

PRE-RIGHTS



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Preventive Measures and Cross-Border Judicial and Police Cooperation
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PROCEDURAL RIGHTS IN EUROPEAN ARREST WARRANT PROCEEDINGS



PRE-RIGHTS | Center for the Study of Democracy | Dimitar Markov



- Simplified cross-border judicial surrender procedure for the purpose of prosecution or executing a custodial sentence or detention order
- Replacing the lengthy extradition procedures that used to exist between EU countries
- The most successful instrument of judicial cooperation in criminal matters in the Union
- An EAW issued by one EU country's judicial authority is valid in the entire territory of the EU
- Based on the principle of mutual recognition the EAW operates via direct contacts between judicial authorities
- An EAW may be issued for (1) prosecuting a person for an offence that has a maximum penalty of at least 1 year of prison, or (2) execution of a custodial sentence or detention order when the sought person has been sentenced to a prison term of at least 4 months

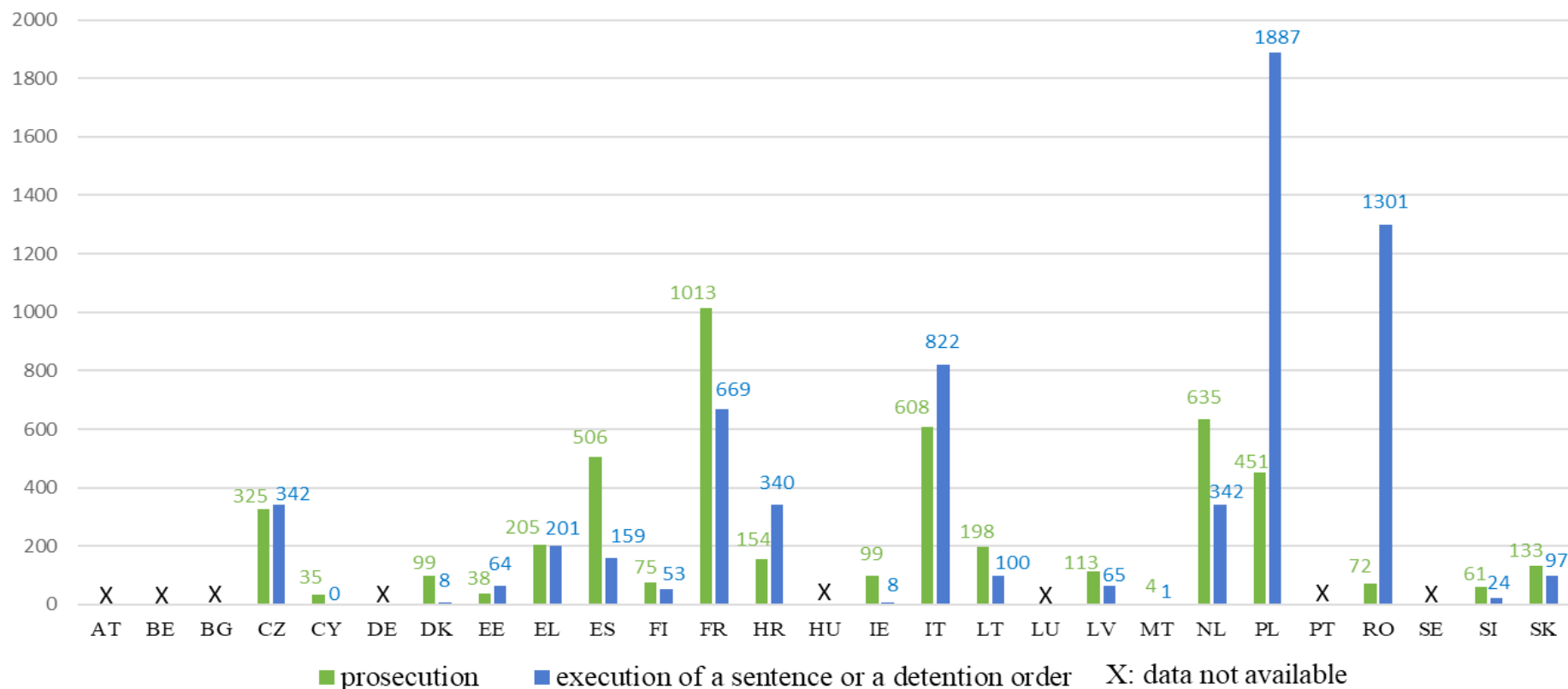




- Strict time limits
 - final decision within 60 (with no surrender consent) or 10 (with surrender consent) days after the arrest
 - surrender as soon as possible and no later than 10 days after the final decision
- Double criminality check no longer required for 32 categories of offences
- No political involvement: EAW decisions made by judicial authorities alone
- Surrender of nationals: EU countries can no longer refuse to surrender their own nationals (unless they take over the execution of the prison sentence)
- Limited (mandatory and optional) grounds for refusal



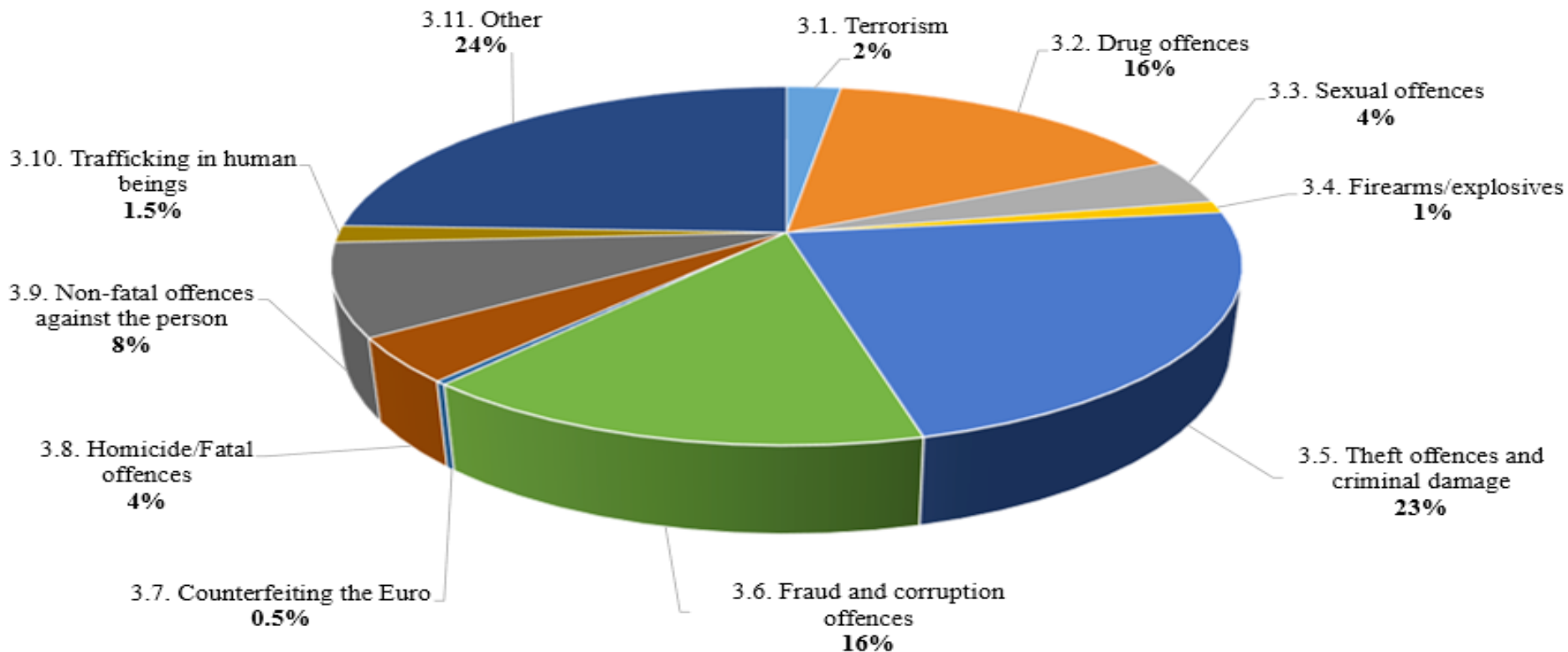
EAWs issued in 2019 for the purpose of:



Source: European Commission, Statistics on the practical operation of the European arrest warrant - 2019



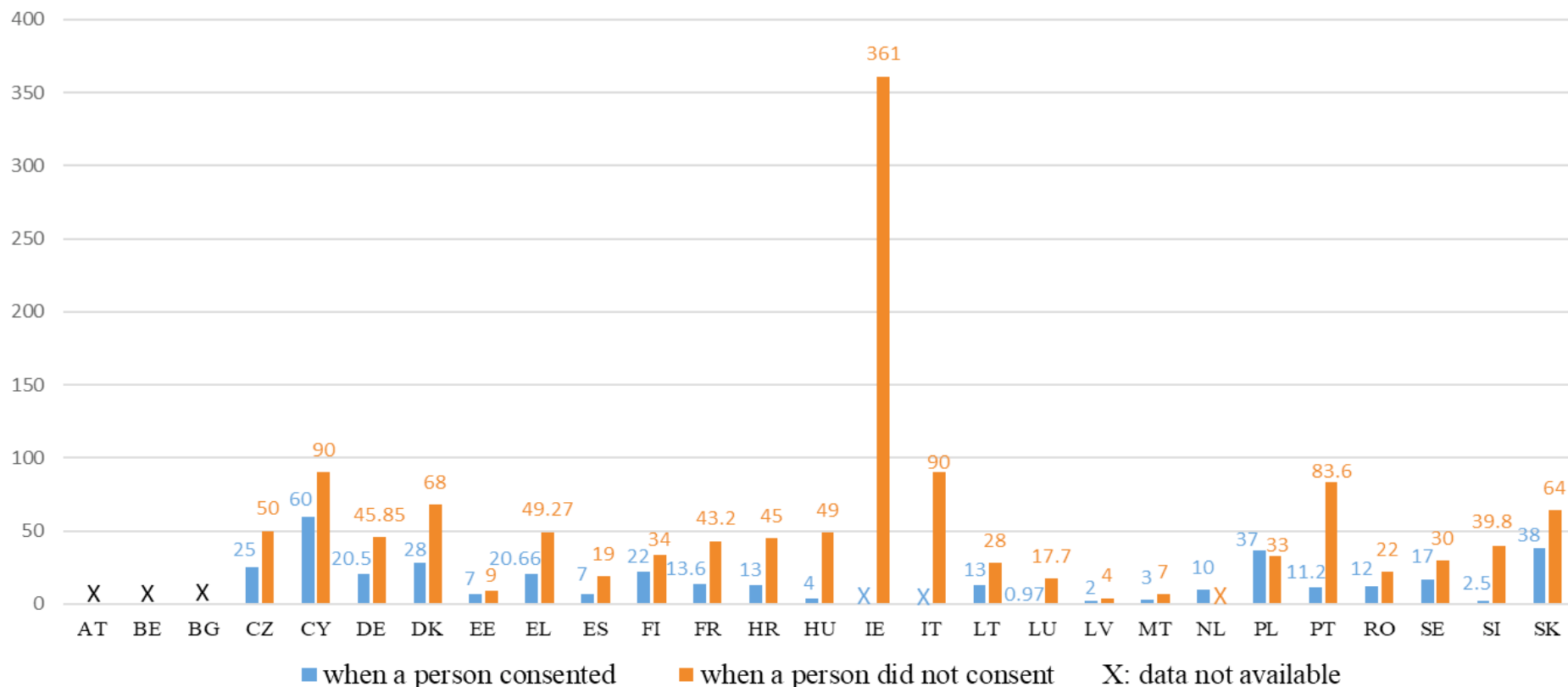
Type of offences:



Source: European Commission, Statistics on the practical operation of the European arrest warrant - 2019



