jim to vysvětlit, říct jim, co to znamená, říct jim to, že je tam pro ně obrovský riziko (...) pokud se jí vzdaj, tak že tam je můžou stíhat i za něco jinýho.’*

It seems that the **courts make a special effort to verify that persons fully understand the implication of consent to surrender, but there is no guideline or system of verification in place.** Instead, consent to surrender is verified in several stages. A state prosecutor said that even if the person states that they consent to surrender in front of the court, this claim has no immediate consequences for the person involved. The consent becomes binding only (1) when the state prosecutor informs the person of all the potential consequences of consenting to surrender; (2) if the consent is pronounced in front of the court and in the presence of the defence lawyer; (3) if it is voiced very clearly. They added that the authorities must make special efforts to explain the speciality rule in a manner that is accessible to the person:

*‘I am very careful about [making sure that the requested person understands their rights, in particular the speciality rule/consent to surrender]. I am convinced that requested persons [who renounce the speciality rule] in my presence in front of the court understand [what they are doing]. (...) The main thing is to explain [the consent to surrender] to the requested person in simple words. These are not usually people who have legal education (...), these are simple people, to whom you must explain what their rights are. And renouncing the speciality rule is truly an extraordinary measure, which can significantly modify the requested person’s [case].’  
(Prosecutor, Czechia)*

*‘Já na to velmi dbám. Jsem přesvědčena o tom, že ti lidé, kteří takové prohlášení činí za mé přítomnosti před soudem tomu rozumí. (...) Jde o to, aby se to té osobě vysvětlilo prostými slovy. Většinou to nejsou lidé, kteří by měli nějaké právnické vzdělání (...) jsou to prostý lidé, kterým musíte vysvětlit, jaká mají práva, a vzdání se práva na uplatnění speciality je opravdu mimořádné opatření, které může velmi zásadním způsobem modifikovat vůli té osoby, že to prohlášení před soudem nedá.’*

Still, several defence lawyers were **critical of the method used by the authorities to verify a requested person’s understanding of the speciality rule.** They explained that the handing over on the basis of an EAW is an overly formal procedure and said that:

*‘I don’t want to blame the state prosecution or the courts, but the truth is that from their point of view their [role] is rather static. They basically need to make sure, to put it bluntly, that it is recorded in the minutes that the [requested person] understands [what consent to surrender means]. But they are not very concerned about the extent to which the person truly understands this issue. (...) They do not verify [if the requested person understands] in any particular way. Another question is how they could actually do that. Because if the [requested person] tells you that they understand, of course you’re going to be content [with that]*

*statement]. Obviously, if the requested person shows any signs of mental illness, then [the authorities] would dig a little further, but let's just say openly that most requested persons do not have the intellectual capacity to understand such a subtle thing as the speciality rule.'* (Defence lawyer, Czechia)

*,Nechci teďka úplně jako to nějakým způsobem vyčítat státnímu zastupitelství nebo ani soudům, ale pravda je, že samozřejmě ze strany těch soudů i těch státních zastupitelství ten přístup je jaksí řekněme mechaničtější. Oni potřebujou vlastně se ujistit, že, když to řeknu, když to řeknu jako nějak lapidárně, tak oni se potřebujou ujistit, že v tom protokolu zazní, že to chápou, ale to faktický pochopení už je až tak nezajímá. Oni prostě potřebujou mít v protokolu, že to dotyčnej chápe, že tomu porozuměl, a pak jeho nějaký postoj k tý věci, ale jestli to opravdu chápe je až tak nezajímá.*

*A: A nezkoumají to? Jako že nějakým způsobem to z toho člověka prostě jako nepáčí nebo tak?*

*B: Nezkoumají no. Ono je taky otázka, jak byste to dělal, že jo, jó, protože když vám někdo řekne, že to chápe, no tak se s tím většinou spokojíte. Není to, samozřejmě pokud by ten dotyčnej vykazoval nějaký znaky duševní poruchy, tak by, třeba, jó, tak třeba by je to trklo, ale řekněme si jako otevřeně, že spousta těch osob nemá vůbec dostatečnou mentální kapacitu na to, aby pochopily tak řekněme subtilní záležitost, jako je specialita, jó.'*

A different defence lawyer expressed the view that although the authorities truly make an effort to explain the speciality rule, the concept may be too complicated for many persons to understand. Another defence lawyer felt that one of the most important reasons why persons may not understand the information given to them is that they experience a great psychological shock during and immediately after an arrest, so they are not in the right mental state to process complicated legal matters. Importantly, while they are critical of what understanding persons have of the speciality rule after they are initially provided with information by the police, the interviewee stated that they never had the impression that the police in any way pressure requested persons into consenting to surrender. As for the authorities verifying whether the person fully understands the information on the EAW and the information they are given about their rights, the interviewee noted that their impression is that the authorities ask a control question. The interviewee said that in their opinion making sure that the person fully understands the information provided is not a priority in the proceedings.

#### c. Additional best practices or challenges

The Czech authorities make a significant effort to provide information on rights. Persons are provided information by the police from the very beginning of the proceedings (from the arrest), and the information is repeated by every authority the person comes in contact with (state prosecutor, court). In addition to this, defence lawyers are also obliged to provide information and they normally discuss the information already given to persons by the authorities to ensure that persons have a full understanding of their rights.

#### d. Discussion of findings

In general, our findings confirm that persons arrested under an EAW are provided with information on their rights from the beginning of the proceedings, and that information (including information on the speciality rule) is provided in various stages and in the person's language. At the same time there **seem to be some shortcomings** in this regard, as the practice is not fully congruent with the legal requirements. Information on rights is provided both in writing and orally, but the **written version is not accessible in every language**. In all languages for which templates are not available, both the regular rights of arrested people and the special rights of requested persons are recounted to them only orally (an interpreter provides a live interpretation of the Czech template). This seems to be **in conflict with the legal requirements**, which clearly establish that all arrested persons in Czechia (not

only those arrested under an EAW) are entitled to a written document detailing their rights in their mother tongue or best language. Although none of the interviewees raised this concern, it must be noted **that persons who are only provided with an interpretation of the Letter of Rights and who do not automatically receive a written translation may have impeded access to the information compared to those who receive it in written form.**

Concerns were raised about the **accessibility of the language** in which the Letter of Rights is written, but FRANET was unable to independently verify whether the template is written in language that is easy to understand for requested persons of various intellectual backgrounds and abilities. When persons are informed orally, it is largely up to the authorities to simplify the contents of the template and adjust it to the person's intellectual abilities. There is **no systematic method (e.g. guideline) to verify that persons fully comprehend the information given.**

Similar concerns can be raised with respect to verifying that the **person understands the consequences of consent to surrender**, as there is **no clear-cut method (e.g. guideline)** in place. Instead, it seems that the authorities make extra efforts (ask further verifying questions) to ensure that the person has sufficient information on this matter – for instance, the person's understanding of the speciality rule is verified in various stages of the proceedings, and the first statement of consent is not legally binding. The **authorities therefore rely both on their own subjective sense that the person understands the speciality rule, and on the defence lawyer's obligation to provide an accessible explanation of this issue.**

## 2. Right to interpretation and translation

### a. Legal overview

In Czechia, any person against whom criminal proceedings are conducted who is not Czech can declare that they do not understand Czech, and by law they are entitled to use their mother tongue or a language they say they understand when dealing with the authorities.<sup>15</sup> In such cases the authority executing that particular step in the criminal proceedings is obliged to summon an interpreter and/or translate the documents in question.<sup>16</sup> An interpreter must be summoned even if the authority is able to appropriately communicate in the language of the person against whom criminal proceedings are conducted.<sup>17</sup> No special rights regarding interpretation are conferred to persons who are arrested based on an EAW.

The following documents can be translated for the person against whom criminal proceedings are conducted: (1) the written resolution on the initiation of criminal prosecution; (2) the resolution on custody; (3) the indictment; (4) the agreement on guilt and punishment; (4) the motion for the approval of this agreement; (5) the motion for punishment; (6) the judgment; (7) the criminal order, (8) the decision on appeal and on the conditional discontinuation of criminal prosecution. If the person says that they do not need a translation of the documents listed above, after being notified of the implications of such a declaration, the authorities are not required to provide a translation.<sup>18</sup> The

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<sup>15</sup> Czech Republic, Act No.141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 2(14).

<sup>16</sup> Czech Republic, Act No.141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 28(1).

<sup>17</sup> Durdík, T. (2017), 'Commentary on section 28' in: Drašík, A. & Fenyk, J. (eds.), *Code of Criminal Procedure: Commentary (Trestní řád: Komentář)*, Prague, Wolters Kluwer, bullet no. 5.

<sup>18</sup> Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 28(2).

person or their legal counsel can request that other documents (such as the case file) are also translated, but the court must approve that these documents are essential for the person in order to acquaint themselves with the facts of the case.<sup>19</sup> There is no obligation for Czech authorities to provide a written translation of the EAW to the requested person.

The corresponding laws do not include any provisions on the use of digital tools when providing interpretation. Authorities have an obligation to control and ensure that the interpreter duly fulfils their duties, and that the person against whom the criminal proceedings are conducted fully understands the nature and particular elements of the proceedings they are subjected to.<sup>20</sup>

b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

Our findings unanimously indicate **that the authorities act in accordance with the law, and whenever needed an interpreter is summoned**. A defence lawyer clarified that the proceedings, including the arrest, always take place in the Czech language (in the presence of an interpreter), including cases when e.g. the police representative speaks the person's language. Already upon the arrest if it is clear for the police that the person does not understand Czech or if the person requests so, the police calls an interpreter who is normally a certified professional (a judicial interpreter).

There do not seem to be any exceptions to the availability of an interpreter, as one experienced defence lawyer confirmed for FRANET. Not having a qualified interpreter would put the authorities in risk of committing a serious procedural flaw, which could have further potential consequences for the case.

*'If [a requested/arrested person] lets [authorities] know that they do not speak [Czech] to the appropriate level, then they must get an interpreter. I do think that this is adhered to within handover procedures. This really is being adhered to. I mean, I never came across [a case] when the authorities would say [to a requested person] 'nah, it's okay, you understand [Czech] well enough'. I don't think anyone would take the liberty, because it's a basic procedural mistake, which [the authorities] can easily be held liable for.'* (Defence lawyer, Czechia)

*'Pokud někdo prohlásí, že neovládá jazyk tak do značný míry, tak prostě toho tlumočnicka mít musí. To si myslím, že je dodržovaný v rámci předávacích řízení. Tak to je vyloženě dodržovaný nebo nesetkal jsem se nikdy s tím, že by řekli, nó, že to nevadí, že vy rozumíte dobře, to si podle mě tam nikdo ani nedovolí, protože to je jakoby základní vada řízení, která, která může bejt postižitelná poměrně snadno.'*

If the arrest is planned, an interpreter must be available immediately, as they are obliged not only to facilitate communication with the arresting authority, but to interpret their rights to the person. In other arrest cases, the timing of the interpreter's arrival depends largely on the language of interpretation. A defence lawyer noted the following:

*'The requested person should not be without information, but when they are arrested, the police of course usually does not have interpreters ready. If the person is arrested by the police [and does speak Czech] they may not find out much at that given moment, but if a decision is already being made about detention, then interpreters are already routinely available. At that*

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<sup>19</sup> Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 28(4).

<sup>20</sup> Durdík, T. (2017), 'Commentary on section 28' in: Drašík, A. & Fenyk, J. (eds.), *Code of Criminal Procedure: Commentary (Trestní řád: Komentář)*, Prague, Wolters Kluwer, Bullet No. 5.

*moment, the person already finds out most of the information, or at least they find out why they are arrested.’ (Czechia, defence lawyer)*

*‘A ten člověk, ten člověk by primárně neměl být úplně bez informací, to znamená, i když ho prostě zadržej, tak vlastně ta policie samozřejmě obvykle nedisponuje tím odborným aparátem tlumočnicků jako, který by tam přímo byli, to znamená, pokud je ten člověk vlastně zadrženej v rámci policejního orgánu, tak tam se toho příliš nedozví, ale potom když už se rozhoduje třeba o nějaký vazbě nebo to, tak tam běžně ty tlumočníci fungují, takže tam se dozví většinu těch informací, který, jako minimálně ví, proč tam je.’*

How early an interpreter arrives at the scene of an arrest may depend on the language, as interpreters in some languages are more readily available than others, as confirmed by a state prosecutor. A judge said that even if they are certain that the requested person understands Czech well, **authorities will almost always order that an interpreter be present during the court proceedings to make sure that interpretation is available on an *ad hoc* basis.** An interpreter will be summoned for the court hearing even if the police claimed that the person does not need or refused to request one:

*‘I admit that even if [other authorities involved] write me that [the arrested person] understands [Czech] both in speech and writing, I still request an interpreter to be present for the court proceeding. In the worst case I send [the interpreter] home, if I can see that [the requested person] speaks perfectly fluent [Czech]. Because it has happened to me many times that as a state prosecutor I came for the custodial hearing and the court did not request an interpreter [assuming that] the [requested person] understands good Czech. And [the requested] person, I mean... I don’t know who wrote that protocol... then I really shouted at the police organ who wrote that [the requested person] basically understands [Czech]. And the [requested person] showed up at the court with no interpreter [even though he clearly needed one]. How [the police] got all the information out of him... I have no idea. So you can’t totally trust the [information given by the police about the requested person’s language competence].’ (Czechia, judge)*

*‘Já se přiznám, že i když mi [jiné orgány činné v trestním řízení] napíší, že [zatčený] dobře rozumí [česky] slovem a písmem, i tak k jednání si vždycky pozvu tlumočnicka, a kdyžtak ho pak poslu domu, když opravdu vidím, že mluví úplně plyně. Protože už se několikrát stalo, že jsem ještě jako státní zástupkyně přišla na vazební zasedání, a soud si nepozval tlumočnicka, protože říkal, že dobře rozumí. A ten člověk jako... nevím, kdo s ním psal ten protokol... pak jsem strašně křičela na policejní orgán, ale napsali, že v podstatě rozumí. A ten chlap tam byl bez tlumočnicka, a jak z něj dostali ty informace, to vůbec netuším teda. Takže se nedá spoléhat [na informaci od Policie].’*

Should they find out that the person did not request an interpreter, but that the person’s Czech language skills are not sufficient to adequately participate in the proceedings, the authorities will not hesitate to adjourn the hearing or interrogation and continue only once an interpreter is present.

