Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings – safeguards for requested persons

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EXECUTIVE SUMMARY

Estonian country report presents the findings of the desk research and expert interviews of the Fundamental Rights Agency (FRA) study project on the topic of procedural safeguards in the European Arrest Warrant (EAW) proceedings.
The general aim of the FRA project is to provide evidence-based advice to the European Council and the European Commission on practical aspects on procedural rights in EAW proceedings as referred to in:

- the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings,
- the Directive 2012/13/EU on the right to information in criminal proceedings and, mainly,
- the Directive 2013/48/EU on the right to access to a lawyer in criminal proceedings and in the EAW proceedings.

In connection with the European Arrest Warrant ('EAW') Framework Decision and possibly other cross-border instruments such as, for example, the European Supervision Order Framework Decision the aim of the report is also to contribute to the proper implementation of fundamental rights and secondary EU legislation at Member State (MS) level as concerns specific aspects of the procedural rights of persons being sought under the EAW.

This report gives an overview of the law in force in Estonia and the findings of six interviews conducted with judges, prosecutors and lawyers who have practical experience with the EAW. The report follows the structure of the questionnaire used to interview the experts. It covers the topics right to information, right to interpretation and translation, right to access to a lawyer, factors considered while issuing and executing the EAW, and use of digital and technological tools in EAW proceedings.

Right to information
All interviewees reported that there are no major problems encountered with the right to information in Estonia. There is a Letter of Rights (LR) available in Estonian, English and, as it appeared from interviews, also in Russian and presented to a suspect/requested person always while detained. All the required information is covered in the LR: right to get information about EAW, right to access to a lawyer, right to interpretation and translation, possibility to consent to their surrender, right to a hearing. It is also stated in the LR that EAW itself cannot be challenged and that in court there will be discussions only regarding the surrendering of a person. Information is presented to requested persons in written form and also orally, if needed the information is repeated by different instances – the arresting police officer, the prosecutor, the lawyer, and sometimes even by the judge. However, the interviewees found that there could be improvement in the way information is presented, as some information is presented in juridical lingo that is too complicated for requested persons to understand.

Right to interpretation and translation
Findings show that translation and interpretation is always provided, but sometimes it takes a lot of effort to provide this service in satisfactory quality due to lack of interpreters who would be fluent in certain languages. Video tools were used a lot to safeguard people during Covid-19, but interviewees had noticed misinterpretation or low-quality interpretation services due to video-medium and thus this is not their first preference.

Right to access to a lawyer
A state paid lawyer is always appointed for the hearing if the requested person does not have their own lawyer. According to the interviewees, the lawyers can always effectively participate in all stages of the proceedings and the only challenges might arise due to the hastiness of the procedures – e.g. it might be difficult to find a defence when the hearing is set with short time notice, is taking place at

the end of the work week, and also there might not be much to do as a defender as the procedure of EAW is very formal and usually ends with surrendering the requested person.

There seems to be a problem with provision of dual representation – all but one interviewee said that this information is not provided and there is lack of practice regarding dual representation. It is important to note that the right to dual legal representation is not regulated in the Code of Criminal Procedure (CCP). A working group created for revising the CCP has drawn attention to the problem that while the appointment of a lawyer in EAW surrender proceedings in Estonia complies with the provisions of the Directive 2013/48/EU, the obligations arising from Article 10 (4)-(6) of the Directive to provide a person with a dual legal representation are still unregulated in Estonian legislation.[1] There is no case law on this matter.

Issuing and execution of the EAW – factors considered

According to the CCP, a person may be surrendered for continuation of criminal proceedings in a requesting state if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment in the requesting state. In addition to that it is taken into consideration if the person actually is located in Estonia, what is the nature of the crime (seriousness and systematic nature), the amount of damage caused, number of victims and their personal situation and public interest in the alleged crime. Even though the Framework Decision does not in fact provide requirements for proportionality, it is considered very important and is certainly considered in Estonia, but the proportionality test is expected to be carried out in the issuing State. According to interviewees, individual situation is rarely taken into consideration while deciding over executing the EAW.

INTRODUCTION

For data collection purposes, in total, six eligible interviews were carried out in the timeframe of April 2022 to September 2022.

The sample size was determined by the Fundamental Rights Agency. All interviewees should have had practical experience in the area of the EAW Framework Decision and should have worked on EAW cases for at least three years prior to the interview. There were six interviews conducted in Estonia by one interviewer from the Praxis Centre for Policy Studies – three with defence lawyers and three with judges and prosecutors.

The setting of the interviews was online via Microsoft Teams software, not so much due to Covid-19 pandemic restrictions but due to logistics: all interviewees were in Tallinn, one lawyer worked from home office while the interviewer was in Tartu (distance 180 km).

o PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

The Praxis interviewer had previous knowledge with qualitative fieldwork research in the field of defence studies, they were familiar with interviewing techniques, had previous experience as an interviewer and used FRA templates for conducting the interviews. They are a sociologist by training. All templates were translated into Estonian as that was the interviewing language and afterwards translated into English.

[1] A. Plekksepp (2019), Retsensioon A. Pere analüüsi "Kriminaalmenetlusalane rahvusvaheline koostöö" alateemadele, November 2019.

Recruitment of the interviewees was managed by the Estonian Human Rights Centre. The lawyers and prosecutors/judges were contacted via email, if necessary, confirmed via phone, asked for their consent to be interviewed and to specify the most suitable time.
It was particularly challenging to find suitable interviewees who would have sufficient knowledge and experience regarding EAW procedures. As interviewees confirmed themselves during the interviews – the country is small in size and population, there is a lack of experiences regarding EAW procedures and the pool of suitable experienced lawyers/judges/prosecutors is relatively small. Moreover, not all experienced people had time to give interviews even though they were contacted several times over the period of several months.
All in all, 15 potential interviewees were contacted for interviews requested by FRA.
Before the interview, all interviewees received a data protection notice and consent form via email and submitted these forms before the interview was conducted.

Starting with the fourth interview (out of six) we reached the data saturation point where it was already possible to draw necessary conclusions and the last two interviews did not produce much value-added insights and data analysis started showing the same themes, with no new findings or variability.

- **SAMPLE AND DESCRIPTION OF FIELDWORK**

Defence lawyers:
Requested: 3, completed: 3

Judges/prosecutors:
Requested: 3, completed: 3

Table 1 Sample professionals

	Group	Expertise, location	Gender
1	Defence lawyer	Private law company, Tallinn, defence lawyer/sworn advocate	M
2	Defence lawyer	Private law company, Tallinn, attorney/sworn advocate	M
3	Defence lawyer	Private law company, Tallinn, attorney/sworn advocate	M
4	Prosecutor	Tallinn, Prosecutor's Office, public prosecutor	F
5	Judge	Harju County Court, judge	F
6	Prosecutor	Office of the Prosecutor General, Assistant Prosecutor	F

As mentioned, it was rather difficult to find suitable interviewees due to the small size of the country, lack of international expertise among lawyers and due to summer season when people were on vacation. All interviewees, except one (EE_L_3) were very well prepared, two of them were familiar with FRA's previous studies on the topic. The average length of an interview was 57 minutes (the longest one lasted 67 minutes and the shortest one was 38 minutes).

All interviews were conducted via Microsoft Teams software as video calls and then converted to audio files that were uploaded to the indicated file share environment.

Atmosphere of the interviews was professional, friendly, and trustworthy; all interviewees were cooperative and open regarding the topic. Interviewees did not mind admitting if they did not know

something, and all of them were willing to share their personal experiences and expertise. No names or sensitive details were revealed throughout. There were no interviewees with visible signs of distrust towards the interviewer. One interview with a judge had to be rescheduled for a few hours due to urgent duties of the interviewee.

All were thankful for the information about the FRA database on conditions of detention that we forwarded to them after the interviews, which they were not aware of beforehand.

- **DATA ANALYSIS**

The responses of the six interviewees were analysed under each topic of the interview to establish patterns, overlaps, or inconsistencies in the answers provided.

Since the interview templates were detailed and covered a number of topics, no coding was used (and not required by FRA) to analyse the data. No theoretical framework was used to analyse the interviewees´ answers.

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

The report presents the study results organised by topics discussed at the interviews (the right to interpretation and translation in criminal proceedings, the right to information in criminal proceedings and the right to access to a lawyer in criminal and EAW proceedings). Each topic is an individual chapter divided into subparagraphs. The key findings are found in the end of the chapter side by side with the suggestions given by the interviewees.

The conclusions, including challenges and promising practices, and reoccurring suggestions are presented in the end of this report.

RESEARCH FINDINGS

1. Right to information

a. Legal overview

In Estonia, the EAW proceedings are regulated in the Code of Criminal Procedure (CCP, *Kriminaalmenetluse seadustik*).[2] According to § 499 (3) of the CCP, upon arrest of a person for the purpose of the execution of an EAW, their rights and the grounds for arrest are explained to them and the person is informed of the opportunity to consent to surrender. The consent cannot be withdrawn.[3] The provision does not specify who is tasked with informing the requested person, however, since the informing has to happen "upon arrest," in practice it would have to be the arresting police officer.

The general right to information of suspects and accused is outlined in the § 35^1 of the CCP, according to which, the suspect or accused must be immediately provided information orally or in writing on their rights (in plain and intelligible language), which is confirmed by signature. A suspect or accused who is detained or taken into custody must be immediately provided with a written LR. If the suspect or accused is not proficient in the Estonian language, they are provided with the LR in their mother tongue or in a language in which they are proficient.[4]

[2] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003.
[3] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 499 (3), 12 February 2003.
[4] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 35^1 (1), (2), (3), 12 February 2003.

There is a separate template for LR of a person arrested on the basis of an EAW.[5] The LR lists the following rights with short explanations:

1) Right to obtain information concerning the EAW
2) Right to use assistance of a lawyer
3) Right to use interpretation and translation
4) Right to consent to surrender
5) Right to be heard
6) Right to challenge

The LR is publicly available in Estonian and English.

Estonia applies the speciality rule. It is outlined in § 493 (1) of the CCP, which states that a person surrendered to Estonia may not be subject to criminal proceedings, measures restricting their liberty or enforcement of a court judgment for another criminal offence committed before the surrender, other than for the criminal offence in connection with which the person was surrendered.

Subsection 2 of the same paragraph lists exception in case of which the rule does not apply, which are based on the EAW Framework Decision Article 27 p. 3:

1) the surrendered person had the opportunity to leave Estonia within 45 days as of their release, or if they have returned to Estonia after leaving;
2) the criminal offence is not punishable by imprisonment;
3) the criminal proceedings are not accompanied by measures which restrict freedom;
4) punishment does not bring about deprivation of liberty, except substitutive punishment which restricts freedom;
5) a person voluntarily consents to surrender and non-application of subsection (1) or, after entry into force of a surrender decision, has consented to the non-application of subsection (1);
6) a MS which surrenders a person has granted its consent for the bringing of additional charges.[6]

The LR of a person arrested on the basis of an EAW has to be signed by the requested person, confirming that "I have been explained the reasons for the arrest, my rights, and I have been given the LR pursuant to § 35^1 of the CCP."[7]

No other specific safeguards are established in the CCP. There is no relevant case law available on the matter.

There are no specific remedies available for a requested person in case they are not provided with information about the EAW and about their rights during the proceedings.

The CCP provides for a general procedure of appeal against any activities of the police or the Prosecutor's Office during criminal proceedings (§ 229 – § 232 of the CCP). A participant in the proceedings, or a person not subject to the proceedings, has the right to file an appeal if they find that a violation of the procedural requirements has resulted in the violation of their rights. An appeal must be filed with the Prosecutor's Office or the Office of the Prosecutor General. If the appeal is granted, the violation is recognised and eliminated by annulling the contested order or suspending the

[5] Estonia, Riigi Teataja, Minister of Justice (*Justiitsminister*), Establishment of form of declaration of rights (*Õiguste deklaratsiooni näidisvormi kehtestamine*), Annex 2, 14 July 2014.
[6] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 493 (1)-(2), February 2003.
[7] Estonia, Riigi Teataja, Minister of Justice (*Justiitsminister*), Establishment of form of declaration of rights (*Õiguste deklaratsiooni näidisvormi kehtestamine*), Annex 2, 14 July 2014.

contested procedural act, if possible.[8] If the person does not agree with the decision, they have the right to file an appeal with the preliminary investigation judge of the county court, whose decision is final.[9] If the person has suffered damages as a result of the violation of the right, compensation can be claimed based on the Compensation for Damage Caused in Offence Proceedings Act (*Süüteomenetluses tekitatud kahju hüvitamise seadus*).[10]

In 2016, the Chancellor of Justice (*Õiguskantsler*) evaluated, at the request of the Estonian Bar Association (*Advokatuur*), whether the regulation concerning the EAW proceedings in the CCP is in accordance with the Constitution and ensures the protection of fundamental rights. One of the concerns of the Bar Association was the information provided on the rights of persons subject to surrender proceedings. However, the Chancellor of Justice found that the amendment to the CCP in 2014, which added the LR requirement, had solved this problem. The analysis by the Chancellor of Justice did not find that the provisions regulating the EAW proceedings in the CCP were unconstitutional.[11]

b. Right to information in practice

This section discusses the key findings from the answers of lawyers, judges and prosecutors regarding how detained persons are informed about their rights, who does it and in which form.

