

**Proceedings from the Symposium ‘ImprovEAW – Improving mutual recognition of European Arrest Warrants through Common Practical Guidelines’, held at the John Paul II Catholic University of Lublin, Poland, 27 and 28 June 2022**

*(The symposium was led on hybrid mode with majority of participants present in Lublin and some other connected by MS TEAMS).*

The Symposium was opened by prof. Małgorzata Wąsek-Wiaderek, head of Department of Criminal Procedure, the John Paul II Catholic University of Lublin and prof. Andrzej Herbet, dean of the Faculty of Law, Canon Law and Administration, the John Paul II Catholic University of Lublin

**First panel – The research project ImprovEAW: Goals, methodology, outcomes.**

The first, introductory panel of the symposium concerned the goals, methodology and outcomes of the project and was chaired by **prof. Małgorzata Wąsek-Wiaderek**.

**The first speaker was Prof. Vincent Glerum (legal advisor and professor of Groningen University, The Netherlands).**

He took the audience back to the origins of the project which was the previous project focused on the EAW and *in absentia* judgments (*InabsentiEAW*). Prof. Glerum explained that the general goal of the current project was to focus on improving the EAW as a whole. In particular, he underlined the need to improve the EAW’s form as a basis for communication between judicial authorities.

He presented the methodology of the project: experts (academics and/or practitioners) from 7 member states (BE; HE; HU; IE; NL; RO; PL) were appointed to elaborate country reports based on the questionnaire. The questionnaire was covering the following issues:

- transposition of FD 2002/584/JHA (*e.g.* grounds for refusal)
- problems with individual sections of EAW form
- problems not directly related to EAW form:
  - supplementary information
  - time limits
  - guarantee of return
  - detention conditions/deficiencies in the system of justice
  - surrender to and from Norway/Iceland/UK
  - (analogous) application of *Petruhhin*
  - speciality rule

On the basis of the country reports (some of them were published in the book “*European Arrest Warrant. Practice in Greece, the Netherlands and Poland*”), the general report was elaborated and “Common Practical Guidelines”. Prof. Vincent Glerum presented also some findings of the project:

- incorrect transposition of grounds for refusal and guarantees – *e.g.* optional grounds transposed as mandatory;
- incorrect transposition of the thresholds of Article 2(1) of the FD EAW
- incorrect transposition of the categories of listed offences of Article 2(2) of the FD EAW
- non-transposition of FD 2008/909/JHA

- the EAW form does not reflect CoJ's evolving case-law (*e.g.*: the requirements of section (b) (national judicial decision) (*Svishtov Regional Prosecutors Office*) – dual level of protection should be assured, if national arrest warrant is issued by a public prosecutor);
- the EAW form is less than clear (*e.g.*: with reference to distinction between EAWs for prosecution and for execution of a sentence – section b) – pt 1 – arrest warrant and pt 2 – enforceable judgement – sometimes both are filled in, although there is only one decision).

**The second speaker was Prof. André Klip (Maastricht University, judge, The Netherlands).**

He further elaborated on the outcomes of the research project. He described the role of the Sounding Board members in the project. He mentioned proportionality as a key issue in transposition of measures of cooperation in criminal matters and indicated the ECJ instructions for more balanced procedure. He also argued for more inclusion of the defence counsel in the procedure and an effective judicial oversight over national arrest warrant.

Professor André Klip underlined that one of the issues to be solved in the project was to answer the question who assesses proportionality. He underlined the role of defence counsel and the requested person (his opinion) in the assessment of proportionality. He proposed the cohesive approach of international co-operation: before issuing an EAW judicial organs shall look for possible alternatives – with proportionality in mind and answer first the question whether the EAW is the best solution in this situation.

Professor stressed the need to link EAW procedure with transfer of proceedings and transfer of execution – as alternatives. At the same time he indicated the obstacle to this: the national authority that issues EAW is often not competent for alternative measures.

