

CJEU: Executing Judicial Authority Must Make Precise Assessment of Detention Conditions

Thomas Wahl

On 15 October 2019, the CJEU (Grand Chamber) further clarified its case law as to the conditions under which the surrender of a person sought by a EAW can be refused because standards of detention in the issuing state infringe the prohibition of inhuman or degrading treatment (Art. 4 of the Charter of Fundamental Rights). The judgment follows the landmark judgment *Arranyosi and Căldăraru* (case C-404/15, see [eucrim 1/2016](#), 16), and the judgment in case [C-220/18 PPU](#) (*Generalstaatsanwaltschaft [conditions of detention in Hungary]*), also referred to as “Aranyosi III”, see [eucrim 2/2018](#), pp. 103-104).

Background of the Case:

The judgment of 15 October 2019 was triggered by a request for a preliminary ruling from the Higher Regional Court (*Oberlandesgericht*) of Hamburg, Germany regarding the execution of a EAW against Mr. Dorobantu for the purpose of conducting criminal proceedings in Romania (case [C-128/18](#)). After having initially approved his surrender, the execution was halted by the German Federal Constitutional Court. The FCC argued that the Higher Regional Court of Hamburg had to file a preliminary ruling to Luxembourg because the legal questions at issue had not been precisely decided in the Kirchberg’s courtrooms. For the case history, see [eucrim 1/2018](#), 32-33.

The Hamburg Court mainly put forward four queries:

- Extent and scope of the review by the executing judicial authority if it possesses information showing that there are systemic and generalized deficiencies in detention conditions in the issuing state;
- Standards for the assessment of space per detainee in a prison cell;
- Influence of existing legislative and structural measures that improve detention conditions in the issuing state on the assessment;
- Possibility to weigh a fundamental rights infringement against the efficacy of judicial cooperation in criminal matters and the principles of mutual trust/recognition.

The CJEU’s Judgment – Parameters:

The judges in Luxembourg essentially follow the opinion of Advocate General *Manuel Campos Sánchez-Bordona* presented in April 2019 (see [eucrim 1/2019](#), p. 36).

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If an executing judicial authority assesses a real risk of inhuman or degrading treatment within the meaning of Art. 4 of the Charter, it must take into account all the relevant physical aspects of the conditions of detention in the prison in which the person subject to surrender will be detained, e.g., the personal space available to each detainee in a cell in that prison, sanitary conditions, and the extent of the detainee's freedom of movement within the prison. One pre-condition remains, however, namely that the executing authority affirms systemic and generalised deficiencies in the detention conditions of an issuing Member States.

Regarding the personal space available to each detainee, the executing judicial authority must take account the minimum requirements set by the ECtHR when interpreting Art. 3 ECHR. The CJEU stresses that the detainee must (at least) have the possibility to move around normally within the cell. The Court also refers to its previous case law in which it indicated that "a strong presumption of a violation of Article 3 of the ECHR arises when the personal space available to a detainee is below 3 m² in multi-occupancy accommodation."

Possible legal remedies and control mechanisms in the issuing state cannot rule out the existence of a real risk of inhuman or degrading treatment. In addition, the executing judicial authority cannot weigh up a found risk of the fundamental right's infringement against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition.

Put in focus:

Beyond specific questions within the EAW framework, the *Dorobantu* case is important because it deals with general questions on the relationship between the Charter and the ECHR if minimum requirements have not been developed by the European Union.

Although the main lines of argument as regards the interpretation of the absolute right not to be treated in an inhuman or degrading way have mainly been clarified by the "*Generalstaatsanwaltschaft*" case ("*Arranyosi III*"); the *Dorobantu* case gave the CJEU the opportunity to specify its "real risk" doctrine as regards possible infringements of Art. 4 of the Charter in detention condition cases. Nonetheless, the judgment left open how to assess factors of single-occupancy cells.

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