A large, stylized graphic of a fingerprint, composed of numerous light blue, rounded, parallel lines that curve and taper to resemble ridges on a finger. It is positioned in the upper half of the page against a teal background.

Beyond Surrender: **the practice of the European Arrest Warrant in Lithuania**

Research report
2018



About the Human Rights Monitoring Institute

The Human Rights Monitoring Institute (HRMI) is an independent, non-governmental, non-profit organization made up of human rights professionals – lawyers, social and political science experts. Our mission is to contribute to the development of an open and democratic society that ensures human rights and freedoms.

The HRMI monitors the human rights situation in Lithuania, takes part in the legislative process, conducts research, engages in advocacy and prepares legislative proposals, submits alternative reports to international human rights supervisory bodies, initiates litigation with respect to strategic human rights questions, and conducts trainings on human rights topics.

The primary focus areas of the HRMI are criminal justice, crime victims' rights, prohibition of all forms of discrimination, privacy and data protection, and freedom of expression.

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Contents

1. Executive summary	4
2. Introduction	6
3. Domestic Legal Framework	8
4. The practice of issuing an EAW	10
5. Detention in Lithuania	14
6. Procedural rights in Lithuania	20
7. Identifying and Monitoring Post-Surrender Treatment	24
8. Conclusions	25

This research report aims to look at the issues faced by a person after they are surrendered to Lithuania under a European Arrest Warrant (EAW), and to identify good and bad practices applied domestically. Concurrent research was conducted in Lithuania, Poland, Romania, and Spain, and a comparative report will be produced with a pan-European focus. The national research consisted of two main stages – desk-based research and case-file review of 20 cases of persons surrendered to Lithuania under the EAW.

Under Lithuanian law, EAWs for criminal prosecution are issued by the Prosecutor General's Office, based on a preliminary court ruling ordering pre-trial detention. EAWs for execution of a custodial sentence are issued regional courts. Lithuanian law establishes that when issuing EAWs, authorities must observe the principle of proportionality, and consider the gravity and scope of the crime, and the personality of the requested person. When executing EAWs received from other States, the Lithuanian procedure is visibly pre-trial detention-oriented.

There is little research and publications on the use of EAW in Lithuania. The available sources stressed disproportionate use of EAWs for minor offences and the dubious practice of making persons cover their own transportations costs following surrender, which is still prevalent to this day.

The case-file review revealed some recurring problems in the practice of issuing EAWs: issuing EAWs in ill-prepared, evidence-lacking cases that fail to result in conviction, failing to exhaust other means of ensuring the person's participation in proceedings before resorting to EAWs, and issuing EAWs where potential sentences do not warrant their use.

There is a very high likelihood that anyone surrendered to Lithuania for criminal prosecution will at least initially be placed in pre-trial detention and be placed in a remand prison. Two out of Lithuania's three remand prisons suffer from poor material conditions and impoverished regime, leading national courts to routinely find violations of rights of detainees held in them. There have already been several instances where foreign States, like Denmark, Malta, and UK, refused to execute EAWs issued by Lithuanian authorities. In at least two instances Lithuanian authorities have issued assurances that surrendered persons, if detained, will be kept in the remand prison with the best material conditions, in Kaunas.

However, an example good practice was observed as well, in which a person on embezzlement charges was released on bail, and allowed to go back to his life and work in Russia, while dutifully returning to Lithuania for court hearings.

EU Directives on procedural rights are mostly transposed to national law, however their implementation in practices does face some issues, such as sub-par of interpretation and translation in criminal proceedings, limited access to case file in the pre-trial investigation, information on right provided in a difficult to understand manner, and poor quality of legal services provided by legal aid lawyers. Due to the nature of EAW cases, surrendered persons are likely to have strong reliance on some procedural rights, such as interpretation and translation, and legal aid. Accordingly their defence they may be particularly hurt by these issues.

There is no system dedicated monitoring post-surrender treatment of persons, making identifying post-surrender cases very difficult. This also means that there is no system in place to ascertain whether assurances issued by Lithuania to other States prior-surrender will be respected.

The simplified system of surrender established by the European Arrest Warrant (EAW) Framework Decision has been around for more than 14 years. While it has undoubtedly had success in preventing the EU's open borders from being exploited by those seeking to evade justice, the considerable period of its application has highlighted problems in its operation as well. The most significant of these problems relate to disproportionate use of EAWs, excessive and unjustified pre-trial detention, and failure of issuing states adequately to protect human rights.

A lot of research and analysis has been done to understand how fundamental rights, including those covered by the EU procedural rights directives, are implemented in criminal justice in Lithuania. Much of it has been conducted by the Human Rights Monitoring Institute, including research on use of pre-trial detention, right to interpretation and translation, right to information, and access to a lawyer and legal aid in criminal proceedings.

However, no work has been done to put the above knowledge into the context of criminal proceedings following execution of an EAW. With this research the Human Rights Monitoring Institute, in cooperation with Fair Trials, seeks to fill that gap and to look at the particular issues faced by a person after they are surrendered to Lithuania, and to identify good and bad practices applied domestically.

Methodology

This research project was developed as a response to the priorities identified by LEAP – an EU-wide network of over 150 criminal justice experts from all 28 Member States – which include ensuring the fair operation of the EAW and the effective implementation of the EU procedural rights directives. Differences of approach between Member States on these issues have impacted negatively on the operation of mutual recognition which has required the EU to take legislative and policy action in response. The project aims to contribute to ensuring effective implementation of the EAW Framework Decision and the EU procedural rights directive by identifying problem areas to be addressed and examples of good practice to be promoted.

Concurrent research was conducted in four EU member states – Lithuania, Poland, Romania, and Spain – ensuring a geographical spread. Each participating country will be producing national reports, and a comparative report will be produced by Fair Trials, which will have a pan-European focus.

The national research consisted of two main stages:

1. Desk-based research, in which national law, prior research and other publications on the use of EAW, fundamental rights in criminal proceedings, use of detention and detention conditions were examined.
2. Case-file review, in which completed cases of persons surrendered under EAWs were analysed, allowing access to most pre-trial investigation and court documents of the case, and enabling researchers to get an understanding of the full life of an EAW case. 20 cases completed between 2012 and 2017 were analysed in the case-file review.

Initially the Human Rights Monitoring Institute attempted to conduct monitoring of ongoing EAW cases, however, as only 2 such cases were identified, case-file review was employed instead. The difficulties concerning identifying ongoing EAW cases are discussed further in section 7.

It is important to note that the number of analysed cases is limited, and therefore should not be considered a precise representation of the scope of problems associated with the use of EAWs in Lithuania. Nonetheless, the collected data illustrates general EAW-related trends and issues discussed in this report.