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

Most interviewees admitted that as far as they are aware, there are no major problems with informing the requested person about their rights. All interviewees, except one lawyer, were aware of the LR and confirmed that the LR is presented to a requested person in a language that they understand or, if necessary, it is interpreted to them orally if the written document is not available in a certain language. Some of the interviewees showed a high level of cooperation with the interviewer and suggested to share the document (LR) with them. There was some hesitation regarding how clear the oral information could be among interviewees, as the document is mostly presented to requested persons in written form.

Interviewees mentioned that **information is provided orally and in a written document** (LR). During the arrest, the LR is always presented and, if necessary, also translated into a language that the person understands. The form is available in Estonian, English and Russian, according to one judge. Usually, the first informing body is the detaining police officer, after that the prosecutor's office and defence lawyer will also provide the same information. At the very last instance, a judge will explain the content of the EAW if they see that it is necessary and the requested person might not have understood everything. But it is important to keep in mind that a prosecutor mentioned that, as they are not present during the first provision of information by a police officer, they cannot be sure of how thoroughly police officers provide the oral information. Hence, in case they have a suspicion that this information is not provided properly, they will do it again before the hearing.

Q 1: Are persons arrested on an EAW in Estonia informed about their rights upon arrest?

[8] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 228, § 229, 12 February 2003.
[9] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 230, § 231, 12 February 2003.
[10] Estonia, Riigi Teataja, Compensation for Damage Caused in Offence Proceedings Act (*Süüteomenetluses tekitatud kahju hüvitamise seadus*), 5 November 2014.
[11] Estonia, Chancellor of Justice (*Õiguskantsler*), Põhiõiguste kaitse loovutamismenetluses, No 6-1/130507/1601468, 7 April 2016.

Judge: *Yes, they are definitely informed. There is also a written form that is different from a national arrest form, which is given to the person in the relevant language. I have seen forms in Estonian, English, Russian. Maybe there are translations in other languages as well.*
EST: *Jaa, kindlasti teavitatakse. Olen näinud ka kirjalikku vormi, mis erineb siseriikliku vahistamise puhul teavitamisest, mis antakse tutvuda vastavas keeles. Olen näinud vorme eesti, inglise, vene keeles. Teisi võõrkeeli hetkel ei tea, aga võibolla on ka tehtud.*

How and by whom are they informed?
Lawyer: *I'd expect everyone explains their rights – prosecutors, police, etc. It's their duty. The obligation to clarify rights arises from the CCP. Problems can arise if a very specific right is not clarified. But the right to a lawyer, the right to know that you do not have to testify – they are informed about those. I believe there are no major practical problems.*
EST*: Ma eeldan, et õigusi selgitavad nii kinnipidav asutus kui prokurörid, kõik peavad õigusi selgitama. Õiguste selgitamise kohustus tuleneb menetlusseadusest. Probleeme võib tekkida, kui mingi väga spetsiifiline õigus jääb selgitamata. Aga õigus kaitsjale, õigus teada, et ei pea ütlusi andma – ma usun, et suuri praktilisi probleeme ei ole.*

Are the requested persons informed about what consenting to their surrender entails?
Prosecutor*: Currently the police take the person's consent or non-consent to the surrender. So I don't know what the police will explain or not explain. Whether they explain what it means for a person to consent or not to consent – I can't say because I'm not there.*
EST*: Praegu fikseerib inimese nõusoleku või mittenõustumise loovutamisega kinnipidamisel politsei. Seega ma ei tea, mida politsei sinna juurde selgitab või ei selgita. Kas ta selgitab, mida inimese jaoks tähendab see, et ta nõus on või ei ole nõus – ma ei oska öelda, sest ma pole seal juures.*

- Information about rights

Based on interviews, it can be said that the requested persons in Estonia are always informed about the contents of the EAW against them – either the EAW or SIRENE respective form is presented to them. If the person does not understand Estonian, information is provided to them orally by an interpreter. One prosecutor mentioned that it is not realistic to organise any written translation as the procedure is very fast: that is the reason only oral interpretation may be provided. All interviewees agreed that there are no major problems with informing about rights.

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

	Lawyer 1	Lawyer 2	Lawyer 3	Judge 2	Judge 1	Judge 3	Total
YES	**X**	**X**	**X**	**X**	**X**	**X**	**6**
In writing (Letter of Rights)	**X**	-	-	-	-	-	**1**
Orally	-	-	-	-	-	-	**0**
In writing (Letter of Rights) and orally	-	**X**	**X**	**X**	**X**	**X**	**5**
NO	-	-	-	-	-	-	**0**
Don't know/remember	-	-	-	-	-	-	**0**
Did not answer	-	-	-	-	-	-	**0**

- Information about the EAW – content and procedure

In general, EAW content and procedures are well provided to requested persons, but not down to all the details.

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

	Lawyer 1	Lawyer 2	Lawyer 3	Judge 2	Judge 1	Judge 3	Total
YES	**X**	**X**	**X**	**X**	**X**	**X**	**6**
In writing (Letter of Rights)	**X**						**1**
Orally	-	-	-	-	-	-	**0**
In writing (Letter of Rights) and orally	-	**X**	**X**	-	**X**	**X**	**4**
NO	-	-	-	-	-	-	**0**
Don't know/remember	-	-	-	**X**	-	-	**1**
Did not answer	-	-	-	-	-	-	**0**

A judge mentioned that as a judge they do not exactly know how the content of the EAW is introduced by the police and prosecutor – they cannot share first-in-line experience, but only general knowledge and assumptions that the content is presented in writing. Both interviewed prosecutors confirmed that there are two options to inform arrested persons about the content of EAW – either SIRENE A form which includes the main information of the EAW aggregated or the LR.

- Information on consenting to surrender

Most of the interviewees referred to the EAW as a very formal procedure where there is not much to explain or do. Two prosecutors mentioned that, to their knowledge, it is a general practice that the requested person is not additionally informed about the right to renounce the speciality rule as the general provision in Estonian CCP has not, in their estimation, regulated that nuance sufficiently. Interviewees pointed out that they usually just explain before or during the hearing the same rights that are brought out in the LR. This could be considered as a certain shortcoming because the practice and the Framework Decision differ, even though, based on the opinions of the interviewees, if the speciality rule stands it does not damage the position of the requested person.

Are the requested persons informed about what consenting to their surrender entails?
Prosecutor: *Yes, the information is brought out in the LR. Estonian practice is that the 'speciality rule' always goes with the person, the person is not even told that they have the opportunity to renounce it – our CCP is not sufficiently regulated in that nuance. There is a general provision that a person who is surrendered to another country may not be prosecuted for other crimes without the consent of the Estonian state. The judges will also inform and explain at the hearing that no other charges can be brought against that person, although the person has the right to renounce the speciality rule based on the Framework Decision.*
EST*: Jaa, teavitamine on õiguste deklaratsioonis olemas. Eesti praktika on, et erikohustuse reegel läheb alati isikuga kaasa, isikule isegi ei öelda, et tal on võimalus sellest loobuda – pole meie kriminaalmenetluse seadustikus piisavalt reguleeritud. On üldine säte, et inimene, keda loovutatakse teise riiki, teda ei tohi muudes kuritegudes kohtu alla anda ega midagi teha ilma Eesti riigi nõusolekuta. Ka kohtunikud istungil teavitavad ja selgitavad, et isikutele ei saa muid süüdistusi teha, kuigi raamotsuse kohasel on isikul õigus sellest loobuda.*

One lawyer was also critical and pointed out that it is not about dealing with the content of the case, but just surrendering the person, and sometimes judges or prosecutors nudge the person to urge them to surrender. Then again, judges and prosecutors brought out that this happens because of the

interest of the requested person. Also, in their viewpoint the EAW is a very formal procedure, and the real discussion can only take place when the person is surrendered.

***Lawyer**: I again reiterate that it was discussed during the court hearing, I do not know how much in advance it is declared. The state also actively tried to introduce this option and influence the choice to be taken. Let's say that the entire surrender procedure is a formality, the message to both me and the requested person was that the extradition will happen regardless and the sooner you go there the sooner you can start discussing the particulars of the case.*
They are advised and nudged to take that option. The person's interest is that their trial would happen as soon as possible. If one does not agree with it, then the prolongation of the process does not have much of a point. The message is that we do not deal with the content of the case, we only extradite and that is all. It is an exceptionally formal procedure.
***EST**: Ma jällegi ütlen, et kohtuistungil oli küll sellest juttu, ma ei tea, kui palju varem sellest teavitatakse. Riik ka aktiivselt üritas seda võimalust tutvustada ja mõjutada seda võimalust ka valima. Ütleme nii, et kogu loovutamismenetlus on formaalsus, sõnum, mis tuli nii mulle kui süüalusele oli see, et niikuinii antakse välja ja mida varem te sinna lähete, seda varem saate hakata asja sisust rääkima. Neid soovitatakse ja müksatakse seda varianti valima. Isiku huvi on, et kohtupidamine toimuks tema üle võimalikult ruttu. Kui sellega mitte nõustuda, siis protsessi pikendamisel ei ole väga mõtet. Sõnum on see, et meie siin asja sisuga ei tegele, meie anname välja ja kõik. See on äärmiselt formaalne protseduur.*

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

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

All interviewees emphasised that **there is usually the need to explain additionally what the surrendering procedure means** – meaning there will not be any discussion regarding whether they committed the crime, but that it is a formal procedure that needs to be fulfilled. One prosecutor also said that there are different judges – some explain the procedure very clearly, some do not – and they, as prosecutors, sometimes even do "the job of a lawyer" to make sure the requested person understands what is happening to them. One judge confirmed that they always explain in the beginning of the hearing and use the LR as a basis for that as it is thorough and clear.

Are the requested persons informed about what consenting to their surrender entails?
***Prosecutor**: I try to explain in very simple language what this [consenting] entails, because people's first reaction is that "no, just in case I don't agree." But in the surrender process, by not consenting, they harm their own position. So then in court I actually look at how much information the person has already received from the judge. I already know the judges so much already, and I know more or less the defence lawyers who can explain those details themselves. Many defence lawyers are not that well versed in the nuances of international processes – in fact, I do as much of this work myself as possible before the hearing.*
***EST**: Üritan hästi lihtsas keeles üksipulgi lahti selgitada, et mida see kaasa toob, sest inimeste esmane reaktsioon on see, et "ei, ma ei ole nõus. Igaks juhuks." Aga loovutamise protsessis nad mitte nõustudes just kahjustavad enda positsiooni. Nii et siis kohtus tegelikult ma vaatan seda, kui palju informatsiooni inimene juba kohtunikult on saanud. Ma tunnen ja tean juba kohtunikke nii palju juba*

ja enam-vähem tean kaitsjaid, kes ise oskavad selgitada. Paljud kaitsjad ei ole rahvusvaheliste protsesside nüanssidega nii hästi kursis – tegelikult ma teen selle töö nii palju kui võimalik enne kohtuistungit ise ära.

- Understanding of information

All the interviewees said that there could be improvement in the ways information is presented to detained persons – there is a need for simple "human" language because often people do not understand the "language of paragraphs." Even if they sign the consent form, they might be nudged to do it without sufficient explanation of those rights in the moment of signing. Interviewees also mentioned that nudging to sign the consent form is in the interest of the requested person as it allows to move on more quickly to the real hearing where the accusation is discussed.

***Prosecutor**: The main thing they don't understand is that we can't discuss the criminal matter on its merits. A very natural reaction of a person is that "but I did not commit this crime at all" or "it was not as it is written." And to explain it to them, that we only evaluate formal prerequisites, we have trust between countries here. After that, they often calm down and give their consent – because they understand that it is in their interest to go to an issuing State, where they can actually start discussing the matter.*
***EST**: Peamine, millest nad aru ei saa on see, et meie ei saa seda kriminaalasja sisuliselt arutada. Inimese hästi loomulik reakstioon on see, et "aga ma pole üldse seda kuritegu time pannud" või "see polnud nii nagu seal kirjas on". Ja seda selgitada neile, et meie hindame ainult formaalseid eeldusi, meil on siin usaldus riikide vahel. Selle peale nad tihti rahunevad maha ja annavad ka nõusolekud – sest saavad aru, et nende huvides on minna välisriiki, kus saab päriselt sisuliselt hakata asja arutama.*

As the information is provided at different levels – by a police officer, prosecutor, defence lawyer and judge – then even if the person does not understand everything at the time of their detention, everything is done so they would understand things in court. One lawyer mentioned that, even though informing is not a matter for courts, nor prosecutors, they still explain what consenting to surrender entails.

The answers to the question if requested persons understand the information provided did not vary much. **There were two levels of understanding that interviewees pointed out:**

1) language-wise – whether the requested person understands most spoken languages (Estonian, English, Russian) or they need an extra interpreter, which could be challenging in Estonia (as for some exotic languages it is just very difficult to find an interpreter);

2) juridical lingo – some terms and juridical lingo is just too complicated and specific for requested persons to understand, and sometimes explanations by responsible instances can be rather meagre.