**Even speakers of Slavic languages, in whose case it can be reasonably assumed that they speak Czech sufficiently well, get access to an interpreter.** A defence lawyer confirmed that based on their experience interpretation is always available, and that it is offered even to Slovak speakers (who otherwise usually have a very good grasp of the Czech language and normally do not opt for an interpreter):

*‘Even with persons whose mother tongue is Slovak, interpretation is offered [by the authorities]. I have experienced this many times [in non-EAW cases] that most persons refuse*

*the interpretation; I've never actually experienced a case when someone would want interpretation from Slovak to Czech. With other languages interpretation is unavoidable. It can take some time for the interpreter to be summoned from the [officially certified] list.'* (Czechia, defence lawyer)

*'I u lidí, jejichž rodným jazykem a jejichž jazykem je slovenština, se nabízí tlumočnické služby ze slovenštiny. Už jsem to opakovaně zažila, většina to odmítá, vlastně jsem se ještě nesešla s tím, že by někdo chtěl toho tlumočnicka ze slovenštiny do češtiny; u těch ostatních se to v zásadě bez tlumočnicka nehne, musí se počkat, až se nějaký tlumočnick sežene, což, nó, což jako je seznam tlumočnicků a měla jsem velmi ochotné tlumočnicky, které, kteří pak spolupracovali i s obhajobou, protože vám se stane, že ten váš klient nemluví, tedy že vy nemluvíte tím jeho jazykem, takže pak si toho tlumočnicka můžete, pokud jste s ním spokojen, s ním domluvit i na návštěvě věznice, ale je třeba jeho přítomnost hned při prvním výslechu.'*

A judge expressed the opinion that not only Slovak speakers, but also speakers of other Slavic languages tend not to request interpretation, but that it is nevertheless ensured to them:

*'The most typical case is that of Russians or Ukrainians who have been living [in Czechia] for years. They have the impression that they know everything, but I tell them: "you know, this is the law. It can be hard for even a Czech native speaker to grasp." So I always request the presence of an interpreter. (...) And I do think that most [judges] do the same.'* (Czechia, judge)

*'Úplně nejtýpější je to u těch Rusů či Ukrajinců, co tady žijou už léta. Oni mají pak pocit, že fakt všechno umí, ale já jim říkám 'víte, tohle je právo. To někdy pochopit je těžké i pro Čecha'. Takže já tam toho tlumočnicka chci vždycky. (...) A myslím si, že to tak dělá většina.'*

With respect to **verifying the quality of the interpretation, no set guidelines are in place**. A state prosecutor said that during the interrogation they request feedback from the person on the quality of the interpretation by asking the person whether they understand the interpreter. The person is also informed that if they do not understand, the information will be explained again.

- Translation of documents

A state prosecutor said that there is **no obligation for the state prosecution to translate official documents**, including an EAW, unless during the interrogation the requested person explicitly states that they want a certain document to be translated. In this case the state prosecutor will ask the interpreter to provide an immediate oral interpretation. During the court hearing, if the person wants a written translation, the **judge must provide a written translation only for the documents issued by the court**. It is the responsibility of the judge to ask the requested person if they wish to have a translation.

A judge interviewed as part of this research did not recount the entire spectrum of documents for which translations must be ensured by the court. The judge maintained that a person has the right to familiarise themselves with the contents of the case and the documents the requested person considers to be essential for their defence. Thus, should the person request it, the documents are translated in writing, and written translations are sometimes mandated by the state prosecutor.

A defence lawyer corroborated that translations of key documents can be requested:

*'I don't think it's an issue for the person to get translations of all [official documents]. The translations are assigned to the certified interpreters, so again there is a bit of delay. So if there*

*is a decision issued, for instance, on detention (...) then the requested person should get hold of the translation within a couple of days.’ (Czechia, defence lawyer)*

*‘překlady vlastně si myslím, že není problém, aby obdržel ten člověk, pokud je bude chtít všechny. To se samozřejmě zase zadává prostě těm tlumočnickům zapsaných, zapsaným v seznamu tlumočnicků, to znamená, má to zase nějakou prodlevu, takže pokud je vydaný nějaký usnesení; ty usnesení obecně o předání nebo o tý vazbě, ať už tý předběžný nebo tý předávací, tak nejsou dlouhý, to je většinou, já nevím, stránka toho odůvodnění, takže myslím si, že ten, že ty překlady těchto listin ten dotyčnej obdrží v rámci dnů, maximálně týdnů.’*

The defence lawyer emphasised that translations will be ensured even if this may lead to some delays in the proceedings.

A defence lawyer who is very experienced in EAW cases said that the documents that are normally translated for a person are those that are included in the handover protocol: the arrest order, the decision on the commencement of criminal procedures, the indictment, and the sentence of first/second instance (he expressed some doubts about the exact documents).

- Interpretation of consultations with lawyers

Our findings indicate that **interpretation is widely available also for consultations with lawyers**, although there does not seem to be a legal obligation for defence lawyers to ensure that an interpreter is present on such occasions. A state prosecutor explained that even though the costs of interpretation are supposed to be borne by the requested person (if they are found guilty), in practice in *ex officio* cases such costs are either reimbursed to defence lawyers by the state or the interpreter bills the court directly. In either case, lawyers do not have any vested interest in saving money by not calling in an interpreter for consultations. At the same time, interpretation is not automatically ensured for consultations, so lawyers must ensure that an interpreter is present.

There is no guarantee that the same interpreter will be available for criminal proceedings and for consultations with defence lawyer. A defence lawyer noted that whenever defence lawyers are satisfied with the quality of the interpretation during the proceeding, they will make an effort to summon the same interpreter for consultations. No restrictions apply to the number of hours or the extent of interpretation, and interpreters routinely accompany defence lawyers to detention facilities. As a defence lawyer explained, arranging the interpreter’s visit to the detention facility can be a time consuming and strenuous process:

*‘I pick from the list of [certified] interpreters, because [the facility administration] would not let just anyone in. It has to be someone who has the interpreter ID for the given language and the specific [requested] person. Only [that interpreter] can accompany me. In practice this can be quite complicated in terms of making the right arrangements. You have to arrange for the interpreter, and you have to make an appointment with them so that they come to the detention facility. The facility must be informed [that the interpreter is coming]. So it’s not very easy.’ (Czechia, defence lawyer)*

*‘Vezmu ze seznamu tlumočnicků, protože nikoho jiného by do tý věznice nepustili, musí to bejt prostě někdo, kdo má tu průkazku tlumočnickou a na ten konkrétní jazyk u toho konkrétního člověka, a ten tam v podstatě může jít se mnou. V praxi to zase naráží na to, že v praxi je to poměrně náročný na to zařizování, musíte si zařídit jako tlumočnicka a musíte ho jakoby na určitou dobu se s ním domluvit, aby byl ve věznici, nechat si tam věznici informovat, nějakým způsobem se tam jako nameldovat, nebo jak to říct – není to úplně, není to úplně snadný.’*

Another defence lawyer said that at times their preference is to have a different interpreter during the consultations than the judicial interpreter who was summoned for the official proceedings. The interviewee added that when they work in EAW cases as a chosen defence lawyer they sometimes prefer to bring their own interpreters for confidential consultations. In *ex officio* cases they prefer to use the interpreter provided by the court, as this increases the likelihood that the interpreting costs will be reimbursed.

**Interpretation is normally available in contexts that are not strictly connected with the criminal proceedings**, for instance, when the person needs to communicate their needs in the detention facility. A defence lawyer said that besides consultations, pre-trial hearings, interrogations, and the court hearing, requested persons who are in detention may need *ad hoc* interpretation if they have a serious medical issue. The need for such *ad hoc* interpretation must be substantiated:

*'The interpreter is definitely present when there is a pre-trial hearing at the state prosecutor's office. As far as other needs are concerned, I'm not sure. I can imagine that if the person all of a sudden showed signs of a health issue and the police or the detention administration needed to talk to the person, I can imagine that in such cases they have the means to summon an interpreter. But it's definitely not like if the person wants to talk about not liking the food at the detention facility, then the [authorities] would get an interpreter.'* (Czechia, defence lawyer)

*'Určitě je tam tlumočnick ve chvíli, kdy je ten předběžnej výslech na státním zastupitelství. Pokud se týče jiných potřeb, tak to nevím, jó. Umím si představit, že v případě, že by, nevím, teď si něco vymyslím, že by prostě dotyčný začal vykazovat nějaký známky prostě náhlý třeba zdravotního zhoršení a ten policejní orgán nebo, nebo prostě ten orgán vězeňský správy nebo někdo by se s ním potřeboval prostě nutně domluvit, takže si umím představit a oni mají ty nástroje na to, aby si toho tlumočnicka obstarali. Určitě to ale není tak, že když si ten člověk bude chtít promluvit o tom, že mu nechutná jídlo prostě ve vazbě, tak že mu seženu tlumočnicka.'*

In these cases, the interpreter is provided by the administration of the detention facility.

#### c. Additional best practices or challenges

A state prosecutor pointed out that Czechia and Austria have a bilateral agreement, according to which the countries send each other EAWs in their own original languages. Therefore, Czech authorities do not automatically receive a translation of the EAW from German to Czech from the Austrian authorities. Notwithstanding this agreement, the Austrian authorities sometimes still send a translated EAW. The interviewee did not explain what, if any, the benefits of this practice are.

#### d. Discussion of findings

Our research findings do not raise any doubts about the **availability of interpretation and translation for requested persons**, and these services are provided by certified professionals. The findings indicate that the **practice is consistent with legal requirements, and that both in criminal proceedings and during consultations with defence lawyers, interpretation is truly widely available**. Although the legal requirements stipulate that the authorities are not required to ensure interpretation/translation if the person says that they do not need a translation, the **interpreter's presence in criminal proceedings seems to be standard practice**.

A somewhat contradictory approach is used regarding the **assessment of the need for an interpreter**. On the one hand, the authorities rely on the person to state that they need an interpreter. At the same



time, the interviewees confirmed that basically interpreters are summoned regardless of whether the person states that they need an interpreter (Slovak persons may be an exception to this rule.) The research also did not identify any systematic method of **assessment of whether the person truly understands the interpretation provided**. During proceedings, the authorities confirm the quality of the interpretation with the person by asking them to confirm that they understand the interpreter, but there are **no objective checks in place**. Whether or not interpretation is available for a person within the detention facility (outside of consultations with their defence lawyer) is also subject to the deliberation of **the detention facility's** administration. Once again, there **does not seem to be a guideline in place**.<sup>21</sup>

### 3. Right to access to a lawyer

#### a. Legal overview

The Czech Charter of Rights and Fundamental Freedoms stipulates that the right to defence lawyer in criminal proceedings is a fundamental right.<sup>22</sup> In the EAW proceedings, the requested person must be counselled by defence lawyer already in the initial (preliminary investigation) stage of the proceedings,<sup>23</sup> initiated immediately after the arrest.<sup>24</sup> The requested person is given 'due time'<sup>25</sup> to choose a defence lawyer. If the arrested person does not choose a defence lawyer, their guardian (if the arrested person is restricted in their legal capacity for any reason), relative (direct ancestor or descendant, sibling, adopter or adoptee, husband, partner, mate (cohabitant)) or a participating person<sup>26</sup> may choose a defence lawyer for them.<sup>27</sup> If these do not choose defence lawyer, it is done for them by the court upon a motion by the prosecutor.<sup>28</sup>

As for the costs of the defence, the defendant is expected to pay their defence lawyer notwithstanding whether the defence lawyer was chosen or appointed *ex officio* by the court in the cases of the so-

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<sup>21</sup> Based on a complaint from an NGO in 2015 the Public Defender of Rights investigated the issue of providing interpretation services in detention facilities. The investigation found that fellow prisoners who speak the same language as the person who needs assistance with interpretation tend to be used as interpreters, including in situations when the person who does not speak Czech needs medical assistance. The Public Defender of Rights found that this practice is common across detention facilities, and they suggested that when certified interpreters are not available, another person who speaks the person's language reasonably well (but not a fellow prisoner) should provide interpretation services. See in Czech language: Public Defender of Rights (2015), [Opinion No. 6685/2013/VOP](#).

<sup>22</sup> Czech Republic, Act No. 2/1993 Coll., Charter of Rights and Fundamental Freedoms (*Listina základních práv a svobod*). Article 37(2).

<sup>23</sup> Czech Republic, Act No. 105/2013 Coll., on International Judicial Cooperation in Criminal Matters (*Zákon o mezinárodní justiční spolupráci ve věcech trestních*). Section 14(1)b).

<sup>24</sup> That is a major difference from the usual procedure, as only selected arrested persons must have a mandatory counsel already in the preparatory stage of the proceedings. Confer Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 36(1)-(3).

<sup>25</sup> In practice, however, this only means several hours, as the arrested person must be brought before a court within 48 hours. The court then decides on whether there are sufficient grounds to further detain the person. Should the authorities fail to bring the case before the court within this time limit, the person must be released.

<sup>26</sup> The participating person is a person whose property is to be seized as a result of the proceedings. By virtue of nature of their participation, it is presumed unlikely that they would choose a Defence lawyer for the arrested person in the EAW proceedings, though. Confer Czech Republic, Act No.141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 42.

<sup>27</sup> Czech Republic, Act No.141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Sections 34 and 37.

<sup>28</sup> Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Sections 38 to 40a.

called mandatory legal defence (as is the case in EAW proceedings), but cost-free legal assistance is also available. The Code of Criminal procedure theoretically foresees an option where the defendant (in this case the requested person) does not have sufficient funds to pay their defence lawyer.<sup>29</sup> If the defendant motions and proves that they do not have sufficient funds to pay the costs of the defence, the court will decide on whether the defendant is entitled for a state financial assistance with the costs, either in full or in part. Should there be a risk of violation of rights of the defendant and there is sufficient evidence supporting it, the court will decide on the matter upon a motion of the state prosecutor, even if the defendant themselves does not apply for the state assistance.<sup>30</sup>

In general, within criminal proceedings the court-appointed defence lawyer provides legal counsel to the defendant over the course of the trial and then collects their remuneration either from the defendant, or (more often) from the state. In the latter case the state then takes the steps to recover the costs from the defendant, and the state bears the risk that this debt may prove to be uncollectible, which often is the case.

When Czechia is the issuing MS, the Act on International Cooperation stipulates that if Directive 2013/48/EU applies in the executing MS and the requested person does not already have defence lawyer for criminal proceedings in Czechia, the requested person has the right to choose defence lawyer in Czechia. When Czechia is the executing MS, the Act on International Cooperation stipulates that if the issuing MS is a MS where Directive 2013/48/EU<sup>31</sup> applies, the requested person must be notified by the arresting police authority or the prosecutor about their right to choose defence lawyer in the issuing MS.

It is either the arresting police authority or the prosecutor's obligation to inform the requested person about their right to dual legal representation during the preliminary investigation stage of the EAW proceedings.<sup>32</sup> Given that the Act on International Cooperation does not contain specialised provisions on remedies against erroneous acts or omissions committed by the prosecutors, the general provisions on remedies against defects in procedure set out in the Code of Criminal Procedure apply. According to these provisions, the requested person has the right to request the elimination of delays in the proceedings, and/or the elimination of defects in the procedure committed by the prosecutor. Any complaints must be handled by the public prosecutor's office immediately superior to the prosecutor whose actions and/or omissions are the subject of complaint.<sup>33</sup>

**Table 4: Dual representation (in law)**

Does the law of the executing MS foresee that the person arrested has a right to have the assistance of a lawyer in the issuing Member State and informed of this right?		
Czechia	YES X	NO

<sup>29</sup>Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 33(2).