The EAW Framework Decision¹ has been implemented into Lithuanian law by incorporating main EAW-related provisions into two pre-existing pieces of legislation – the Criminal Code and the Code of Criminal Procedure, and adopting one dedicated sub-statutory law.

The Lithuanian Criminal Code of the Republic contains a single article concerning the EAW, listing the grounds for surrendering a person under an EAW and for mandatory and optional nonexecution of an EAW.² It also covers the possible additional conditions for surrendering a person in cases of possible life sentence or where a surrender of national or resident may be subject to that person later being returned to serve the sentence in the executing State, as per the EAW Framework Decision.

The principal rules concerning the issue and execution of EAWs are contained in the Code of Criminal Procedure of the Republic of Lithuania.³ The EAWs are issued by one of two authorities: if the EAW concerns a person wanted for criminal prosecution, it is issued by the Prosecutor General's Office, based on a court's preliminary order of pre-trial detention for the person. If the EAW is for execution of a custodial sentence, it is issued by a regional court. Initially, the latter type of EAWs were issued by the Ministry of Justice, but this was changed in 2013,⁴ as doubts were raised by national and foreign experts on whether the Ministry of Justice could be considered a "judicial authority" in the sense of the EAW Framework Decision.⁵

In 2016 the Court of Justice of the EU considered a request for a preliminary ruling raising this very question from Amsterdam District Court, concerning an EAW issued in 2013 by the Lithuanian Ministry of Justice before the amendment discussed above had entered into force. The Court found that an organ of the executive, such as the Ministry of Justice, cannot be designated as an 'issuing judicial authority', within the meaning of the EAW Framework Decision.⁶

The Code of Criminal Procedure also establishes that the principle of proportionality must be observed when issuing an EAW, even though it does not go into much detail about it: when issuing an EAW the Prosecutor General's Office of the regional court must "assess whether the person's surrender under the European Arrest warrant meets the principles of proportionality and procedural economy, considering the gravity and scope of the crime, and the personality of suspected, accused or convicted person."⁷

¹ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), as amended.

² Baudžiamasis kodeksas (Criminal Code), No. VIII-1968, 26 September 2000, as amended, art. 9¹, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/ZpNMZQSaRN>

³ Baudžiamojo proceso kodeksas (Code of Criminal Procedure), No. IX-785, 14 March 2002, as amended, articles 17¹, 69¹-77, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.EC588C321777/RKDzuhQANj>

⁴ Baudžiamojo proceso kodekso 66, 67, 69¹, 71-1, 73, 365-1 straipsnių ir Kodekso priedo pakeitimo ir papildymo įstatymas (Law Amending Articles 66, 67, 69¹, 71-1, 73, 365-1 and the Annex to the Code of Criminal Procedure), No. XII-346, 30 May 2013, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.450200>

⁵ Explanatory notes on bills No. XIP-4635, XIP-4636, 2 July 2012, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.429226?jfwid=-11gea3v28b>

⁶ The Court of Justice of the European Union, judgment of 10 November 2016, Kovalkovas, case C-477/16.

⁷ Code of Criminal Procedure, art. 69¹(3)

Where executing EAWs received from other States, the provisions in the Code of Criminal Procedure are visibly pre-trial detention-oriented. This starts with the very definition of EAW provided in the Code of Criminal Procedure, in which its purpose is described to "place into pre-trial detention and surrender"⁸ a person, rather than "arrest and surrender", as per the EAW Framework Decision.⁹

Other provisions also point toward the Code of Criminal Procedure assuming use of pre-trial detention when executing an EAW, as some obligations towards persons requested in EAW cases are tied directly to them being placed in pre-trial detention. The 60 day term to make a final decision on the execution of an EAW is determined from the person being placed in pre-trial detention rather than arrested.¹⁰ The obligation to inform the requested person that they have the right to request a lawyer in the issuing Member State is also to be fulfilled after a person is placed in pre-trial detention.¹¹

Finally, being wanted under an EAW is sufficient grounds, by itself, to place a person in pre-trial detention.¹² Typically, when ordering pre-trial detention, a risk of flight or absconding, of further offences, or of tampering with evidence or otherwise hindering the proceedings, must be established for pre-trial detention to be ordered. This is not required when a person is sought under an EAW.

More detailed instruction for issuing EAWs and the EAW form are laid out in a dedicated sub-statutory law, the Rules for Issuing the European Arrest Warrant and Receiving Persons under the European Arrest Warrant (Rules on EAW).¹³ The Rules on EAW, among other specifications, list conditions for issuing an EAW for criminal prosecution. A couple of these conditions impose additional restrictions on issuing EAWs, and can be seen as expanding on principle of proportionality.

First, the Rules on EAW specify that EAWs cannot be issued for minor crimes, i.e. crimes punishable by a maximum custodial sentence of 3 years, unless the crime caused major property damage. Major property damage¹⁴ is considered damage in excess of 5 700 EUR.¹⁵ Second, other means of ensuring the person's participation in the proceedings or trying the case in the person's absence must be exhausted first.¹⁶

No additional restrictions on issuing EAWs for the purposes of executing a custodial sentence are provided in the Rules on EAW.

⁸ *Ibid.*, art. 17¹

⁹ Under Lithuanian law "pre-trial detention" refers to a longer term detention before conviction, lasting weeks, months and sometimes years, as opposed to a short-term custody of a person, which is allowed up to 48 hours under art. 140 of the Code of Criminal Procedure.

¹⁰ Code of Criminal Procedure, art. 71¹(3)

¹¹ *Ibid.*, art. 71¹(10)

¹² *Ibid.*, art. 122.

¹³ Europos arešto orderio išdavimo ir asmens perėmimo pagal Europos arešto orderį taisyklės (Rules for Issuing the European Arrest Warrant and Receiving Persons under the European Arrest Warrant), Minister of Justice and Prosecutor General's joint order No. 1R-195/I-114, 26 August 2004, as amended, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.7729FF220686/vtycEWqSKt>

¹⁴ Rules for Issuing the European Arrest Warrant and Receiving Persons under the European Arrest Warrant, point 4.1

¹⁵ Criminal Code, art. 212(1)

¹⁶ Rules for Issuing the European Arrest Warrant and Receiving Persons under the European Arrest Warrant, point 4.4

The practice of issuing an EAW

The use EAWs in Lithuania has received little academic or practical research, as well as commentary in the form of articles and similar publications from practitioners. However, the limited resources available raise some questions and problems concerning the practice of issuing EAWs in Lithuania.

In 2007, relatively early after starting to use the EAW system, Lithuanian institutions received criticism from one of the leading national experts on criminal procedure for using EAWs in a disproportionate manner, for minor offenses, such as disturbing the public peace or small-scale theft.¹⁷ Such practice lead to a situation where only around a third of persons surrendered under EAWs received custodial sentences. In one instance two suspects only received fines of approx. 100 and 150 EUR, where the costs for transporting them to Lithuania from Spain were well over 2000 EUR.