Much depends on the attitudes of legal bodies – some judges (or even prosecutors) might be more willing to ensure that the requested person understands everything, but some might not bother to invest their time into it. So it depends on the particular legal professional whether they make sure that the requested person understands everything.

From your experience, do requested persons understand the information provided?
***Prosecutor**: Throughout the process from detention to court – not always. All the necessary information is available, but the procedures are very different. The fact that this LR is thrown under a person's nose during detention, "read it, sign it, do you understand" – the person does not even know what to ask. This is completely new information for them, this is such a legal language. I don't know if the police will explain in human language. I think the best officers certainly do. […]*

Judges are different – we have good young judges who actually explain very well, but there are some judges who, I know, do not bother to explain anything to the person during the hearing, and then I try to do the work myself.
***EST**: Kogu protsessi jooksul alates kinnipidamisest kuni kohtuni – mitte alati. Kogu vajalik informatsioon on kättesaadav, aga menetlejad on väga erinevad. See, et inimesele visatakse kinnipidamisel see õiguste deklaratsioon nina alla "loe läbi, pane allkiri, kas said aru" – inimene ei oska küsima hakatagi. See on tema jaoks täiesti uudne informatsioon, see on selline juriidiline keel. Ma ei tea, kas politsei selgitab inimese keeles lahti. Ma arvan, et tublimad mentlejad kindlasti teevad seda. […]*
Kohtunikud on erinevad – meil on tublid noored kohtunikud, kes tegelikult ka väga hästi ise selgitavad, aga on mõni kohtunik, kelle puhul ma tean, et ta istungil ei vaevu midagi inimesele selgitama ja siis ma proovin seda tööd ise teha.

As mentioned above, language-wise there might not be suitable interpreters available and even if they manage to find the interpreter for certain language that is not so widely spoken (interviewees mentioned Latvian, Georgian, Arabic, Spanish that they have had experiences with), the requested person might not understand the essence of the accusation due to their low educational background, or the quality of the interpretation. E.g. the interpreter might not be so fluent with legal terminology.

***Judge**: Depends on the interpreter. Estonia has the biggest problem with interpreters. We have a relatively small number of minority nations and we have a very difficult situation with some interpreters. We have situations where even a Lithuanian interpreter cannot be found.*
***EST**: Sõltub tõlgist. Eestil on kõige suurem probleem tõlkidega. Meil on suhteliselt väike kogus vähemusrahvaid ja meil on mingite tõlkidega olukord väga keeruline. Meil on situatsioonid, kus isegi leedu keele tõlki ei suudeta leida.*

Interviewees admitted that there should not be any problems with providing information in Estonian, English and Russian, but with other languages there is usually extra effort required.

It was also mentioned that in certain cases, requested persons are told that they must surrender. The same lawyer pointed out that instead of explaining the situation in understandable terms to the requested person, a document with legal stipulations is given to them and informing is poor in those cases. That refers to perceived poor understanding of juridical lingo by requested persons.

From your experience, do requested persons understand the information provided?
***Lawyer**: So and so. There have been individuals who have not quite understood. And there have also been cases when they have given their consent immediately and then start thinking that maybe they should have done something differently. In certain cases, even pressuring [the requested person] is taking place – they are just told that they must go and that's it. In my opinion, this informing is a bit poor for us, I agree with that, yes.*
***EST**: Nii ja naa. On olnud isikuid, kes pole päris täpselt aru saanud. Ja on olnud ka juhtumeid, kui nad on andnud koheselt nõusoleku ja pärast hakkavad mõtlema, et äkki oleks pidanud tegema midagi teistmoodi. Teatud juhtudel isegi survemeetod… et öeldakse, et pead minema ja kõik. Minu arust see teavitus on meil natuke kesine, sellega ma olen nõus jah.*

c. Additional best practices or challenges

In general, there are no major problems with providing the information, but obstacle could be the willingness to explain to the requested person what is going to happen to them and also confirming that they really understood their rights. If the problem of understanding occurs language-wise then

the interviewees mentioned that sometimes it is difficult to find interpreters in certain languages. This is discussed further in section 2.

d. Discussion of findings

The right to information in EAW proceedings does not seem to be an issue in Estonia. Based on the interviews, it can be concluded that requested persons are usually presented the LR by the detaining police officer, and most of the time information is repeatedly provided to them afterwards as well either by the judge, by the defence lawyer or even by the prosecutor. The LR is available in most common languages, and it covers all the required information: right to get information about EAW, right to access to a lawyer, right to interpretation and translation, possibility to consent to their surrender, right to a hearing. It is also stated in the LR that EAW itself cannot be challenged and that in court there will be discussions only regarding the surrendering of the person. Despite the standard of providing information in a written document (LR), practice deviates by prosecutors and judges not knowing for sure if the police provided the info thoroughly enough, or if the requested person really understood the full scale of their situation, as the juridical lingo used in practice might be confusing for the requested persons, and thus pushing people to surrender might occur.

2. Right to interpretation and translation

a. Legal overview

According to the CCP, a person arrested on the basis of an EAW has, as of their arrest, the right to the assistance of an interpreter or translator.[12] The CCP also provides that if the person concerned is not proficient in the Estonian language, the text of the report on detention of the suspect, arrest warrant, EAW, statement of charges and judgment shall be translated into their native language or a language in which they are proficient, at least to the extent which is significant from the point of view of understanding the content of the suspicion or charges or for ensuring fairness of the proceedings.[13] There is no specific criteria available how the extent of necessary translation is assessed and by who. The case law available about this provision is limited to the translation of court judgments. In case 1-20-6129, the Supreme Court explains that the purpose of translating court judgments is to ensure that the requested person has an effective right of defence. To achieve this, the requested person must understand the court's reasoning. According to the Supreme Court, it is not necessary to re-translate parts of the court judgment which the requested person is already familiar with, such as the summary of the accusation or the description of the requested person's own complaint. The extent to which the judgment must be translated for the requested person is assessed by the court according to the circumstances of the case.[14]

The LR of a person arrested on the basis of an EAW outlines the "Right to use interpretation and translation" as one of the rights. It is explained that if the requested person is not proficient in Estonian, they are ensured free of charge interpreter's assistance. When requested, the interpreter's assistance is ensured - also when conferring with a lawyer. The requested person will be provided with the text of the EAW or, before the arrival of the EAW, the notice on a wanted person in the Schengen Information System translated into their native language or a language in which they are proficient. Instead of a written translation, the arrest warrant or the notice may be translated orally or an oral summary may be made. Interpreting shall be ensured immediately, but the written translation shall

[12] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 499 (4), 12 February 2003.
[13] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 10 (5), 12 February 2003.
[14] Estonia, Supreme Court (*Riigikohus*), Case No 1-20-6129, 19 November 2021.

be ensured within a reasonable period of time, which does not impair the exercise of the right of defence in the course of the surrender proceedings.[15]

There are no available guidelines on assessing the quality of interpretation.

No specific remedies are available for a requested person in case they are not provided with interpretation or translation during the EAW proceedings. However, according to the CCP, if a criminal matter is heard without the participation of an interpreter or translator in a language in which the accused is not proficient, it is a material violation of criminal procedural law, which is a ground for annulment of the court judgment.[16] Even though a surrender decision made in EAW proceedings is a court order, not a court judgment, the same rules should apply, as according to § 389 of the CCP, an appeal against a court order is considered pursuant to the provisions for appeals against court judgments, taking into account the specifications provided for court orders.[17] Therefore, if during the court hearing in the surrender proceedings adequate interpretation is not provided, this could be a ground for appeal and possibly annulment of the court order.

b. Interpretation and translation in practice

This section discusses the key findings from the answers of lawyers, judges and prosecutors regarding the assistance of interpreters and translators.

- Provision of interpretation (decision and means)

All interviewees agreed that written translation is provided of the most important documents that are necessary to ensure the rights of the suspect; if necessary, an interpreter is provided for the court hearing and for the meeting with the defence lawyer, and certain documents are also translated. There is extensive amount of translating involved during EAW hearings. There are staff interpreters in court and translation is done relatively quickly.

Arranging an interpreter is mostly a lawyer's job and interviewees did not recall if there had been any major challenges regarding this. The courts, the police and the prosecutor's office have their own interpreters who offer Estonian-Russian translation. All other interpreters are invited to court from translation agencies – they are appointed and paid by the state if necessary.

- Translation of documents

Interviewees pointed out that the law states that procedural documents must be presented in a language that can be understood by the requested person. There are, of course, certain limitations – for example, if it is necessary to translate documents to less spoken languages, then Estonia does not always have the capability for that due to lack of suitable translators. Instead, the translation is provided then in English or another language that the requested person understands. This is allowed by the CCP.[18] In criminal proceedings there is a general principle that more important documents need to be translated to an understandable language for the requested person, but this does not necessarily mean that everything needs to be translated.

Q5: Are requested persons provided with interpretation and translation where needed?

[15] Estonia, Riigi Teataja, Minister of Justice (*Justiitsminister*), Establishment of form of declaration of rights (*Õiguste deklaratsiooni näidisvormi kehtestamine*), Annex 2, 14 July 2014.
[16] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 339, 12 February 2003.
[17] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 389, 12 February 2003.
[18] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 10 (5), § 35^1, 12 February 2003.

***Lawyer**: Interpretation is provided to a certain extent. Deadlines are so short for a written translation. Think about it - finding translators in the middle of summer - it's relatively unrealistic. In my experience, this [need for translation] has not become a problem.*
***EST**: Suulist tõlget kindlasti teatud ulatuses. Tähtajad on niivõrd lühikesed kirjaliku tõlke jaoks. Mõelge – keset suve leida tõlgid – see on suhteliselt ebareaalne. Minu kogemuste põhjal pole see probleemiks tõusnud.*

- Interpretation of consultations with lawyers

Lawyers admitted that, if needed, there will be interpreters available, but they also brought out that they have never used an interpreter during consultations - mostly because of the possible breach of client-lawyer confidentiality principle. Two lawyers mentioned that they would need to pay for this service themselves and that is one of the reasons they have not hired an interpreter, but have managed themselves by using Estonian, Russian and English.

Are the consultations with a lawyer interpreted by a state-appointed interpreter?
***Lawyer**: This is prescribed by law, but I've never used it. […] If I could choose an interpreter myself – that I would send the bill and the state would pay it, but I could not allow my confidential information to anyone who has not been chosen by myself. What is needed is a background check, the risk of being influenced by the other party must be – it must be up to me and under my control. Otherwise, it's under someone else's control. Confidentiality is important.*
***EST**: Nii on ette nähtud seaduses. Ma ei ole seda kunagi kasutanud. […] Kui saaks ise valida tõlgi – et ma saadan arve ja riik maksab seda ära, aga ma ei saa lubada enda konfidentsiaalset teavet kellelegi, kes pole minu enda poolt valitud. Vajalik on taustakontroll, risk, et teda mõjutatakse vastaspoole poolt – see peab sõltuma minust ja olema minu kontrolli all. Muidu on see kellegi teise kontrolli all. Oluline on konfidentsiaalsus.*

Confidentiality was brought up also by a judge who expressed their worry regarding potential situations where a requested person and a lawyer need an interpreter during their private consultations.

Are requested persons provided with interpretation and translation where needed?
***Judge**: Sometimes you can't communicate directly (with a requested person) but have to communicate through an interpreter, but what about the obligation of confidentiality? The relationship between the defence lawyer and the requested person must be confidential – there is a problem with the interpreter in that case. This is not so much a problem in bigger countries where the palette of nations is wider and interpreters are easier to find than in Estonia.*
***EST**: Vahel ei saagi vahetult suhelda vaid peab suhtlema tõlgi vahendusel, aga mis saab siis konfidentsiaalsuskohustusest? Kaistja ja kaitsealuse suhe peab olema konfidentsiaalne – tõlk seal vahel on problemaatiline. Suurriikides ei ole nii palju see probleemiks, suurriikides on rahvuste palett laiem ja leidum ka tõlke, aga Eestis mitte.*

Based on all interviews with lawyers, judges and prosecutors, it can be confirmed that translation and interpretation is provided if needed, there are in-staff interpreters and translators in court, and, if their language palette is not enough, they also use translation agencies' help. It is also common practice to ask the requested person if they need interpretation or translation.

Are requested persons provided with interpretation and translation where needed?
***Prosecutor**: We have Russian interpreters in the court. If English is already needed, it is the task of the prosecutor's office to find this interpreter. We are really going out of our way to find these translators.*

Also on the weekends. We use translation agencies. We never leave the person in a situation where they don't understand what is happening in the hearing and what is happening before it.
***EST**: Kohtus on meil venekeele tõlgid. Kui on juba ingliskeelt vaja, siis on prokuratuuri ülesanne see tõlk leida. Me tõesti poeme nahast välja, et need tõlgid leida. Ka nädalavahetusel. Kasutame tõlkebüroosid. Me ei jäta kunagi inimest olukorda, kus ta aru ei saa, mis toimub istungil ja mis toimub enne seda.*

c. Additional best practices or challenges

A common practice seems to be to provide written translation of documents whenever it is requested and possible in time. **Interpretation into more common languages (Estonian, Russian, English) is not a problem as interviewees confirmed, but there have been struggles with finding people who would be able to interpret/translate less spoken languages in Estonian society.** The requested person is always asked if they understand the documents and if translation or interpretation is needed. As already mentioned above, the formality of the procedure sets certain time limits and due to that it has to be decided what documents are available for translation and in certain cases oral interpretation of certain documents must be agreed.