**Second panel – “ImprovEAW Improving mutual recognition of European Arrest Warrants through Common Practical Guidelines” – a Polish perspective, chaired by prof. Małgorzata Wąsek-Wiaderek**

**The only speaker of the panel was prof. Paweł Wiliński (professor, head of Department of Criminal Procedure, Adam Mickiewicz University, Poznań, Poland).**

He looked at Common Practical Guidelines and Recommendations from the Polish perspective. He stressed that the main prerequisite of effective mutual cooperation in criminal matters is the mutual understanding which even precedes mutual trust. With reference to Common Practical Guidelines (CPG) he underlined their importance and role in improving effective cooperation. He noticed that the problem with reference to EAWs issued by Polish judicial authorities is the perception of Polish courts in other European countries. He argued that judicial independence should be underlined and not undermined, judges should understand each other. With reference to grounds of refusal and these parts of the report which criticise transposition of the FD EAW by Poland, prof. Wiliński stated that higher protection of Polish citizens has constitutional basis. For these reasons he did not see any chances to implement the FD EAW properly with respect to this issue. The same was stated with reference to political offences committed without violence – with reference to them there are also constitutional obstacles to surrender. At the end prof. Wiliński expressed some critical remarks concerning Recommendation 6.1. of the final report directed to the EU. He argued that this may cause additional practical problems and prolong execution of an EAW.

### **Third panel – Improving the EAW: topics that stand out, chaired by Judge Hans Kijlstra from Amsterdam District Court.**

In this session six speakers – members of the research team presented their views on particular aspects of EAW procedure.

**The first speaker, László Angyal-Szuross (judge, Hungary)** addressed the issue of detention conditions. He presented legal background and the jurisprudence of the ECJ on refusal of surrender due to detention conditions (*Aranyosi and Căldăraru, Dorobantu, Generalstaatsanwaltschaft* cases). He also elaborated more on the two-step examination of conditions of detention - Aranyosi test: *in-abstracto* risk and *in-concreto* risk. He stressed that currently there are no EU harmonised standards on detention conditions based on EU legislation. Very often there is also no updated information on current condition in prisons and detention centres in particular countries. This problem shall be solved at EU level.

**The second speaker was Justice John Edwards (judge and professor, Ireland).** He discussed time limits for execution of EAWs. After presenting the legal framework for time-limits, he mentioned exceptional circumstances that contribute to delays in execution:

- risk if surrendered of suffering inhuman or degrading treatment, breach of fundamental right to fair trial.
- stayed proceedings due to preliminary request to EJC.

He mentioned the following measures limiting non-observation of time limits:

- national legislation should not mandate release of a suspect where time limits cannot be observed;
- if suspect is released, measures should be implemented to prevent absconding;
- if there is a serious risk of absconding, EAW does not depend decisively on compliance with time limits.
- supplementary information – neither the Article 15(2) of FD nor the ECJ obliges the executing judicial authority to fix a deadline – but it's a good practice;
- adjust time limits to particular case / however need to respect time limits in Art. 17 FD.

Judge John Edwards presented also recommendations 4.6., 4.8., 5.2., 5.4. and 5.7. related to time-limits.

**The third speaker was Jan Van Gaever (advocate general, Belgium).**

He elaborated on art. 4(6) of EAW Framework Decision. He indicated the following problematic issues (matters to be considered) concerning effective execution of a sentence in case of refusal to surrender of a national or resident of the executing MS.

- a legitimate interest – whether it will increase the chances of the convict to reintegrate the society
- foreign judgement must be final;
- execution must not be statute-barred;
- there should be an immediate execution of the sentence – the convict should not be released, but put immediately into prison.

**The fifth speaker, prof. Vincent Glerum** addressed problems with transposition of the FD EAW.

He indicated the following groups of problems:

- Non-transposition (with few exceptions (HU, IE), project member states transposed all grounds for refusal of Article 4 FD 2002/584/JHA);
- Incorrect transposition (some MS implemented optional grounds for refusal as mandatory);
- Incorrect transposition (some MS make distinction between nationals and other EU citizens);
- Incorrect transposition (some MS introduced additional grounds for refusal).

Prof. Glerum presented examples of all the above-mentioned incorrect transpositions. He also formulated the hypothesis that Member States were and are more attached to the (possibility of) preserving national sovereignty than to cooperating.

