First Periodic Country Report: Finland

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Introduction

Framework Decision of the Council of the European Union (2002/584/YOS) has been internally enforced in Finland by the Act on Surrender Procedures between Finland and Other Member States of the European Union (1286/2003, the EU Surrender Act) (Fredman et al 2020, p. 237 - 250 and Melander 2015, p. 265 – 290.)

The Supreme Court (SC) has given several precedents on questions related to the interpretation and implementation of the Framework Decision (FD) rules in European Arrest Warrant (EAW) cases involving Finland. Precedents are decisions given by the SC on questions that the law has left unclear to help interpret and apply the law similarly in future cases. These precedents have, firstly, concerned how national legislation should be interpreted in order to be in keeping with the objective of the Framework Decision. By the FD objective, the SC has primarily meant the efficient verification and sanctioning of criminal liability (SC 2021:29[1]). Secondly, the SC has considered the question of whether the surrender of the suspect or the convicted person breaches the prohibition of subjecting the surrendered person to inhumane or derogatory treatment (SC 2021:24[2], SC 2020:25[3], SC 2017:11[4]). The question has, in particular, concerned the assessment of prison conditions in the state requesting the surrender. Thirdly, the precedents have taken a stand on whether surrender is unreasonably based on the close connections that the person requested for surrender has to Finland (SC 2017:11, SC 2015:99[5], SC 2012:62[6], SC 2011:8[7]). Fourthly, the question has been about whether the charges pressed against the person surrendered to Finland coincide with Finland's request of surrender (SC 2017:30[8]). That is to say the SC has taken a stand on whether the charges concern an offence other than that for which the other state has surrendered the suspect to Finland.

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[1] Supreme Court of Finland, judgment of 10.5.2021, ECLI:FI:KKO:2021:29

[2] Supreme Court of Finland, judgment of 16.4.2021, ECLI:FI:KKO:2021:24

[3] Supreme Court of Finland, judgment of 17.3.2020, ECLI:FI:KKO:2020:25

[4] Supreme Court of Finland, judgment of 15.3.2017, ECLI:FI:KKO:2017:11

[5] Supreme Court of Finland, judgment of 22.12.2015, ECLI:FI:KKO:2015:99

[6] Supreme Court of Finland, judgment of 21.6.2012, ECLI:FI:KKO:2012:62

[7] Supreme Court of Finland, judgment of 26.1.2011, ECLI:FI:KKO:2011:8

[8] Supreme Court of Finland, judgment of 24.5.2017, ECLI:FI:KKO:2017:30

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Section I – Issuing of EAWs: rule of law and fundamental rights considerations

Subsection I.1 – Qualification and Independence of Finland's Issuing Judicial Authorities, and effective judicial protection in the issuing phase

The proceedings of surrender according to the EU Surrender Act are as follows. The Helsinki district court decides on surrender and continuation of keeping in custody (EU Surrender Act s 11). The prosecutor presents the request for surrender. In order to secure surrender, a police official with the power of arrest may decide to take a requested person into custody. The documents pertaining to the taking into custody shall immediately be submitted to the competent prosecutor. If the prosecutor decides to continue to keep the person in custody, he or she shall inform the competent district court of this (EU Surrender Act s 17(1)). After being informed that a requested person has been taken into custody, the district court shall, without delay, take the matter concerning the continuation of the keeping in custody up for consideration in compliance with the provisions of the Coercive Measures Act (896/2011) on the consideration of a request for remand, as appropriate. The prosecutor shall present the claim for the continuation of the keeping in custody at the district court. The court shall decide that the decision on taking into custody remain in effect if there is a reason to suspect that the execution of the request for apprehension and surrender would otherwise be endangered (EU Surrender Act s 18). A person taken into custody may, regardless of any time limit, file a complaint with the Supreme Court against a district court decision on the continuation of the keeping in custody (EU Surrender Act s 19).