Are certain documents always provided in a language a requested person can understand during the EAW proceedings?
***Prosecutor:** The LR is provided in a language that they understand. Regarding other documents, such as court orders, we ask whether a person wants a translation or whether an interpretation at the hearing is sufficient. And if they want a translation, they get it.*
***EST**: Õiguste deklaratsioon esitatakse talle arusaadavas keeles. Muud dokumendid, näiteks kohtu määruste kohta küsitakse inimese käest – kas ta soovib kirjalikku tõlget ka või piisab suulisest tõlkest kohtuistungil. Ja kui ta soovib kirjalikku tõlget, siis ta saab selle.*

***Prosecutor**: Rather, in practice it is the case that the documents they need to examine after being detained are orally interpreted, because in practice it would be extremely difficult to make written translations immediately. If a person is detained, they must be arrested within 48 hours. I can't even imagine what quick translations would have to be prepared in writing for this.*
***EST**: Pigem on praktikas nii, et dokumendid, millega ta tutvub peale kinni pidamist, käib suulise tõlkega, sest praktikas oleks äärmiselt keeruline kohe kirjalikke tõlkeid teha. Kui inimene kinni peetakse, siis 48h jookusl peab ta olema vahistatud. Ma ei kujuta isegi ette, mis kiirtõlked peaksid selleks kirjalikult valmima.*

Regarding digitals tools used for interpretation, interviewees pointed out that very often the quality is low due to lack of face-to-face interaction that has happened more and more due to Covid-19 pandemic. Mostly it is preferred to have the interpreter in the same room as that makes it easier to exchange discrete remarks with the requested person, and video interpretations are rather used in emergency cases when there is no interpreter available for a certain language, etc. Video conferences are not preferred in first instance, but as mentioned by a prosecutor, very often because of Covid-19 everyone is behind their camera and the requested person is not brought to court but they remain in prison during the hearing. One prosecutor and one lawyer pointed out that the police use video interpretation a lot, but in court on-site interpreters are usually preferred as in video there is still quite a chance for misunderstanding or false interpretation. The reasons mentioned were that sometimes the interpreter could mishear and misinterpret, sometimes the requested person could mishear or might want to clarify and it could be troublesome, sometimes the quality of interpretation could be low.

How do interpreters normally assist requested persons – in person or via online tools, such as videoconference?
Lawyer: *It used to be that they were always present but now in court I have seen that rather they are present. Outside the courthouse it is visible that the interpretation happens also via audio connection. There it is very apparent when the distance is greater – it creates an actual distance – it is amazing to watch how misunderstandings or false interpretations happen. But in court, as much as I have seen, the interpreter has been present whenever there have been physical hearings.*
EST*: Varem olid alati kohal, aga kohtus olen näinud, et pigem on kohal. Väljaspool kohtumaja on näha, et tõlkimine toimub ka audio ühenduse teel. Seal on kohe näha, et kui distants on suurem – see loob ikkagi distantsi – on hämmastav vaadata, kuidas tekib arusaamatust ja valetõlget. Aga kohtus, nii palju kui mina olen näinud, on tõlk olnud kohal, kui on olnud füüsilised istungid.*

Judge*: We have preferred the interpreter to be in the same room at the hearing and to provide oral interpretation. This is still the preferred method. Communication over the web becomes very difficult precisely because of the translation – if a person quietly wants to specify something and not ask the court, they must do so through an interpreter. In an emergency, if there is no interpreter of this language in Estonian or during Covid, video translation will come into play.*
EST*: Me oleme eelistanud, et tõlk on samas ruumis kohtuistungil ja teeb suulist järeltõlget. See on ikkagi eelistatum meetod. Üle veebi läheb hästi keeruliseks see suhtlus just tõlke tõttu – kui inimene tahab vaikselt midagi täpsustada, mitte kohtu käest küsida, peab ta tegema seda läbi tõlgi. Hädaolukorras, kui pole selle keelesuuna tõlki Eestis või covidi ajal, siis tuleb kõne alla see video teel tõlkimine.*

In addition to access to interpreter, one challenge could also be the quality of interpretation especially in less spoken languages. Almost all interviewees had distinctive examples of situations when there was an interpreter needed to a certain language and they had to put excessive effort into finding someone – usually they used video conference in this case. It was admitted that this problem is probably not that big in larger EU MSs, but due to lack of qualified speakers in Estonia they sometimes struggle even finding a person to interpret language spoken in a neighbouring country.

At the time of detention, it is the duty of the police to explain what is happening to the person in a language the requested person can understand. Later it is the duty of the prosecutor and the court. When the police find out what language the requested person speaks and if there is a borderline situation, the interpreter is hired, so that they could understand all the possible nuances. As interviewees mentioned, it also in their interest that the person understands everything.

d. Discussion of findings

Findings show that, if necessary, the translation and interpretation is always provided, but sometimes it takes a lot of effort to provide this service in satisfactory quality. Video tools are helping to safeguard people during Covid-19, but half of the interviewees had witnessed misinterpretation or low-quality interpretation services due to video-medium.

3. Right to access to a lawyer

a. Legal overview

When Estonia is the executing State

According to the CCP, a person arrested on the basis of an EAW has, as of their arrest, the right to receive state legal aid.[19] Participation of a lawyer in surrender proceedings is mandatory starting from the consideration of a request for the arrest of a person.[20]

According to the LR of a person arrested on the basis of an EAW, the requested person has the right, as of their arrest, to receive free of charge legal assistance. They have the right to use the assistance of a lawyer and to confer with the lawyer without the presence of other persons. They may choose a lawyer for themselves or apply in writing for the appointment of a lawyer by the Prosecutor's Office.[21]

When Estonia is the issuing State

No specific rules are outlined, so general rules apply. Any suspect or accused person has the right to the assistance of a lawyer.[22] In criminal proceedings, the suspect, the accused or the convicted offender may choose a lawyer personally or through another person. A lawyer shall be appointed by an investigative body, Prosecutor's Office or court if a suspect or the accused has not chosen a lawyer but has requested the appointment of a lawyer; or a suspect or the accused has not requested a lawyer but the participation of a lawyer is mandatory.[23] The lawyer may participate in criminal proceedings as of the moment when a person acquires the status of a suspect in the proceedings.[24]

The participation of a lawyer is mandatory for the entire course of criminal proceedings if:

1) the person was a minor at the time of commission of the criminal offence or unlawful act;
2) due to their mental or physical disability, the person is unable to defend themselves or if defence is complicated due to such disability;
3) the person is suspected or accused of a criminal offence for which life imprisonment may be imposed;
4) the interests of the person are in conflict with the interests of another person who has a lawyer;
5) the person has been held in custody for at least four months.[25]

According to the State-funded Legal Aid Act (*Riigi õigusabi seadus*), where the participation of a criminal defence lawyer throughout criminal proceedings is not required and a suspect has not chosen a lawyer but requests the participation of a lawyer, the suspect submits an application for state-funded legal aid to the investigative body or the Prosecutor's Office.[26]

No legal provisions or other rules are available on cooperation between lawyers in executing and issuing MS.

[19] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 499 (4), 12 February 2003.
[20] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 501, 12 February 2003.
[21] Estonia, Riigi Teataja, Minister of Justice (*Justiitsminister*), Establishment of form of declaration of rights (*Õiguste deklaratsiooni näidisvormi kehtestamine*), Annex 2, 14 July 2014.
[22] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 34 (1) 3), 12 February 2003.
[23] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 43, 12 February 2003.
[24] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 45 (1), 12 February 2003.
[25] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 45 (2), 12 February 2003.
[26] Estonia, Riigi Teataja, State-funded Legal Aid Act (*Riigi õigusabi seadus*), § 10 (4), 28 June 2004.

No specific remedies are available in Estonia when a requested person is not informed about their right to dual legal representation or access to a lawyer is delayed or denied. If a requested person is not provided with legal assistance and the court hearing regarding the surrender takes place without the presence of a lawyer, even though the participation of a lawyer is mandatory, this could be a ground for annulment of the court order on surrender.[27] An appeal against a court order on surrender may be filed with a Circuit Court in accordance with the rules provided in the CCP within three days of receiving the order.[28]

It is important to note that the right to dual legal representation is not regulated in the CCP. A working group created for revising the CCP has drawn attention to the problem that while the appointment of a lawyer in EAW surrender proceedings in Estonia complies with the provisions of the Directive 2013/48/EU, the obligations arising from Article 10 (4)-(6) of the Directive to provide a person with a dual legal representation are still unregulated in Estonian legislation.[29] There is no case law on this matter.

Table 5 Dual representation (in law)

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

Table 6 Cost-free legal assistance (in law)

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

b. Right to access to a lawyer in practice

According to all the interviewees, requested persons are always provided the access to a lawyer in such time and manner as to allow requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty. It is also stated in the LR that the presence of a lawyer is mandatory and guaranteed from the first hearing. All interviewees admitted that the requested person is guaranteed the possibility to meet and communicate with their lawyer and the lawyers can always effectively be present and participate in all stages of the proceedings and there are no challenges regarding that. Sometimes extra effort is invested by judges or prosecutors to find lawyers so the hearing could take place on time.

***Prosecutor**: It is not at all unusual for me to help them contact the defence lawyers. If the police call me that a person has been detained, and if the police have received any indication that the person has a lawyer with whom they have dealt with before, I look up the contacts of this lawyer, call them and ask if they are ready to provide their service. That way I get a defence lawyer involved instead of just assigning a public defender to them.*

***EST**: Ei ole üldse ebatavaline, et mina aitan neil ühendust saada kaitsjatega. Kui politsei mulle helistab, et inimene on kinni peetud ja kui politsei on saanud vähegi mingi indikatsiooni, et inimesel on kokkuleppel kaitsja, kellega ta on varem asju ajanud, siis mina otsingi selle kaitsja kontaktid ülesse,*

[27] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 339 (1) 3), 12 February 2003.
[28] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 504, 12 February 2003.
[29] A. Plekksepp (2019), Retsensioon A. Pere analüüsi "Kriminaalmenetlusalane rahvusvaheline koostöö" alateemadele, November 2019.

helistan talle ja küsin, kas ta on valmis teenust osutama. Niimoodi tõmban kaitsja menetlusse, selle asemel, et määrata lihtsalt riiklik kaitsja talle.

***Lawyer**: I have had a situation where I came out of court and there was a prosecutor at the door who could not go to a hearing because there was no lawyer and he called me to defend a random person on the go. And I went because the state legal aid system no longer helped on Friday night.*
***EST**: Mul on olnud olukord, kus ma tulin kohtust ära ja ukse peal oli prokurör, kes ei saanud istungit pidada, sest polnud kaitsjat ja ta kutsus mu kaitsma käigu pealt täiesti suvalist inimest. Ja ma läksin, sest riigi õigusabi süsteemist ei saanud reede õhtul enam abi.*

- Information about legal assistance (including on dual representation)

As mentioned above, the right to dual legal representation is not regulated in the CCP and for interviewees this was mostly new information. Some of them were willing to discuss possible practicalities, but in this section, we mostly concentrate on the information about legal assistance in general.

Requested persons are always notified about their right to be assisted by a lawyer in the proceedings in Estonia. The notification is in written form and stated in the LR, also oral notification is provided as much as interviewees were aware. However, there is no information on state-funded legal assistance in the LR because the participation of a lawyer is obligatory – it does not depend on the financial situation of an accused person whether they receive state-funded aid – if they do not want to choose the lawyer themselves, the state will always appoint a defence lawyer.

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

	Lawyer 1	**Lawyer 2**	**Lawyer 3**	**Judge 2**	**Judge 1**	**Judge 3**	**Total**
YES	**X**	**X**	**X**	**X**	**X**	**X**	**6**
In writing	-	-	-	-	-	-	-
Orally	-	-	-	-	-	-	-
In writing and orally	**X**	**X**	**X**	**X**	**X**	**X**	**6**
NO	-	-	-	-	-	-	-
Don't know/remember	-	-	-	-	-	-	-
Did not answer	-	-	-	-	-	-	-

All answers in Table 8 are about the general access to a lawyer. When asked about dual representation, then most interviewees had no experience or exact knowledge how and if at all this information is provided to persons. One lawyer expressed their surprise when asked about dual representation and thought maybe they did not have enough experience to know about this possibility. Interviewees were doubtful how dual representation would work in practice. Only one lawyer said that persons are informed about dual representation, and they had during their practice searched and found defenders for their clients in Slovenia, Slovakia and Finland.

One judge suggested that if dual representation is mentioned in the LR then this information is presented, but most probably no one is aware of this option (note – this is not mentioned in the LR).