Another point of criticism concerned the courts' case-law, under which the costs for transporting a person from the executing State to Lithuania had to be covered by the surrendered person. This practice, the author argued, both violated the principle that the State must bear the costs associated with keeping a person in custody and opened up the possibility for the prosecution to apply illicit pressure on the suspect, by demanding a confession in exchange for a promise not to seek transportation costs.

Concerns about disproportional use of EAWs were addressed in 2009, when an amendment to the Rules on EAW was introduced, limiting the use of EAW in minor crimes cases.¹⁸ Further amendments directly stating that the principle of proportionality must be observed when issuing EAWs were introduced in 2013 both to the aforementioned Rules on EAW and the Code of Criminal Procedure.¹⁹

These amendments seem to have had some positive effect. A fairly recent overview of the principle of proportionality application in criminal proceedings concluded that the case-law of Lithuanian courts recognizes that the principle of proportionality must be applied than issuing EAWs.²⁰ However, the principle of proportionality is not always observed in practice when issuing EAWs for criminal prosecution, as the case-file review demonstrated. It was also stressed in the same overview, on the other hand, that no test of proportionality is applied when Lithuanian courts are executing an EAW issued by another State.

¹⁷ Gintaras Švedas, „Kai kurios asmens perdavimo pagal Europos arešto orderj baudžiamajam persekiojimui teorinės ir praktinės problemos“, 5 October 2007, „Teisė“ 2008 66 (1), available at: <http://www.zurnalai.vu.lt/files/journals/5/articles/371/public/62-74.pdf>

¹⁸ Minister of Justice and Prosecutor General's joint order No. 1R-312/I-140, 7 October 2009, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.590E344C079B>

¹⁹ Minister of Justice and Prosecutor General's joint order No. 1R-313/I-331, 27 December 2013, available at: <https://www.e-tar.lt/portal/lt/legalAct/588b5ee07d3e11e390d3a9e74c4ac9d0>

Baudžiamojo proceso kodekso 66, 67, 691, 71-1, 73, 365-1 straipsnių ir Kodekso priedo pakeitimo ir papildymo įstatymas (Law Amending Articles 66, 67, 691, 71-1, 73, 365-1 and the Annex to the Code of Criminal Procedure), No. XII-346, 30 May 2013, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.450200>

Baudžiamojo proceso kodekso 66, 67, 691, 71-1, 73, 365-1 straipsnių ir Kodekso priedo pakeitimo ir papildymo įstatymas, Nr. XII-346, 2013 m. gegužės mėn. 30 d., priėgta: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.450200>

²⁰ Justina Dešriūtė, Ernestas Rimšelis, „Europos arešto orderio proporcingumo testas baudžiamajame procese“, Teisės apžvalga, No. 2 (14), 2016, p. 411-435, available online at: <https://ejournals.vdu.lt/index.php/LawReview/article/download/1255/1143>

The practice of having the surrendered person cover their transportation costs from the State executing the EAW to Lithuania is still prevalent today, although it has been modified. Under the Supreme Court of Lithuania case-law, the costs related to transporting the suspected person from a foreign State to Lithuania for the purpose of criminal prosecution must be covered by that person if there is evidence proving that the person absconded after committing the offence.²¹

When determining this the court will factor in whether the person moved abroad before knowing that a criminal investigation was started, whether they were considered a suspect at that time, and whether by moving they violated conditions of restrictive measures, if any, imposed on them. If the person moved abroad for other reasons, such as employment, with no intention to abscond from possible prosecution, the costs will not be awarded.

Case-file review results

The case-file review results indicate that problems in the practice of issuing EAWs are still fairly common. These mostly concern one or other aspect of observing the principle of proportionality.

One recurring problem discovered in the course of case-file review was issuing of EAWs in ill-prepared cases. In at least 4 of such cases it was fairly evident from the available documents that there is a lack of evidence against the suspected persons, and a strong case against them cannot be built. Unsurprisingly, they all failed to reach a conviction.

A good illustration of such a situation is a case in 2012 concerning a businessman, who was charged with selling a car that had liens placed on it, and failing to observe a court order not to sell it.²² The case documents indicated that it was fairly obvious from the initial stages of the investigation that there was no criminal conduct in his actions, and any misconduct was of civil law nature. That did not, however, stop the prosecutor's office from issuing an EAW at a later stage, and the case from reaching the court.

When questioned the businessman admitted to both charges, though the evidence he gave indicates that he did not really understand the nature of the charges against him, and acknowledged selling the car while not believing to have confessed to any criminal activities. His evidence in the case hints that he did not really understand that he is under investigation, having waived his right to a lawyer.

²¹ Supreme Court of Lithuania, case no. 2K-321/2013, 2 July 2013

²² Vilnius Regional Court, case no. 1-38-648/2013, 14 January 2013

After questioning he was released under written obligation not to depart. He, however, moved abroad and started working for a company conducting its activities in Russia and Belarus. He was not aware that he was sought after by the police and only learned that from his wife, and then hired a lawyer via email.

An EAW was issued for him and he was arrested when crossing the Latvian border and surrendered to Lithuania, where he was placed in pre-trial detention. He spent 2 months in remand prison, until the court finally acquitted him of all charges.

In another case in 2015, an EAW was issued and the person surrendered to be prosecuted for offences concerning illegal financial operations.²³ The person was initially held in pre-trial detention, but was released after 2 months with a written obligation not to depart from his residence, which is often an indication that the pre-trial investigation is not going well. One and a half month later the investigation was terminated. Failure of the case to even reach court is a blatant display of disproportionate use of the EAW in this instance.

Another fairly common problem is not following the requirement of exhausting other means of ensuring the person's participation in the proceedings before issuing an EAW, as required by the Rules on EAW.²⁴

In at least 4 such reviewed cases, between 2015 and 2016, Lithuanian nationals, who were later surrendered to Lithuania, had moved abroad seeking work, specifically in Denmark, Germany, and in 2 instances in the United Kingdom. The persons in these cases gained legal employment with no attempt to hide from Lithuanian authorities or conceal their presence in the country. However, the Lithuanian authorities, having learned of the suspects' presence abroad, usually from their relatives, made no attempt to contact these suspects through their employers, and simply issued EAWs instead.

In one case, in 2011, the police had the exact address of a suspect, a Lithuanian national, who had moved to reside legally in the United Kingdom. Nonetheless the police made a formal decision that they were unable to serve the suspect with a notification. Instead, they asked for and the Prosecutor

²³ Kaunas Regional Court, case no. 1A-400-634/2017, 29 June 2017

²⁴ See section 3.