**The sixth speaker, Dr. Christina Peristeridou (assistant professor, Netherlands)** discussed problems with transposition of grounds for refusal, based on the example of Greece:

She stressed that Greece transposed optional grounds for refusal as mandatory ones with reference to: double criminality, statute of limitations and territorial jurisdiction (Art. 4 par. 7(i)). As possible reasons for such attitude she mentioned the need to protect sovereignty (nationals) and the need to preserve important traditional principles of cooperation. She argued that improper transposition prolongs the execution of EAWs and causes extensive use of Art. 15(2) FD EAW as well as problems of execution.

**The seventh speaker was Dr. Mariana Radu (Eurojust and Ministry of Justice, Romania).**

She focused on legislative and practical aspects of issuing EAWs for prosecution. She argued that issuing the EAW shall be preceded by issuing the national arrest warrant. In Romania the later procedure requires summoning of the accused. His presence at the hearing is mandatory, except of *in absentia* cases. Before decision on arrest is taken, hearing of accused, when present, is mandatory and he has a right to remain silent. Also legal assistance is mandatory – he has to be represented by *ex officio* or chosen lawyer. She also underlined the need to respect the principle of proportionality when issuing the national arrest warrant, not only the EAW. She indicated alternatives to EAWs for prosecution – e.g. EIO, or transfer of the proceedings.

**The last speaker of the session, Prof. Małgorzata Wąsek-Wiaderek** discussed the problem of proportionality in issuing EAWs with special focus on Polish practice. She mentioned changes of Article 607b of the Code of Criminal Procedure of 2015 and introduction of the “interest of justice” as a prerequisite for issuing the EAW. She also gave examples of refusals to issue the EAWs for prosecution purposes as well as refusals to issue the EAW for execution of the sentence. She underlined the need to preserve proportionality and necessity to take into account the human rights perspective. Finally, with reference to EAWs issued for the purpose of prosecution she mentioned the risk of paying compensation by the issuing state in case of unjustified detention pending surrender.

### **Discussion:**

During the discussion participants from the audience referred *inter alia* to the following issues: possibility of applying the proportionality principle with reference to EAWs issued for execution purposes; the difficulties in translation of EAWs, lack of participation of defence counsels from the issuing state in execution of an EAW. All questions and comments were addressed by speakers.

## II day of the symposium – 28 June 2022

### First panel – Recommendations from the project for improving and views of the Sounding Board – chaired by prof. André Klip.

#### Recommendations on transposition and implementation of the FD EAW.

##### **Prof. Andre Klip was the first speaker of the panel.**

He focused on recommendations concerning transposition and implementation of FD EAW. He stressed that countries tend to guard their sovereignty, especially when it comes to refusal grounds. This problem is addressed in Rec. 2.1, 2.5. 2.6. Furthermore, he underlined the need to respect proportionality as the principle of EU law. This issue is addressed by Rec. 2.9 and 2.10. He indicated that the lack of proportionality has impact on the presumption of innocence and on free movement rights. He strongly supported the need to find alternatives to surrender – e.g. when a person wants to appear voluntarily, transfer of proceedings may be such an alternative (factors to be taken under consideration: stage of proceedings, circumstances of the case, interests of the victim).

**Prof. Juliette Lelieur (professor of Strasbourg University, France)** evaluated recommendations on proportionality on the example of France (Rec. 2.9 and 2.10). She considered the following issues:

- a) should the condition of proportionality be introduced formally into EAW?
- b) in France it's not customary to evaluate proportionality when a prosecutor issues a given decision, it's assumed that if the decision is legal, it's also proportional;
- c) in France, when a judge asks a prosecutor to issue EAW, he has to do it, he can't assess it, i.a. its proportionality.