A lawyer and a prosecutor mentioned that in theory dual representation could be facilitated, but in practice it is rather impossible due to short deadlines, lack of contacts and deficient accessibility to communication tools for the requested person while in detention. Another prosecutor admitted

directly that the right for dual representation is a shortcoming in the Estonian legal system – it is not guaranteed in Estonia.

Table 8 Information on dual representation, interview findings

Are persons arrested on an EAW informed by authorities on their right to have the assistance of a lawyer in the issuing Member State?							
	Lawyer 1	**Lawyer 2**	**Lawyer 3**	**Judge 2**	**Judge 1**	**Judge 3**	**Total**
YES	-	X	-	-	-	-	**1**
NO	X	-	-	-	X	X	**3**
Don't know/remember	-	-	X	X	-	-	**2**
Did not answer	-	-	-	-	-	-	**0**

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

As stated above, participation of a lawyer is mandatory in EAW hearings. There is a right to choose one´s own lawyer, but usually the lawyer is appointed by the state. While one interviewee, a prosecutor mentioned that it is very rare for requested persons to have their own lawyer, another prosecutor said that many requested persons have lawyers by agreement – in this regard their answers conflicted, but that could be explained by their different experience level. There were no conflicting opinions among the interviewees on whether persons arrested on EAW can privately meet and consult with their lawyers – this opportunity is always granted, but there is relatively little time between the time of detention and when the requested person arrives before the judge so sometimes there is not enough time to prepare or study all possible options. The lawyer is always present at the hearing – there was no variety of answers in that matter.

It was also confirmed that in case there is no time for previous consultation and the lawyer first meets the person in the courtroom, the court gives them the opportunity to speak in private – the judge and the prosecutor leave the courtroom. But as pointed out by one lawyer those meetings could be rather unfruitful due to the lack of time for preparation and the formal requirements of EAW procedures.

Can persons arrested on EAW privately meet and consult with their lawyers? At which moment/stage of proceedings usually?

***Lawyer**: Yes, they can privately meet and consult. Since the notifying of the defence lawyer happens rather late and the hearing is already set in place for that time which is often impossible to postpone. Before the hearing we meet the requested person, hopefully before as well. We can meet, but the result of the meeting is almost always nothing significant.*

***EST**: Jaa, saavad privaatselt kohtuda ja nõu pidada. Kuna kaitsja teavitamine toimub kaunis hilja ja selleks ajaks on määratud juba arutamise aeg, mida edukalt edasi lükata pole tihtipeale võimailik. Enne istungit saab kindlasti kokku saada, loodetavasti ka varem. Ikka saab kohtuda, aga kohtumise tulemus ei ole tavaliselt midagi märkimisväärset tavaliselt.*

The role of the defence lawyer in the surrendering procedure according to a prosecutor would often be to admit that it is in the interest of the requested person to consent to the surrendering as soon as possible and to go to the issuing country to discuss the matter in substance. In that matter the lawyers actually expressed a certain helplessness – even if they would want to help their client, there is not much they could do and decision to surrender is decided in advance.

Q11: What kind of assistance is provided by a lawyer in EAW proceedings in the executing State?

***Prosecutor**: But to be honest, both the state legal aid lawyers and the defence lawyers chosen by agreement are often not very well acquainted with these international instruments and the corresponding provisions. They do this very rarely, sometimes they misunderstand these provisions. I cannot say that the legal assistance provided by the defence lawyer is always of high quality.*
***EST**: Aga kui rääkida ausalt, siis nii riigi õigusabi kui kokkuleppel kaitsjad sageli ei ole nende rahvusvaheliste instrumentide ja vastavate sätetega väga hästi kursis. Nad teevad seda väga harva saavad teinekord valesti aru nendest sätetest. Ma ei saa öelda, et kaitsja poolt antav õigusabi oleks väga kvaliteetne alati.*

***Lawyer**: The defence lawyer can theoretically collect evidence and whatever but since the time is short and the subject being discussed is very narrow and formal – in general it seems that going through the court is a requirement derived from the rule of law wherein the state cannot simply hand over a person to another state. The entire proceedings are built in a way that objecting to it has been made practically as difficult as possible and the defence lawyer is more of a spectator.*
***EST**: Reaalselt saab selgitada kaitsja välja asjaolusid – kas peavad paika, kas on kahtlustus, mida klient ise teab, kas esinevad mingid väga napid alused, mis võimaldavad rahuldamata jätta, võib teoreetiliselt koguda tõendeid ja mida iganes, aga kuna aeg on nii lühike ja see, mille üle arutatakse on hästi kitsas ja formaalne – laias laastus tundub, et see läbi kohtu käimine on õigusriiklik nõue, et inimest ei saa lihtsalt teisele riigile üle anda. Kogu menetlus on ehitatud nii, et vastu hakkamine on praktiliselt tehtud nii keeruliseks kui võimalik ja advokaat on lihtsalt pealtvaataja.*

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

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing? (When your country is an executing State)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1		X	
Lawyer 2	X		
Lawyer 3			X
Judge 1			X
Judge 2			X
Judge 3			X
Total	1	1	4

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

As it appeared, there were not many experiences with legal assistance in the issuing State due to hastiness and formality of EAW procedures. If asked what kind of assistance could be provided by lawyers in the issuing State, they expressed the worry whether a foreign defence lawyers would even be able to help if a difference in MSs' legal systems arises, e.g. foreign lawyers might not be familiar with all juridical procedures conducted in Estonia, and they mostly saw their role as a medium for exchanging documents (if included as early as possible in the process) or supporting the requested person in a minimal way, e.g. explaining the nature of the procedures to the client in their own language etc.

Also, the hastiness and formality of the procedure was criticised by lawyers since this does not support cooperation with lawyers in the issuing State.

What kind of assistance is provided by a lawyer in EAW proceedings in the issuing State?

***Prosecutor**: I'd rather say no assistance at all. Surrender proceedings are very fast and efficient procedures in the country where they are carried out. Lawyers' assistance can be provided if there are any problems why the EAW should not be complied with (e.g. Romania – where there might be poor conditions in prison). If the lawyer in that country could produce some documents showing that the conditions of detention are very poor and under no circumstances should a person be sent there. In practice, lawyers in the issuing State do not participate in the proceedings in the executing State in any way. I do not see a very practical need for them.*
***EST**: Pigem ei annagi. Pole väga kokku puutunud. Loovutusmentelus on väga kiire ja tõhus menetlus selles riigis kus seda täidetakse. Võib osutada seda abi, kui on mingid probleemid, miks EAWd ei peaks täitma (Rumeenia näide – kehvad tingimused vanglas), kui sealne kaitsja suudaks mingid dokumendid produtseerida, mis näitavad, et vangistamistingimused on väga hullud ja mingil juhul ei tohiks inimest sinna riiki saata. Praktikas EAW väljastanud riigi kaitsjad selles täitvas riigis menetluses kuidagimoodi ei osale ma väga praktilist vajadust neil ei näe.*

When asked to bring possible examples, the interviewees provided quite a few, but then again concluded that even though there are opportunities for the lawyer in the issuing State to help, usually there is not enough time for these procedures and it is rather complicated to get in contact with a lawyer in the issuing State if the requested person happens to have one.

***Judge**: [...] a lawyer can look into possible punitive practices – what awaits me for this crime, whether I have alternative procedures, what would be my prospect in that country. Additional evidence about the content of the case can be gathered, it could also be helpful to collect descriptive data – that the requested person is not a hardened offender, has a place of residence, a job. The family could also be informed and kept informed of the fate of the requested person – there are many opportunities.*
***EST**: [...] kaitsja saab uurida võimaliku karistuse praktikaid – mis mind selle kuriteo eest ootab, kas mul on alternatiivseid menetlusi, mis mu potentsiaal seal riigis on. Võib koguda juhtumi sisu kohta täiendavaid tõendeid, abi võiks olla ka iseloomustavate andmete kogumisest – et pole paadunud kurjategija, omab elukohta, töökohta. Samuti võiks perekonda teavitada ja kursis hoida kinnipeetava saatuses – võimalusi on laialt.*

All lawyers emphasised that the presence of a lawyer is mandatory and in case the requested person does not have their own defender, the state and all legal parties will assist them to find one.

When a person is arrested in Estonia on an EAW issued by another State, is this person informed that they can benefit from the assistance of a lawyer in the Member State that issued the EAW?
***Prosecutor**: I know that this issue is on the agenda with the EAW – people have that right, but there is no practical outcome. The surrender procedure is a specific procedure with very short deadlines – I do not see how a lawyer elsewhere could help.*
***EST**: Ma tean, et see teema on päevakorras seoses EAWga – inimesel see õigus on, aga praktilist väljundit selles ei näe. Loovutamismenetlus on väga lühikeste tähtaegadega konkreetne menetlus – ma ei näe, kuidas mujal riigis olemas olev kaitsja aidata saaks.*

- Communication between the lawyers in both States

In case the requested person has their own lawyer in the issuing country, the Estonian lawyers are able to communicate with them mostly via digital tools (calls, emails). A lawyer described their experience with international cooperation and they said that in Hungary their client was not allowed to communicate with them directly, but had to communicate via Hungarian lawyer – so representing a client depended on how well they were able to exchange information, mainly whether there would

be grounds for refusing to surrender, and could they be implemented in the case of the requested person.

Most lawyers agreed that there is also a possibility to gather information and exchange between the issuing and executing State. Most of them have had some experience in doing that.

What kind of assistance is provided by a lawyer in EAW proceedings in the executing State?
Judge: *I have had this situation for a few times – a lawyer appointed in Estonia has contacted the lawyer of the issuing country at the request of the client to clarify the legal situation in another country. So the person can contact a lawyer in another country through their own lawyer in Estonia.*
EST*: Mul on olnud mõnel korral praktikat – Eestis määratud kaitsja on võtnud ühendust kliendi palvel välja andnud riigi kaitsjaga, et selgitada teises riigis olevat õiguslikku olukorda, et inimene saab teises riigis oleva kaitsjaga oma kaitsja vahendusel suhelda.*

There were some conflicting views regarding gathering additional evidence about the case – as one lawyer and a judge said they have done it and also searched for grounds not to surrender, another lawyer pointed out that they do not collect additional evidence as in Estonia there is a wide understanding that if the EAW has been issued, there is no option not to be surrendered. Later they still admitted that they are trying to find ways not to surrender their requested person, but in most cases the participation and resolution of an EAW request has been decided in advance – the person will be surrendered.

What kind of assistance is provided by a lawyer in EAW proceedings in the issuing State?
Lawyer*: In essence, this means that I, as a lawyer in the executing State, must pass on information – for example, that these are grounds for refusing to surrender, and can they be implemented on the requested person. Evidence can also be gathered; we have done it.*
EST*: Sisuliselt tähendab see seda, et mina kui täitvas riigis tegutsev advokaat pean edastama informatsiooni – näiteks, et need on alused loovutamisest keeldumiseks, kas teil on informatsiooni, et midagi võiks olla selle isiku puhul täidetud. Saab ka tõendeid koguda, me oleme teinud seda.*

Lawyer*: …they do not collect additional evidence. Here in Estonia, we have understood that if the EAW has been issued, then you have to go, there is no option not to be surrendered. The court also clearly states that we do not assess the guilt of a person, it remains to be solved in the issuing State and based on what is stated in the EAW. If we say that he has a family, a job – let's not arrest him, it unfortunately doesn't help.*
EST*: Sellel hetkel nad ei kogu täiendavaid tõendeid. Meil siin Eestis on aru saadud, et kui EAW on välja antud, siis ka minema peab, seal ei ole varianti mitte minna. Täiendavaid tõendeid… Kohus ütleb ka selgelt, et me ei hinda isiku süü küsimust üleüldse, see jääb lahendada taotlevas riigis ja seetõttu lähtumegi sellest, mis on EAWs toodud. Kui me ütleme, et tal on perekond, töö – ärme vahista, siis see kahjuks ei aita.*

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

In practice, there are two possibilities – whether the requested person has previous contact with a lawyer and they become their lawyer, or they say that they need state legal aid, and whoever responds the request first becomes their lawyer.

It was also pointed out that explaining the possibility of state legal aid is the duty of the police, but as judges, prosecutors and lawyers are not present during the initial detention, the exact details how explaining and introducing the rights goes should rather be asked from the police officers.

Does this information also cover legal aid assistance (state-funded legal assistance)?
***Prosecutor**: The police always explain that it is also possible to get state legal aid. Also, the LR states that you are entitled to free legal aid*.
***EST**: Alati politsei selgitab, et on võimalik saada ka riigi õigusabi. Deklaratsioonis on kirjas, et teil on õigus tasuta õigusabile.*

The person conducting the proceedings cannot choose which lawyer is assigned to the requested person. The form of the lawyers' information system is sent to five lawyers with the preferred language and whoever answers first will be appointed to the hearing. There are all criminal lawyers in the information system and there is no option to select specific state legal aid lawyer from the list. A prosecutor expressed slight worry regarding the fluctuation of quality of defence due to that system.

