

CJEU Clarifies Position on Non-Surrender in Case of Poor Detention Conditions (“Aranyosi III”)



News

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On 25 July 2018, the CJEU rendered a [further landmark judgment](#) on the question as to which extent judicial authorities in the executing Member State can refuse surrender after a European Arrest Warrant if detention conditions in the issuing Member State risk violating the fundamental right against inhuman or degrading treatment (Art. 4 CFR). The decision was triggered by reference for preliminary ruling from the Higher Regional Court of Bremen, Germany, that sought clarification and further guidance from the CJEU after the judgment in [the Aranyosi and Căldăraru case](#) (see also [eucrim 1/2016, p. 16](#)). The present case (C-220/18 PPU) is also referred to here as “Aranyosi III”. For the background of the case at issue, see [eucrim 1/2018, p. 32](#).

The judges in Bremen responsible for deciding on the execution of a EAW against a Hungarian national who is to serve a custodial sentence for bodily harm, damage, fraud, and burglary in Hungary, were essentially concerned about the following four issues:

- Does the existence of a legal remedy – in the issuing state – enabling the sought person to challenge the detention conditions rule out the existence of a real risk of inhuman and degrading treatment?
- If the answer is negative, to which extent can the executing authority assess the conditions in the prisons, i.e. all prisons in which the sought person could potentially be detained in or only the prison in which he is *likely* to be detained for most of the time?
- Which information must the executing authority take into account for assessment of the prison conditions?
- What is the value of assurances given by an institution in the issuing state other the issuing judicial authority?

By way of preliminary observations, the CJEU stressed that the principle of mutual recognition and mutual trust are of fundamental importance for the functioning of an EU area without internal borders. It further emphasised that the executing Member State may, under EU law, be required to presume the respect of fundamental rights by other EU Member States. Furthermore, the CJEU reiterated its settled case law in that refusal of a EAW is limited to the refusal grounds as set in Arts. 3, 4, and 4a FD EAW and that the Court had opened a fundamental rights exception in the *Aranyosi/Căldăraru* case only for “exceptional circumstances.” In the context of the latter judgment, the CJEU further reiterated its “two-step approach,” i.e., against the yardstick of the fundamental rights protection guaranteed by EU law, the executing authority must determine both (1) the existence of systemic and generalised deficiencies in detention conditions in the issuing state,

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and (2) a real risk of the individual being subjected to inhuman or degrading treatment in the issuing state after his/her surrender, i.e., taking into account precisely the circumstances of the specific case.

In the case at issue, the CJEU pointed out that the reference is limited to questions relating to the second step of said examination, thus not ruling on the systemic or generalised deficiencies in detention conditions in Hungary, although this was disputed by the Hungarian government. Nonetheless, the CJEU calls on the court in Bremen to reconsider its premise of systemic deficiencies by taking into account properly updated information.

Regarding the first question posed, the CJEU replied that the subsequent judicial review of detention conditions in the issuing state is not sufficient to avert a real risk of inhuman treatment. The executing authority is still bound to undertake an individual assessment.

Regarding the second question, the CJEU held that the executing judicial authority is solely required to assess the detention conditions in the prison in which the person concerned is *specifically* intended to be detained, including on a temporary or transitional basis. Requests for additional information on detention conditions in prisons in which the person might be detained would run counter to the premise that the “real risk test” must be specific and precise, to the principles of acceleration and facilitation the EAW system is based on, and to the “*effet utile*” of the EAW mechanism. The compatibility with the fundamental rights of detention conditions in other prisons in which the person concerned may possibly be held at a later stage is a matter that falls exclusively within the jurisdiction of the courts of the issuing state.

As regards the third question, i.e., the criteria for assessment of the detention conditions, the CJEU reiterated the case law of the ECtHR on violations of Art. 3 ECHR. In particular, ill-treatment must attain a minimum level of severity, and the personal space for the detainee is a determining factor in whether an Article 3 violation can be presumed or not. In this context, the CJEU points out that requests for additional information must concentrate on the determining factors of the ECtHR case law. The list of 78 questions submitted by the Bremen court to the issuing authorities, which included questions on opportunities for religious worship or laundry arrangements, went too far according to the CJEU.

Fourthly, the CJEU addressed the question as to which extent assurances given by the issuing state must be taken into account. According to the judges in Luxembourg, the FD EAW allows the request for assurances on the actual and precise detention conditions. Since the EAW system is based on mutual trust, the executing authority must, however, rely on the assurance given, at least if – as in the present case – there are no specific indications that the detention conditions in a particular prison centre are in breach of Art. 4 CFR. If the guarantee is not given by a judicial authority in the issuing state, the executing authority can evaluate it by carrying out an overall assessment of all the information available.

In conclusion, the CJEU sees no hindrances why the sought person cannot be surrendered to Hungary, since a breach of Art. 4 CFR is unlikely. The final verification, however, is up to the referring court.

In essence, the CJEU follows the [opinion of AG Campos Sánchez-Bordona](#), which was presented on 4 July 2018. A main difference is, however, that the AG was of the opinion that legal remedies against detention conditions that can be brought forward in the issuing state are a decisive factor when conducting an assessment of the general situation in the issuing Member State.

The decision of the CJEU on prison conditions is another milestone in the longstanding debate as to which extent possible fundamental rights violations in a EU Member State may trigger refusal of surrender. The CJEU established rather narrow conditions and, with its judgment of 25 July 2018, clarified that the “fundamental rights card” can only be played under “exceptional circumstances.” Therefore, the premises established in the *Aranyosi/ Căldăraru* case seem to be only a Pyrrhic victory for the individual.

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