#### Recommendations on the EAW form

**Prof. Vincent Glerum** presented the following recommendations on the EAW form:

- 1) EAW form in general:
  - a) recommendations to issuing judicial authorities:
    - only use the official form: no *ad hoc* deviations (REC 3.1)
    - only use the official form in the official language of the executing Member State (REC 3.2) and just translate the text that the issuing country introduced into the form.
  - b) recommendation to the EU:
    - create mechanism for regularly updating (and digitising) EAW form (REC 3.3) in keeping with CoJ's case-law;
    - the form should be available in digital form
- 2) specific sections of the EAW form (e.g. amending section (e), REC 3.12)
  - number each separate offence (section (e)I)

- describe each separate offence only once (section (e)II)
  - all factual and legal information with regard to each separate offence under one heading (section (e)II)
  - designating listed offence: separate step; correlate listed offence to numbered offence described above (section (e)III)
- 3) some recommendations to Member States:
- amend legislation to conform with thresholds of Art. 2(1) (REC 3.9)
  - just copy the list with offences of Art. 2(2) (REC 3.13)
  - (and executing judicial authorities): no systematic review of listed offences (REC 3.14).

**Prof. Juliette Lelieur** commented on recommendations on some grounds for refusal from French perspective. She stated that lack of double criminality until December 2021 was a mandatory ground for refusal, now it's optional.

**Monique Lundh (PhD candidate, Denmark)** looked at recommendations on double criminality ground for refusal from Danish perspective:

- in case of several criminal acts enumerated in prosecution/executive EAW, in Denmark it suffices if only one meets the requirement of double criminality;
- Rec. 3.16 – it suffices if the criminal act only partially matches a crime in Denmark, plus it doesn't have to be punishable with prison sentence;
- Rec. 3.17 – in Denmark - each case should be assessed individually – flexible approach.

### **Recommendations on EAW problems not related to the form**

**Dr. Christina Peristeridou** presented recommendations on EAW problems not related to the form:

- i. Rec. 4.6 – reduce the number of requests for supplementary information (Art. 15(2)) – e.g. concerning the merits of the case, using standardised list of questions;
- ii. detention conditions and deficiencies of system of justice:
  - Rec. 4.1 – harmonise detention conditions;
  - Rec. 4.2 – add template to Handbook with what type of supplementary information could be requested;
  - Rec. 4.7 – issuing MS in response to request for further information should, if possible, include information of prison facilities in which the person will likely be detained + a guarantee that the facility will comply with standards.
- iii. return guarantee – art. 5(3):
  - Rec. 4.5 – the EU shall regulate whether Article 5 (3) FD EAW can be triggered only after person invokes it and whether consent is required to execute it after the end of proceedings.
  - Recommendation 4.8: issuing MS shall include the guarantee already in *section f* (if the EAW concerns a national/resident).

**Renata Barbosa (Maastricht University)** addressed the speciality principle.

She defined the purpose of this principle which is the protection from the abuse of power of the issuing state. She also stressed that this principle should enhance mutual trust and understanding. She mentioned the following recommendations concerning speciality principle: Recommendation 4.12: Executing judicial authorities shall include in the decision on the execution of the EAW the person's decision concerning the renunciation of the speciality rule. She also stressed that information on non-renunciation of speciality clause should be delivered to the administrative authority – e.g. prison authorities.

**Dr. Annika Suominen (Dr., Sweden)** addressed the Norwegian perspective on problem of systemic deficiencies in the judicial system. She argued that EAW can be automatically refused only if the procedure under Article 7 of the Treaty on the European Union was officially initiated. With regard to this issue she referred to the example of Poland.

**Monique Lundh** presented Danish perspective on some of the recommendations.

With reference to the speciality principle she stated that in Denmark in case of execution of EAW the court asks a given person about its stance on speciality principle. In practice his/her consent to remove the protection stemming from the speciality principle cannot be revoked.

**Second panel – Recommendations from the project for improving and views of the Sounding Board and Common Practical Guidelines** – chaired by Dr. Christina Peristeridou

#### **Bringing it all together - Hans Kijlstra (judge)**

He made three observations:

1. The EAWs procedure has become complicated;
2. No real dialogue exists between judicial authorities;
3. No substantial proportionality assessment is carried out.

He also presented three 'recommendations':

1. Let's make and keep it simple;
2. Let's get together: judicial authorities should enter into a dialogue; in practice they conduct two consecutive monologues;
3. Let's take proportionality seriously by using all available instruments of cooperation.