General's Office issued an EAW. The suspect was not surrendered in this case however, instead she was arrested in Lithuania and placed in pre-trial detention when she returned for a home visit, unaware of the EAW against her. She was released from detention 8 days later, and acquitted of all charges when the case reached the court 2 years later.²⁵

Examples of issuing EAWs where potential sentences do not warrant their use were also discovered. In one case in 2015, a Lithuanian national who was legally employed in Denmark was surrendered to Lithuania on attempted robbery charges, i.e. attempt to forcefully grab a purse. Even though the person in question did not resist the EAW and agreed to being surrendered, he ended up spending 2 months in detention in Denmark and a further 4 months in Lithuania, until the end of his trial, where he was found guilty not of attempted robbery, but of disturbing the public peace.²⁶ That is a minor offence, punishable by community service, fine, or up to 2 years in prison (he received 8 months). According to the Rules on EAW, the EAW should not have been issued in the first place.

In another case in 2016, a Lithuanian national was surrendered from the United Kingdom to be prosecuted for a small-scale theft, i.e. a mobile phone and bottle of perfume. The person spent almost 2 months in detention in the United Kingdom, awaiting surrender, and another one and a half month in Lithuania. After the trial, he ended up receiving a sentence of 3 months 8 days, that, conveniently, being the exact number of days he spent in pre-trial detention.²⁷

Finally, in one case from 2016, a Lithuanian national, surrendered from Germany, was ordered to pay the 1836 euros of his transportation expenses by the court.²⁸ The costs were awarded despite the fact that the person moved to Germany for employment rather than to abscond, and he was unaware of the criminal investigation. Such decision contravenes the requirements for awarding EAW transportation costs established by the case-law of the Supreme Court of Lithuania, as discussed in Section 3.

All of these examples show that while the problems that surfaced at the initial stages of the EAW application, concerning both disproportionate use of the measure and financial burden on persons surrendered, might not be as prevalent today, they have not gone away entirely.

²⁵ Kaunas Regional Court, case no. 1-63-478/2013, 3 May 2013

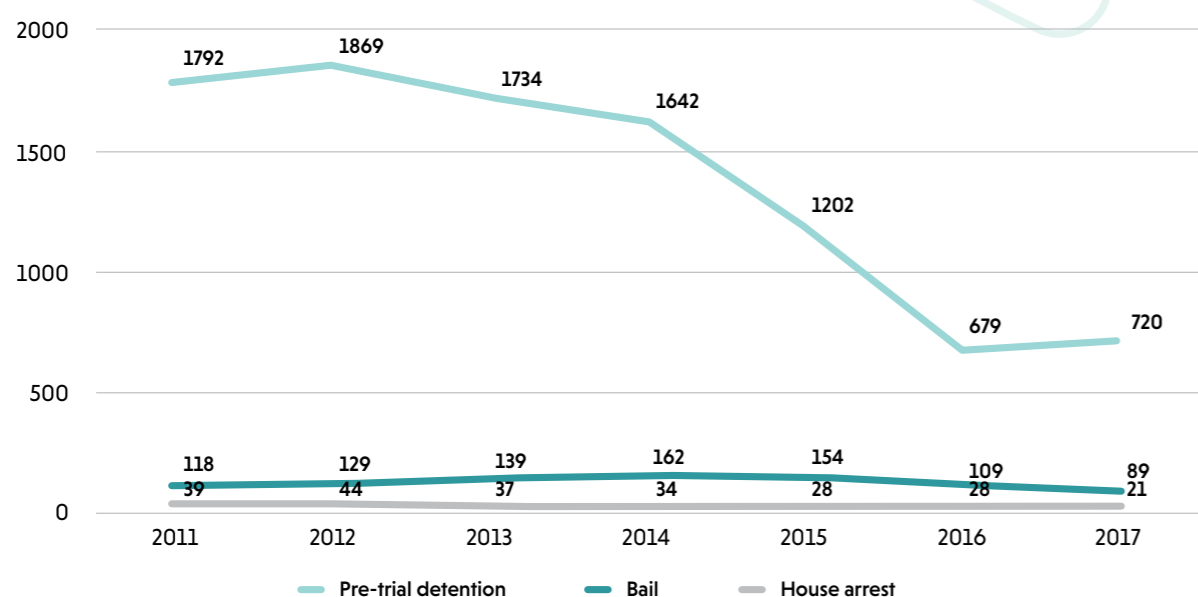
²⁶ Vilnius Regional Court, case no. 1A-245-843/2016, 14 March 2016

²⁷ Kaunas District Court, case no. 1-128-246/2017, 17 May 2017

²⁸ Kaunas District Court, case no. 1-270-573/2017, 16 January 2016

The EAW for the purposes of conducting a criminal prosecution in Lithuania is issued by the Prosecutor General's Office, based on a court's preliminary ruling to order pre-trial detention.²⁹ Once the person is surrendered to Lithuanian authorities, he must be brought before the same court within 48 hours to decide whether to uphold pre-trial detention and set a specific detention term, order an alternative restrictive measure (such as financial bail, house arrest, electronic monitoring etc.), or to release the person without any restrictions.³⁰

There is an overwhelming likelihood that pre-trial detention will be ordered if it is requested by prosecution. While the overall number of persons placed in pre-trial detention in the period of last 5 years, 2013-2017, has gone down significantly, the courts have granted approximately 95 percent of all prosecution requests for pre-trial detention.³¹ Measures such as financial bail or house arrest, offering a greater degree restriction that could be considered a real alternative for pre-trial detention, as opposed to "light" measures, such as travel bans or police supervision, are used far less frequently.



Restrictive measures ordered per year.

²⁹ Code of Criminal Procedure, art. 69¹(1)

³⁰ *Ibid.*, art. 123, 140

³¹ Information obtained via FOI requests to the National Courts' Administration by HRMI, 2014-2018

The courts order pre-trial detention most frequently on the grounds of the suspect being a flight-risk.³² When establishing this risk, courts consider factors such as lack of fixed residence in Lithuania and social-ties abroad as proof of this risk. This makes persons surrendered under an EAW very likely to be considered a flight-risk, and accordingly be placed in pre-trial detention for the entirety or most of the pre-trial investigation and during the trial.