With this procedure it has been guaranteed that surrender cases follow the criteria of a fair trial. An independent court decides on surrender based on prosecutor's request, on appropriate preparation and on an oral hearing. A complaint with the Supreme Court against the district court decision shall be made without a time limit. This procedure meets the demands of EU law and human rights law without the slightest doubt.

Instead of taking a requested person into custody, a travel ban may be imposed on him or her. The provisions of the Coercive Measures Act on the travel ban and the provisions of the EU Surrender Act on taking into custody apply to the travel ban, as appropriate (EU Surrender Act s 17(3)). In the case SC 2021:29, the person requested to be surrendered had with the district court's order been banned from travelling before processing the request for surrender. The SC, however, did not consider the travel ban necessary to secure the surrender and rejected the prosecutor's request on this part.

The person requested for surrender must be informed of his or her rights immediately after being apprehended. He or she has the right to be assisted by a legal counsel. A defence counsel shall be appointed for a requested person if the person so requests. The court orders a reasonable remuneration to be paid to the defence counsel from state funds, which shall be borne by the State. The provisions of chapter 2 of the Criminal Procedure Act (689/1997) apply, as appropriate, to the appointment of a defence counsel by virtue of office and to the defence counsel also in all other respects (EU Surrender Act s 20). The right for defence of the requested person is comprehensively organised in Finland.

Subsection I.2 - The speciality principle and its implementation in Finland

In the case SC 2017:30, P was surrendered from Estonia to Finland based on an EAW under suspicion of three aggravated thefts. According to the description of the criminal act made in the arrest warrant, P had broken into stores in Finland and stolen goods. However, in Finland, P had been charged with aiding and abetting aggravated thefts with a description of the criminal act that was not included in the arrest warrant. The question in this case was whether P had been charged with some other act than the act in the surrender request. Second, the question was whether the money laundering charges against P could be questioned in the same case based on the consent given by Estonia, whereas P's consent of being imprisoned had been given only for the above-mentioned aiding and abetting crimes. According to both the district court and the Court of Appeal, there was no obstacle to investigate the charges. In this case, the offence of aiding and abetting crimes was not included in the description of the criminal act included in the arrest warrant (which referred instead to three aggravated thefts) upon which the decision on surrender was based. Thus, the criminal charges in Finland differed factually from the request for surrender. Also, the norms applied to the acts and the legal characterisation of the acts had changed substantially. The SC viewed that the charges of aiding and abetting could not be considered because Estonia had not given its consent to question those. Instead, the SC viewed that the money laundering charges could be considered because the Estonian court had given its consent to do so. The freedom of the surrendered person had not been restricted on grounds of aggravated money laundering before the consent was given, although P had been restricted of freedom for another offence. This possibility to institute criminal proceedings for offences that are different from the one described in the EASW was also discussed similar in cases SC 2021:29 and SC 2008:118[9].

In the case SC 2021:29, Estonia had requested a person convicted in Estonia to be surrendered to Estonia to serve his custodial sentence of four months. The SC accepted the request for surrender because the custodial sentence could no longer be enforced in Finland due to being time-barred, according to the Criminal Code of Finland (39/1889). However, the sentence could be enforced in Estonia according to the Estonian judicial authorities' notice. Thus, in this case it was accepted that the prerequisites of enforcement are settled in Finland according to the laws of Finland and the prerequisites of enforcement in another state are settled according to the laws of the other state. The SC emphasised that the objective of the Framework Decision was to create a simpler and more efficient system based on mutual recognition for surrendering convicted or suspected people between EU member states. This objective leads to execution of the EAW being the main rule and rejecting the enforcement being the exception, which should be interpreted narrowly. The Court of Justice of the European Union (CJEU) has viewed that the obligation to guarantee full efficiency of the Framework Decision generates an obligation for the member state of execution to surrender the person or, in case the execution of the EAW is rejected, an obligation to guarantee that the sentence is enforced according to the national legislation. To leave a sentence not enforced is against the objective sought by the Framework Decision (Poplawski II, 82, 86, 88[10] and 106 and Sut 47[11]).