<sup>30</sup> Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 33(2) and 33(4).

<sup>31</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right to access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right upon deprivation of liberty to inform a third party and to communicate with third persons and with consular authorities while deprived of liberty.

<sup>32</sup> Czech Republic, Act No. 105/2013 Coll., on International Judicial Cooperation in Criminal Matters (*Zákon o mezinárodní justiční spolupráci ve věcech trestních*). Section 204(2).

<sup>33</sup> Czech Republic, Act No.141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Sections 157a(1) and 157a(2).

Table 5: Cost-free legal assistance (in law)

Free of cost lawyer provided in law	When your country is an issuing State	When your country is an issuing State (e.g. to assist the lawyer in the issuing State)
Czechia	YES	NO

b. Right to access to a lawyer in practice

- Information about legal assistance (including dual representation)

The interviews confirmed that **arrested persons are notified of their right to legal assistance upon arrest**. The written notification of rights that the police gives to arrested persons includes **information on the option to choose defence lawyer or the option to take advantage of state-appointed legal assistance**. The information is simultaneously provided orally, and it is interpreted to persons who speak a different language than those in the available templates. If the arrested person does not choose defence lawyer, or their chosen defence lawyer cannot be reached, the police would request the court to appoint defence lawyer. There is a manual for this procedure, as confirmed by a state prosecutor.

State prosecutors and judges allege **that information on dual legal representation is given**, and a judge confirmed that this information is included in the written notification of rights handed out by the police. They stated that the state prosecutor is obliged to inform the requested person of the possibility of dual legal representation, but the court is not. Yet two out of the five defence lawyers interviewed mentioned that they cannot recall ever hearing such information, although they admitted that they might simply not remember this. Another defence lawyer said that they think the information on dual representation is given to persons, but it may not be sufficiently emphasised and requested persons are not explicitly reminded about this option throughout the proceedings. A defence lawyer added that not only is the information on the possibility of dual representation not emphasized, but persons are only given general information that they are entitled to legal assistance, without the authorities explicitly pointing out that this may also cover legal assistance in the issuing State. It should be noted that defence lawyers are normally not present when this information is provided to requested persons.

Table 6: Are persons informed of their right to access a lawyer?

	Lawyer 1	L2	L3	L4	L5	Judge 1	J2	J3	J4	Total
<b>YES</b>	X	X	X	X	X	X	X	X	X	9
In writing										
Orally										
In writing and orally	X	X	X	X	X	X	X	X	X	9
<b>NO</b>										0
<b>Don't know/remember</b>										0
<b>Did not answer</b>										0

Table 7: Information on dual representation, interview findings

Are persons arrested on an EAW informed by authorities on their right to have the assistance of a lawyer in the issuing Member State?										
	L1	L2	L3	L4	L5	J1	J2	J3	J4	Total
YES	X					X	X			3
NO				X	X					2
Don't know/remember			X							1
Did not answer		X						X	X	3

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

Table 8: Facilitating dual legal representation, interview findings (executing MS)

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing? (When your country is an issuing State)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1			X
L2			X
L3			X
L4		X	
L5			X
Judge 1	X		
J2	X		
J3			X
J4			X
Total	2	1	6

**When Czechia is the issuing State, access to a defence lawyer can be obtained either by a person choosing their defence lawyer or by the court appointing defence lawyer.** The person has several hours to choose defence lawyer, but it is important that the person can name the chosen defence lawyer, have their phone number, or provide any other specific identifying information on the chosen defence lawyer to the police (confirmed by a judge). The person is **not allowed to use their own phone or any other resources (internet, etc.) to search for defence lawyer**, but if they have specific information, the **police will contact the chosen defence lawyer immediately via phone**. A defence lawyer described the process in the following way:

*'[The police] confiscate [the person's phone], but [the requested person] can say: "I want this and this [Defence lawyer] and they are called this and this". And [the police] should somehow find out if it truly is a defence lawyer if they truly are included on the [bar association's] list of defence lawyers. If yes, then [the police] should contact them and tell them that the [requested person] wishes to have them as their defence lawyer. They ask [the defence lawyer] if he accepts the case. In practice what happens is that the police organ calls the specific [Defence lawyer] saying that they have this and this requested person and the person is saying he wishes to have [this specific defence lawyer]. And then [the defence lawyer] answers whether he wants to [take up the case]. And the defence lawyer can either say yes or no.'* (Czechia, defence lawyer)

*Oni mu to vezmou, ale on řekne, nevím: Já chci tady tohodle, jmenuje se takhle a takhle, tak oni by ho měli prostě nějakým způsobem zjistit, jestli to je skutečně advokát, to znamená, jestli je zapsanej na seznamu advokátů, a pokud jo, tak by ho měli nějakým způsobem kontaktovat a říct, že tady pán si ho chce zvolit a jestli obhajobu přijme. V praxi to je tak, že v podstatě ten policejní orgán, ten v podstatě zavolá tomu konkrétnímu člověku, že tady mají tohodle zadrženýho, že ten říká, že by jeho chtěl, tak jestli jako jo. A buď řekne jo, nebo ne.*

A state prosecutor initially suggested that if persons want to choose defence lawyer, but have no initial contact with or specific information on them, they could be referred to the bar association. In this case, allegedly 'it would be possible for the person to take a look at the list' of registered defence lawyers and chose one on a random basis. However, later the interviewee admitted that persons do not get access to a list. Even if they did so, the list does not indicate a specialisation in EAW cases, so it would in no way help the person in choosing a specialised defence lawyer. The same state prosecutor emphasised that cases of requested persons choosing their own defence lawyers are very rare, as state-appointed defence lawyers account for 98% of cases in EAW proceedings. A defence lawyer confirmed that if the requested person wants a chosen defence lawyer but does not know any specific defence lawyer then the requested person does not really have the means to choose one. Authorities do not provide requested persons with a list of available defence lawyers or any means to contact defence lawyers (randomly or otherwise) without the assistance of the police (as described above).

Another state prosecutor stated that the police normally accommodates the chosen defence lawyer and will readily postpone the proceedings to ensure that the legal representation can participate:

*'If the person says 'I want [a chosen defence lawyer] and I have made a settlement with [a specific person], the police will always inform [the defence lawyer] and it will always be ensured that the person can enjoy their right for a legal defence. So, for instance, the hearing will be postponed by two hours so that the defence lawyer is able to attend. (Czechia, judge)*

*A pokud ta osoba řekne: Ano, já chci obhájece na plnou moc, má domluveno tady tohodle, tak samozřejmě policejní orgán vždycky toho obhájece vyrozumí o tom úkonu a vždycky se to dělá tak, aby bylo umožněno té osobě využít plně práva na obhajobu, to znamená, ten výslech se odloží o dvě hodiny, než přijede obhájece.*

If the person does not choose **defence lawyer, the court appoints** one. Courts have an alphabetical (or random) list of lawyers for *ex officio* cases and the court is obliged to appoint the next person on the list. A judge explained that at times it may be difficult to find defence lawyer who will accept being appointed to an EAW case, especially on bank holidays:

*'[It's hard to get a defence lawyer] especially over the weekend and on call... I may need to make 11 attempts to contact a defence lawyer, and three people will not even pick up the phone, not even if I call them three times for hours in a row. Their office, of course, doesn't work [over the weekend/holiday] and some offices only have a landline phone. So over the weekend, bank holidays, when there are the most [EAW arrests], it's [difficult to get defence lawyer].' (Czechia, judge)*

*'Zvlášť víkendy, služby... Já jich 11 škrtnu, tři mi to vůbec nezvednou, ani na troje zavolání hodinu po sobě, kancelář samozřejmě nefunguje, a některé [advokátní] kanceláře mají jen pevnou linku, takže o víkendu, o svátcích, když je toho nejvíc, tak...'*

The same judge raised the issue that the list is not confined to defence lawyers who have a specialisation in EAW – the defence lawyers on the list serve in criminal defence cases in general. Therefore, **some of the defence lawyers who are appointed by the court have no or very limited experience with the EAW procedure** and the judge expressed concerns about their professional competences.

*'Often it's very unfortunate [that arrested persons] are given a [state-appointed] defence lawyer who does a miserable job and doesn't know anything [about EAW and/or European criminal law]. And [the court] cannot influence this. (...) If [defence lawyers who do not specialise in EU criminal law] apply [to be included on the list of state-appointed defence lawyers], then [the court] cannot influence this, because this is what the bar association lobbied for.'* (Czechia, judge)

*Často je to neštěstí, protože [osoby] velice často dostanou mizerného advokáta, který nic neví. Ale my to nemůžeme ovlivnit. (...) když se [advokáti, kteří nemají specializaci na evropské trestní právo] se přihlásí, tak my to nemůžeme ovlivnit, protože takhle si to vydupala advokátská lobby.*

A state prosecutor confirmed that the police has 48 hours to hand the arrested person over to the court, and if the arrest takes place at night, 'it may take a while' for the handover to take place. Because there is so little time, it can happen that the police needs to inform the state prosecution about the fact that no legal counsel has been appointed yet. The defence lawyer should be present during the first interrogation, but it is possible to conduct the hearing without a legal counsel if the arrested person consents to this.

The defence **lawyer has a wide range of tasks, which go beyond the provision of legal advice**. In general, interviewees were in agreement that the defence lawyer's role is **diverse and not formalistic**. A defence lawyer said that their role is to review the case materials and explain to the requested person their rights as well as their options. The defence lawyer must **explain the point of the EAW** and that the EAW proceedings are mainly focused on the handing over as such and not on the actual assessment of the crime committed. It is also the defence lawyer's responsibility to **point out to the court if there are obstacles to handing the person over** to the issuing State. Defence lawyers should be informed by the authorities about all the procedures and should be present during them (except during the collection of biological data). Another defence lawyer who had only had one EAW case added that their further responsibilities include the provision of information and visits to the detention facility. This specific interviewee visited the person at least four times and presented them with some minor things such as a newspaper and similar items. The interviewee also wrote complaints to the High Court because the handover was delayed due to the COVID-related travel restrictions. They even shared sensitive personal information with the requested person – the person's daughter wrote an email to the interviewee that a family member committed suicide and the interviewee went to the detention facility to share this information with the requested person.

A defence lawyer explained that one of their most important tasks is to find out what the best interests of the person are:

*'I must explain [the person] how the whole thing works, what the rules are, and I must find out from them what is best for them. There are clients who want to be handed over (...). It's important to explain [to these persons] how the process works, what the differences are, and give them the right recommendation on their best options. Because they may want to be handed over, and you can see that [the hand over] makes sense, and there is no reason to not*

*agree to the handover. All the implications must be explained, and you have to know all the details of the case, which the client will inform you about.’ (Czechia, defence lawyer)*

*Já mu musím vysvětlit, jak to funguje, jaké jsou ty, jaká jsou ta pravidla, a musím of něj zjistit, co je vlastně pro něj výhodnější. Jsou klienti, jsou zadrženi, kteří chtějí být předáni, kteří s tím souhlasí a není, chtějí být předáni. Je třeba vysvětlit mu, co je, jak to funguje, jaký je v tom rozdíl, a zjistit a poradit mu, co je pro něj v ten daný okamžik výhodnější, jestli souhlasit s předáním bez dalšího, protože prostě on chce a vy tam vidíte, že to má smysl, že tam není důvod nepředávat, anebo nesouhlasit s tím předáním. Vysvětlit hlavně důsledky každého z těch rozhodnutí tomu klientovi a k tomu musíte znát samozřejmě i okolnosti toho případu, které vám řekne tedy ten klient, protože ten je zná nejlíp.*

Another defence lawyer listed the following duties to the person: finding out the person’s position on the prospect of the handover, making sure the person understands the implications of the specialty rule, and going through the details of the reasons why the EAW was issued (finding out if the person obtained a court decision or information on the prosecution in the issuing State). The defence lawyer emphasised that these could also be considered the responsibility of the state prosecution, but that they believe it is also the defence lawyer’s job as to verify these facts. They remarked that the **state prosecution and the defence lawyer complement each other**, and that defence lawyers are sometimes able to find out crucial information about the case:

*‘It is understandable that the requested person would trust the defence lawyer more – that is, if one manages to explain to them what defence lawyer is and what their duties are. Which is not necessarily the rule. It is much easier for the defence lawyer to find out information from the requested person than it is for authorities because the person’s position is usually that the state prosecution or the police is against him, because it was them who arrested the person.’ (Czechia, defence lawyer)*

*‘Je pochopitelný, že ten dotyčnej předávanej jakoby trochu víc důvěřuje tomu obhájci, pokud teda vůbec se mu podaří vysvětlit, co to je obhájce a co tam jako dělá a tak, což taky není úplně pravidlo, takže se spousta těch informací dá vlastně zjistit od něj možná líp ze strany toho obhájce než ze strany toho vlastně jakoby tý vrchnosti, protože ten předávanej to tak vnímá, že ať už to státní zastupitelství nebo ten policejní orgán je spíš proti němu, protože oni ho zadrželi, oni ho zatkli.’*

According to the same defence lawyer they are also in charge of **verifying whether the EAW is issued in the right way, and whether there are any reasons to not hand over the person**. This includes verifying that the crime for which the EAW was issued must count as a punishable crime in both the issuing and the issuing State, which can involve the counsel studying the criminal code of the issuing State. This can be time consuming, and the defence lawyer mentioned that for instance, what is considered a crime in Slovakia may only be a crime according to the CZ Criminal Code. Interestingly, the defence lawyer emphasised that it is important for the defence lawyer to truly understand the interest of the person and act in accordance with their interests regardless of the circumstances (e.g. if the person wants to be handed over but the EAW is not issued in a good quality, the defence lawyer may chose to ignore the deficiencies of the EAW and make sure that the person is handed over as soon as possible). In case the person does not want to be handed over the counsel’s responsibility is to continue **defending the person’s interests, provide information on the proceedings and remedies, and assist in requesting these** if needed. The defence lawyer mentioned also less formal ‘not codified’ types of assistance – an example provided was that they may need to assist the person in getting the right medicine for their health issues.