If a person is surrendered under an EAW issued for the purposes of executing a custodial sentence, they will typically still initially be placed in a remand prison, i.e. a prison primarily intended to hold pre-trial detainees, before being allocated to a specific institution to serve their sentence. Thus, either way, a person surrendered under an EAW is likely to spend some time in one of three main Lithuanian remand-prisons – in Kaunas, Šiauliai, or the Lukiškės remand prison in Vilnius.³³

Detainees in remand prisons are moved to cells where they are kept for the majority of the duration of their detention. The detainee allocation to cells is carried out under set rules of what type of detainees must be kept separately: males and females, juveniles and adults, pre-trial detainees and prisoners serving sentences, also detainees who have served a prison sentence in the past are placed separately from detainees who have not.³⁴

Conditions in pre-trial detention

Two of the remand prisons in Lithuania, Šiauliai and Lukiškės, have a reputation for poor material conditions. In 2009 the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) reported poor material conditions and lack of activities for detainees in Lukiškės remand prison. The CPT concluded that the cumulative effect of these problems could be in some instances considered inhuman and degrading.³⁵

Some renovations and progress on living conditions has been made since that time in Lukiškės. However, in their report covering the visit in 2016 the CPT still noted material conditions and related problems, such as dilapidation, lack of adequate ventilation and access to daylight, as well as overcrowding in parts of the institution.³⁶

³² "The practice of pre-trial detention in Lithuania", HRMI, 2015, p. 31-33, available at: <http://www.hrmi.lt/uploaded/TYRIMAI/Pre-Trial%20Detention%20in%20Lithuania%20-%202015.pdf>

³³ There is also one specialised institution in Kaunas, which functions both as a remand and regular prison for juveniles.

³⁴ Suėmimo vykdymo įstatymas (Law on the Execution of Pretrial Detention), No. X-1660, came into force 1 April 2009 (as amended), Article 10, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.11A8B08A7405/hOqkUhOhFI>

³⁵ CPT report on Lithuania, 2009, page 23, available at: <https://rm.coe.int/1680697335>

³⁶ CPT report on Lithuania, 2018, page 27, available at: <https://rm.coe.int/pdf/16807843ca>

National courts consistently and regularly find violations of detainees' rights because of the conditions they face in Lukiškės. The most frequent violation is related to overcrowding and lack of space in detention cells, where detainees are allowed less than the minimum allowed 3.6 m² per person.³⁷ Courts also find violations concerning unhygienic conditions³⁸ and lack of privacy while using toilet in the cell.³⁹

Similarly to Lukiškės, Šiauliai remand prison is also criticised for poor material conditions and overcrowding. In its 2014 report the CPT found that all of the facilities at Šiauliai remand prison were "old and rundown", and the prison was facing a serious overcrowding problem – officially the prison can hold up to 435 inmates, but in 2012, at the time of CPT's visit, 619 inmates were kept there, 142% of the prison's official capacity.⁴⁰

Conditions in Šiauliai remand prison received public attention in 2014, after it was visited by the President of the Republic of Lithuania. After her visit the President has been quoted as saying: "The conditions in which [detainees] have to spend entire months undermine their human dignity."⁴¹

Overcrowding in Šiauliai has receded in the past several year: there were on average 387 detainees in 2016,⁴² and 382 in 2017.⁴³ Thus, the prison was operating at approx. 90% its official capacity. However, situations of overcrowding still occur frequently and such violations are regularly established by the courts.⁴⁴ Similarly to Lukiškės, violations in Šiauliai remand prison concerning lack of privacy⁴⁵ and unhygienic conditions in cells are also commonly established by the courts.⁴⁶

³⁷ E.g., Supreme Administrative Court of Lithuania decision No. A-1827-442/2018, 28.03.2018; Supreme Administrative Court of Lithuania decision No. A-352-756/2018, 28.03.2018; Supreme Administrative Court of Lithuania decision No. A-1480-520/2018, 28.03.2018; Supreme Administrative Court of Lithuania decision No. A-777-520/2018, 28.03.2018; Supreme Administrative Court of Lithuania decision No. A-2108-415/2018, 21.03.2018.

³⁸ E.g., Supreme Administrative Court of Lithuania decision No. A-490-525/2016, 24.02.2016; Supreme Administrative Court of Lithuania decision No. A-2566-442/2016, 22.02.2016.

³⁹ E.g., Supreme Administrative Court of Lithuania decision No. A-1827-442/2018, 28.03.2018; Supreme Administrative Court of Lithuania decision No. A-888-858/2018, 28.03.2018; Supreme Administrative Court of Lithuania decision No. A-777-520/2018, 28.03.2018.

⁴⁰ CPT report on Lithuania, 2014, available at: <https://rm.coe.int/1680697367>

⁴¹ "D. Grybauskaitė is appalled: such conditions undermine human dignity" ("D. Grybauskaitė pasibaisėjusi: tokios sąlygos pamina žmogiškąjį orumą"), Delfi.lt, 07 October 2014, available at: <http://www.delfi.lt/news/daily/lithuania/d-grybauskaitė-pasibaisėjusi-tokios-salygos-pamina-zmogiskaji-oruma.d?id=66051666>

⁴² Prison Department annual report for daily costs of keeping detainees, 2016, available at: http://www.kalejimudepartamentas.lt/lt/kalejimu-departamentas/administracine_informacija/ataskaitos/metines.html

⁴³ *Ibid.*, 2017

⁴⁴ E.g., Supreme Administrative Court of Lithuania decision No. A-225-552/2018, 14.03.2018; Supreme Administrative Court of Lithuania decision No. A-196-756/2018, 14.03.2018; Supreme Administrative Court of Lithuania decision No. A-204-822/2018, 14.03.2018; Supreme Administrative Court of Lithuania decision No. A-297-261/2017, 14.02.2017; Supreme Administrative Court of Lithuania decision No. A-93-858/2017, 07.02.2017.

⁴⁵ E.g., Supreme Administrative Court of Lithuania decision No. A-482-552/2018, 14.03.2018; Supreme Administrative Court of Lithuania decision No. A-204-822/2018, 14.03.2018; Supreme Administrative Court of Lithuania decision No. A-196-756/2018, 14.03.2018.

⁴⁶ E.g., Supreme Administrative Court of Lithuania decision No. A-193-822/2018, 14.03.2018; Supreme Administrative Court of Lithuania decision No. A-646-756/2018, 14.03.2018; Supreme Administrative Court of Lithuania decision No. A-196-756/2018, 14.03.2018.

Kaunas remand prison, being the most newly reconstructed and reopened in 2004,⁴⁷ has the best material conditions out of the three adult remand prisons in Lithuania. It is also in the best situation where occupancy rates are concerned: it can officially hold up to 336 inmates,⁴⁸ and the average number of detainees has been slowly, but steadily decreasing – 285 in 2015 (85%), 243 in 2016 (72%), and 237 in 2017 (71%).⁴⁹

Accordingly, the courts find significantly less violations of detainees' rights in Kaunas remand prison. Some violations are established occasionally, these mostly concern separate instances of lack of space and overcrowding in individual cells.⁵⁰

However, all three remand prisons share one major issue – an impoverished regime for pre-trial detainees with almost a complete lack of out-of-cell activities. Detainees in Lukiškės,⁵¹ Kaunas⁵² and Šiauliai⁵³ remand prisons spend up to 22-23 hours locked in their cells, with the daily one-hour walk outside being the only out-of-cell activity.