In the case SC 2008:118, L and P had been surrendered to Finland based on an EAW. They were suspected of an aggravated drug offence, which included importing a large amount of amphetamine illegally to the country.

[9] Supreme Court of Finland, judgment of 23.12.2008, ECLI:FI:KKO:2008:118

[10] CJEU, judgment of 24.6.2019, Poplawski II, C-573/17, EU:C:2019:530

[11] CJEU, judgment of 13.12.2018, Sut, C-514/17, EU:C:2018:1016

They were then charged with an aggravated drug offence which included importing a large amount of hashish. The description of the criminal act charged differed from the description of the criminal act included in the arrest warrant, in particular with regard to the time of commission, as well as to the crime scene. The question was whether L and P were charged with another act than the act on the decision of surrender. The SC viewed that the essential factors of the charges are the same as the ones based on which L and P were surrendered to Finland and they did not change the nature of the crime, nor did they form mandatory or discretionary grounds for refusal of the sections 5 and 6 of the EU Surrender Act.

Section II – The execution of EAWs: national judicial authorities as monitors of trust

Subsection II.1 – Detention Conditions in the Issuing Member State (risk of inhumane or degrading treatment)

The cases in this section concern the evaluation, by Finnish executing authorities, of prison conditions in the issuing member state. In cases where doubts exist regarding such conditions, the court requests more information from the state requesting the surrender. This is what the Supreme Court recently did in case SC 2021:24. In such case, the defence had the possibility to present information on the risk of being subject to inhumane and derogatory treatment. In the case SC 2020:25, the SC refused to surrender the person based on the verified existence of this risk. The SC cases are well in line with the criteria presented by the CJEU.

In the case SC 2017:11, Bulgarian citizen A had been sentenced to imprisonment by the Bulgarian court. In Finland, the prosecutor had demanded the Helsinki district court to surrender A to Bulgaria for the enforcement of imprisonment sentence, based on an EAW issued by Bulgarian authorities. The basis of the European arrest warrant was the national arrest warrant adopted by the court of first instance in Sofia. A opposed the surrender and based his opposition, inter alia, on the argument that the conditions in Bulgarian prisons would violate his human rights. Following such opposition, the SC requested the prosecutor to deliver a detailed description of the conditions in the Bulgarian prison in which A would serve his sentence for the SC's use. The SC considered this description to be based on the objective, reliable, exact, and appropriately updated facts, and to provide the kind of information about Bulgarian prison conditions that was presumed for applying the EU Surrender Act. From such information, it resulted that prison conditions had been improved and will be improved further to correspond the European demands. It also resulted that Bulgarian authorities were undertaking appropriate measures to improve the conditions. Based on the description, there were no mandatory grounds for refusal. The fact that A had committed two crimes in Finland was as well taken into consideration. Additionally, A had a possibility to request a new hearing in Bulgarian court due to the previous judgment being rendered in his absence. With due consideration of the matters shown, the SC viewed that there were also no discretionary grounds for refusal. In this case, case-specific valuation, and the starting point of every EU member state ensuring the realisation of human rights in their prisons were emphasised. There is an absolute obstacle for surrender only when there is a concrete danger of the convicted person being subject to inhumane or derogatory treatment in the prison of the state requesting the surrender.