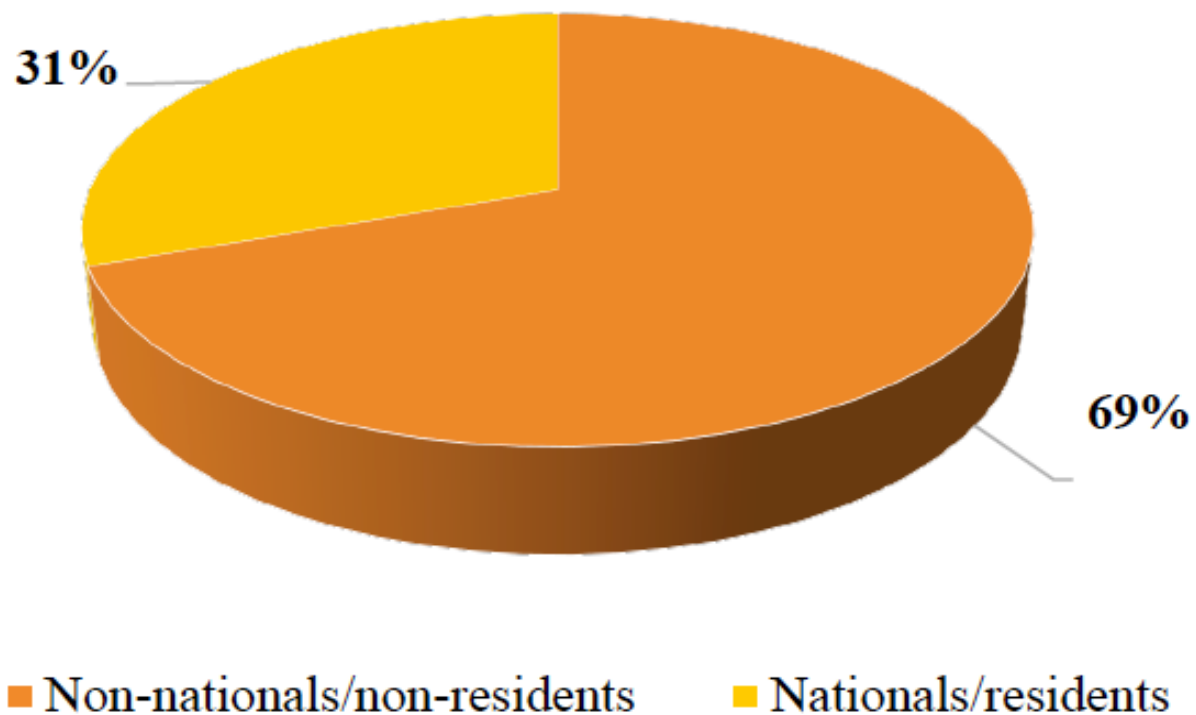
Average time-limits to take a decision whether to execute an EAW (in days)



Source: European Commission, Statistics on the practical operation of the European arrest warrant - 2019



EAWs executed with regard to:



Source: European Commission, Statistics on the practical operation of the European arrest warrant - 2019





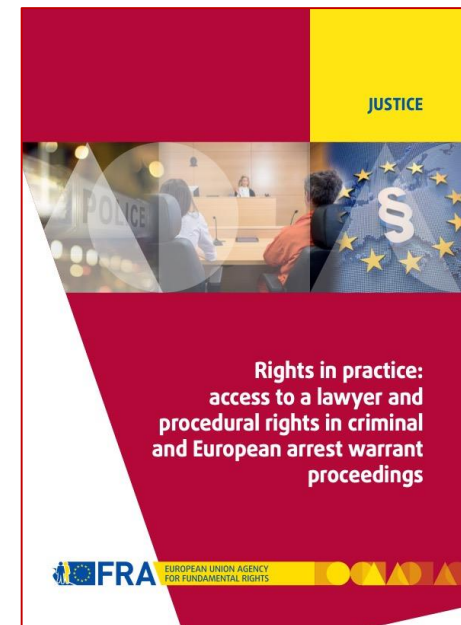
- Right to interpretation and translation
- Right to information
- Right of access to a lawyer
- Right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
- Right to legal
- Procedural safeguards for children



Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings

European Union Agency for Fundamental Rights, 2019

Member State	Defendants in national proceedings	Defendants in EAW proceedings	Lawyers	Police officers	Judges and prosecutors	Members of bodies that monitor detention facilities	Total number of interviewees
AT	5	5	6	4	6	3	29
BG	5	6	6	5	4	3	29
DK	5	4	4	6	6	4	29
FR	10	3	8	8	7	5	41
EL	6	4	6	5	5	3	29
NL	4	2	7	7	4	2	26
PL	7	7	6	7	9	3	39
RO	6	4	4	6	7	3	30
Total	48	35	47	48	48	26	252