Refusals to execute EAWs

Given the material conditions and regime problems described above, it is unsurprising that there have been instances where other States refused to execute EAWs issued by Lithuania, citing risk of detention related violations as the reason.

In early 2013 the High Court of Justice in Belfast refused to surrender a man, Liam Campbell, who would have faced weapon smuggling charges in Lithuania.⁵⁴ The Court found that extraditing Mr Campbell to Lithuania would expose him to a real risk of inhuman and degrading treatment, due to overcrowding and unsanitary conditions in Lukiškės remand prison.

Soon after, in March 2013, in another case, the Lithuanian Ministry of Justice issued an assurance that "all detainees surrendered from the United Kingdom will be held in Kaunas remand prison during

⁴⁷ History of Kaunas remand prison, Prison Department, available at: http://www.kaldep.lt/lt/kaunoti/veikla-mpn_255_456/istorija_238_256_457.html

⁴⁸ Prison Department Director General order No. V-124, 11 May 2010, point 1.1.3, available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.1B50EF77CBF9/hOrqXWHeeO>

⁴⁹ Prison Department annual report for daily costs of keeping detainees, 2015, 2016 and 2017, available at: http://www.kalejimudepartamentas.lt/lt/kalejimu-departamentas/administracine_informacija/ataskaitos/metines.html

⁵⁰ E.g., Supreme Administrative Court of Lithuania decision No. A-3733-502/2017, 21.12.2017; Supreme Administrative Court of Lithuania decision No. A-2134-520/2017, 06.12.2017; Supreme Administrative Court of Lithuania decision No. A-642-143/2017, 21.02.2017.

⁵¹ CPT report on Lithuania, 2018, page 29, available at: <https://rm.coe.int/pdf/16807843ca>

⁵² *Ibid.*

⁵³ CPT report on Lithuania, 2014, page 25, available at: <https://rm.coe.int/1680697367>

⁵⁴ „Liam Campbell: Lithuania extradition will not go ahead rules judge“, BBC, 16 January 2013, available at: <http://www.bbc.com/news/uk-northern-ireland-21043433>

the entire period of pre-trial investigation and case hearing in the court.”⁵⁵ A move which both raised questions about discriminatory treatment of “domestic” detainees, and could be seen as a tacit acknowledgment that conditions in at least 2 Lithuanian remand prisons violate human rights.

While this assurance led to persons being surrendered to Lithuania from the United Kingdom once more, extradition was refused from other states. In August 2014 Denmark refused to execute an EAW for a Danish citizen wanted in Lithuania on rape charges.⁵⁶ In July 2017 the Constitutional Court of Malta ruled that extraditing a Maltese national to Lithuania, where he would face fraud charges, would breach his fundamental rights.⁵⁷ In both cases prison conditions in violation of human rights requirements were cited as the chief reason for refusal.

In May 2016, following the Court of Justice of the EU decision in the Aranyosi and Căldăraru cases,⁵⁸ the Ministry of Justice revoked the 2013 assurance that persons surrendered from the United Kingdom will be kept in Kaunas remand prison.⁵⁹ In addition to the developments in the Court of Justice case-law, the decrease of the numbers of detainees in Lithuania between 2013 and 2016, and accordingly reduced risk of overcrowding, were also cited as a reason for revoking the assurance.

In early 2018, in another case concerning a Lithuanian national residing in the United Kingdom and wanted under an EAW a similar assurance was again issued. In this instance the assurance was issued by the Prosecutor General’s Office.⁶⁰ However, unlike the previous assurance, this one was issued specifically for the one suspect in question, and stated that if surrendered and placed in detention, he will be held in Kaunas remand prison for the duration of the pre-trial investigation. This again can be seen as recognition by the national authorities that the risk of human rights violations in 2 of the three adult remand prisons in Lithuania is very real.

Case-file review results and good practices

In all of the cases analysed during the case-file review, persons surrendered under the EAW were, at least initially, placed in pre-trial detention pending trial. The briefest detention lasted for 8 days, the person was then released from pre-trial detention by prosecutor’s decision (and later acquitted

⁵⁵ Ministry of Justice note to the Prosecutor General’s Office, No. (L.39)7R-2058, 20 March 2013

⁵⁶ “Lukiškės jau ėmė kelti siaubą ir Danijoje” (“Lukiškės starts raising horror in Denmark too”), Irytas.lt, 22 August 2014, available at: <https://lietuovosdiena.lrytas.lt/aktualijos/lukiskes-jau-eme-kelti-siauba-ir-danijoje.htm>

⁵⁷ „Constitutional Court orders immediate release of Maltese man fighting extradition to Lithuania”, The Malta Independent, 18 July 2017, <http://www.independent.com.mt/articles/2017-07-18/local-news/Constitutional-Court-orders-immediate-release-of-Maltese-man-fighting-extradition-to-Lithuania-6736176758>

⁵⁸ Court of Justice of the European Union, 5 April 2016 judgment in joined Cases C-404/15 and C-659/15 PPU, available at: <http://curia.europa.eu/juris/liste.jsf?num=C-404/15>

⁵⁹ Prosecutor General’s Office note, No. 14.2.-2837, 31 May 2016

⁶⁰ Prosecutor General’s Office note, No. 14.2.-454, 29 January 2018

in court). The longest detention of a person following surrender lasted almost 2 and a half years, before the person was sentenced by the court.

The average length of pre-trial detention in analysed cases, before provisional release or court decision, was approx. 6 months (median – 5 months). The average length of detention before trial was approx. 3 months (median – 2.5 months). Out of the 20 cases reviewed, provisional release from detention was ordered a total of 4 times: 3 times during the pre-trial investigation, and once when the case was being considered by the court. These results indicated that there is a good chance that the person will spend all of the period from their surrender to the court decision, in pre-trial detention.

However, there are good practices as well. One example is a case monitored in 2017, in the course of research for this report. The case concerns a Belarussian businessman charged with embezzlement in Lithuania. While his family lived in Lithuania, he himself worked and spent most of his time in Russia, and only returned to Lithuania occasionally for relatively brief periods of time.

Lithuanian authorities issued an EAW for him, and he was arrested in Estonia. However, after he was surrendered to Lithuania, instead of being placed in pre-trial detention, he was allowed to stay in his daughter’s apartment under house arrest, for the duration of the pre-trial investigation. He did not violate the conditions of the house arrest, however, this measure was still problematic, both because it precluded him from going back to his home in Russia and working, and because the term of his visa was running out.