**Consultations with defence lawyer are widely available** and no restrictions apply even in the case of state-appointed legal assistance. There are **no restrictions to consultations** even if the person is in a detention facility. A defence lawyer expressed that they never experienced any obstacles to being present at hearings at all times:

*'I have never experienced a situation in which someone told me [to stop consulting], even at the police or in the detention facility or at the court. I've never been told: Dr [interviewee], that's enough, let's go on. This has never happened to me.'* (Czechia, defence lawyer)

*Nesetkal jsem se s tím, že by mně někdo řekl, že prostě ani u policie, ani vlastně ve věznici, ani u soudu, že by mi řekli jako: Pane doktore, to stačí, už prostě pojďme, pojďme pokračovat. Nikdy se mi to nestalo.*

Another defence lawyer confirmed that private consultations are always made possible and there are basically no time restrictions. The only applicable restriction is that during the hearing the defence lawyer cannot consult with the person after the authorities ask the person a question – the defence lawyer cannot prompt or help with the reply. The defence lawyer can request that the court or other authority gives them and their client an opportunity to consult in private even during the court hearing. A judge mentioned that telephone conversations between the requested person in custody and their defence lawyer are also allowed. The person and their defence lawyer can consult before the court hearings in the hallway, although in this case the escorting police officers may be within hearing distance. The judge may allow the person and the defence lawyer to consult privately in an office of the court. The judge emphasised that the range of assistance that individual defence lawyers provide very much depends on the given defence lawyer.

**Privacy is ensured during consultations.** All interviewees confirmed that consultations normally take place in person, not via an online tool (although this would be an option). Only one defence lawyer said that they often consult with the person via skype as this is a cost-effective and less time-consuming option than making personal visits (this defence lawyer usually works as a chosen lawyer). A defence lawyer said that defence lawyers meet the person at least twice before the court hearing takes place, and there are no obstacles to meeting the person in private. The same defence lawyer expressed the view that consultations in the defence facility are not videotaped and there is total privacy. This contradicts another defence lawyer's opinion, who stated that in the detention facility there is visual supervision (without sound) to ensure the defence lawyer's safety (the claim was not corroborated by other interviewees). Only one defence lawyer remarked that consultations before or during the court proceedings are not sufficiently confidential. They claimed that privacy is somewhat difficult to ensure if there is a need for consultation during the court proceedings. The person and their legal defence can consult inside the court room – the participants can lower their voice, but the court or the interpreter may still overhear it. If there is a need to consult in front of the court room, there is a chance that the court security personnel may overhear the discussion.

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

The interviewees were very clear about the responsibilities of the defence lawyers when Czechia is the issuing State, but they divulged **considerably less information on the case when Czechia is the issuing State**. Only four interviewees – a judge, two state prosecutors, and defence lawyer – were able to provide extensive details on legal assistance when Czechia is the issuing State. A judge said that the authorities do not in any way assist in facilitating the search for defence lawyer in the issuing MS, but they do not obstruct communication between the requested person and the defence lawyer from the issuing MS either. **It seems that the Czech authorities make no special efforts to support the arrangement of dual legal representation**, although in the words of a state prosecutor it is the state



prosecutor's 'duty to inform the requested person that [the state prosecutor is] obliged to help them choose defence lawyer' in the issuing country. The same state prosecutor also said that it is not their responsibility to help facilitate the appointment of a legal aid lawyer in the Member State that issued the EAW. In fact, they said that the person must request defence lawyer from the issuing MS. They can do so by turning to the Czech state prosecutor who records this request and who contacts the court or state prosecutor who issued the EAW. The Czech state prosecutor then asks the corresponding authorities of the issuing MS for all the details necessary for the requested person to choose defence lawyer from the MS in question. The details of the defence lawyer from the issuing State are given to the Czech defence lawyer, who facilitates the communication between the defence lawyer from abroad and the person (the defence lawyer from the issuing MS can also call the person in detention, no restrictions apply). According to the experience of the interviewee requested persons rarely ask for defence lawyer from the issuing MS, but the state prosecutor mentioned that Austrian or German authorities send well-written templates informing requested persons about this possibility. The same state prosecutor explained the process of choosing a lawyer from the issuing MS the following way:

*'It happened to me a few times that I got a template that contained an email address or postal address where [requested persons] can request the establishment of defence lawyer [from the issuing MS]. In fact, it's more about the defence lawyer signing up, they are not established, so that [the requested person] can inform [the defence lawyer] that they want their services. Austrians have a beautiful template for this, that's what they send, and I also saw this with the ones the Germans send. But whether the requested persons truly chose the defence lawyer - I don't know that. But it is my duty to inform the requested person that I am obliged to help them choose defence lawyer in the country where the EAW was issued.'* (Czechia, prosecutor)

*Stalo se mi párkrát, kdy jsem dostala takový formulář, kde bylo napsáno na jaké emailové adrese nebo adrese jako takové mohou [osoby] požádat o ustanovení obhájce. Jde respektive o to, aby se jim obhájce sám přihlásil, ne ustanovil, aby mu mohli sdělit, že ho požadují. Rakušani mají krásný formulář na to, ty to posílají, a i Němci jsem viděla, že to posílají. Ale jestli ty osoby si toho obhájce skutečně zvolí, to už opravdu nevím. Ale je to moje povinnost informovat osobu o tom, že já jsem povinna pomoci mu zvolit obhájce v tom státě kde ten EZR byl vydán.*

A judicial trainee who is an assistant to a judge who issues EAWs made two important points with respect to legal assistance when Czechia is the issuing State. Firstly, they said that when Czechia issues an EAW and the person already has defence lawyer in Czechia, then the defence lawyer's contact details are included within the EAW upon its issue. This only takes place when the defence lawyer is already involved in the proceedings, and it must be noted that in the overwhelming majority of cases defence lawyers do not yet participate in the proceedings when the EAW is issued. The interviewee only included the defence lawyer's contact details in the EAW once, and thus this does not seem to be standard practice. Secondly, the same interviewee said that if the person does not have a legal defence lawyer in Czechia when the EAW is issued against them, then the authorities include a link to the bar association's publicly available list in the EAW (once again it is unclear whether this is routinely done or whether it is only practised by the interviewee). The link leads to a search engine, which should assist the person in choosing a lawyer in Czechia. The search engine (<https://vyhledavac.cak.cz/>) is available in English, French, German, and Czech and, among other things, it can be used to search for a legal specialisation (EAW is not included as a separate specialisation, but criminal law is included, as is international judicial cooperation in criminal proceedings). It can also be used to choose legal defence based on the languages spoken by the

person. No other interviewee mentioned the inclusion of the bar association's search engine or the contact details of defence lawyers in the EAW.

Only one out of the five defence lawyers interviewed said that they had experience serving as defence lawyer when Czechia is the issuing State. The interviewee who did so was always contacted by the defence lawyer of the person in the issuing State (and not by state authorities).

**Some defence lawyers emphasised that having defence lawyer in the issuing MS can be a significant advantage.** The defence lawyer with the most extensive experience with respect to serving as defence lawyer in the issuing State said that his most important task is to verify that the warrant has been issued correctly – whether it has been issued in a valid way and under the right conditions. His other tasks consist of consulting with his colleague in the executing MS (e.g. on whether the crime for which the EAW was issued is also considered to be a crime in the other MS that merits detention), on conditions for the handover, and even whether the charge brought against the person is valid. The interviewee thinks that the authorities in the issuing and the executing MS have a very high sense of mutual trust, and therefore they do not examine the charge as such, and they do not examine potential mistakes in court decisions. The work of the lawyers in the issuing and executing MS can thus also extend to this field, but it is rather marginal and mostly takes place if there is a reason to believe that some mistake has been made. Additional evidence can also be gathered, but the interviewee said this goes beyond the usual tasks of the defence lawyer in the issuing MS.

Defence lawyer who once experienced dual representation in an EAW case said that a Slovak person she defended already had defence lawyer in Slovakia, who actively consulted with the requested person. Another defence lawyer opined that Czech authorities do not actively search for defence lawyers in the issuing MS commented, but that dual legal representation would be particularly advantageous in the case of an EAW, which, according to the defence lawyer, is considered by the Czech authorities to be mostly a formal procedure. The defence lawyer mentioned that in one EAW case the official documents sent from the issuing MS were poorly translated, and that a lawyer from that state would have helped to clarify the details of the case:

*'It happened to me earlier that the statement of facts was translated [into Czech] either using Google or by someone who thought they speak Czech [but they do not]. In any case its content did not make any sense. I read it multiple times and I couldn't make anything out of it. It was about some kind of a tax fraud, which is quite complicated, and it's not like when someone steals three buns or beats someone up with a crowbar. The case file, as it was described, did not fall within the field of criminal justice, at least in the Czech legal system. So I said [to the authorities]: "What you have here isn't a criminal case, the [requested person] cannot be handed over [based on this]". But Czech authorities said: "We have it marked here in this section, this is a fraud case or tax crime, and we will not investigate it further". So I think this is the most significant issue, and should there be any changes [to the EAW] then I would recommend that there should be [an opportunity for the Czech defence lawyer] to find out what the issuing authorities have against the requested person. There should be a stable way to access the person's case file in the issuing country.'* (Czechia, defence lawyer)

*Ale už se mi stalo, že prostě ta skutková věta tím, že byla překládaná nějakým, já nevím, jestli strojovým Googlem, nebo jestli byla, jestli to překládal někdo jako tady v Čechách, ale nebo někdo tam, kdo si jako říkal, že umí česky, tak tam v podstatě to, co tam bylo, tak nedávalo smysl. Já jsem to četl x-krát a prostě nebyl jsem schopnej z toho něco vyvodit. Jednalo se o nějakou daňovou trestnou činnost, což prostě je jako komplexní trošku a není to, jak když někdo ukradne tři rohlíky nebo jak když někoho vezme druhého trubkou po hlavě, tak prostě ten popis*

*tak, jak to tam bylo popsáný, tak to třeba nebylo trestný podle českýho práva. Jó, já jsem říkal: „Tak takhle, jak to tady máte, tak to není trestný, takže nemůžete vydat.“ Ale naši, ty mi řekli: „Ale my to tady máme zaškrtný v tom políčku, že to je ten podvod nebo daňovej trestnej čin, tam my to nepřezkoumáváme.“ Takže tohle je podle mýho ta největší, největší, ta největší ouvej, jó, že pokud by měla být nějaká změna, tak můj návrh je takovej, že ten člověk by měl, pokud je teda takhle předávanej, tak mít nějakým způsobem možnost se dozvědět, co tam proti němu je, a mít formalizovanej přístup nebo mít jako zakotvenej přístup do toho spisu, kterej tam proti němu je vedenej.*

Another defence lawyer who has never been connected with a defence lawyer from an issuing MS said the Czech authorities normally do not even get access to the court verdict based on which the EAW was issued. Some courts still request verdicts from the issuing MS, which is relatively successful when the issuing MS is Slovakia. But even in these cases Czech lawyers are not connected with the defence lawyers in the issuing MS.

**Table 9: Providing dual legal representation, interview findings (issuing MS)**

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing in another MS? (When your country is an issuing State)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1			X
L2			X
L3			X
L4			X
L5			X
Judge 1			X
J2	X		
J3			X
J4	X		
Total	2	0	7

- Communication between the defence lawyers in both states

Only two defence lawyers included in the research sample had experience with this issue. The authorities interviewed mentioned that cooperation between lawyers in the two MSs is possible (see above), but their assessment was based on hypothetical situations. A defence lawyer with extensive experience in dual representation – the same person who is usually contacted by the person's defence lawyer in the executing MS – explained that dual representation should take place from the very beginning of the proceedings:

*'The defence lawyer in the other [issuing] must be immediately contacted so that the defence lawyer [in the executing MS] can access the case file – this is absolutely essential. All potential challenges must be confronted with the defence lawyer on the other side, especially with respect to the principle ne bis idem, the follow-up proceedings. (...) The possibility to contest the arrest warrant in the issuing country in the executing country is absolutely essential.'* (Czechia, defence lawyer)

*Okamžitě kontaktovat advokáta v druhé zemi a seznámit se se spisem – naprostá nutnost. Zkonfrontovat všechny potenciální námitky s advokátem z druhé strany a zejména teda ne bis in idem, navazující řízení co, a další překážky, ať to neopakuju znova, a potom navazující řízení*

*a možnost napadnout ten zatykač v té zemi toho státu, který ho vydal. To je naprosto klíčové, protože brojit proti vydání v té zemi vydávající, v té zemi, která je dožádaná vlastně...*

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

In Czechia, legal representation is mandated by law and depending on the person's individual situation there may or may not be financial obligations involved. The chosen lawyers' fees are covered by the person. *Ex officio* lawyers' fees are either covered by the person once they are found guilty (in this case, at least in theory, the person should reimburse the Czech state for the costs of the legal defence), or free legal representation is available to persons who can prove that they do not have the financial means to cover the costs of legal defence. A state prosecutor confirmed that during the preliminary investigation they inquire whether persons have the financial means to cover the costs of legal counsel. At the same time, the prosecutor informs persons about the possibility of requesting free legal assistance.

A defence lawyer said that information on state-appointed lawyers is available to requested persons, but that persons may not be fully aware of the potential financial implications of having a state-appointed lawyer. In other words, persons may wrongly assume that state-appointed legal defence is always automatically for free, which is not in fact the case:

*'If I correctly remember the information provided [to requested persons], I think it [included state-appointed legal help], but it's not explained. I think it might be very difficult [for requested persons] to grasp the difference between ex officio and free legal assistance. I think what happens is that these terms get mixed up. [Requested persons] rarely realise that ex officio legal defence is paid [by them], but ex post, at a later stage, and that free of charge legal assistance is something they need to request. (...) I never experienced a situation when the police explained [that the legal defence is obligatory and not entirely free of charge. (Czechia, defence lawyer)*

*Pokud si vzpomínám na ta poučení, tak to tam je, ale není to vysvětleno. Není, myslím si, že je velmi obtížné si jakoby uvědomit v té situaci pro klienty rozdíl mezi ex officio a bezplatnou obhajobou. Dochází k míšení těch pojmů. Málokdy si uvědomují, že ex officio obhajoba je placená, akorát až ex post, až později, že vlastně ta bezplatná obhajoba je ještě něco dalšího, o co je potřeba žádat. (...) Nesetkal jsem se s tím, že by to někdo z policistů vysvětlil někdy.*

State-appointed legal assistance is only truly for free if the person qualifies for it (they can prove that they have no financial means to cover the costs). However, state-appointed defence lawyers are in practice likely to turn out to be free of charge for the person even if they do not specifically ask to be exempt from the costs due to their financial situation. Some interviewees expressed that they are unsure whether the Czech state is ever successful in requiring the reimbursement for defence costs from persons to whom an *ex officio* lawyer was appointed, but a free of charge defence was not granted. As soon as persons are handed over to the issuing State it is unclear whether the Czech state even makes attempts to recover the potential costs for legal assistance.

It is unclear whether free of charge legal defence is available when Czechia is the issuing MS. Only a state prosecutor mentioned that whenever the person already has a defence lawyer in Czechia (before

the EAW is issued), the authorities include the lawyer’s contact details in the EAW. It is likely that in this case the person could qualify for cost-free legal assistance.