He identified three possible ways to simplify:

1. To replace the FD EAW by EU regulation;
2. Only judges should act as competent judicial authorities – to avoid the problem of dual level protection;
3. To improve technical matters (esp. EAW-form – e.g. always include the return guarantee).

**Teresa Magno (judge, Italy)** elaborated on simplification of the procedure by using the example of Italy. She stressed, *inter alia*, the need for communication between judges. They should try to make dialogue out of two monologues, especially using Eurojust, EJTJN.

**Tuuli Eerolainen (public prosecutor, Finland)** addressed the issues of communication and proportionality. She underlined the need to understand the differences between jurisdictions – there are sometimes odd questions, but if the requested information is not received, it entails the risk of refusal. She also considered the question of proportionality. With reference to using EIO instead of EAW she stated that this depends on national legislation, there must be possibility to attend the entire proceedings. She also stressed the need to take into account the interests of victim.

### **A future perspective**

**Prof. André Klip presented future perspective** concerning third level of protection:

- bringing all interests and stakeholders together in order to enhance direct communication;
- one single joint procedure in two stages: 1. hearing before the issuing judicial authority – postulated video-hearing; 2. hearing before the executing judicial authority.

During such joined procedure the following issues should be examined: proportionality of national arrest warrant and an EAW (on EAW: both MSs and requested person shall be heard; issuing MS shall consider an EAW or alternative; executing MS shall consider whether executing EAW is proportional (examining new circumstances)).

**The proposal of Prof. Klip** was addressed *inter alia* by **Dr. Annika Suominen and Dr. Vania Costa Ramos (Portugal)** who underlined the need to assess proportionality and found this proposal to be useful for this goal.

### **Common Practical Guidelines.**

**CPG were presented by Dr. Christina Peristeridou.** She focused on selected, most important issues.

Her presentation was followed by remarks of **Prof. Jaan Ginter (Estonia)**. He mentioned the following issues:

- 1) It should be made clear already from the start that the proportionality test when issuing of an EAW requires more substantial arguments than when issuing national arrest warrant.
- 2) What should be included in proportionality test? – in prosecution-EAWs - in this respect only the degree of soundness of suspicion should matter, not such aspects as the state and progress of investigations;
- 3) Double criminality for non-listed offences - if the national framework currently gives to the executing judicial authority such discretion, the executing judicial authority should preferably make use of it.
- 4) Prosecution in the executing Member State for the same ‘act’:
  - if the national framework currently gives to the executing judicial authority such discretion, the executing judicial authority should make use of it, if practical;
  - how it is possible to assess the proportionality without information on merits?

CPG were also commented by **Dr Vania Costa Ramos**. She made a few suggestions with reference to CPG, including the following:

- the age of the suspect should be mentioned in the EAW;
- executing judicial authorities should always specify the period of detention pending surrender, even if the execution of the EAW was refused.

During the whole day of the symposium participants from the audience in the conference room as well as those present on MS TEAMS took part in discussions, posing questions and comments (also on chat of MS TEAMS).

Below please find some links to information provided within the framework of the discussion conducted on chat by the Portuguese Member of the Sounding Board, Dr Vania Costa Ramos:

[ECBA STATEMENT Mutualrecognitionextraditiondecisions 21June2022.pdf](#)

<https://www.linkedin.com/events/launchoftheecbastatementonmutua6947171295713214464/comments/>

<https://sol.sapo.pt/artigo/62276/extradicao-de-michel-e-muito-provavel>

[https://www.cmjornal.pt/cm-ao-minuto/detalhe/ouvido-em-franca?ref=Mais%20Sobre\\_BlocoMaisSobre](https://www.cmjornal.pt/cm-ao-minuto/detalhe/ouvido-em-franca?ref=Mais%20Sobre_BlocoMaisSobre)

## Wrap-up and thank you

**Project leader, prof. André Klip thanked all the participants and the contributors and closed the symposium.**

The symposium gathered 47 participants in Lublin (in the conference room) and:

- 27 participants on MS TEAMS on 27 June 2022;
- 26 participants on MS TEAMS on 28 June 2022.



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