***Prosecutor**: The quality of state legal aid is a separate issue altogether. Sometimes they misunderstand and give wrong information to the client. In this case, my role as a prosecutor in these processes is also to look at the circumstances objectively, and if I see that there are any circumstances preventing the surrendering according to the law, I will immediately point them out. My role as a prosecutor is not to shut up when the defence is stupid. I can point out all the circumstances in the same way and cover the shortcomings.*

***EST**: Riigi õigusabi kvaliteet on üldse omaette teema. Teinekord nad saavadki valesti aru ja annavad kliendile vale infot. Sellisel juhul minu roll prokurörina nendes protsessides on ka vaadata objektiivselt asjaolusid ja kui ma näen, et esinevad mingid loovutamist takistavad asjaolud seaduse järgi, siis ma kohe toon need välja. Minu roll prokurörina ei ole suu kinni hoida, kui kaitsja on rumal. Mina saan samamoodi kõiki asjaolusid välja tuua ja puudujääke katta.*

Table 10 Cost-free legal assistance, interview findings

Free of cost lawyer provided	When your country is an **executing** State		When your country is an **issuing** State for the purposes of procedures in the executing MS (e.g. to assist the lawyer in the executing State)	
	YES	NO	YES	NO
Lawyer 1	X			X
Lawyer 2	X			X
Lawyer 3	X			X
Judge 1	X			X
Judge 2	X			X
Judge 3	X			X
TOTAL	6			6

c. Additional best practices or challenges

As one of the possible challenges, the interviewed prosecutors mentioned that the instruments of international co-operation may not be familiar to lawyers and due to that the legal representation is sometimes provided with questionable quality.

Most interviewees admitted that access to dual representation is a bottleneck in Estonia. As they elaborated, it came out that in theory, it must be possible to get in contact with your lawyer from a foreign country, but there are no practical experiences of this happening nor arrangements which would facilitate this. As one interviewee mentioned, they do not think the police even mentions to a person that they have such a right. It is explained that they have the right to legal aid in Estonia, but most probably nothing is mentioned about the issuing country.

***Prosecutor**: At the moment, we are completely lacking possible legal assistance from an issuing State – we basically do not deal with it. We do not inform the person about this possibility, we do not organise contact opportunities, etc. This should perhaps be improved.*

***EST**: Välisriigi võimalik õigusabi on meil hetkel täiesti puudulik – me sisuliselt ei tegele sellega. Me ei teavita inimest sellest võimalusest, ei organiseeri ühendusevõtmise võimalusi jne. Seda tuleks ehk parandada.*

Two lawyers mentioned that as access to digital tools in prison is limited, those tools have not played much role in enabling access to information on the appointment of a lawyer in the issuing State and legal aid schemes for a requested person, but for a lawyer those tools could be helpful indeed. The only argument is the tempo of EAW proceedings – there is not much time to establish contact between lawyers in different countries even if you have digital tools for that. One lawyer even went so far as to criticise the superficiality of the right to access to a lawyer:

***Lawyer**: But the pace of the proceedings is so fast that all these rights in my opinion are superficial, not real. I have the right for my lawyer to be present, but I have not been provided reasonable time to search for them […].*
***EST**: Aga menetlustempo on nii kiire, et kõik need õigused on minu arvates näilised, mitte reaalsed. Mul on õigus advokaadi ilmumisele, aga kui mul pole antud mõistlikku aega tema otsimiseks, siis mulle öeldakse, et teda ei ilmunud.*

Another challenge mentioned was hastiness, formality, and lack of time to prepare and provide proper defence during EAW proceedings.

***Lawyer**: There is a lack of time to participate in the proceedings which removes even those few options to defend something. It is currently built in a way that when there has not been a mistake in identifying the person and the crime has been described with enough severity, then the requested person is extradited. The defence lawyer's participation is rather pointless. To onlook and shrug.*
***EST**: Väljakutseks on aja nappus, mis nullib ära need vähesedki võimalused midagi kaitsta. See nagu on praegu üles ehiatatud – et kui isikuga pole mööda pandud ja kuritegu on kirjeldatud piisava raskusastmega, siis on minek. Kaitsja osalemine on suhteliselt sisutu. Vaadata pealt ja laiutada käsi.*

d. Discussion of findings

Despite the legal requirement, there does not seem to be any practice of providing or informing about dual representation. All interviewees gave very similar answers when it came to that practice and some of them were even confused about how to arrange those situations in real life. Their main worry was that there is too little time and too much energy needed (searching and contacting lawyers in another country) to properly put this right into practice.

In conclusion, a state-paid lawyer is always appointed for a hearing if the requested person does not have their own lawyer. According to the interviewees, the lawyers can always effectively participate in all stages of the proceedings and the only challenges might arise due to the hastiness of the procedures – e.g. it might be difficult to find a defence when the hearing is set with short time notice, is taking place at the end of a work week, and there also might not be much to do as a defender as the EAW procedure is very formal and usually ends with surrendering the requested person.

4. Issuing and execution of the EAW

a. Legal overview

The issuing of EAWs is regulated by § 507 and § 508 of the CCP. It is provided that the EAW must include:

- the identity and nationality of the person concerned;
- the name and contact details of the issuing judicial authority;
- a notation concerning the relevant court judgment or arrest warrant;
- facts relating to and classification of the criminal offence;
- the penalty imposed in the case of a court judgment which has entered into force or the prescribed scale of penalties for the criminal offence which forms the content of the warrant under the law of the issuing State.[30]

The specific form for the EAW is established by a regulation of the Minister of Justice.[31]

It is also outlined which institutions are competent to prepare the EAW – in pre-court proceedings, the Prosecutor's Office; in judicial proceedings, the court which conducts proceedings regarding a criminal offence which is the basis for the EAW; for execution of a decision which has entered into force, the county court enforcing the decision. The EAW is communicated to the relevant MS by the Ministry of Justice.[32]

Subsection 3 of the same paragraph states that "[i]n pre-court proceedings, a preliminary investigation judge may, at the request of the Prosecutor's Office, apply arrest for surrender before preparation of an EAW in order to ensure surrender." This subsection has been criticised for being confusing, misleading and not in accordance with the EAW. The working group created for revising the CCP published an analysis in September 2019,[33] in which it is pointed out that "arrest for surrender" means arrest applied to a requested person who is being surrendered to another MS by Estonia. Thus, in order to request the surrender of a person from abroad, it is not necessary to apply "arrest for surrender," but to apply ordinary arrest, which would be the basis for issuing an EAW. It is further explained in the analysis that the issuance of a national arrest warrant cannot be optional, as phrased in this provision, but the existence of an arrest warrant is a mandatory precondition for the issuance of an EAW.[34]

Based on the recommendations of the working group (covering also other topics), an intention to amend the CCP was developed in 2020 and sent to different ministries for approval.[35] It does not appear that a draft law has yet been developed based on the intention to date.

The CCP provides that the authority which prepared the EAW (Prosecutor's Office or the court) is competent to annul it.[36] However, it is not further clarified in the law.

The Supreme Court has clarified that the EAW, despite its name, is not a court order resolving an individual issue in national criminal proceedings, but is a measure guaranteeing legal cooperation between the MSs of the EU. Pursuant to § 508 (1) 3) of the CCP, the EAW submitted by Estonian authorities must contain an indication of the procedural document (arrest warrant or court judgment) which shows a legitimate basis for restricting the liberty of the person being requested from another

[30] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 508, 12 February 2003.
[31] Estonia, Riigi Teataja, Minister of Justice (*Justiitsminister*), Euroopa vahistamismääruse vormi kehtestamine, 22 December 2014.
[32] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 507, 12 February 2003.
[33] A. Pere (2019), Kriminaalmenetlusalane rahvusvaheline koostöö, September 2019.
[34] A. Pere (2019), Kriminaalmenetlusalane rahvusvaheline koostöö, September 2019.
[35] Estonia, Eelnõude Infosüsteem, Kriminaalmenetluse seadustiku ja karistusregistri seaduse muutmise seaduse eelnõu väljatöötamise kavatsus (kriminaalmenetluse revisjoni II etapp), File No 20-0566, 8 May 2020.
[36] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 507 (5), 12 February 2003.

MS. In the CCP, the right to appeal against an arrest warrant or a court judgment is separately guaranteed.[37] Consequently, the EAW itself is not subject to appeal in Estonia when Estonia is the issuing MS. This has also been confirmed by Tallinn Circuit Court in its ruling of 22 May 2020.[38]

General conditions for surrender

According to the CCP, a person may be surrendered for continuation of criminal proceedings in a requesting state if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment in the requesting state. A person may be surrendered regardless of the prescribed sanction in the case of the criminal offences provided for in subsection 489[6] (1) of the CCP, which lists 32 criminal offences resulting from the provisions regarding EU cooperation in criminal proceedings. Surrender of a person for the purposes of execution of a judgment of conviction is permitted if at least four months of the sentence of imprisonment have not yet been served.[39]

Grounds for non-execution of the EAW

The CCP also lists the cases in which surrender of a person is not allowed.[40] The list covers the three grounds listed in Article 3 of the EAW Framework Decision, in addition, it outlines the ground that if an arrest warrant has been issued with regard to an Estonian citizen for the execution of imprisonment and the person applies for enforcement of the punishment in Estonia. Furthermore, the provision states that grounds covered in § 436 of the CCP also apply. This provision lists grounds for prohibition of international cooperation in criminal proceedings:

- if it may endanger the security, public order or other essential interests of the Republic of Estonia;
- if it is in conflict with the general principles of Estonian law (there is no fixed list of general principles of Estonian law, according to the Ministry of Justice, proportionality is one of the general principles[41], however, there is no case law on this matter in this context);
- if there is reason to believe that the assistance is requested for the purpose of bringing charges against or punishing a person on account of his or her race, nationality or religious or political beliefs, or if the situation of the person may deteriorate for any of such reasons.[42]

The same paragraph also lists grounds for optional non-execution of the EAW, which are similar to the EAW Framework Decision Article 4. However, a problem with transposing the EAW Framework Decision Article 4 (6) has been identified by the working group on revision of the CCP. Article 4 (6) provides that executing EAW may be refused if the EAW has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing MS and that State undertakes to execute the sentence or detention order in accordance with its domestic law. This ground has been transposed as a mandatory ground for non-execution of the EAW in Estonia, but only partially (i.e., only concerning Estonian citizens).[43]

Arrest of the requested person

[37] Estonia, Supreme Court (*Riigikohus*), Case No 3-1-1-93-11, 19 December 2011.
[38] Estonia, Tallinn Circuit Court (*Tallinna Ringkonnakohus*), Case No 1-17-6589, 22 May 2020.
[39] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 491, 12 February 2003.
[40] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 492, 12 February 2003.
[41] Estonia, Estonian State Portal, Legal Principles.
[42] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 436, 12 February 2003.
[43] A. Pere (2019), Kriminaalmenetlusalane rahvusvaheline koostöö, September 2019.

In order to ensure execution of an EAW, a person may be arrested pursuant to the regular arrest procedure outlined in the CCP. A preliminary investigation judge shall decide on an arrest for surrender at the request of the Prosecutor's Office.[44]

It has been criticised by the previously mentioned working group that there are no alternatives to detention in EAW proceedings. Article 12 of the Framework Decision provides that the requested person may be released provisionally at any time in conformity with the domestic law of the executing MS, provided that the competent authority of the said MS takes all the measures it deems necessary to prevent the person absconding. However, Estonian law does not prescribe alternatives to the application of detention in surrender proceedings.[45] The Supreme Court has found (albeit in the context of extradition arrest) that the provisions of Chapter 4 of the CCP concerning alternatives to detention are not applicable in surrender proceedings.[46]

Court hearing in surrender proceedings

The CCP § 498 lists the courts which are competent to conduct EAW proceedings and adopt a surrender decision, which are Harju County Court and Tartu County Court. The central authority for cooperation in surrender proceedings is the Ministry of Justice.[47]

In order to decide on the surrender of a person based on an EAW, a court hearing must be held within ten days after the receipt of EAW by a court. If a person has given notification of their consent to the surrender, a court hearing is held within five days as of the receipt of the EAW by a court.[48]

Court hearings in surrender proceedings are conducted by a judge sitting alone. The court hearing has to be attended by the prosecutor, the person whose surrender is requested, and the lawyer of the person whose surrender is requested. In the court hearing, the court verifies whether the person consents to surrender; informs the person of the provisions § 493 (speciality rule) and § 494 (surrender and extradition to third countries) of the CCP; hears the opinions of the requested person, their lawyer and the prosecutor. The court may set a deadline to a competent judicial authority of the requesting state for the submission of additional information.[49] The Chancellor of Justice has noted that in Estonian case law, the court has refused to surrender a person because the requesting MS did not provide the requested additional information.[50]

Proportionality is not mentioned in relation to the EAW proceedings. This has been briefly noted by the working group revising the CCP, who have raised it in the form of a question for further analysis – whether the general legal principle of proportionality is sufficient, or whether the question of proportionality needs to be regulated in the law.[51]

There are also no provisions or instructions on whether the court should examine detention conditions in the issuing MS or look into whether the requested person would be deprived of a fair trial in the issuing MS.