In the case of SC 2020:25, it was considered on what premises the prison conditions of the other state are regarded inadequate enough that surrendering the convicted person to imprisonment there would breach the prohibition of inhumane treatment. The prosecutor had asked the Helsinki district court to surrender Romanian national A to Romania for the enforcement of a custodial sentence based on the EAW. A had been sentenced to four years of imprisonment in Romania, which was fully unserved. The district court had refused the surrender based on the risk of A being placed in a prison that does not meet the standard of prisons set in the rulings of the European Court of Human Rights (ECHR) (*Muršić v. Croatia*[12]). This led the SC to consider that

[12] *Muršić v. Croatia*, no. 7334/13, ECHR 2016

A was in danger of being subject to inhumane treatment, in line with the CJEU case law (Dorobantu[13] and Generalstaatsanwaltschaft[14]). Based on the report produced by Romanian authorities, the SC also viewed that the prison conditions created strong risks of violation of human rights according to the ECHR rulings. The assumption of the existence of such risk was not refuted by the fact that, according to the report, the doors of the prison cells were left open during the days. The surrender of A was refused on the basis of section 5(1)(6) of the EU Surrender Act, according to which surrender shall be refused if there are reasonable grounds to suspect that the requested person is in danger of being subject to capital punishment, torture or other treatment violating human dignity, or to persecution threatening his or her life or liberty or to other persecution because of his or her origin, membership in a particular social group, religion, belief or political opinion, or there are reasonable grounds to assume that the person would be subjected to a violation of his or her human rights or constitutional legal protection, freedom of expression, or freedom of association. In this case, the report on prison conditions in Romania was sufficient to conclude that the conditions did not fully meet the standards to be satisfied in order to execute the surrender of a convicted person.

The SC came to a contrary result in its most recent precedent SC 2021:24. Based on an EAW, the prosecutor had requested Romanian citizen A to be surrendered to Romania for the enforcement of imprisonment. The prison conditions were described in the report given by Romanian authorities, and according to a separate assurance, A was to be given a 3 m^2 personal space in prisons he was likely to be placed. The SC viewed that, based on the report from the Romanian authorities on the prison conditions and the assurance, it could be reviewed that A was not going to be subject to inhumane or derogatory treatment. There were no grounds for refusal of A's surrender in the section 5(1)(6) of the EU Surrender Act.

The SC repeatedly emphasised that in cases concerning surrender, the norms should be interpreted in a way that EU law is taken into consideration in full. There have been no issues with applying the EAW into the Finnish system of criminal law and the law of criminal procedure.

Subsection II.2 – Verification of dual criminality and qualification of a crime as 'list offence'

In its cases, the SC considers all the circumstances standing for and against the surrender. By doing so, the SC has also considered the conditions for applying discretionary grounds for refusal, which have been scrutinized carefully in all the relevant cases.

The prerequisite for surrender in case of offences falling outside the list of 32 crimes, or which are not punished in the country of issuing with a custodial sentence or detention order for a maximum of at least three years, is principally the verification of the of double criminality requirement. Surrender for the purpose of enforcing a custodial sentence also requires the verification that the sanction imposed is a custodial sentence of at least four months. For the 32 crimes listed in the Framework Decision (section 2(2)) and in the national law (section 2 of the EU Surrender Act), '"the qualities leading to surrender" are determined only according to the law of the state issuing the EAW. The authorities of the enforcing state (surrendering state) are prohibited from testing the criminal qualification of act in the light of their national law. Considerations related to the liability

[13] CJEU, judgment of 15.10.2019, Dorobantu, C-128/18, EU:C:2019:857

[14] CJEU, judgment of 25.7.2018, Generalstaatsanwaltschaft, C-220/18 PPU, EU:C:2018:589

to punishment, or to the severity of the possible sentence do not fall under the responsibility of the executing authorities in the surrendering state. The court in the executing country does not question the legislation of the state issuing the EAW, but trusts that the EAW has been issued in relation to an act mentioned in the said list, and that it constitutes an offence for which the punishment is a custodial sentence of at least three years.

According to the EU Surrender Act, however, the court can consider the case when there is a doubt of the validity of the notice given by the requesting state. In that case, the court can only consider whether the act, on which the request is based, constitutes an offence for which the punishment is a custodial sentence of at least three years. Instead, it is more difficult for executing authorities to consider whether an act belongs to one of the so-called list offences because their definition are partly broad and open to various interpretations.