- Delays in providing information
- Language barrier
- Lack of confirmation that the arrested person understood their rights
- Information on the possibility of consenting to surrender either not given or misunderstood

"On the 15th of November 2017 we were brought before the prosecutor in regards to the EAW [...] The secretariat of the prosecutor gave us a paper in Greek language and another in Bulgarian [...] The second informed me about the reason why the EAW was issued in Bulgaria [...] I could not read the warrant in Greek language, but I had to sign [...] There was an interpreter from [North] Macedonia [...] I could understand half of the information he interpreted [...] And I did not know the Greek language."

(EAW defendant, Greece)

"I made a huge mistake when I agreed to be transferred back to Poland [...] in France the conditions are completely different - in the prison cell there is a shower, toothpaste in a normal tube, plasma TV, razors and normal after shave cream [...] If I had known what I know now, I would've never agreed to be transported back to Poland."

(EAW defendant, Poland)





- Delays in providing information
- No interpretation when communicating with the lawyer
- No opportunity to talk to the lawyer in private
- No help to arrange contacting a lawyer
- Difficulties in communication between lawyers
- (Pre-)payment issues

"No [I was not able to talk to the lawyer alone]. It was something like five minutes, even less, outside. We entered the courtroom immediately. After that, when we went out, while the interpreter went to the toilet, and as he [the lawyer] spoke a little Russian, I tried, but we could not understand each other what exactly was going on. Meanwhile the interpreter went out and just left."

(EAW defendant, Bulgaria)

"I did have the phone number of a lawyer in Hungary, but the police didn't let me call. I wrote a request here in prison that I have to speak to the lawyer in Hungary about what happened here and in Hungary, and the police didn't let me. I do not know [why the police refused to contact my Hungarian lawyer]."

(EAW defendant, Austria)

"No, I did not speak to a lawyer at all before the police questioning. It was the police who put pressure on me to sign papers in Spanish which I did not understand, well before I saw a lawyer. And when I saw the lawyer, it was useless since he did not speak French and there was no interpreter."

(EAW defendant, France)





- No provision of information in an understandable way
- Lack of or limited right to participate in the selection of lawyers (e.g. by requesting certain linguistic abilities)
- Poor quality of legal aid
- Insufficient capacity of appointed lawyers (legal and/or linguistic)

Q: "Why did you decide for a private lawyer? Were you not satisfied with the public lawyer?"

A: "Yeah, I was not so satisfied and I think, private lawyer is better in my case."

Q: "Did the police inform you that you had a right to contact a lawyer? If yes, how did they inform you and at which stage of the proceedings?"

A: "Yes, he came to a small appointment [interrogation by the judge, who decides on pre-trial detention] and then I told him, you don't need to come to the big appointment [main trial], I will take a private lawyer. He said all right, fine, you told me that and I told him the name of the new lawyer."

Q: "Did you already know this lawyer?"

A: "I heard it's a good lawyer, in prison."

Q: "So it was not the case that you did not trust the other lawyer?"

A: "They are not the same. A private lawyer and a lawyer provided by the state - do you pay me money or not?"

(EAW defendant, Austria)





- No provision of interpretation at all stages of the proceedings (arrest, custody, court hearings)
- Poor quality of interpretation
- No mechanism to check the quality and accuracy of interpretation

"They explained to me, well, as much as one can call it an explanation. They made signs: 'you shoot someone'. There was no interpreter. Neither at the police station nor at the port. At the police station I had an interpreter in Arabic who was useless because I did not understand [his form of Arabic]."

(EAW defendant, France)

"I have given them a choice: in Russian, in Bulgarian or in English. [...] He was trying in both Bulgarian and Russian, but in the end we talked with the judge in English."