**Table 10: Cost-free legal assistance, interview findings**

Free of cost lawyer provided	When your country is an issuing 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 issuing State)	
LAWYER 1	YES			Did not answer
L2	Yes			Did not answer
L3	Yes			Did not answer
L4	Yes			Did not answer
L5	Yes			Did not answer
JUDGE 1	Yes			Did not answer
J2	Yes			Did not answer
J3		Did not answer		Did not answer
J4	Yes		Yes <sup>34</sup>	
TOTAL	8	1	1	8

c. Additional best practices or challenges

A state prosecutor mentioned that when Germany and Austria are issuing States they send a special template to the Czech authorities that contains information on the fact that the person has the right to legal counsel in the issuing country. The Czech authorities give this information to the person in German.

A state prosecutor said that at least in some cases when Czechia is the issuing State and the person already has defence lawyer in the country, the defence lawyer’s contact details are included in the EAW upon its issue. If the person does not have a chosen/state-appointed legal defence lawyer in Czechia, a link to the bar association’s public search engine is included in the issued EAW in order to assist the person in choosing a lawyer from the issuing State. The search engine (<https://vyhledavac.cak.cz/>) is available in English, French, German, and Czech and, among other things, it can be used to search for a legal specialisation (EAW in not included as a separate specialisation, but criminal law is included, as is international judicial cooperation in criminal proceedings), as well as the languages spoken by a given lawyer.

Czech defence lawyers fulfil a role which goes beyond the provision of legal advice. They visit the person in detention and provide services such as supplying them with hygiene products, newspapers, and tending to their general basic needs. A defence lawyer pointed out that it is challenging and time-consuming to study the criminal codes of the issuing States to verify that the crime for which the EAW was issued counts as a punishable crime in both the issuing and the issuing State, due to language barriers as well as the foreign criminal codes often not being easily accessible. The defence lawyer suggested that the EU could assemble the codes on a single website. The website could include either the full, texts of the respective national laws or at least hyperlinks to the governmental sites of the particular MSs, so that it would be easier for the defence lawyer to compare the criminal codes of the executing and the issuing MS.

<sup>34</sup> It is unclear whether free of charge legal defence is available when Czechia is the issuing MS. Only a state prosecutor mentioned that whenever the person already has a defence lawyer in Czechia (before the EAW is issued), the authorities include the lawyer’s contact details in the EAW. It is likely that in this case the person could qualify for cost-free legal assistance.

#### d. Discussion of findings

From the findings it seems that the practice is consistent with the legal requirements and that **legal representation is always provided to requested persons from an early stage in the proceedings.** There do **not seem to be any impediments to consultations** with defence lawyer and **state-appointed defence lawyers are available to persons who do not choose their own defence lawyer.** **Free of charge legal defence is available** to persons who can prove that they do not have the financial means to cover the legal defence costs. Defence lawyers fulfil a **wide range of roles**, including visiting the person in the detention facility (although this does not seem to be frequent).

It is **debateable whether persons are truly able to freely choose their defence lawyer**, because if they do not already know defence lawyer (the name, address, phone number, or any other specific details that would make the defence lawyer identifiable), they clearly have **no opportunity to research** one online or in any other way. Requested persons are not given any access to the internet and are not given a list of names or provided with any other means with which to look for potential defence lawyers. This is surprising, considering the fact that the bar association has a search engine that includes the contact details and specialisations of defence lawyers and the languages they speak. The search engine is available in English, French, German (and Czech). It is remarkable that when they issue an EAW, the Czech authorities assume that the person in the executing country will be able to access the database of Czech defence lawyers, but when the Czech authorities are executing an EAW, they do not provide access to the same database.

**Improved access to information is needed with respect to dual representation.** It seems that the police and the state prosecution provides information on this matter, but the court and defence lawyers do not (which is in line with legal requirements). State prosecutors do not automatically facilitate contact with defence lawyer in the issuing MS, and this special step must be requested by the person. **Dual legal representation seems to take place only in exceptional cases, and mostly only in cases when the person has a chosen defence lawyer.** Several defence lawyers in the study sample emphasised the advantages of dual representation, but judges and state prosecutors did not find it important.

Concerns were also raised about the fact that in the case of state-appointed defence lawyers, the court must choose from a list of lawyers who sign up with the given court for *ex officio* cases. There is no obligation to **specialise in EAW cases, only to provide general services as criminal defence lawyer.**

## 4. Issuing and execution of the EAW

### a. Legal overview

The Act on International Cooperation sets out a detailed procedure for issuing an EAW in its sections 192 to 198. It stipulates the subject matter jurisdiction for issuing an EAW, specifies the criminal offences for which an EAW may be issued, and sets out other relevant procedural matters.<sup>35</sup> The primary provision dealing with proportionality when issuing an EAW is section 193(3), which in turn refers to more general section 79(2). According to section 79(2)d), a **person will not be requested for extradition from another state<sup>36</sup> if the extradition would cause harm to the requested person that would be manifestly disproportionate to the significance of the criminal proceedings or the**

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<sup>35</sup> Czech Republic, Act No. 105/2013 Coll., on International Judicial Cooperation in Criminal Matters (*Zákon o mezinárodní justiční spolupráci ve věcech trestních*). Sections 193 to 198.

<sup>36</sup> It should be pointed out that section 79 is a general provision dealing with requesting a person from another state, not only through the EAW proceedings.

**consequences of the crime committed, in particular with regard to their age, health, or family circumstances.** The Commentary on the Act on International Cooperation does not include more details about the practical application of this section or additional criteria as to what constitutes ‘*manifestly disproportionate*’.<sup>37</sup> There are additional guidance materials in the form of methodical instructions for the Ministry of Justice and an explanatory EAW template, but FRANET was unable to get access to these materials.

As for the case law on the proportionality of issuing the EAW (proportionality in the sense of choosing among available measures of mutual legal assistance), the 2018 opinion of the Supreme Court<sup>38</sup> should be considered the primary guideline for state prosecutors and courts when proposing/issuing an EAW.<sup>39</sup> The opinion states that in situations when there is a person (1a) who has already been charged with a crime and served the charges or (1b) who has been a suspect of having committed a crime but has not yet served, and (2) whose place of residence in another EU state is well known and confirmed, the authorities involved in the criminal proceedings are not obliged to use other measures of mutual legal assistance (e.g. use the assistance of the authorities of the other EU state to deliver the charges/summons) before issuing an EAW on such a person, if such an approach (issuing the EAW without having exhausted other options) is considered ‘tactical’, in the sense that any other course of action could alert the person and allow them to flee. To decide whether issuing an EAW without having exhausted other options is apt, the Supreme Court sets the following conditions (at least one of which must be met): (1) there is a reason to detain the person and (2) there are also concrete facts that indicate that the use of mutual legal assistance could jeopardise the successful completion of the criminal proceedings (e.g. that the person would attempt to hide/escape) and that the person could take active steps to avoid being served with the criminal charge or summons or (3) take active steps to conceal evidence of their criminal activities.

The requested person is **entitled to challenge what they perceive as errors or omissions in the EAW procedure**, but the requested person may **neither challenge the issuing of the EAW itself nor request its withdrawal**.

b. Issuing and execution of the EAW in practice

- Factors considered when issuing the EAW

**Legal requirements**

Two interviewees, a state prosecutor who specialises in preparing motions for issuing of EAWs and a judicial trainee who is the assistant of a judge who issues EAWs were able to give a comprehensive answer on the factors that the Czech authorities consider when issuing an EAW. This section is therefore largely based on information from these two interviewees. Other interviewees either clearly said this does not fall within their expertise or emphasized that they were guessing, and their claims were not based on experience. Since the desk research was unable to get access to the inside materials

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<sup>37</sup> Kubíček, M. (2020) ‘Commentary on section 79’ in: Polák, P., Huclová, H. & Kubíček, M. Act on International Judicial Cooperation in Criminal Matters. Commentary – 2<sup>nd</sup> Edition (*Zákon o mezinárodní justiční spolupráci ve věcech trestních (č. 104/2013 Sb.). Komentář - 2. vydání*), Prague, Wolters Kluwer.

<sup>38</sup> Under special circumstances, the Supreme Court issues opinions that settle important legal issues ‘in the interest of unified deciding of courts’ (those are sometimes referred to as ‘unifying opinions’), even if there is no litigation pending before it. Confer Czech Republic, Act No. 6/2002 Coll., on courts, judges and court administration (*Zákon o soudech, soudcích, přisedících a státní správě soudů*). Section 14(3).

<sup>39</sup> It should be pointed out, though, that the opinion itself never uses the word the word ‘proportionality’ in respect of issuing an EAW (*přiměřenost/proporcionalita* in Czech). Supreme Court of the Czech Republic, Opinion of 26 April 2018, Tpjn 301/2017 ([Stanovisko Nejvyššího soudu ze dne 26. 4. 2018, sp. zn. Tpjn 301/2017](#)), 26 April 2018.

that describe the considerations that the authorities take into account when issuing an EAW, below is a detailed description of the process. Basically, the state prosecutor sketched two scenarios: (1) one when the authorities have no information on the whereabouts of the person and the EAW is issued as the measure of last resort, and (2) one when there is a reasonable suspicion that a crime was committed by a sufficiently identified suspect and the authorities suddenly find out that the suspect is located at a more or less concrete location in another MS.

(1) Under usual circumstances, the issuing of an EAW needs to be preceded by a number of domestic measures taken by the authorities to locate and bring in the wanted person. First, a thorough investigation of the wanted person's whereabouts by the police must be conducted nationwide. Such an investigation must take place even before the resolution on the commencement of criminal proceedings is issued, in other words, very early in the proceedings. After exhausting the domestic measures, the police will further investigate through international cooperation and register the data of the wanted person in the Schengen information system (SIS). Should these steps yield no results to establish the location of the person, the authorities (the police and the supervising state prosecutor) will consider whether a national detention order should be issued against the person. The state prosecutor plays a pivotal role in this process and is responsible for making sure that the decision on the commencement of criminal proceedings and the domestic detention order are issued in accordance with the law and are reasoned. The state prosecutor reviews whether the investigation of the police was sufficiently thorough and whether the police used sufficient less invasive steps to locate and arrest the person domestically. Only after this assessment does the state prosecutor make a motion to the court to issue the domestic detention order. The police then has 6 months to apprehend and detain the wanted person domestically. Should the police fail to bring the person in, the issuing of an EAW is considered. The motion to issue an EAW is prepared by the state prosecutor and must be justified; all the preceding steps must be described in detail for the court to issue the EAW. The motion will be accepted by the court only if the state prosecutor can prove that once the person is arrested, they face at least a four-month imprisonment. Then the court performs the same assessment once again, and an EAW is usually issued no sooner than one year after the commencement of criminal proceedings. The state prosecutor said the following on the length of time before an EAW is issued in case of a person who cannot be located by the authorities:

*'If I [as state prosecutor] do not know where the person is located then only after six months can I make a motion for the EAW to be issued. So if you add everything up, an EAW will not be issued within less than a year from the commencement of the criminal proceedings. All other tools must be exhausted first so that the most invasive tool [the EAW] can be used.'* (Czechia, state prosecutor)

*'Takže nemám-li zjištěný pobyt, tak teprv po šesti měsících jsem, jako mohu podat návrh na vydání Evropského zatýkacího rozkazu, takže v podstatě k vydání EZRu za této situace se přistupuje, když si to spočítáte takhle, nejdřív za dobu jednoho roku od zahájení řízení. Tam se prostě musej vyčerpat všechny ty prostředky k tomu, aby se teprve mohlo přistoupit k tomuhle jakoby nejinvazivnějšímu prostředku.'*

The interviewee stressed that the EAW is considered to be the most 'invasive' measure and there must be attempts to find the person through other measures before the EAW is issued.

(2) The EAW can be issued within a shorter amount of time if the criminal proceedings already began and the police identified the suspect and positively located them at the territory of another MS. In this case the state prosecutor can skip the six-month period from the issuance of the detention order and initiate the issuing of the EAW within only a few days' time. Once again, this must be preconditioned



by the state prosecutor's ability to prove to the court that the person will realistically (not only hypothetically) face at least four months of imprisonment once they are arrested. The authorities do not have to know the precise address of the person and it is also enough if they know the region where the person is (it can even be a transnational region within the EU; the interviewee gave an example of 'the requested person crossing the Pyrenees Mountains from Spain to France and back'). Data that do not come from the police or from international cooperation, such as data coming from the person's social media, can be used as well. The interviewee mentioned a case where a crime had been committed by a Czech person on Thursday and by Monday the EAW was already issued, as the location of the requested person had been established as 'in the vicinity of Barcelona'. The person's location had been confirmed with the Spanish police, and it corresponded with the person's Facebook posts. The person was then apprehended in Spain within a month:

*'Once I had an experience where a crime was committed on a Thursday (...) and the police found out (...) within a few hours that the suspect was a Czech citizen who committed the crime in Spain, and that they reside in Spain on a long-term basis. They were travelling, sleeping on the beaches (...) and through cooperation with the Spanish police it was found that the person was somewhere close to Barcelona and on the move. It all corresponded with the person's Facebook, so on Friday evening the police brought me a resolution on the commencement of criminal proceedings (...) and an order for an arrest and an EAW. I read through the materials and I came to the conclusion that they were well-founded, so on Saturday I brought the judge a motion to issue an arrest warrant and an EAW. And on Monday the EAW was issued. It only took four days.'* (Czechia, state prosecutor)

*V rámci, ve své praxi jsem zažil situaci, kdy ve čtvrtek, ve čtvrtek byl spáchán trestný čin, zločin vydírání vůči představiteli vlády, zjistilo se, během několika hodin zjistil policejní orgán z Krajského ředitelství policie hlavního města Prahy z obvodu extrémismu a terorismu, že se jedná o českého občana, který to napsal ze Španělska, že se dlouhodobě zdržuje ve Španělsku, že různě jako cestuje, přespává na pláži a podobně, to se zjistilo cestou rychlý policejní spolupráce z tamních statistik španělské policie a evidencí, no a že ten člověk samozřejmě jako je v tom Španělsku někde poblíž Barcelony jako na pohybu. Všechno to korespondovalo i s jeho Facebookem a podobně, takže policejní orgán v pátek ve večerních hodinách mi v rámci dosahu přinesl usnesení o zahájení trestního stíhání, podnět na paragraf 76a, příkaz k zadržení a EZR. Já jsem to přezkoumal, dospěl jsem skutečně k závěru, že ten návrh nebo podnět policejního orgánu je důvodný, takže v sobotu jsem soudci donesl návrh na vydání příkazu k zadržení, návrh na vydání EZRu a v pondělí byl ten EZR vydán, takže tam vlastně během tedy asi čtyř dní od zahájení úkonů trestního řízení byl vydán EZR.*