In practice a court can only intervene in situations where the offence described in the EAW is clearly not equivalent to any of the criminal acts listed. Offences listed in the Framework Decision (section 2(2)) are nearly always considered an offence also in Finland. The verification of which offences of the Criminal Code of Finland are equivalent to the acts or offences in the EAW FD list only matters when Finnish authorities themselves present requests for surrender to other member states.

Detention pending surrender and temporary surrender

The conditions that justify the custody of a requested person pending surrender were discussed in case SC 2012:62. With district court's final judgment, A had been ordered to be surrendered to Estonia to serve a custodial sentence there. However, the surrender could only be enforced when a final decision on the charges against A in Finland had been given, and the sentence had been served. The district court's decision of surrender had not specifically ordered A, who was then in pretrial detention, to be taken into custody. According to his sentence plan, which is an individual plan concerning the serving of the term of sentence, release, and conditional release (Imprisonment Act (767/2005) c 4 s 6(1)), A had started to serve his custodial sentence that he was sentenced to, and the prosecutor had only later decided to take A into custody.

The SC viewed that the restrictions imposed upon A were enough to keep him from absconding. Taking into consideration the rather long postponement period of the execution of the decision of surrender, keeping A in custody throughout the remaining postponement period could fairly be considered unreasonable and disproportioned from A's point of view. The SC viewed that taking a person into custody, which is the starting point set in the legislation, cannot usually be considered unreasonable considering, amongst other things, the short time limits of surrender matters. What is set in the EU Surrender Act section 17(2) about pretrial detention is followed by, for example, the provision according to which the person taken into custody cannot be placed in an open prison and that the person cannot be granted access to unsupervised exits, civil work, or supervised action or studying on the outside. The SC stated that even though keeping in custody is used to secure the surrender, it also involves the kind of interfering in the person's freedom that essential principles, such as principle of proportionality and the prohibition of unreasonable imprisonment, applied to using coercive means should be taken into consideration when using this measure. Based on the information authorities get from the person's offences, his personal qualities, and living conditions, the meaning of rights connected to a prisoner's status should be evaluated primarily relative to securing the enforcement of the surrender. However, it is also important to consider if the limitations of the enforcement of the sentence,

caused by keeping the person in custody, become disproportionate or unreasonable, as meant in Coercive Measures Act section 1(26)(a), considering the length of the sentence.

In this case, A had already been placed in an open prison and received exit permits from the prison. Thus, A could have tried to avoid the enforcement of the decision of surrender. With his behaviour, A had shown that keeping him in custody was not necessary. The SC viewed that due to the limitations regarding the prisoner's status were enough to prevent him from escaping and took into consideration the rather long postponement period (almost a year) of the enforcement of surrender. Keeping A in custody would be disproportionate and unreasonable. The SC reversed the district court's judgment in relation to keeping him in custody. The SC stated, too, that the decision did not prevent the prosecutor from deciding the case in a different way when the significant conditions change.

In the case SC 2012:87[15], the Helsinki district court had agreed to surrender A for prosecution measures to Sweden, but it had postponed the enforcement of the decision of surrender until final judgment had been given on A's pending criminal case in Finland and A had served his possible sentence. Furthermore, the district court had ordered A to be kept in custody until the decision of surrender had been enforced. The first question to be addressed by the SC was about the grounds in presence of which a person who is serving his sentence, and who is charged with a new offence in Finland, can be surrendered temporarily to another Nordic country to respond to the criminal charges there. The decision in this case would have been the same even if the request was made by another Member State. However, it must be stated that the risk of being subject to inhumane treatment is very unlikely if the state requesting the surrender is another Nordic country. In the Nordic countries the legal systems are very similar, which guarantee full realisation of human rights. A second question related to the grounds that justify keeping in custody the person wanted for surrender. Based on the facts presented in the case, the SC assessed that there was a danger worth considering that A might abscond to avoid the ongoing trials. According to the SC, the pros and cons of a temporary surrender had to be case-specifically considered as well as what conditions could be set to the requested state to minimise the risks of the surrender. The objective of the EU Surrender Act is to make the proceedings more flexible, and by doing so, to speed up the proceedings. Temporary surrender must be agreed to if the disadvantages of surrender are not stronger than the advantages of surrender. In the case in question, the risk of delaying the Finnish proceedings was minimal because the Swedish criminal case was already heard in the Appeal Court.