[44] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 499, 12 February 2003.
[45] A. Pere (2019), Kriminaalmenetlusalane rahvusvaheline koostöö, September 2019.
[46] Estonia, Supreme Court (*Riigikohus*), Case No 3-1-1-101-13, 19 December 2013.
[47] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 498, 12 February 2003.
[48] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 502, 12 February 2003.
[49] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 502, 12 February 2003.
[50] Estonia, Chancellor of Justice (*Õiguskantsler*), Põhiõiguste kaitse loovutamismenetluses, No 6-1/130507/1601468, 7 April 2016.
[51] A. Plekksepp (2019), Retsensioon A. Pere analüüsi "Kriminaalmenetlusalane rahvusvaheline koostöö" alateemadele, November 2019.

Decision to surrender the requested person

If no additional information is requested, the court makes an order granting or refusing the EAW immediately after the court hearing. If the surrender decision cannot be made within a prescribed term, the term for the making of the surrender decision is extended by thirty days. The requesting MS and Eurojust must be immediately informed of such extension of surrender procedure.[52]

Appeal procedure

An appeal against an order on surrender or an appeal against an order on refusal to surrender may be filed in accordance with the rules provided in the CCP within three days of receiving the order. An appeal against an order is considered by written procedure in a Circuit Court within ten days as of submitting the appeal. The judgment of a Circuit Court is final.[53]

A person whom a court has decided to surrender may waive their right of appeal by making a written application. In such case the court order enters into force on the day of waiving the right of appeal.[54] The requested person is surrendered within ten days as of entry into force of the order on surrender.[55]

b. Issuing and Execution of the EAW in practice

This section discusses the key findings of lawyers, judges and prosecutors understanding of national practices in issuing and executing an EAW and whether certain specific circumstances are considered.

- Factors considered when issuing the EAW

Legal requirements

Among interviewees, it was widely known that the EAW could always be issued when there might be at least one year of imprisonment as a sentence. The legal requirements were listed as follows:

- if the requested person is staying in Estonia or not;
- what could be the potential future punishment for a person – is the future punishment sufficiently severe that it is worth issuing an EAW;
- the seriousness or systematic nature of the crime;
- the amount of damage caused;
- the number of victims and their personal situation;
- public interest in the alleged crime.

One lawyer added that they believed that no country has enough money to arrest for so-called small crimes, so in most cases EAW proceedings are probably justified by now, and mainly are a method of executing the arrest decision of an issuing State. A couple of interviewees mentioned Poland as a negative example from the past that had issued EAWs on very questionable grounds and all of them admitted that it takes considerable resources – time and money – to proceed EAWs. A judge also said that, if possible, they will consider other means if an EAW seems disproportionate – e.g. EIO, video conferencing the hearings, etc.

Proportionality

It was said by a prosecutor that, in the knowledge of the interviewee in practice, the issuance of an EAW has never been challenged in Estonia, even though it could theoretically be done relying on the general provisions of criminal procedure. The same prosecutor stated that, even though the Framework Decision does not in fact provide requirements for proportionality, it is considered very

[52] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 502, 12 February 2003.
[53] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 504, 12 February 2003.
[54] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 504 (5), 12 February 2003.
[55] Estonia, Riigi Teataja, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 505, 12 February 2003.

important and is certainly considered in Estonia, but a proportionality test must first be carried out in the issuing State. There were no conflicting views on that other than one lawyer who was critical towards the formality of the whole procedure and noted questionable defence guarantees for requested persons.

When your authorities are called to execute an EAW that may exceptionally raise proportionality concerns, how do they react?

***Lawyer**: Estonian courts show an attitude that the decisions have been made elsewhere, we are just stamping them. […] Estonian courts' understanding is rather that if it has been decided in another country then we shall do it. In matters where the suspicion is severe enough, it is not discussed much. I sincerely hope that the state thinks about the fact that they should protect their citizens more thoroughly, but I really do not know who should do it. It is an international agreement – our institutions will not start doubting it.*

***EST**: Eesti kohus näitab välja suhtumist, et otsused on tehtud mujal, meie lööme ainult templi peale. […] Eesti kohtu arusaam on pigem, et kui kuskil välisriigis on otsustatud, siis me teeme seda.*

Piisavalt raske kahtluse korral sel teemal küll väga ei arutata, ma tahaks loota, et riik mõtleb sellele, et peaks oma kodanikku kaitsma laiemalt, aga ma tõesti ei tea, kes seda peaks tegema. See on ju riikidevaheline kokkulepe – meie asutused ei hakka seda kahtluse alla seadma.

Other possible factors

According to the interviewees, there were no other possible factors than the abovementioned to be considered.

Challenging the issue

As stated above, proportionality is not mentioned in relation to the EAW proceedings in Estonia.

- Factors considered when executing the EAW

Proportionality

According to interviewees, proportionality is always considered when executing the EAW. If needed, additional information is asked from the issuing State to explain their decision – that situation came up while a judge and a prosecutor described past situation when Poland "flooded" EU with EAWs.

A very interesting example was provided by a prosecutor when discussing formal conditions of executing EAW and possible concessions. If the felony's time has barred, Estonia could consider refusing the surrender, but there are not too many opportunities to assess proportionality.

When your authorities (you as an executing authority) are called to execute an EAW that may exceptionally raise proportionality concerns, how do they react?

***Prosecutor**: For example, one Spanish case, a very old episode of a crime against the person. The person was an Estonian citizen, established his life here, obeyed the law, had a family, a home, a job. And Spain requested him eight years later for the crime. The judge looked for an option not to comply with the EAW and found it to be a 2nd degree felony, time barred under our law and decided not to surrender the requested person. Strictly speaking, this statute of limitations is worded a little differently – we should not look at it according to our law – if it has not expired according to Spanish law, then we should surrender them. This is where the question of proportionality arises. That seven years later it is necessary to send a person to Spain, where the conditions of imprisonment are really difficult, normal interpreter assistance is not provided there, as far as we know, etc. In this case the court shifted a bit and found a way not to surrender them. But in fact, we don't have too many opportunities to assess proportionality – we have to look at these formal conditions.*

***EST**: Näiteks üks Hispaania juhtum, väga vana episood isikuvastase kuriteoga. Inimene oli Eesti kodanik, siin oma elu sisse seadnud, seadusekuulekas, pere, kodu, töökoht. Ja Hispaania küsib teda 8 aastat hiljem kuriteo eest Hispaaniasse. Kohtunik otsis võimalust EAWd mitte täita ja leidis, et see on 2. astme kuritegu, see on meie seaduse järgi aegunud ja jättis loovutamata. Rangelt võttes see aegumise säte on natuke teisiti sõnastatud – me oma seaduse järgi ei peaks seda vaatama – kui see Hispaania seaduste järgi aegunud pole, siis mea peaksime ta loovutama. Siin tekibki väga teravalt proportsionaalsuse küsimus. Et kas 7 aastat hiljem on vaja inimest sinna Hispaaniasse saata, kus on tõesti keerulised vangistustingimused, seal ei tagata normaalset tõlgiabi meile teada olevalt jne. Et sel juhul kohus natukene nihverdas ja leidis selle tee, et miks teda mitte saata. Aga tegelikult meil ei ole liiga suuri võimalusi proportsionaalsust hinnata – me peame vaatama neid formaalseid tingimusi.*

Conditions of detention

None of the interviewees were aware of the FRA database on conditions of detention, but they did describe other possibilities to gain information about conditions of detention – through the Ministry of Justice, the Court of Justice of the European Union and the European Court of Human Rights decisions, European Judicial Network's website etc., but in general they admitted that this is a complex problem with no fast and easy solution. One lawyer mentioned that personal connections could also give quite good understanding of detention conditions in the issuing country.

Rights to a fair trial (rule of law)

It was emphasised by four interviewees that one of the EU's fundamental principles in communication in criminal proceedings is mutual trust in common standards. It was said to be essential to trust another MS as a partner – that their judicial system is fair and equitable. Issues with rule of law might arise more with third countries. A judge also mentioned that having doubts in another MS's respect of the rule of law could also cause diplomatic tensions that should be avoided.

When deciding on the execution of an EAW, how do your national authorities consider the procedural rights of the requested person in the issuing State?

***Prosecutor**: It would come into question if the defence lawyer brought it up as an argument, but we are talking about EU Member States – in which state can we say that there is no fair trial? This is a very complicated problem – how can the Estonian law enforcement agency say about another MS that, in our opinion, they do not have a fair trial. We are not talking about third countries that we know nothing about. The principle of mutual trust applies in the EU.*

***EST**: See tuleks kõne alla kui kaitsja toob selle argumendina välja, aga me räägime EL riikidest – millise riigi kohta me same öelda, et seal pole õiglast kohtupidamist? See on väga keeruline problem – kuidas saab Eesti õiguskaitseasutus öelda teise liikmesriigi kohta, et meie hinnangul teil pole seal õiglast kohtupidamist. Me ei räägi kolmandatest riikidest, kelle kohta me midagi ei tea. EL-is kehtib vastastikuse usalduse põhimõte.*

Individual situation

All of the interviewees, except one prosecutor, said that usually the individual situation is not taken into consideration because of the formalised procedure, and most of them had no experience in that matter. One prosecutor pointed out that there cannot be a threat to life or health and those nuances should be taken into consideration. None of the interviewees seemed to have experience with such cases though, but they were willing to discuss this theoretically.

Yet, some of the interviewees suggested that disability, health situation or complicated pregnancy of the requested person could be an issue in surrendering the person to certain states - but a lawyer and a prosecutor also brought out that medical care is provided in detention facilities and that health, even if it might be taken into consideration, is usually not a basis for refusing to surrender the

requested person. Mother-child bond was brought out by a judge and a lawyer as one potential situation that could be taken into consideration.

***Prosecutor**: One condition is that there must be no danger to life or health. During Covid, the argument that "look at the infection rate, I won't go to that country" was raised, but this argument, for example, is not valid. The court did not find that a person's life was put in danger. […] I would have no worries about sending a pregnant woman to Finland or Sweden, where the conditions are good and she is well taken care of, but if, for example, to Spain (where there have been personal contacts) where the child is with their mother for three years and then the child goes to the social welfare system, the child will be taken away from their mother. If there is a long prison term, the child is taken away and given up for adoption – this could be a very big question. Pregnancy is not a circumstance that directly excludes surrender, but then the court has to assess the situation. Additional information must be requested from the foreign country.*

***EST**: Üks tingimus on, et ei tohi olla ohtu elule või tervisele. Covidi ajal tõstatus see argument, et "vaadake nakatumise näitajat, mina küll sinna riiki ei lähe", aga see argument näiteks ei päde. Kohus ei leidnud, et sellega inimese elu ohtu pannakse. […] Mul poleks muret saata lapseootel naine Soome või Rootsi, kus tingimused on head ja tema eest hoolitsetakse hästi, aga kui nt Hispaaniasse (kus on olnud isiklikud kokkupuuted), kus 3 aastat on laps sinu juures ja sealt edasi läheb laps sotsiaalhoolekande süsteemi, võetakse emalt ära. Kui on pikk vangistus kanda, võetakse laps ära ja antakse lapsendamiseks – see võiks väga suur küsimus olla. Rasedus ei ole otseselt loovutamist välistav asjaolu, aga eks siis peabki kohus hindama olukorda. Tuleb küsida lisainfot välisriigilt.*

Others

The only other aspect that might be ground for appeal mentioned by the interviewees was if the person is tried or convicted in absentia, but they also mentioned that European states have very different understanding of the prerequisites for making a conviction for a person tried in absentia.

Q21: When deciding on the execution of an EAW, how do your national authorities consider the procedural rights of the requested person in the issuing State?

***Lawyer**: If a person is convicted in absentia, Estonia has refused to surrender. The principles of fair procedure are taken account of.*

***EST**: Kui isikut ei teavitata menetlusest, mis tema suhtes toimus. Kui isik mõistetakse tagaselja süüdi, siis Eesti on keeldunud loovutamisest. Arvestatakse ausa menetluse põhimõtteid.*

c. Discussion of findings

Findings demonstrate that the law is implemented in practice when it comes to issuing and executing the EAW. None of the interviewees were aware of the FRA database on conditions of detention. Regarding the rights to a fair trial, interviewees emphasised that one of the EU's fundamental principles in communication in criminal proceedings is mutual trust in common standards so they would not have any grounds to doubt that there would be problems with the rule of law in other MSs. As for proportionality, the interviewees pointed out that the proportionality test must first be carried out in the issuing State, also noting that there are not too many opportunities to assess proportionality when Estonia is the executing State.

According to interviews, individual situations are rarely taken into consideration when deciding over the execution of an EAW. Some of the interviewees suggested that disability, health situation or complicated pregnancy of the requested person could be an issue when surrendering the person to certain states, but they also brought out that medical care is provided in detention facilities and health, even if it might be taken into consideration, is usually not a basis for refusing to surrender the requested person. Mother-child bond was brought out as one potential situation that could be taken

into consideration – e.g. in case a child would be taken away from the mother in the issuing State prison system, they would probably consider not surrendering the requested person. But there were no practical experiences.