Once the trial started, the defence asked for bail, so the accused could go back to his life and work in Russia, undertaking to return to Lithuania for the court hearings. The prosecutor, in a show of trust, did not protest that, and a financial bail was set.

This worked out smoothly with the accused dutifully returning to court hearings every several weeks, and the proceedings going ahead as scheduled and without additional delays. This example shows that despite the tendencies of using detention, arrangements that do not impose overwhelming restrictions on the person and still allow the proceedings to continue without hindrance are possible in EAW cases, and do happen in practice.

Lithuania does not suffer from major deficiencies in the right to a fair trial which could be said to render the trials generally unfair. Indeed, over the last 6 years only a single European Court Human Rights judgment found that Lithuania has violated the right to a fair trial in criminal proceedings, by failing to duly notify a defendant about a hearing held before an appellate court.⁶¹ Nonetheless, some particular problems with suspects' and defendants' rights do exist, including in areas covered by EU procedural rights directive.

EU procedural rights directives

Lithuania has formally transposed the first three EU procedural rights directives – on the right to interpretation and translation,⁶² on the right to information,⁶³ and on the right to access a lawyer⁶⁴ in criminal proceedings. The three later directives – on presumption of innocence,⁶⁵ on procedural safeguards for children,⁶⁶ and on legal aid⁶⁷ – have not yet been formally transposed. It is worth noting that at the time of this drafting report, the transposition term, 1 April 2018, for the Directive on presumption of innocence has already run out.

Even though the first three EU procedural rights directives have been formally transposed, there are certain problems in practice when implementing the rights covered by each respective Directive.

Where interpretation and translation in criminal proceedings are concerned, the major issue is quality of these services. Lithuania has no official register for qualified interpreters and translators, and the Code of Criminal Procedure is somewhat lax on who can be an interpreter or translator in criminal proceedings: "[a]n interpreter (translator) is a person who knows the languages needed for interpretation (translation) or understands sign language [...]"⁶⁸

⁶¹ European Court of Human Rights, *Buterlevičiūtė v. Lithuania*, Application no. 42139/08, 12 January 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-159885>

⁶² Directive 2010/64/EU of the European Parliament and of the Council of 22 May 2012 on the right to interpretation and translation in criminal proceedings

⁶³ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

⁶⁴ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the 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

⁶⁵ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

⁶⁶ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

⁶⁷ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

⁶⁸ Code of Criminal Procedure, art. 43.

When implementing the Directive on right to interpretation and translation, no register of qualified interpreters and translators was established, and no other means to attest and oversee the qualification of these service providers were implemented. Unsurprisingly, issues with quality of interpretation and translation in the proceedings are common.⁶⁹ This is especially true when interpretation and translation is required for rarer languages, not often spoken in Lithuania.

Most of provisions from the Directive on right to information have been transposed to Lithuanian law. However, there are issues with how these provisions are applied in practice. An essential part of the Directive is the letter of rights – a written list and description of suspects' and accused rights, which must be served to every suspect or accused on arrest. Lithuanian law expands this obligation – the letter of rights has to be served to every suspect, not just arrested ones. However, there are problems with the letter itself. It uses complex and legal language to describe suspect's rights, making it difficult to understand to anyone without a legal background.⁷⁰ This is in contravention of the Directive requirement for the letter to be drafted in "simple and accessible language".⁷¹

Another issue is access to case-file during the pre-trial investigation. The Code of Criminal Procedure establishes the defence right to access the case-file in the course of the pre-trial investigation, but also gives broad powers to the prosecutor to restrict this right: access can be refused if "the prosecutor believes that such access could hinder the success of the investigation."⁷² This ground is reportedly abused, with restriction of access becoming the rule rather than the exception it was intended to be.⁷³

The right to access a lawyer from the moment of "apprehension or first interrogation" is enshrined in Lithuania's Constitution.⁷⁴ However, due to this wording disagreements would arise in practice whether this encompasses a right of arrested person to privately meet a lawyer before the first investigation.⁷⁵ This has been cleared up with the transposition of the Directive on the right to access a lawyer, specifically the provision that establishes the access to a lawyer encompasses access before the suspected person is questioned.⁷⁶ Also, as a constitutional right, the right to access a lawyer cannot be restricted under the Code of Criminal Procedure, unlike under the Directive. Thus, in this instance Lithuanian law offers a wider protection of this right than the Directive.

⁶⁹ "Discussion on the Implementation of EU Procedural Rights Directives", Human Rights Monitoring Institute, 18 August 2014, <http://www.liberties.eu/lt/news/diskusija-del-direktyvu-igyvendinim> (accessed 26 April 2018)

⁷⁰ "Letter of Rights in Lithuania: regulation and practice", Human Rights Monitoring Institute, 2017, <https://hrmi.lt/wp-content/uploads/2017/06/Letter-of-rights-EN-2017.pdf> (accessed 26 April 2018)

⁷¹ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, art. 4(4)

⁷² Code of Criminal Procedure, art. 181(1)

⁷³ "The right to interpretation and translation and the right to information in criminal proceedings in the EU", prof. dr. Lyra Jakuleviciene, report to FRA, May 2015, http://fra.europa.eu/sites/default/files/fra_uploads/rights-suspected-persons-country_lt.pdf

⁷⁴ The Constitution of the Republic of Lithuania, art. 31, available at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>

⁷⁵ "Accessible justice: the right to a lawyer and the right to legal aid in Lithuania", Human Rights Monitoring Institute, 2017, available at: <https://hrmi.lt/wp-content/uploads/2017/11/Accessible-justice.pdf>

⁷⁶ Code of Criminal Procedure, art. 48(1)(2)

However, in practice more than a half of suspects waive their right to a lawyer during the first questioning.⁷⁷ Practitioners attribute this to suspected persons not being aware of the gravity of their situation, believing that the process will go by quicker without involving a lawyer, and worrying that they will be unable to afford a lawyer. Some criminal defence lawyers also express concerns that pressure exerted by investigating officers may also contribute to persons deciding to waive their right to a lawyer.⁷⁸

Lithuania has considerable state-funded legal aid coverage, with legal aid being offered to persons who are below a government-set income and property line, and on an extensive list of mandatory grounds, such as the suspect being a minor, suffering from physical or psychological disabilities, unable to speak Lithuanian, being held in pre-trial detention and other.⁷⁹

However, the quality of the services provided by legal aid lawyers is a major problem. They are often criticised for providing significantly poorer service than their hired counterparts, and taking a very passive role during the proceedings, often playing the role of a “token” lawyer, which in turn offers little help or in some instances is even detrimental to the position of the defendant.⁸⁰ There is also no effective legal aid quality assurance mechanism in place. The assessment of the services’ quality is mostly triggered by individual complaints. The complainants, mostly being lay persons dependent on legal aid, often lack legal experience and financial means to collect and present any evidence of the lawyer’s misconduct themselves.