In summary, there are three main steps that precede the issuance of the EAW in Czechia: **first the police makes a motion to the state prosecutor, then the state prosecutor will make a motion to the court, and then the court issues the EAW.**

### Proportionality

**Most of the interviewees were not very clear on the issue of proportionality.** One judge said that the concept of proportionality is rather vague. A state prosecutor also said that proportionality is not well defined and that different states can have different views on it. Defence lawyer with extensive experience in EAW cases claimed that proportionality is not a key factor. They thought that the issuing authorities often deliberately overestimate the time the person will spend in prison, or they overestimate the gravity of the crime in order to forego proportionality concerns in the executing MS, and to ensure that the EAW will be executed:

*'Issuing authorities often overstate the gravity of the crime, so that they can avoid [proportionality] arguments. They will often name the object as a threat and indicate a [higher sentence]. A number of legal regulations carry high criminal sentences, and if the upper limit is ten years, then [there is no reason for the executing authorities] to raise questions, even if in reality the case ends with a conditional sentence. What I mean is that there is a relatively big effort on the side of the issuing State to maximise the reasons, and in my experience there is considerable room for negotiation (...). So what I mean is that the [crime] often looks far more dangerous in the warrant than it is in reality.'* (Czechia, defence lawyer)

*'Orgány vyžadující často nadsadí tu nebezpečnost trestného činu, aby se vyhly tady těm, tady těm argumentům, a vlastně pojmenovávají objekt často ohrožený a tam (vyčísľují) nejvyšší sazbu, kde velmi mnoho zákonodár-, nebo mnoho právních úprav má široké trestní sazby, a pokud ta horní hranice sazby je deset let, tak ta otázka do určité míry padá, byť ta věc třeba končí podmínkou často. To znamená, je tady poměrně velkej, velká snaha maximalizovat ty důvody ze strany toho vyžadujícího státu, a pak a my podle zkušenosti vím, že tam je potom velkej prostor pro jednání, pokud ty věci, že, že já nevím, jak bych to řekl, abych tady nekotl furt dokola, ale prostě často ta věc v tom zatykači vypadá mnohem nebezpečněji než potom v realu.'*

The defence lawyer was critical of the amount of trust between the issuing and executing authorities (they called it 'institutional trust'), and according to the interviewee this type of trust does not have much to do with real trust. In a sense the interviewee thought that the warrant is just a formality and a way for the issuing authorities to get hold of the person:

*'There has always been trust, it's very convenient for the authorities. I deliberately call it institutional trust, because it doesn't have much to do with trust in reality. We kind of all play this game of trust, and in a way it's okay I guess – the warrant is a tool with which the competent authorities can get hold of the person.'* (Czechia, defence lawyer)

*'Důvěra tady byla vždycky, ona je i pohodlná ta důvěra pro ty orgány a je to, já jsem schválně říkám institucionální důvěra, protože to nemá nic společného s reálnou důvěrou. Tady prostě na tu důvěru hrajeme a je to svým způsobem v pořádku, prostě zatykač je nástroj, jak dostat dotyčnou osobu k příslušnému orgánu.'*

Based on the interview with a state prosecutor who specialises in issuing EAWs there **are two steps where proportionality is assessed**. (1) The first moment is where the state prosecutor assesses the proportionality of the proposed detention measure (at this point of the proceedings, the domestic one). In their assessment, the state prosecutor reviews whether the investigation of the police was sufficiently thorough and whether sufficient less invasive steps were taken by the police to locate and arrest the person domestically. Only after this assessment does the state prosecutor make a motion to the court to issue the domestic detention order. The police then has six months to apprehend and detain the wanted person domestically. Should they fail to bring the person in, consideration is given to issuing an EAW.

(2) The second step is that the state prosecutor has to prove to the court that once the person is arrested, they will realistically (not hypothetically, on the mere basis of the sentence available for the alleged crime in the penal code, but in all probability) face at least a four-month prison term. The state prosecutor takes into account the person's criminal history, the nature of the crime, etc., to convince the court that the sentence of four or more months is a realistic assumption. Then the court performs the same assessment once again. The state prosecutor explains:

*'If I come to the conclusion that I will undoubtedly propose a prison sentence that is longer than four months, then I can initiate the EAW. Should I come to the conclusion that I won't [propose such a sentence], then I should not make a motion to initiate an EAW. And of course I must include this reasoning in the materials submitted to the court, because in any case it's the judge who issues the EAW, and the judge should do the same kind of reasoning.'* (Czechia, state prosecutor)

*'Pokud dospěju k závěru, že jednoznačně budu navrhopvat trest nepodmíněný, delší než čtyři měsíce, tak pak teda ten EZR můžu iniciovat. Pokud dospěju k závěru, že nikoliv, no tak nemůžu, bych neměl podávat návrh na vydání Evropského zatýkacího rozkazu a samozřejmě tuhleto úvahu já musím promítnout do toho návrhu, a protože v konečném důsledku je to soudce, který ten EZR vydává, a samozřejmě by měl tuhleto úvahu učinit taky.'*

It is primarily the state prosecutor who assesses the proportionality of using the EAW. The state prosecutor points out that often the police would like to initiate an EAW, but the state prosecutor does not find that the condition of a prison sentence of at least four months has been realistically met or does not agree with the police investigation and the police the must investigate further. If the state prosecutor agrees to bring the motion to issue the EAW, the court performs a second assessment of proportionality, as a double-check.

The state prosecutor emphasised that there are no guidelines for assessment of proportionality and that **issuing of an EAW is always based on an individual assessment:**

*'There are no guidelines available and [the authorities] deal with every case individually. Because every time an EAW is issued the case is incomparable [to other EAW cases], because there are so many variables at play. It can be the movement of the person in different MSs, which we find out from the person being controlled in the SIS. Many variables can come into play and it is really up to the state prosecutor to assess when they should [initiate the issuance of an EAW] and when they shouldn't.'* (Czechia, state prosecutor)

*'Metodika není a primárně se vychází jako z každé té konkrétní věci, protože každá konkrétní věc, kde je vydáván EZR, je nesrovnatelná, protože zpravidla do toho vstupuje spoustu dalších proměnných, ať už je to pohyb té osoby v různých členských státech třeba, že je kontrolována v rámci Schengenského informačního systému; spoustu proměnných do toho vstupuje a skutečně je to jako vybalancovat, kdy ten státní zástupce k tomu přistoupí a kdy ne.'*

#### Other possible factors

A state prosecutor specialising in the issuing of EAWs expressed the opinion that if the requested person is a foreign national, then the Czech authorities will not have much information on them (if the person is Czech, there might be more information). Often the only information the authorities have about the person is their criminal history, but they might not know much about the person's family ties or background. The interviewee claimed that it is important to gather as much information about the person as possible and to take this information into account, but that in reality not much is known. One special consideration could be the health situation of the person.

#### Challenging the issue

A state prosecutor who specialises in issuing EAWs was very clear that **proportionality concerns based on the particular facts of the case can be raised** by the requested person in the handover procedure in the state where they were arrested. The interviewee mentioned the example of a British person (the case took place before Brexit) who was not handed over to the Czech authorities out of humanitarian concerns – the person had three children in the UK. The UK court claimed that handing

over the person based on the EAW would be disproportionate considering the fact that the person had family obligations in his home country, even though there were no doubts about the fact that the criminal case was serious (it involved the laundering of millions of CZK).

Other interviewees were much less certain about the **possibilities to challenge the issuance of EAW**. A judge said that the requested person could challenge the issuing of an EAW before the Constitutional Court, but the judge was not very clear about the details. A defence lawyer who has very limited experience with EAW cases said that the person could challenge the issuing of an EAW on the grounds of proportionality concerns – they could do so in court or before the state prosecutors as part of the preliminary interrogation.

- Factors considered when executing an EAW

#### Proportionality

Several interviewees gave examples where **proportionality was of concern, but the Czech authorities handed over the person anyway, against their best judgement**. A state prosecutor mentioned that Slovakia issues many EAWs for fathers failing to pay child support. Not paying child support is a criminal offence both in Czechia and in Slovakia. Yet the state prosecutor expressed the view that the EAW was designed primarily for the most serious criminal cases and should not be used for such petty things as not paying child support. The interviewee described this case as a typical example of a lack of proportionality, but at the same time the state prosecution ‘had no choice’ and the person was handed over. The state prosecutor said that proportionality concerns mainly the type (severity) of sentence given to the requested person – or the sentence that the person is expected to receive. If the (impending) sentence is disproportionate in the light of national law, then the Czech authorities can even refuse to implement an EAW and/or return the EAW to the issuing authorities.

According to a defence lawyer it is possible for the Czech authorities to challenge an EAW based on proportionality concerns, but in practice it is difficult. The lawyer mentioned a case when the authorities contacted the authorities of the issuing MS to negotiate for the requested person not to be handed over due to grave health concerns. The issuing authorities did not take the Czechs’ request into account in spite of the fact that the person was terminally ill. They also described a practice where if the first EAW fails (the person is for some reason not handed over on the basis of an EAW), then **the issuing country issues another EAW**. In this case the Czech authorities can either join the two proceedings or use some ‘tricks.’ The European Chief Prosecutor can also play a part in such cases, as the EAW proceeding can be requested through this office. The lawyer was very critical of **this practice** and said that it **disrespects the speciality rule**:

*‘It happens that when one [EAW] does not work out [and the person is not handed over] then the issuing State tries to issue another [EAW]. So this means that when one court issues an EAW abroad and the case is in process, but the handover as such is not very clear, not straightforward. So [the issuing State] tries to issue a second [EAW]. Then the Czech authorities have two options. Either they run the proceedings alongside each other or jointly. In the majority of cases, they run them jointly, or they do some procedural tricks. There is a thing called the European Public Prosecutor’s Office, which is a supranational authority, and an EAW can also be requested through this office. So what [the issuing authority] can do is that they withdraw the [original EAW] and they request the person through this office.’ (Czechia, defence lawyer)*

*Se stává, že když vlastně nevyjde třeba jeden, jedna žádost z nějakýho jednoho dožadujícího orgánu cizozemskýho, takže to zkusej přes druhej. To znamená, je zatykač třeba jednoho soudu, kterej vydá nějakej soud tam někde, tady je rozjetý řízení prostě, tady je zase klasický EZRový*

*řízení, to nějakým způsobem probíhá, teďka se tam může vyskytnout to, že vlastně předání tak úplně jasný být nemusí, no tak zkusej, tak se zkusí vydat jako druhý, druhá žádost, zase tady, a teďka naši tak mají jakoby dvě možnosti. Buď ty řízení jet souběžně, nebo je spojit; v drtivý míře je spoje, nebo prostě v podstatě jako můžou s tím dělat takový procesní tanečky. Tedka jsou, je institut evropského žalobce jako prostě supranacionální orgán, což jako pro mě je úplně věc nepředstavitelná v podstatě, nebo doposud by byla nepředstavitelná, ale prostě tak to máme tady evropského žalobce jako nadnárodní orgán a i skrz něj lze vlastně žádat, žádat to EZRový řízení. Takže ještě se tam dá, že v podstatě ty žádosti, oni to stáhnou skrz ty klasický a teďka že to jde přes toho evropského žalobce.*

Throughout the interview this defence lawyer was very critical of what he called the **formalistic nature of EAW proceedings**. In this lawyer's opinion executing authorities do not investigate the crime indicated and their focus is only on whether the person should be handed over. The lawyer said that from the perspective of the Czech authorities the EAW is an issue of bureaucracy and not justice, because the authorities hand the person over even in cases when the crime is not properly described in the warrant. For instance, in some cases the description of the crime is often lacking detail and precise data, which makes it impossible for the Czech authorities to truly assess whether the crime is grave enough for a handover. The lawyer claimed that the Czech state prosecution does not investigate enough at the issuing authority about the details of the crime committed.

Another defence lawyer expressed the view that **proportionality concerns are raised only in exceptional cases** and only when the defence lawyer is highly skilled, and the judge is committed to pursuing the case. This lawyer also described the EAW as a somewhat formalised process and said that as executing authorities the Czech authorities mostly communicate with the Slovak authorities. The lawyer said that they were unaware of how they could pursue proportionality concerns. Indeed, a state prosecutor confirmed that their role is not to evaluate the crime itself but to verify whether the person in question should be handed over or not:

*'It isn't my role to say "this isn't so serious a crime" – even if I had solid reasons or if this was very apparent. "This isn't so serious a crime that such and such steps should be taken" – [saying] this is not my role. The Act on International Judicial Cooperation states: if such and such conditions are fulfilled, then hand [the person] over [to the issuing State]. I think if something didn't work out well [in the Framework Decision] then it is an issue of proportionality. The Framework Decision requires that the authorities wield this very serious tool with caution and skill. But I think that it is very possible that a person can be requested for a crime that I would [consider] a minor issue or something that can be dealt with in a different way.'* (Czechia, state prosecutor)

*Mě nepřísluší říct 'to není tak závažný trestní čin'. I kdyžbych k tomu měla opravdu nějaký závažný důvody, nebo by to z toho bylo úplně patrný. 'To přece není tak závažný trestní čin aby my jsme museli tady činit takové kroky'. To mě prostě nepřísluší. Zákon o mezinárodní justiční spolupráci mi prostě říká: když jsou splněny tyhle podmínky, respektive když nejsou nesplněny ty podmínky, tak předej. Myslím si, že jestli se tedy něco nepovedlo moc, tak je to právě ta proporcionalita. V rámcovém rozhodnutí se samozřejmě vyzívají orgány, aby s tím nástrojem, který je opravdu velmi závažný, zacházeli opatrně, obratně. Ale podle mého názoru se může stát, že ta osoba je vyžádána někdy ke stíhání pro trestný čin, který já bych [považovala] jako bagatelní, nebo jinak řešitelný.*

### Conditions of detention

Based on the interviews, **detention conditions are taken into account only to a limited extent or not at all**. There seems to be a general consensus that there is no particular need to verify the detention conditions within the EU, as Member States ‘trust’ each other. A judge mentioned that in some cases the courts request information on detention conditions from EU institutions that monitor this issue. But the judge added that Czech courts regard other EU MSs as democratic countries in which there should not be any major problems regarding detention conditions. At the same time, the judge gave a detailed account explaining the unsatisfactory detention conditions in detention facilities in Czechia:

*‘Many arrested persons [originally] say that they most definitely do not agree with being handed over to the [issuing State], but after 14 days in our custody they ask us to be handed over [to the issuing State] as soon as possible. They say: “I’ve served time in various places, but there are few places where the space is so small and the conditions as horrible as here”. So everyone wants to be handed over to Germany immediately, because they know that at the Pankrác prison there are barely three-square meters per person. And the situation is particularly bad in places where the prisoners are employed, because those guys work every day. So this means that they have to wash their own stuff. And you see eleven of them sleeping on six cots, and you see a table there with three chairs. And they have the right to shower twice a week even though they work...’ (Czechia, judge)*

*Spoustu zadržených kteří [původně] řeknou že rozhodně nesouhlasí s předáním, a po 14 dnech v našich věznicích prosí aby byli předáni co nejdřív, protože říkají: ‘už jsem sedel leckde, ale tak málo místa a tak strašný je to tady... to je málokde’. Takže do Německa chtějí předat rovnou všichni, protože vědí, že na Pankráci jsou sotva tři metry na vězně. A zoufalý je to tam, kde jsou vězně pak zaměstnaní, protože ty chlapy denně makají, to znamená, že denně perou si ty věci, a když vidíte, že je jich na šest palandách jedenáct, a že u stolu jsou tři židle, a že mají nárok na sprchu formálně dvakrát v týdnu i když pracují...*

Other interviewees had similar opinions but most of them did not expand on the issue of detention conditions. A defence lawyer said that the Czech authorities may take detention conditions into account, but that he has never experienced an EAW case where detention conditions were a decisive factor.