The case SC 2011:14[16] was about surrendering an Estonian citizen A from Finland to Estonia based on an EAW for prosecution measures and for enforcement of a custodial sentence in a situation in which A was serving his prison sentence in Finland. A had in this stage opposed the surrender because he wanted to serve the before mentioned sentence in Finland uninterrupted before being surrendered. The SC viewed that A could be surrendered to Estonia for prosecution measures based on the given EAW. The SC also viewed that it was possible to surrender A to Estonia for the enforcement of his custodial sentence mentioned in the arrest warrant because a decision of another kind could evidently be considered, according to the SC, to be against the objective of the Framework Decision on the EAW. According to the SC, however, surrendering A required the conditions of the surrender being met as per the EU Surrender Act section 49(2), which establishes that

[15] Supreme Court of Finland, judgment of 26.10.2012, ECLI:FI:KKO:2012:87

[16] Supreme Court of Finland, judgment of 14.2.2011, ECLI:FI:KKO:2011:14

the court may, instead of postponing the enforcement of a surrender decision, surrender the requested person temporarily to the requesting Member State. A person serving a sentence of imprisonment in Finland may be surrendered only for court proceedings pending in the requesting Member State. The time limit within which a temporarily surrendered person shall be returned to Finland and the other conditions for the temporary surrender shall be recorded in the district court decision. The decision shall also contain a statement that the requesting state is obliged to comply with the conditions set for the temporary surrender. The enforcement of a decision on temporary surrender may be commenced after the competent authority of the requesting state has declared in writing that it undertakes to comply with the conditions set by the district court.

Subsection II.3 Connections to Finland and Interpretation of discretionary grounds for refusal

In already mentioned case SC 2017:11, Bulgarian citizen A opposed his surrender to Bulgaria and had based his opposition, inter alia, on his personal and financial connections to Finland, which he no longer had to Bulgaria. A's financial connections to Finland were considered minor, his income had consisted mainly of social support. A had resided in Finland for over six years. A's partner and their child were both citizens of Estonia, and A was not the guardian of the child, nor had he ever practically lived with the child and the mother of the child in the same apartment. A's lingual and cultural connections were to Bulgaria. Relevant was also the fact that A's sentence in Bulgaria was rather short in terms of detention period. The fact that A had committed two crimes in Finland was as well taken into consideration. Additionally, A had a possibility to request a new hearing in Bulgarian court due to the previous judgment being rendered in his absence. With due consideration of the matters shown, the SC viewed that there were also no discretionary grounds for refusal.

In the case SC 2015:99, the prosecutor requested the Helsinki district court to surrender a national of Poland for prosecution measures from Finland to Ireland. In the district court, the person wanted for surrender, Am, opposed the surrender. A referred to the discretionary grounds for refusal of the EU Surrender Act section 6(5), according to which surrender may be refused, if the right to bring charges has become time-barred under Finnish law or a punishment can no longer be imposed or enforced and, under chapter 1 of the Criminal Code, Finnish law may be applied to the act. His opposition was therefore based on limitation of criminal proceedings of Finnish law. According to A's demand, Finnish law could be applied to the act because A had been permanently residing in Finland for several years and because of other conditions. According to the district court's judgment, however, there were no grounds for refusal of surrender. In this case, the question was about the interpretation of discretionary grounds for refusal of the EU Surrender Act (EU Surrender Act s 6(5)), especially about permanent residence and personal conditions but also about setting a condition concerning discretionary return to Finland (EU Surrender Act s 8(2)). When considering the discretionary grounds for refusal, the SC resorted to legislative materials of the EU Surrender Act. The legislative materials stated that the purpose of the legal provision is to enable refusal of surrender in situations in which the request is based on an outdated act according to Finnish law. According to the legislative materials, refusal would be justified in situations in which Finland was closely connected to the offence. If Finland has no special interest in the matter, there would be no reason to refuse the surrender. The severity of the act could also be taken into consideration as well as how long ago the right to institute criminal proceedings has been limited. The SC viewed that in this case the severity of the offences or the limitations of the proceedings were not grounds for or against the surrender. Because the offence had no connection to Finland nor did the possible interrupting the limitation act had any meaning to the result, the SC viewed that surrender could not be refused based on the ground for refusal in question.