Procedural rights post-surrender

Neither the case-file review results, nor the monitored cases indicate that persons surrendered to Lithuania receive any special or different treatment than other defendants in criminal proceedings where their procedural rights are concerned. A defence lawyer participated in all analysed cases, unless waived by the defendant, and an interpreter was present where necessary. However, due to particularities of the EAW procedure, persons being surrendered tend to especially rely on some procedural rights, making them more vulnerable to the deficiencies of these rights practical application.

⁷⁷ “Accessible justice: the right to a lawyer and the right to legal aid in Lithuania”, Human Rights Monitoring Institute, 2017, available at: <https://hrmi.lt/wp-content/uploads/2017/11/Accessible-justice.pdf>

⁷⁸ *Ibid.*

⁷⁹ Code of Criminal Procedure, art. 51

⁸⁰ “Accessible justice: the right to a lawyer and the right to legal aid in Lithuania”, Human Rights Monitoring Institute, 2017, available at: <https://hrmi.lt/wp-content/uploads/2017/11/Accessible-justice.pdf>

Foreign nationals surrendered to Lithuania will rely on translation services, and the lack of quality assurance, as discussed above, might be a problem. But the foremost example of this vulnerability is legal aid. The issue of EAWs for the purpose of criminal prosecution in Lithuania is tied to a preliminary court ruling, ordering pre-trial detention. As pre-trial detention is a ground for mandatory defence lawyer participation, persons surrendered for the purposes of criminal prosecution will initially be appointed a legal aid lawyer.

It is very difficult for a person who is being surrendered to another state and held in custody to secure a privately hired lawyer, even if the person in question can afford one. If not receiving outside help, such as from family or friends, the person essentially has two options two at the initial stage after being surrendered: rely on the legal aid lawyer or waive the lawyer and attempt to hire one at a later stage. Indeed, in the 3/4 of all cases analysed in the case-file review, suspected persons relied on legal aid through most of the proceedings.

This leaves persons surrendered to Lithuania particularly vulnerable to poor legal services provided by state-appointed lawyers, taking into account the problems with legal aid discussed above. The situation is further complicated by the fact that the legal aid lawyer may in some cases change one or more times at the initial stage after surrender. The suspected person must be questioned and brought before court to rule on pre-trial detention within 48 hours of surrender. Due to difficulties in securing a legal aid lawyer in this relatively short term, a temporary lawyer for these initial procedural actions may be appointed. This has occurred in several of the cases analysed in the case-file review.

In such instances the lawyer comes in with very limited time to prepare and knowing that they will have no further involvement in the case later on. This further hurts the quality of the legal services provided, and in turn the defence of the surrendered person.

7.

Identifying and Monitoring Post-Surrender Treatment

In the course of conducting this research the Human rights Monitoring Institute faced a great challenge in identifying “live” EAW cases, i.e. cases that are still being heard by the courts post-surrender. In the end we were unable to overcome this challenge, as we have only managed to identify two cases.

In seeking to find post-surrender EAW cases we contacted approx. 30 criminal defence lawyers we have had worked or had contact with in the past, asking to relay any information about EAW cases they or their colleagues might be working on. Concurrently, our partner organisation, Fair Trials, asked their network of EU criminal defence lawyers, LEAP,⁸¹ to inform about any cases involving EAWs for surrender to Lithuania they might be working on. This approach has had a very limited success, with only one Lithuanian lawyer notifying us about his client who was in trial post-surrender to Lithuania.

These results are not particularly surprising, as such approach relies on the slight chance that a specific lawyer is working on an EAW case at the moment of such request or soon after. Also only a limited number of defence lawyers can be engaged, as it is reasonable to expect only lawyers you have had previous contact with will respond to such request.

Another approach is to request information from institutions that have direct involvement in post-surrender proceedings. However, the main difficulty with this is that it relies solely on the good will of the institution to cooperate. We attempted approaching the State Guaranteed Legal Aid Service, as the institution responsible for assigning legal-aid lawyers to cases, including those of persons surrendered under an EAW. Sadly we found the good will lacking and received no information about post-surrender cases.

Essentially there is no system in place in Lithuania dedicated monitoring post-surrender treatment of persons, so as to establish whether their fair trial rights are respected, or where they are kept if detained during the pre-trial investigation and trial, and if convicted. This also means, from the perspective of foreign courts deciding whether to surrender to Lithuania, that there is no system in place to ascertain if assurances issued by Lithuania prior-surrender will be respected.

As things stand now, the best chance to identify ongoing post-surrender EAW cases is to have vast network of cooperative contacts and a great deal of luck. Indeed, we learned about one of the two cases we ended up monitoring when a person incidentally called our office and asked to attend his court hearing, as he believed his procedural rights were being violated after being surrendered under an EAW.

⁸¹ Legal Experts Advisory Panel, <https://www.fairtrials.org/fair-trials-defenders/legal-experts/> (accessed 26 April 2018)

6.

Conclusions

1. Under Lithuanian law, authorities, when issuing EAWs, must observe the principle of proportionality, and consider the gravity and scope of the crime, and the personality of the requested person.
2. Under national case-law, the costs related to transporting a person from a foreign State to Lithuania for the purpose of criminal prosecution must be covered by that person if that the person absconded after committing the offence.
3. Case-file review indicates a number of recurring problems with the practice of issuing EAWs: issuing EAWs in ill-prepared, evidence-lacking cases that fail to result in conviction, failing to exhaust other means of ensuring the person's participation in proceedings before resorting to EAWs, and issuing EAWs where potential sentences do not warrant their use.
4. A person surrendered to Lithuania for criminal prosecution is very likely to be placed in pre-trial detention. That is likely to lead to a violation of the person's rights, as conditions in 2 out of Lithuania's 3 remand prisons are routinely found to violate detainees' rights.
5. There have been several precedents of foreign States refusing to execute EAWs issued by Lithuanian authorities due to risk of detention conditions-related violation of the requested person's rights.
6. In at least two instances Lithuanian authorities have issued assurances that surrendered persons, if detained, will be kept in the remand prison with best material conditions, in Kaunas.
7. Good practices, contrary to the tendency to detain, exist as well. In one example an accused Belarussian national was released on bail, allowing him to go back to living and working in Russia, while still dutifully returning every several weeks to attend court hearings.
8. Persons surrendered under EAWs are likely to have strong reliance on procedural rights such as interpretation and translation, and legal aid, which suffer from quality issues in Lithuania. Accordingly their defence may be particularly hurt by these issues.
9. There is no system of monitoring post-surrender treatment of persons in Lithuania, making identifying post-surrender cases and ascertaining whether assurances issued by Lithuania to other States prior-surrender will be respected very difficult.

