

# AG: Assessment Standards of Detention Conditions in EAW Cases



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European Law Forum: Prevention • Investigation • Prosecution

**Thomas Wahl**

**News**

On 30 April 2019, Advocate General (AG) *Manuel Campos Sánchez-Bordona* presented his [opinion in case C-128/18 \(Dumitru-Tudor Dorobantur\)](#). The request for a preliminary ruling was made by the Higher Regional Court (HRC) of Hamburg, Germany, which initially ordered the surrender of Romanian national *Mr. Dorobantu* to Romania in respect of offences relating to property and forgery and the use of forged documents.

Mr. Dorobantu claimed that surrender to Romania would infringe his fundamental rights, since he would be incarcerated in prisons that do not fulfil the minimum standards of human and non-degrading treatment. The assessment of the referring court as regards detention conditions in Romania, finding that they comply with the standards of Art. 4 CFR, was quashed by the German Federal Constitutional Court (FCC). The FCC demanded that the HRC of Hamburg file a request for preliminary ruling to the CJEU, so that the latter further determine the factors relevant to the assessment of the detention conditions in the issuing State. For the case history, see [euclid 1/2018, 32-33](#).

Subsequently, the HRC of Hamburg stayed the EAW proceedings and posed several questions to the CJEU. The first block of questions relates to the minimum standards for custodial conditions required under Art. 4 CFR. The second block deals with questions as to which standards are to be used to assess whether custodial conditions comply with EU law and to which extent these standards influence interpretation of the term “real risk” as defined in the leading judgment *Arranyosi and Căldăraru* (see [euclid 1/2016, 16](#)).

The AG first examined the level of review of detention conditions that the executing authority is entitled to carry out within the EAW regime. Secondly, he elaborated on the underlying criteria for review of the detention conditions in the establishment where the person surrendered is likely to be incarcerated.

In conclusion, the AG proposed that the executing judicial authority meet the following obligations:

- Carry out an overall assessment of all the material aspects of the detention that are relevant to the assessment of whether there is a real risk of inhuman or degrading treatment as a result of poor detention conditions;
- Place particular importance on the minimum personal space in the prison cell;
- Take into account the type of cell (single occupancy or multiple occupancy) and the space taken up by furniture (excluding sanitary facilities);
- Examine other material aspects of detention, e.g., layout of the cell, essential services, and infrastructure of the prison, out-of-cell activities, etc., if the cell is 3m<sup>2</sup> or less, in order to assess compensation for lack of personal space and rebut the presumption of a breach of Art. 4 CFR;

## AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

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- Take into account the duration and extent of the restriction, the type of prison, and the prison regime, when assessing the various factors.

Ultimately, the AG concluded that legislative and structural measures for improvement of the execution of sentences in the issuing EU Member State cannot, as such, mitigate the real risk of inhuman and degrading treatment to which the person surrendered would be exposed. Furthermore, the executing judicial authority cannot weigh the individual's guarantee to not be subject to any inhuman or degrading treatment in the sense of Art. 4 CFR against compliance with the principles of mutual trust and mutual recognition and with safeguarding the effectiveness of the European criminal justice system.

After the above-mentioned judgment in *Arranyosi and Căldăraru* and contributions made by the judgment in case C-220/18 PPU (*Generalstaatsanwaltschaft [conditions of detention in Hungary]*), also referred to as "Aranyosi III", see eucrim 2/2018, 103-104), the *Dorobantu* case gives the CJEU a further opportunity to shape the required assurances for respecting the fundamental rights of the person surrendered under a European Arrest Warrant when there are general or systematic deficiencies in the prison system in the issuing EU Member State.

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