In the case SC 2011:8, the SC viewed that when applying grounds for refusal based on permanent residence or staying, the wording of the EU Surrender Act, legislative materials, and national legal practice as well as the Framework Decision of the European arrest warrant, its objective, and the legal practice of the CJEU concerning the matter should be taken into consideration. The SC based its ruling mainly on the CJEU Kozlowski[17] case, in which the before mentioned concepts and their evaluation have been defined. The SC based its view on the consistent interpretation of the concepts in the EU, which is also the natural starting point for EU law adapted by the CJEU in the Kozlowski case. The wording of the grounds for refusal of the EU Surrender Act differs from the wording of the equivalent grounds for refusal of the Framework Decision. Despite this, EU law sets the demand for interpreting the concepts consistently in the whole union and of setting this interpretation the starting point of national application of law. For criminal law of EU, this is a reasonable and important starting point. The SC viewed that A had to be surrendered to Estonia, even though he had factually resided permanently in Finland. The SC also viewed that based on A's personal reasons and on another special reason, it was not reasonable for A to serve his custodial sentence in Finland. The SC justified this by stating that A's financial connections to Finland had remained rather minor. He had worked occasionally in Finland, which he had kept hidden from the authorities.

The principle of proportionality connects primarily to whether the offence, based on which surrender has been requested, is severe enough to be the basis of the request for surrender (Helenius 2014b). The fairness and the principle of proportionality of surrender should be considered when the applicability of discretionary grounds for refusal is being taken into consideration. An alternative to surrender proceedings could be processing the offences committed abroad in Finland and serving a sentence that was condemned abroad in a Finnish prison. These alternatives have been used. Processing offences that were committed abroad in Finland, has been considered justified especially in cases in which the person who has committed crimes abroad is also charged for offences committed in Finland. Enforcement in Finland is possible if the person convicted abroad is a Finnish citizen or he otherwise has close connections to Finland

[17] CJEU, judgment of 17.7.2008, Kozlowski, C-66/08, EU:C2008:437

Section III – Mutual Trust and cooperation through the EAW: key interpretation and implementation challenges, and solutions adopted in Finland

Mutual recognition does not seem to cause issues in Finland (Tolttila 2020, p. 89- 97). There have not been any cases in Finland in which the competence of the requesting state's authorities had been questioned. Neither have competence issues been covered in legal literature. Nor has the independence of authorities requesting the surrender or deciding on surrender been questioned.

If necessary, the SC has acquired more information, for example, about the prison conditions of the requesting state or ordered the prosecutor to present a report on the matter. If the report has not been considered to be enough, the surrender has been refused. This happened in the case SC 2020:25.

