

Executive Summary: Luxembourg

*Prof. Dr. Katalin Ligeti**

*Panayiotis Constantinides***

Interim Executive Summary

Issuing Procedures

- Luxembourg's investigating judge – competent to issue EAWs for the purposes of criminal prosecution (Prosecutorial EAWs) – satisfies the independence requirement and, thus, qualifies as an issuing judicial authority within the meaning of Article 6(1) FD 2002/584. As the vast majority of Luxembourg-issued EAWs are Prosecutorial EAWs, a member of Luxembourg's judiciary is its typical issuing judicial authority, such that is not surprising that we found no cases questioning the qualification or independence thereof.
- Luxembourg's Chief Public Prosecutor – competent to issue EAWs for the purposes of executing a custodial sentence or detention order (Custodial EAWs) – should be deemed as satisfying the independence requirement and, thus, qualify as an issuing judicial authority within the meaning of Article 6(1) FD 2002/584. As in several other Member States, Luxembourg's Chief Public Prosecutor and the Public Prosecutor's Office fall under the authority of Luxembourg's Ministry of Justice. The latter is competent to instruct the Chief Public Prosecutor to initiate prosecution proceedings; a power which has not been exercised for decades. An analysis of the relevant provisions of the Code of Criminal Procedure leads to the conclusion that the authority of the Minister of Justice does not appear to extend to an ability to order the execution of custodial sentence or detention orders, much less order the issuance of a custodial EAW.

* Professor of European and International Criminal Law, University of Luxembourg.

** Research and Development Specialist in European Criminal Law, University of Luxembourg.

- **The issuing of a custodial EAW by the Chief Public Prosecutor satisfies the requirement of effective judicial protection.** According to relevant CJEU jurisprudence, judicial review of a decision to issue a custodial EAW, which is necessary to ensure effective judicial protection, is provided by the enforceable judgment on which that custodial EAW is based. As a result, executing judicial authorities can presume that the Chief Public Prosecutor's decision to issue a custodial EAW results from national proceedings in which the requested person has had the benefit of all safeguards.

Executing Procedures

- **Luxembourg's executing authorities refuse to perform a proportionality review when executing an EAW, even if the facts of the case suggest some disproportionality between the nature of the crime and the prison sentence imposed.** Such a proportionality review would amount to creating a new ground for refusing to execute an EAW, contravening FD 2002/584 and the principle of mutual recognition it embodies.
- **Judgments rendered *in absentia* in the issuing Member State in the context of a custodial EAW and the right to contest such a judgment upon surrender:** although the legislation transposing FD 2002/584 prevents Luxembourg's executing authorities from outright refusing to surrender the requested person for the execution of a custodial sentence or detention order passed down in an *in absentia* judgment, the executing authorities can condition the requested person's surrender on receiving adequate assurances from the issuing Member State that he/she would actually be retried and be present when judged.
- **Risk of inhuman and/or degrading treatment in relation to the detention conditions in the issuing Member State:** in implementing the two-part *Aranyosi and Căldăraru* assessment in six separate decisions, Luxembourg's Court of Appeal found that the information in the case files was not sufficiently objective, reliable, specific and properly updated to allow it to conclude that there was indeed a real risk of inhuman or degrading treatment by virtue of general conditions of detention to find that that systemic or generalised detention conditions prevailing in the issuing Member State.
- **Right to translation under Directive 2010/64/EU:** in two decisions, rendered before Luxembourg transposed the Directive in 2017, Luxembourg's District Court held that a failure to provide a written translation of essential documents under the relevant provisions of the Directive, carried no penalty and, thus, could not result in either a refusal to execute the EAW or a requested person's provisional release. The transposing legislation now provides for the right to free translation of all documents which are essential for the exercise of defence rights and to safeguard the fairness of proceedings.

Key interpretation and implementation challenges

- **Overall, the implementation of the EAW in Luxembourg does not pose any major interpretation and implementation challenges.** When Luxembourg authorities involved in EAW implementation confront issues, they are more of a practical nature (e.g., transfer of documents, language) rather than a substantive one.
- **Qualification and independence of the issuing Member State's judicial authority:** when faced with interpretative challenges, such as those in Case No. 630/19, in which the Court of Appeal had to

examine the qualification and independence of the French Public Prosecutor, the Court of Appeal made use of the preliminary reference mechanism to resolve the challenge. The case led to the CJEU's preliminary ruling in *Parquet général du Grand-Duché de Luxembourg (and de Tours)*. Nevertheless, that case remains the only EAW-related request for a preliminary reference by Luxembourg courts.

- **Application of the two-part *Aranyosi and Căldăraru* assessment:** decisions of Luxembourg courts on detention conditions in the issuing Member State do not reflect an elaborate and methodological reasoning when applying the CJEU's jurisprudence, but rather a swift conclusion combining the two-part assessment laid down in *Aranyosi and Căldăraru*. Perhaps, this may be explained by the drafting traditions of Luxembourg judges, as evidenced by the relatively short length of their decisions.
- **Right of access to the case file:** although Luxembourg's Code of Criminal Procedure enshrines the right to access the case file, defence lawyers still find it difficult to gain access in practice when the suspect is under arrest or in police custody and are most often told to request the case file from the authorities of the issuing Member State.