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

**National authorities do not automatically consider the procedural rights of the person in the issuing MS.** According to a judge, they trust that the authorities of other Member States do not violate these rights. The right to a fair trial is considered only when there is reason to doubt if this right was observed. The interviewee mentioned that the court checks whether the person had the right to an effective defence, an interpreter, and similar issues. A state prosecutor said that in theory the Czech authorities could take into account proportionality concerns only, for example, if the human rights of the requested person were violated, but the interviewee added that they could not imagine such a case. A defence lawyer commented that the Czech authorities do not really consider the procedural rights of the requested person in the issuing MS:

*‘[Czech authorities] simply expect that a certain judicial standard will be adhered to [in the issuing MS] and that this standard will be respected. Basically [the procedural rights of the requested person in the issuing MS are not considered by the Czech authorities] because the presumption is that they are already respected.’ (Czechia, defence lawyer)*

*'Tady prostě se fakt předpokládá, že bude zachován určité právní standard a ten bude dodržovanej. To znamená, tady v podstatě nijak, protože se, lze říci, presumuje to, že by to mělo bejt jako, že by to mělo bejt dodržovaný.'*

A state prosecutor also said that they trust the authorities of other MS, but at the same time the state prosecutor uses a system of checks to ensure that the person's rights are adhered to. The interviewee explained that sometimes they make sure and ask questions for the requested person to verify the rightness of the procedure:

*'I admit that sometimes I ask a little. Just in case it was to have serious consequences, for instance, when the [requested person] claims that they already served the sentence [in the issuing country] ... (...) You can never rule out a small mistake. (...) In such cases I do investigate whether procedural rights are being adhered to. [If I found out that the EAW should be withdrawn] I would not execute the [EAW], I would sit on the case so long that the [issuing State] would withdraw [the warrant]. And I would raise a complaint at the Ministry of Justice or something like that. (Czechia, state prosecutor)*

*'Někdy se přiznám, že se malinko zeptám. Kdyby to mělo opravdu nedozírné následky, když třeba ten dotyčný mi naopak tvrdí, že už si tam ten trest odseděl (...). Chybička se může vloudit (...) V tomhle případě jakési dodržení procesních práv já zkoumám. [Kdybych zjistila, že by EAW měli vzít zpět] tak bych [EAW] nevykonávala a tak dlouho bych seděla na EAW až by hovzali zpátky. A stěžovala bych se na Ministerstvu spravedlnosti, nebo tak.'*

#### Individual situation

The **individual situation of persons can be taken into account**, but the **factors of gender and disability did not resonate with the interviewees**. A state prosecutor mentioned that there is no legal requirement to take the individual situation of persons into account as the Act on International Judicial Cooperation does not include a section which would enable the authorities to consider the individual situation of a requested person, and the EAW Framework Decision also originally does not include such a consideration. The interviewee thought that such a consideration is missing and mentions breastfeeding mothers as people who would fall in this category – in such a hypothetical case the Czech authorities would have no means of keeping the baby and mother together. The interviewees only mentioned pregnancy and a serious illness as grounds for challenging the execution of an EAW. The state prosecutor said that it is difficult to take individual situations into account, and even if the Czech authorities do so, the issuing authorities may not:

*'We have cases when the [requested person] is [fatally] ill and still we have to hand them over if the other side does not understand the seriousness of the situation and does not take the EAW back. (...) We have an EAW now – the previous warrant was withdrawn and a new EAW was issued. The [issuing authorities] knew already that the person in question has terminal cancer and that he will have to be cared for in the detention facility so he gets the care he needs. But still [the person's health] was not taken into account. The [legislation] does not include any specific section that would explicitly state that mothers who are breastfeeding babies cannot be handed over. With the personal situation [of the requested person] – be it health, family, or other circumstances – there isn't really a way to take it into account or to divert in some way. At most we can communicate with the [issuing State] that is requesting the handover if there is any possibility for the EAW to be withdrawn.'* (Czechia, state prosecutor)



*Máme případy, kdy osoba je nevléčitelně nemocná, a přesto my tu osobu musíme předat - pokud ta druhá strana nepochopí vážnost situace a nevezme ten rozkaz zpět. (...) Máme teď EZR - předchozí byl odvolán a nový EZR byl vydán už s vědomím, že ta osoba má rakovinu v terminálním stádiu a že se o ní budou muset ve věznici starat tak, aby měla tu léčbu, kterou potřebuje. Ale nedá se k tomu přihlížet. Není [v legislativě] žádné ustanovení, které by řeklo, že ta matka, která zde má kojence, nemůže být vydaná. Pro tu osobní situaci - zdravotní, rodinnou, jinou - tam bohužel žádná možnost úvahy nebo nějakého odklonu prostě není. A maximálně se dá komunikovat s tím státem, který to předání dožaduje, jestli neexistují nějaké možnosti, že by ten EZR byl odvolán.*

A defence lawyer said that individual situations are not really taken into consideration, unless the court sends the person to detention in Czechia – for instance, if the person is pregnant: ‘The Czech courts would never compel a heavily pregnant woman to go to pre-trial detention’. The only individual circumstance that resonated with a number of interviewees was a potentially serious health condition as an impediment to handing over the person.

#### Others

No additional issues were raised.

- c. Additional best practices or challenges

No additional best practices or challenges were identified.

- d. Discussion of findings

Czechia as the issuing authority:

Only two interviewees were skilled at issuing the EAW, and since FRANET did not gain access to the legal requirements of issuing an EAW, it is difficult to assess the interviewee’s account in an analytical way. Based on the data collected from the two interviewees, there is no reason to doubt that the **Czech authorities only issue an EAW after careful consideration and as a last resort.**

Czechia as the executing authority:

Due to a lack of experience many interviewees did not comment on this section or gave only very general opinions. The most important findings of the fieldwork research are that the **Czech authorities hand over persons even in situations when proportionality is of concern.** There are several reasons for this. The Czech authorities **find it difficult to challenge an EAW based on the individual situation of persons,** as in some cases the issuing authorities issue multiple EAWs or find other ways to circumvent the executing authority’s refusal to hand the person over. In addition to this, some lawyers noted that **EAWs are largely a formalistic procedure,** and that the Czech authorities often do not have the skills or the means to assess proportionality concerns and/or challenge the handover.

Based on the interviews there is no indication that the Czech authorities take detention conditions into account, as there is a sense of trust that within the EU detention conditions will meet a certain standard. **Procedural rights are considered in the case of suspicion,** but from the interviews it is hard to assess the extent and frequency of when and how requested persons’ procedural rights are evaluated.

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

- a. Legal overview

The corresponding national legislation does not include any provisions on the use of digital tools when providing interpretation. The desk research did not establish the existence of any legal standard which



would govern the use of digital tools (such digital transfer of documents, or online cooperation between the lawyers in both countries) with respect to criminal proceedings.

The possibility to conduct the hearing/interrogation of persons participating in the criminal proceedings (especially those in the role of witnesses or victims) through videoconferences is foreseen in the Code of Criminal Procedure in detail. The possibility was initially meant to serve “for safekeeping of persons’ rights, especially because of their age or health, for security concerns or other grave reasons, if the nature of such procedures allows for it and it is technically feasible”.<sup>40</sup> In other words, the intent was to allow the witnesses/victims to provide a testimony while sparing them a face-to-face confrontation with the perpetrator (procedural economy is not among the reasons listed). In practice, it was quickly established that technical tools may also allow for the simplification of court proceedings in terms of procedural economy, especially in terms of logistics – videoconferences allow for interrogations to be conducted remotely, which is especially practical if the interrogated person is incarcerated at the other side of the state. This was acknowledged by the Constitutional Court in 2015: “videoconferencing allows, in cases provided for by law, to combine the efficiency and economy of the court proceedings with the preservation of a party's right to speak before the court, to communicate with the court and to defend themselves in person”.<sup>41</sup>

The existing legal framework for use of videoconferencing in criminal proceedings was put to a stress test during the COVID pandemic; the interviews conducted by FRANET nevertheless suggest that functioning of the courts was halted during the lockdowns and court proceedings were mostly adjourned rather than conducted online. There have not been any legislative developments in this regard neither during nor since the COVID pandemic.

As for facilitating of interpreting services remotely, a distinction must be made between two variants. The first (1) one where the hearing/interrogation is conducted remotely (the interrogated person is not physically present in the same room as the interrogating person), and the interpreter is present either with the interrogated person or the interrogating person. This, in our opinion, is not a remote interpretation in itself, as the interpreter is personally attending on one side of the hearing. In practice, it is a relatively frequent scenario, and some of the interviewees pointed out that it is not an ideal set up. Remote interpretation can involve the loss of information, slower communication or possible technical difficulties compared to when everyone is in the same room. The second (2) variant is providing interpretation from a third location, when the interpreter is not physically in the same room with either the interrogator or the interrogated. Theoretically, section 52a of the Code of Criminal Procedure allows for this option. It seems that courts avoided remote interpreting (in the sense that the interpreter would be neither in the courtroom nor with the person they provide interpretation for) before the COVID pandemic. Interviews conducted by FRANET nevertheless suggest that during the pandemic, remote interpretation (2) was a possibility during the strict lockdowns as a measure of last resort, but otherwise, personal attendance of interpreters was preferred.

Table 11: Use of technological tools (in law)

National laws	Conducting EAW	Facilitating the provision	Remote examination	Communication with involved	Facilitating transmission	Facilitating access
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<sup>40</sup> Czech Republic, Act No. 141/1961 Coll., Code of Criminal Procedure (*Zákon o trestním řízení soudním*). Section 52a. For detailed legal regulation of videoconferencing see section 111a and following.

<sup>41</sup> Czech Republic, Constitutional Court of the Czech Republic, Ruling of 14 April 2015, III.ÚS 983/15-1 ([Usnesení Ústavního soudu ze dne 14. 4. 2015 sp. zn. I. ÚS 983/15-1](#)), 14 April 2015. Para. 6.

providin g for:	hearings (when an issuing State)	of interpretatio n	n of witnesses or the person arrested (when an issuing State).	foreign authorities (both executing – issuing States).	n of documents (issuing - executing)	to a lawyer in the issuing Member State (when an issuing State)
Country	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO
Czechia	YES	YES	NO	YES	YES	YES

#### b. Interview findings

The findings from the interviews indicate a **moderate uptake of digital tools**, especially in the field of online interpretation. **No interviewee had ever experienced online interpretation** where all participants were in separate spaces, **and no one expressed support for the increased use of online interpretation** in EAW proceedings. The interviewees found that in person interpretation is generally preferable to online interpretation and that in person interpretation increases the procedural rights of requested persons.

Interpreters are always called to be present in person, and interpretation is almost always available in EAW cases (see section 2). This is the case even for languages that are less common. A judge said that even if the court takes place through videoconference, interpreters must always be physically present either at the court or at the prison with the lawyer and the defendant. The videoconference device used must be certified by the Ministry of Justice. A state prosecutor confirmed that online interpretation is possible but did not mention experience with this. The interviewee expressed a preference for in-person interpretation (as well as a preference for the requested person to be physically present). The state prosecutor expressed the view that a criminal prosecution is a complicated procedure and if possible, there is value in seeing the requested person face-to-face. Even during the peak of the COVID-19 pandemic the state prosecutor conducted the hearings in person in the detention facility:

*‘Theoretically it is possible for [all participants] to be online, which has proved to be the case lately. But I prefer for the interpreter to be present [in person], and also, [I prefer] to see the person face-to-face whose about who’s destiny is being decided in the criminal procedure shall decide face-to-face. Because it isn’t so simple. [Within the procedure] a person who was residing at a place/country out of his or her free will and without any force shall be [forcibly] taken and subject to such an unpleasant procedure as unpleasant as a criminal procedure. So I turned down the option of videoconferences even during the [peak] Covid season. We would always, however, meet in the detention facility, but of course, we adhered to all the hygienic and safety measures. Even in the worst of times I conducted the hearings in the detention facility, and I took interpreters with me there. And I don’t think that anyone had adverse effects on anyone. [Conducting hearings in detention facilities] was never banned.’ (Czechia, state prosecutor)*

*Teoreticky to jde, všichni můžeme být na dálku, jak se to teď v poslední době ukázalo, ale já dávám přednost tomu, aby tlumočník byl přítomen, a stejně tak, abych já v tváři tvář viděla toho člověka, o jehož osud se v tomto řízení dost rozhoduje. Protože ono to není tak jednoduché - někoho z území, kde se ocitl patrně dobrovolně a nebyl k tomu někým nucen, tak aby jsme ho*

*vzdálili někam kde ho stihá takové nepříjemné řízení, jako je řízení trestní. Takže já jsem se ani v době Covidu neobrátila k formě videokonference. Ale vždycky jsme se sešli -samozřejmě za bezpečnostních, hygienických opatření - ve věznici. A i v ty nejhorší době jsem ty lidi vyslychala ve věznici a brala jsem si sebou i tlumočnický. A myslím si, že nikdo z toho neměl nepříznivé následky. Nebylo to nikdy zakázáno - chodit do věznice.*

Another state prosecutor never experienced interpretation as an online tool and said that even during COVID-19 lockdowns the interpretation was provided face-to-face. The lawyers interviewed had similar opinions. Three defence lawyers said that in theory videoconferences could be used for interpretation, but they never experienced this in practice. Online interpretation was experienced only by a defence lawyer who said that he occasionally consults via Skype with persons in detention (the interpreter is in the same room as the defence lawyer). A defence lawyer (who also never experienced online interpretation) noted that interpreters never fully understand everything that is said in a criminal proceeding, and if interpreters are not present in person, the chances of a misinterpretation increase. This defence lawyer also expressed a preference for personal contact with the requested person over videoconferences during EAW proceedings. They said that face-to-face contact with the requested person is superior to videoconferences as nothing can compete with a personal meeting:

*'Personal contact with requested persons is just irreplaceable. The person has trust in the defence lawyer and I think that this trust cannot be cultivated through a videoconference.'*  
(Czechia, defence lawyer)

*Ten osobní kontakt s těma lidma je jakoby v tomhleto nenahraditelnej. Jó, tady většinou člověk jako obhájce, tak to má, je tam určitej prvek tý důvěry a ten si myslím, že prostě nelze zachovat pomocí nějakýho videokonferenčního zařízení.*

The judges and state prosecutors mentioned the **frequent use of emails and videoconferences**, and a judge mentioned that these increase the **speed of EAW proceedings as they improve communication with authorities abroad**. The judge thought that digitalization could potentially lead to fewer EAWs being issued, but not every proceeding can be done through videoconference. According to this judge the more proceedings were held through videoconferences, but the use of the devices decreased once lockdown restrictions were lifted. A state prosecutor mentioned that sometimes the authorities of another MS want to conduct a hearing with the requested person before handover, and that this normally takes place through videoconferences. In these cases, the hearing is officially conducted by the Czech state prosecutor, but the authorities from the MS that issued the EAW are permitted to participate and request the Czech state prosecutor to ask their questions. Another option is that the authorities of the issuing MS send a set of predefined questions that the Czech state prosecutor then asks during the hearing. The same state prosecutor said that **digitalization could lead to fewer EAWs being issued**, but at the same time they noted that that increased digitalization since the pandemic has not led to a lower number of EAWs being issued (this claim is based on the state prosecutor's impression and not empirical data). Another state prosecutor also advocated for the increased use of videoconferences, saying that these increase the speed of the criminal proceedings. A judicial trainee who works along a judge who issues EAWs endorsed increased digitalization efforts. They mentioned that non-digital forms of communication, such as faxing, can cause delays in processing required documents. In many cases the Czech authorities must send documents via fax, as this is the only communication channel indicated by the other MS. The interviewee mentioned that in several cases executing authorities of another MS had requested that the Czech authorities send the translated detention order, but that the executing authorities had not received the incoming fax. It can then become impossible to adhere to the required time frame, and this may lead to further complications:

*Perhaps sending the detention order [to the executing MS could be changed]. I often had an issue with the short time frames for sending translations, because the only contact I received from the police Presidium would be fax or the postal address [of the executing authority]. So we would send them everything through fax, but we've had cases – 50 percent of cases – when it is not possible to send the fax. The executing authority would not accept the fax on the other side. (...) Somehow we're unable to send it in a way that [the executing authority] would actually receive it. We send it and then it says there's some kind of a mistake, or that the other side is not accepting it. So I have to go through the Ministry [of Justice] or the Police Presidium in order to get [the executing authority's] other means of contact. (Czechia, judge)*

*Možná zasílání těch zatýkacích rozkazů, že třeba jsem měla hodně problém, když tam jsou vlastně takové ty velice krátké lhůty na zaslání těch překladů, takže vlastně jediný možný odkaz, který nám teda to prezidium dává, je vlastně fax a potom ta adresa, takže vlastně my jim všechno posíláme na fax, ale už se stalo, třeba tak pade na pade už to je tedko, že to nejde odeslat ten fax, že oni to nepřijímají třeba na té druhé straně nebo tak.*

*A: Že už prostě nemají faxy jinými slovy?*

*B: No že nám to nějakým způsobem jako nejde jim jako odeslat, aby to přijali. Odesílá se to a pak to napíše třeba chybu, nebo že tam nejsou nebo že to nepřijímají, takže to pak řeším zase přes ministerstvo a ministerstvo se s nima třeba kontaktuje nebo přes prezidium, že se snažím, zase musím zkontaktovat tady některé, abychom zase získali nějaké třeba další kontakty.*

**Defence lawyers normally do not communicate with the authorities of the issuing MS, yet all defence lawyers advocated for the increased use of digital tools.** Only two interviewees mentioned experience in this regard. One of these defence lawyers said that they exchanged emails with the requested person's family, which was based in Bulgaria. The other one said that **digitalization could enable faster access to the person's case file**, which would have many advantages – among other things, it would enable the defence lawyer to find out more about the case and to identify the person's defence lawyer in the issuing State (if they have one). Another defence lawyer mentioned that digital tools can be particularly helpful for the executing authorities, because they can **speed up communication and quickly clarify pending issues** with the authorities of the issuing MS. In this respect, they can assist executing authorities to decide whether the hand over should take place. The defence lawyer did not think that digital tools would assist defence lawyers. The defence lawyer expressed the view that whatever is still in a paper format should now be digitalized. Another defence lawyer mentioned that digitalization would speed up the EAW proceedings, which would have a positive outcome on the rights of requested persons. In general, this defence lawyer expressed that Czechia is very much backward with respect to digitalization. They specifically mentioned that defence lawyers in Czechia do not have access to the online case file, which means that in case they need any materials from the case file they must xerox the papers or take pictures with their phones. They gave the following assessment:

*'We haven't much moved forward with the digitalization yet. If there was real digitalization and if would really be functional, then that would speed everything up, because all the documents would immediately be sent to the defence lawyer, everything would arrive into the registered data box. Currently we need to keep going to the court and take pictures of the case file or scan it. We must do it manually. (...) We do not have access to the electronic case file – we need to go in person to the court (...). So yes, digitalization would make things faster and thus more effective, which would lead to the better protection of persons' rights, because all the [authorities] would react faster. And hypothetically, the interpreter could also get the digitalized version of documents [in advance].'* (Czechia, defence lawyer)

*My jsme se v digitalizaci ještě nikam neposunuli moc. Kdyby opravdu to byla digitalizace a fungovalo by to veškeré, opravdu funkční digitalizace, tak by to samozřejmě všechno urychlilo, protože by se veškeré dokumenty poslaly tomu obhájci rovnou, přišlo by to všechno datovkou; my dneska neustále chodíme k soudům a fotíme spisy nebo skenujeme, ale jako musíme si to ručně udělat, takže ta digitalizace je, sice máme datové schránky, údajně se vezme, vede elektronický spis, ale vy nemáte elektronický přístup do toho spisu. Vy musíte fyzicky přijít k soudu a dostat, ofotit si to, takže ano, kdyby byla opravdu efektivní digitalizace, bylo by to rychlejší, tím pádem efektivnější a pravděpodobně by to i zajistilo větší možná ochranu těch práv toho člověka, protože by se reagovalo na všechno rychleji. Zároveň by to mohl dostat i digitálně částečně i ty dokumenty nějaký tlumočnick, nevím, ale to je jako hypotetická otázka.*

Another defence lawyer had a different opinion. They said that that digitalization can even slow down a consultation with a requested person in the detention facility, **as using digital tools for consultation in the detention facility may be a more complicated** and protracted process compared to visiting in person:

*'Videoconference [between the defence lawyer and the requested person in the detention facility] has its limits from a practical point of view. Because if the requested person is in one of the Prague detention facilities then [the defence lawyer] can simply visit them. It does take some time to get to the consultation, to get through the security gates and such. But if I wanted a videoconference then I have to inform the facility in advance, I have to tell them the specific time, it's a bit [awkward].'* (Czechia, defence lawyer)

*Videokonferenci, ale zase ono to naráží na nějaký praktický, praktický, jako praktickou stránku věci, protože zatímco když ten člověk je jakoby tady někde ve vazbě v pražských věznicích, tak tam člověk prostě dojede, chvilku teda trvá, než se tam dostane jakoby na tu poradu, než tam projde tím bezpečnostníma koridorama a rámadama, ale když by chtěl tu videoporadu, tak prostě o tom musím informovat věznic, musím mít konkrétní čas, musím, je to takový jakoby neúplně...*

The interviewees had contradicting opinions on the effect of the COVID pandemic on digital tool use. State authorities indicated a **recent increase in the use of digital tools in connection with the COVID pandemic**. Some interviewees said that all persons involved in the proceedings can hypothetically be online, but that in practice this is rarely the case. In a judge's opinion videoconferences are streamed from certified devices, but a state prosecutor said that uncertified devices (e.g. smart phones) could also be used. FRANET was unable to independently verify these claims. With respect to the pandemic, a defence lawyer said that **digitalization has not significantly influenced the way digital tools are used currently**.

No interviewees from state authorities expressed serious concerns about the **potential human rights implications in the case of digital technology use**. Only a judge commented that GDPR concerns could be raised about the communication between the court and authorities abroad. Like the state authorities, lawyers expressed **limited concern about the human rights implications of digital technology use in EAW proceedings**. A defence lawyer mentioned that there is always a risk of information leakage as encrypted data can be decrypted by unauthorised persons. The same interviewee raised that access to the electronic case file should be registered, as the current system of access without there being a trace of the person who accessed the file can potentially lead to information leakage.

Table 12: Use of digital tools, interview findings.

Interviewees per Country	Conducting EAW hearings (when an issuing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both executing – issuing States).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an issuing State)
LAWYER 1	No	Yes	-	-	Yes	No
L2	-	Yes	-	-	Yes	No
L3	-	No	-	-	Yes	No
L4	No	No	-	-	Yes	No
L5	-	Yes	-	Yes	Yes	No
JUDGE 1	Yes	No	-	Yes	Yes	No
J2	Yes	No	-	Yes	Yes	Yes
J3	-	No	Yes	Yes	Yes	-
J4	-	No	Yes	Yes	Yes	-
TOTAL	2/9	3/9	2/9	5/9	9/9	1/9

e. Discussion of findings

The interviewees clearly expressed a support for the use of online tools, but at the same time, it seems that **few safeguards are in place to ensure that increased digitalization does not lead to the breach in requested persons' rights**. Importantly, there are no legal standards for the use of digital technology in criminal proceedings and **the lack of such requirements was not raised as a potential problem by any interviewee**. Only a few concerns were raised about the potential negative effect of digital tools on the rights of requested persons. At the same time, defence lawyers mentioned taking pictures of case file materials with their personal smart phones, so there is evidence that digital tools are routinely used without security checks in place.

In terms of potential recommendations for improvement a defence lawyer said that a clear deadline should be set for communication between the authorities of issuing and issuing States. The defence lawyer experienced many protracted international criminal proceedings (non-EAW related), where foreign authorities took a long time to reply by email. The defence lawyer thinks that:

*'Some kind of a better, more thorough legislation would be needed which would lay down that if the question comes [via email] on Monday, then a reply should be given within ten days if it's not a complicated case. That would speed up the proceedings.'* (Czechia, defence lawyer)

*Nějaká lepší, důslednější legislativa, který by třeba zakotvila to, že jestliže přijde doraz v pondělí, tak odpoví se do deseti dnů, pokud to nemá nějakou složitost, tak by to určitě zrychlilo celé řízení.*

The interviews conducted by FRANET also provided evidence that the authorities can sometimes be flexible in their use of tools of remote communication, shifting from the EAW procedures to the procedures more alike to the European Investigation Order, and allowing remote interrogation of

persons arrested on the basis of EAW in the issuing State by authorities from the issuing State via videoconference, or remotely concluding a plea bargain with a person arrested on the basis of an EAW issued in Czechia without that person ever being handed over to Czechia. In FRANET's opinion, while not explicitly forbidden by the law, such approaches are not foreseen by it either. This may testify to the gradual shift of approach towards modern technologies by authorities participating in the criminal procedure.

## CONCLUSION

The data acquired within the frames of this fieldwork research indicates that **the Czech authorities largely adhere to the requirements set out in the EAW Framework Decision** and related documents. **The research did not identify any serious shortcomings** that would seriously violate the rights of requested persons on a routine basis.

Information on rights is provided to persons from the moment of the arrest orally, and in the case of some languages also in writing. **Information is provided by all the main stakeholders involved in the proceedings.** In the field of information provision, improvements could be made to the overall comprehensibility of the written/oral information provided to requested persons (the information could be simplified). In order to comply with the legal requirements information on rights should be handed out in writing to all requested persons, not only the ones that speak one of the languages in which a template is available. The information provided to requested persons is normally interpreted to them, and interpreters seem to be available for all languages, including minor languages, from the beginning of the proceedings (including immediately after the arrest if the arrest is unplanned). No shortcomings were identified in the field of **interpretation, which seems to be available at all times and under all circumstances**, including for private consultations with defence lawyers.

Requested persons **have the right to legal representation**, and if they know the contact details of a defence lawyer, the **authorities enable immediate access to the chosen defence lawyer**. However, in case requested persons do not already have specifics (name/telephone/...) for a defence lawyer, they are **unable to research a suitable one online or by any other means**. Requested persons do not get access to the bar association's online search engine, which would make it possible for them to identify defence lawyer who speaks their language and who has experience in international criminal law. **State-appointed defence lawyers are available**, and persons who can prove that they do not have the financial means to cover the costs of legal defence can request free of charge legal defence. There are no safeguards at place which would ensure that state-appointed defence lawyers are specialized in EAW cases. This may lead to a situation in which requested persons who do not choose their own defence lawyer do not receive the best possible legal assistance. Virtually **no restrictions apply to private consultations between a requested person and their defence lawyer**, although there may be issues with privacy if the consultations take place at the premises of the court. When Czechia is the issuing State, insufficient support is provided to requested persons in choosing a defence counsel from the issuing State. Even less support is provided to requested persons in choosing a defence counsel from Czechia when Czechia is the issuing State.

Czech **authorities currently do not seem to have full clarity on the issue of proportionality when executing an EAW** and/or find it difficult to ensure that the proceedings are not limited to their formalistic aspects. More clarity is needed on the **extent to which individual situations can be taken into account**, and more communication with issuing authorities could be done. When issuing an EAW Czech authorities seem to adhere to a complex system of checks and balances, which ensures that EAWs are issued only as the last resort.

**Digitalization has in recent years become prevalent in EAW cases**, including videoconferences of interrogations with the online participation of issuing authorities, but the uptake of digital technologies is still moderate. The overwhelming majority of proceedings take place in person, and there is a general feeling that in-person interrogations or trials safeguard the requested persons' rights better than online proceedings do. It seems that **few safeguards are at place to ensure that digital copies of case materials are handled in a safe way** (e.g. defence lawyers use their mobile phones to take pictures of the documents at the case file). There seems to be **little awareness of the potential breach of rights that increased digitalization may result in** in EAW cases.

To summarize, the positive aspects of the current Czech system appear to be the fact that information is provided repeatedly and on many occasions, and that defence lawyers are widely available and fulfil a number of roles that go beyond the provision of legal advice. The most problematic aspects of the current practice in Czechia are in the field of access to a defence lawyers, as no resources are provided to arrested persons to find or to search for a defence counsel. More support is needed for persons to be able to choose their defence lawyer from the issuing State.