The SC has emphasised in its precedents SC 2020:25 and SC 2021:24 that there has been no reason to question the other state's report on the prison conditions. In the case SC 2020:25, the SC emphasised that the evaluation should be based on objective, reliable, exact, and appropriately updated facts about the prison conditions. While considering the surrender, it must be concretely and specifically valued whether there are strong grounds to believe that the person requested for surrender would be exposed to inhumane or derogatory treatment, as provided for in the article 4 of the Charter of Fundamental Rights of the European Union, because of the prison conditions in the state in question. The SC viewed that the assumption of breaching the article 3 of the European Convention on Human Rights and article 4 of the Charter of Fundamental Rights of the European Union created by the report delivered by the Romanian prison authorities was not refuted by the fact that keeping A in prison conditions below the standards set by the ECHR would be occasional and of minor importance. Because refuting of the assumption demands all the grounds that enable the refuting to fulfil, there is no reason to value the prisoners' freedom of movement or the other conditions in the Braila prison further. In its conclusion, the SC viewed that there are grounds to believe that surrendering A to Romania would subject him to inhumane treatment. Thus, the surrender must be rejected based on section 5(1)(6) of the EU Surrender Act. The decision is well in line with case law by CJEU. The SC refers to this case law in paragraphs 7-13 of its decision (Dorobantu and Generalstaatsanwaltschaft). The decision is the result of thorough pro et contra argumentation.

In the case SC 2021:24, the prosecutor had, based on an EAW, requested Romanian citizen A to be surrendered to Romania for the enforcement of imprisonment. The prison conditions were described in the report given by Romanian authorities, and according to a separate assurance, A was to be given a 3 m^2 personal space in prisons he would likely to be placed. The SC viewed that based on the report from the Romanian authorities on the prison conditions and the assurance, it could be reviewed that A was not going to be a subject of inhumane or derogatory treatment. In its prior precedent SC 2020:25, the SC had decided on a contrary result.

In the case SC 2017:11, A had opposed the surrender and had based his opposition, first, on the prison conditions in Bulgarian prisons that would violate his human rights, and second, on his personal and financial connections to Finland, which he no longer had to Bulgaria. The prosecutor had by the SC's request delivered a detailed description of the conditions in the Bulgarian prison in which A would serve his sentence for the SC's use. The SC considered this description based on objective, reliable, exact, and appropriately updated facts to be the kind of information about Bulgarian prison conditions that was presumed for applying the EU Surrender

Act. The prison conditions had been improved and will be improved further to correspond the European demands, and Bulgarian authorities had also started appropriate measures to improve the conditions. Based on the description, there were no mandatory grounds for refusal.

The defence always has the right to present literature and oral evidence against the surrender. In my view, the rights of the people requested to be surrendered have been materialised in full. The Finnish courts have in every case had enough information to support their decision. The legal practice is without doubt in line with the EU law. Special challenges cannot be found in the case law. The prosecutor has a duty to solve the case impartially, the person requested to be surrendered always has the right to appoint a legal counsel, and an independent court decides on the surrender after a thorough preparation and an oral hearing.

There are many cases in which the SC has taken a decision directed at ensuring that the goal of the Framework Decision, for example to prosecute crime and enforce custodial sentences, are pursued effectively. In the case SC 2015:99, the principle of mutual recognition was emphasised when it came to prosecution limitations. In the case SC 2021:29, Estonia had requested a person convicted in Estonia to be surrendered to Estonia to serve his custodial sentence of four months. The SC accepted the request for surrender because the custodial sentence could no longer be enforced in Finland due to being time-barred, according to the Criminal Code of Finland. However, the sentence could be enforced in Estonia according to the Estonian judicial authorities' notice. Thus, in this case it was accepted that the prerequisites of enforcement are settled in Finland according to the laws of Finland and the prerequisites of enforcement in another state are settled according to the laws of the other state. The SC emphasised that the objective of the Framework Decision was to create a simpler and more efficient system based on mutual recognition for surrendering convicted or suspected people between EU member states. This objective leads to enforcing of the EAW being the main rule and rejecting the enforcement being the exception, which should be interpreted narrowly. The CJEU has viewed that the obligation to guarantee full efficiency of the Framework Decision causes the enforcing member state to be obligated to surrender the person or, if rejected, be obligated to guarantee that the sentence truly is possible to enforce according to the national legislation. To remain unsentenced is against the sought objective of the Framework Decision (Poplawski II, 82, 86, 88 and 106 and Sut 47).

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