(EAW defendant, Bulgaria)

"They did not care at all about the fact that I did not understand anything; moreover, they insisted several times that I sign documents that were in Spanish and which I did not understand at all. They kept putting pressure on me and did not want to understand that I do not speak Spanish at all. Of course, I refused to sign the documents, but they were not at all happy with that."

(EAW defendant, France)





Sofia City Court Decision No 802 of 17 July 2018 (Criminal Case No 2899/2018)

Proceedings instituted at the request of the Sofia City Prosecutor's Office to examine a European Arrest Warrant dated 22.05.2018 received from the General Prosecutor's Office in Munich, Federal Republic of Germany, issued on the basis of an arrest warrant dated 16.05.2018 of the District Court in Munich, in respect of a German citizen for the purpose of prosecution for preparation of a serious act of violence endangering the State (undergoing training for terrorist purposes) in conjunction with intentional possession of weapons without a permit





The facts according to the EAW

- The requested person was born in Moscow, Russian Federation
- With a clean criminal record, university education, divorced, German nationality
- No address in Germany, residing in a monastery, monk by profession
- In 2014 left Germany for the Russian Federation with a tourist visa
- Underwent paramilitary training, mostly in the manufacture or handling of firearms, explosive devices or other abilities used to launch a terrorist attack
- From September 2014 to 27 February 2015, engaged in military actions on the territory of Ukraine
- During the same period (2014-2015), was in possession of a Kalashnikov AK-47 assault rifle





According to the prosecutor

- All required information is completed
- The EAW was issued by a competent authority for the purpose of prosecution for terrorism (no double criminality required) and illegal possession of weapons (offence under Art. 339 of the Bulgarian Criminal Code)
- The German judicial authorities have jurisdiction even though the offence was committed in Ukraine (the person is a German national)
- Explicit guarantees have been received that the person will not be subject to prosecution on grounds of ethnicity and political opinion
- The proceedings are not for prosecution on grounds of ethnic origin or political opinion
- There are no grounds for refusal

According to the lawyer

- Contradiction between the facts (training in a pro-Russian separatist camp, undergoing paramilitary training, participation in combat operations in Ukraine) and the legal qualification (preparation of a serious act endangering the state)
- No description of the person's involvement in the alleged offence
- Undergoing military training does not violate German law
- The person may not receive a fair trial in Germany due to imputed political beliefs (according to the detention order, the person considers the armed struggle against the Ukrainian state regime as a legitimate means of enforcing pro-Russian interests and denies the values of the democratic order)





According to the court

- The additional information requested provided details of the time, place, manner of commission and involvement of the person in the offence
- In accordance with the principle of mutual recognition, the executing court may not question the validity of the decisions of the court of the issuing State
- According to a declaration received from the Office of the General Prosecutor's Office, the person is not being persecuted on account of his ethnic origin or political opinions
- The EAW complies with the formal requirements of Bulgarian and European law
- The offence of "preparation of a serious act of violence endangering the State (undergoing training for terrorist purposes)" falls within the definition of terrorism, which excludes double criminality
- The mandatory and optional grounds for refusal are not present
- There is no evidence of deficiencies in the conditions of detention in Germany which would expose the person to inhuman or degrading treatment within the meaning of Article 4 of the EU Charter of Fundamental Rights
- There are no grounds for believing that the order was issued for the purpose of persecuting or punishing a person on account of his or her sex, race, religion, ethnicity, nationality, language, political opinion or sexual orientation





The outcome of the case and follow-up proceedings

- 17 July 2018: Sofia City Court issued a decision to surrender the requested person and to keep him in detention until the decision is executed
- The surrender decision is executed and the requested person is detained in custody in Landsberg Prison in Germany
- 31 July 2019: The District Court in Munich issued a new arrest warrant in respect of the same person for different crimes (unauthorised possession of weapons of war in conjunction with attempted murder); both crimes were committed before the surrender but were not included in the EAW
- 11 October 2019: During a court hearing at the District Court in Munich the defendant explicitly stated that he had not expressed renunciation of entitlement to the "speciality rule" (a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered)
- 17 December 2019: Upon request by the General Prosecutor's Office in Munich, Sofia City Court issued a decision to give consent for the prosecution of the surrendered person for unauthorised possession of weapons of war in conjunction with attempted murder





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