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

There are no legal standards governing the use of digital tools (such as online questioning or digital transfer of documents) during EAW proceedings available. There were no amendments adopted due to the COVID-19 pandemic specifically regarding EAW proceedings. However, in general, at the height of the pandemic, court hearings that could not be conducted in writing or postponed were conducted via technical means of communication.[56] Regarding criminal proceedings, in case 1-20-1578/58, the Supreme Court addressed the participation of the requested person in the court hearing via videoconference due to the pandemic and found it was allowed in these exceptional circumstances.[57]

Table 11 Use of technological tools (in law)

National laws providing for:	Conducting EAW hearings (when an executing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both executing – issuing States).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing State)	Facilitating access to a lawyer in the executing Member State (when an issuing State)
Country	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO
ESTONIA	YES	YES	YES	YES	YES	YES	YES
TOTAL	1	1	1	1	1	1	1

b. Interview findings

Digitalisation was seen in the widest possible sense by most interviewees – mostly they emphasised the need to move documents and exchange information quickly and safely via encrypted channels and so the main benefit of digitalisation is to accelerate the procedure that could otherwise take time.

***Judge**: As compliance with the EAW is time-critical, there should be an advantage if we ask the issuing court directly for additional information and obtain it from an encrypted source. […] Some things can be sent by email without any problems, but from a data protection point of view, some queries contain, for example, health data and the transmission of this health data requires an encrypted channel.*
***EST**: Kuna EAW täitmine on aegkriitiline, peaks olema soodustatud olukord, kus küsime otse välja andvalt kohtult täiendavat informatsiooni ja saada seda krüpteeritud allika kaudu. […] Mõnda asja saab probleemideta e-mailiga saata, aga andmekaitse seisukohalt sisaldavad mõned päringud näiteks tervise andmeid ja nende terviseandmete edastamine eeldab krüptokanalit.*

[56] Estonia, Council for Administration of Courts (*Kohtute haldamise nõukoda*), Recommendations of the Council for Administration of Courts for organising the administration of justice during emergency situation, 16 March 2020.
[57] Estonia, Supreme Court (*Riigikohus*), Case No 1-20-1578/58, 21 May 2021.

It was admitted by a judge that in essence, digitalisation has no effect on the process, but it makes the work faster and more convenient in some respects and, in Estonia, in general there is very high technical readiness, but it varies greatly from state to state.

Video conferences were very common tools for all, and the only downfall mentioned regarding those was facilitating quality interpretation and personal preferences to communicate in person. Video calls were seen as a good tool for solving the matter faster and by two interviewees, a prosecutor and a lawyer, it was suggested even as a tool to avoid issuing the EAW, but also brought out the risk of not being able to control the environment and surroundings via video conferences.

***Prosecutor**: Within the EAW, we do not question people, there are no interrogations – yes, there have been videoconferences to decide if EAW is necessary. In the context of EAW, it can be said that if remote solutions existed, EAWs may not be even needed every time. If, for example, an EAW is submitted because a person needs to be heard and they do not come to Estonia. But if they are nicely available, switches to Skype and is identifiable, it can certainly reduce the number of EAWs when they are submitted to interview a person. […] Hearings can also be conducted remotely, reducing the need for EAWs.*
***EST**: EAW raames me inimest ei küsitle, ülekuulamist ei tehta – on jah videokonverentsi teel kohtuistungeid peetud EAW otsustamiseks. EAW kontekstis võib seda öelda, et kui kauglahendused on olemas, siis iga kord EAWd ehk polegi isegi iga kord vaja. Kui näiteks EAW esitatakse selle pärast, et inimest on vaja küsitleda ja ta ei tule Eestisse. Aga kui ta on kenasti kättesaadav, aga ta lülitub Skype'I ja on identifitseeritav, siis see kindlasti võib vähendada EAWde hulka kui need on esitatud selleks, et inimest küsitleda. […] Ka kohtuistungeid on võimalik viia läbi kaugteel ja see vähendab ka vajadust EAW järele.*

***Lawyer**: The questioning with a preliminary investigation judge could take place via video if the person has been detained in the executing State. The judge could immediately question the person through digital tools. If, for example, he finds that the arrest was not justified, he would not need to be transported to Estonia. This would make the procedure much faster. […] Risks – the judge cannot be sure if there aren't anyone targeting the requested person with guns on the other side of the camera, controlling their testimony. If someone has a very personal interest in having a person in prison that could be a risk. Via digital tools we are unable to control the environment/surroundings.*
***EST**: Küsitlus eeluurimiskohtuniku juures võiks toimuda video vahendusel kui isik on täitvas riigis kinni peetud... kas kohtunik saaks tehniliste vahendite kaudu kohe inimest küsitleda. Kui ta leiab näiteks, et vahistamine polnud põhjendatud, siis poleks inimest vaja selleks Eestisse transportida. See muudaks protseduuri väga palju kiiremaks. […] Riskid – kui teiselpool kaamerat seisavad automaatidega sihtivad mehed, kes kontrollivad ütlusi, ei saa kohtunik selles kindel olla. Kui kellelgi on väga suur isiklik huvi, et mingi inimene oleks vangis. Ei saa kontrollida keskkonda.*

One prosecutor also referred that the right to a defence lawyer is not sufficiently guaranteed if the requested person is on video and others are in the courtroom, as it is easier for the person to understand the whole process if they can directly communicate with people. They also mentioned that in their experience participating in video hearings is very uncomfortable as the emerging picture is not so immediate.

Often available tools are of no use because of the lack of skills of personnel, one lawyer mentioned that in their experience sometimes it seems like hindering on purpose when otherwise easy tools are misused.

***Lawyer**: We have all the resources, but I do not see that they are used. In Estonia, there is a funny practice where easily processed material in criminal proceedings is trying to be made not processable*

for the defence lawyer. If there is a digital document, it is tried to serve as a scanned picture, for a copy-paste it needs to be processed. There is a lot of such absurdity. Maybe it is incompetence. Estonian Bar Association has requested this not to be done. Whether they fear to show the attributes of the file or where the problem is, but it creates a lot of empty work and wastes the client's money, since we must do meaningless work and cannot make sense of information. In that sense every digitalisation would indeed be a positive improvement.
***EST**: Meil on kõik vahendid olemas, aga ma ei näe, et neid kasutatakse. Eestis on naljakas komme, et kriminaalmenetlusega seoses üritatakse teha hästi töödeldavat materjali kaitsja jaoks töötlematuks. Kui on olemas digitaalne dokument, siis seda üritatakse serveerida pildina skännimisega, peab hakkama copy-paste jaoks töötlema. Sellist absurdsust on palju. Võibolla see on oskamatus. Advokatuuri poolt on tulnud ka palved seda mitte teha. Kas kardetakse faili atribuute näidata või milles probleem on, aga see tekitab palju sisutut tööd ja raiskab kliendi raha, kuna tuleb tegelda mõttetu tööga ja ei saa mõtestada infot. Selles suhtes oleksid tõesti kõik digitaliseerimised positiivne areng.*

A lawyer and a prosecutor brought out how digitalisation has "bloomed" due to COVID-19.

***Lawyer**: During the pandemic, digitalisation first made things more difficult and then easier. We would never do this interview via Teams without Covid. As far as EAW is concerned, more digitalisation has happened. In the past, I had to go and be present myself.*
***EST**: Pandeemia ajal digitaliseerimine alguses raskendas ja siis lihtsustas. Me ei teeks seda intervjuud kunagi Teamsis kui COVIDit poleks olnud. EAW osas on elektroonikat rohkem tulnud. Varem pidi rohkem ise kohale minema.*

***Prosecutor**: In connection with the pandemic, video communication has definitely started to be used more in Estonia. I think in other countries as well.*
***EST**: Seoses pandeemiaga on Eestis kindlasti hakatud rohkem kasutama video teel suhtlust. Ma arvan, et ka muudes riikides.*

Table 12 Use of digital tools, interview findings

Interviewees per Country	Conducting EAW hearings (when an executing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both executing – issuing States).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing State)	Facilitating access to a lawyer in the executing Member State (when an issuing State)
Lawyer 1	YES	YES	YES	YES	YES	YES	YES
Lawyer 2	YES	YES	YES	YES	YES	YES	YES
Lawyer 3	YES	YES	YES	YES	YES	YES	YES
Judge 1	YES	YES	YES	YES	YES	YES	YES
Judge 2	YES	YES	YES	YES	YES	YES	YES
Judge 3	YES	YES	YES	YES	YES	YES	YES
TOTAL	6/6	6/6	6/6	6/6	6/6	6/6	6/6

d. Discussion of findings

The different interviewees all gave similar answers regarding the role of digitalisation – it accelerates the process and was inevitable during pandemic. They mentioned that Estonia has been well prepared and digital literacy is rather high. But of course, there are exceptions as well and not all officials know how to use basic tools for transferring documents.
The need to move documents quickly was mentioned many times due to the fast nature of EAW procedures.
The risks which were mentioned were regarding uncontrollability of the environment and surroundings while conducting video calls for hearings or questionings.

CONCLUSION

The findings of the study show that there are no major problems in Estonia regarding the right to information and access to a lawyer. There is always a lawyer present during the hearings and, if needed, state legal aid is provided. However, access to dual representation in EAW cases could be improved. The right to dual legal representation is not regulated in the CCP and interviewees had no practical experience regarding this.

Information is provided orally and by written documents, the most important documents are also translated, if necessary, and the requested persons in Estonia are always informed about the contents of the EAW against them.

The Estonian Supreme Court has clarified that the EAW, despite its name, is not a court order resolving an individual issue in national criminal proceedings but is a measure guaranteeing legal cooperation between the MSs of the EU. Due to that, interviewees admitted that requested persons are often nudged to consent to surrender because the real discussion of their case can only take place when the person is surrendered and a court hearing takes place in the issuing MS.

One particularly good practice in Estonia seems to be that the same information about the requested person's rights is given repeatedly by different instances – by the arresting police officer, by the prosecutor, the lawyer and the judge, as it is considered in everyone's best interest that the requested persons understand what is happening with them during the EAW proceedings. This practice, however, is not required by law but is something that practitioners have noticed themselves, as they pointed out they cannot always be sure how thoroughly the information was given to the requested person in an earlier stage and if the requested person understood everything in that instance.

The most common challenge interviewees have encountered in the matter of understanding the information seemed to be the difficulties of comprehending specific terminology and juridical lingo by requested persons, so they emphasised the need to provide information in very simple "human language" instead of only in legal terminology and paragraphs.

Regarding the right to interpretation and translation, the requested person is always asked if they understand the documents and if translation or interpretation is needed. There are certain limits when it comes to interpretation readiness in other languages than Estonian, English, or Russian. Also, defence lawyers mentioned that theoretically they would need to find and pay interpreters themselves if they would need them for client consultations and they would not trust state provided interpreters due to potential confidentiality issues – so far, however, all defence lawyers interviewed had done their job without needing interpreters for client consultations.

According to the CCP, a person may be surrendered for continuation of criminal proceedings in a requesting state if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment in the requesting state. In addition to that, according to the

interviewees, it is taken into consideration if the person is in Estonia, what is the nature of the crime (seriousness and systematic nature), the amount of damage caused, number of victims and their personal situation and public interest in the alleged crime. So even though proportionality is not mentioned in relation to the EAW proceedings, the interviewees still mentioned it as an argument that needs to be considered but also pointed out that proportionality test must first be carried out in the issuing State.

To decide on the surrender of a person based on an EAW, a court hearing must be held within 10 days after the receipt of EAW by a court. If a person has given notification of their consent to the surrender, a court hearing is held within five days as of the receipt of the EAW by a court.

There are no provisions or instructions on whether the court should examine the detention conditions in the issuing MS or investigate whether the requested person would be deprived of a fair trial in the issuing MS – none of the interviewees were aware of the FRA database on conditions of detention.

Regarding rights to a fair trial, interviewees emphasised that one of the EU's fundamental principles in communication in criminal proceedings is mutual trust in common standards so they would not have any grounds to doubt that there would be problems with the rule of law in other MSs.

According to interviewees, the individual situation is rarely taken into consideration while deciding over executing the EAW. Some of the interviewees suggested that disability, health situation or complicated pregnancy of the requested person could be an issue in surrendering the person to certain states, but they also brought out that medical care is provided in detention facilities, therefore health is usually not a basis for not to surrender the requested person. Mother-child bond was brought out as one potential situation that could be taken into consideration, but most examples were theoretical, and the interviewees had no practices to share.

Estonia has been well prepared in using digital tools, but the interviewees sensed that this has not always been the same in other MSs with whom they have proceeded EAWs. The main gain of digitalisation for the proceedings of the EAW is speeding up procedures – exchanging information and documents etc. Video hearings could be used more regarding interviews – to avoid even issuing EAWs in the long run, but then again, they admitted that currently there are no ways to control the environment and the surroundings of the other side so there would not be any issues affecting the requested person.

Digital tools are also used for interpretation purposes, but not as the first preference, but more as an aid if there cannot be face-to-face situations due to the pandemic or due to logistics (e.g., finding a suitable interpreter from distance).

In short, the findings of the study show that despite a number of good practices, there are still some shortcomings in EAW proceedings. The interviewees brought out some challenges regarding understanding the information provided to requested persons, dual representation, hastiness of procedure, and minor interpretation issues. There were some good practices present even without legal requirements.