



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 102/18**

Luxembourg, 4 July 2018

Advocate General's Opinion in Case C-220/18 PPU  
Generalstaatsanwaltschaft (Conditions of detention in Hungary)

**Advocate General Campos Sánchez-Bordona proposes that the Court should rule that the existence, in the State issuing a European arrest warrant, of judicial remedies against possible inhuman or degrading treatment is a relevant factor allowing such a risk to be discounted and that, consequently, there are, in principle, no exceptional circumstances capable of justifying the non-execution of that arrest warrant**

*If, in addition to that factor, the executing judicial authority considers it relevant to obtain certain information on the centres in which the person whose surrender is sought is likely to be detained, the issuing judicial authority must provide that information. If it does not do so, the executing judicial authority can discontinue the surrender proceedings*

In October 2017, a Hungarian court issued a European arrest warrant against ML, a Hungarian national sentenced in absentia to a term of imprisonment for offences of bodily harm, criminal damage, fraud and theft. In order to try him on the facts that would eventually lead to that conviction, the same court had previously issued another European arrest warrant against ML, pursuant to which he was detained in November 2017 in Germany. ML opposed his surrender to the Hungarian authorities, asking that a request for a preliminary ruling be made to the Court of Justice.

Prior to ruling on the issue of surrender, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court, Bremen) — the executing judicial authority — sought additional information to that received from the Hungarian authorities in the context of the initial arrest warrant (it had been informed of the places where ML would be detained, and received assurances that the detainee would under no circumstances be subjected to inhuman or degrading treatment within the meaning of the Charter of Fundamental Rights of the European Union). The executing judicial authority was also informed that in October 2016 legislation had come into force in Hungary guaranteeing detainees a right of complaint against the conditions of their detention. The German court was not satisfied with the response that it had received to a subsequent request for information and set a timeframe for the Hungarian authorities to provide the information requested. As it had not received that by the date set (28 February 2018) and given that the German Public Prosecutor supported the execution of the European arrest warrant, the Hanseatisches Oberlandesgericht in Bremen made a request for a preliminary ruling to the Court of Justice, seeking further clarification of the case-law contained in the judgment in *Aranyosi and Căldăraru*<sup>1</sup> concerning the interpretation of the Framework Decision on the European arrest warrant.<sup>2</sup> In particular, it sought clarification with regard to the case in which (possible) breaches of the right not to be subjected to inhuman or degrading treatment in prisons in the State issuing the European arrest warrant may be remedied by that State's own judicial authorities.

<sup>1</sup> Joined cases: [C-404/15 PPU and C-659/15 PPU](#) *Aranyosi and Căldăraru* see Press Release [36/16](#). The references for a preliminary ruling in those cases were also made by the German court making the present request, which is being dealt with under the urgent preliminary ruling procedure.

<sup>2</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

In today's Opinion, Advocate General Manuel Campos Sánchez-Bordona recalls, first of all, that **mutual recognition is the cornerstone of the system of surrender between judicial authorities. This encompasses both the obligation for the Member States to execute an arrest warrant and the mutual confidence that all Member States guarantee equivalent and effective protection for the fundamental rights recognised in the EU.** It can be inferred from the judgment in Aranyosi that, in addition to the general situation in which the Council has formally declared a serious and persistent breach of the values and rights proclaimed in the TEU (Article 7 TEU), EU law exceptionally allows the non-execution of a European arrest warrant in other particular cases.

Having clarified that point, the Advocate General observes that the situation may have changed by comparison with the Aranyosi judgment, given that the issuing State (Hungary) has introduced **safeguards** of the kind that were lacking when the questions answered in that judgment were referred for a preliminary ruling. Those safeguards offer the persons affected the possibility of complaining about their detention conditions, and the European Court of Human Rights has affirmed that there are no indications that they do not afford a real possibility of improving those conditions, in such a way that they comply with the prohibition of inhuman or degrading treatment. The Advocate General adds that the information submitted to the Court of Justice supports the conclusion that the safeguards established by the Hungarian legislature are not hypothetical or impracticable solutions, but are capable of bringing about effective, practical consequences. **Therefore, it can no longer simply be assumed that there is objective, reliable and specific evidence demonstrating that there are systemic or generalised deficiencies that may affect certain groups of persons or certain detention centres.** In the Advocate General's opinion, a system of co-operation in criminal matters based on mutual judicial trust cannot survive if the courts in the executing State deal with requests made by the courts of the issuing State as though the latter's sensitivity in guaranteeing the protection of fundamental rights were less than that of the former. In any event, **the receipt of a European arrest warrant cannot, in his view, cause the executing court to adjudicate on the quality of the issuing State's prison system, either as a whole or in the light of its own national law. The sole test must be Article 4 of the Charter (which prohibits torture and inhuman or degrading treatment or punishment).** The Advocate General therefore considers that **the existence of domestic judicial remedies which effectively guarantee, in practical terms, the protection of the right not to be subjected to inhuman or degrading treatment as regards conditions of detention constitutes an especially significant factor in ruling out the risk of suffering such treatment on account of systemic or generalised deficiencies affecting certain groups of persons or certain prisons.**

**Nonetheless, the Advocate General accepts that, in a situation such as that at issue in this case — in which the recent introduction of specific judicial arrangements guaranteeing the right not to be subjected to inhuman or degrading treatment when detained in the issuing State may not yet have become fully effective, to the point of rendering the risk of infringement of that right an exception — the executing judicial authority would be justified in concerning itself with the conditions in which the person whose surrender is sought would be detained.**

The Advocate General recalls that, in the Aranyosi judgment, in addition to having proof of systemic (general) deficiencies in detention centres in the issuing State, the executing authority has to verify whether, *in the circumstances of the particular case*, there are substantial grounds for believing that, following his surrender to the issuing Member State, that person will be exposed to a real risk of being subjected to inhuman or degrading treatment in that Member State. The Advocate General clarifies that, to that end, the executing judicial authority should limit itself to the objective and reasonable information that may be provided to it concerning the concrete and specific conditions that may affect that person. In that respect, the Advocate General states that **the executing judicial authority also has to assess, as a particularly relevant factor, any assurance that may have been given by the competent administrative or judicial authorities in the issuing State, by which they undertake that the person whose surrender is sought will not be subjected to inhuman or degrading treatment during his detention. As the expression of an obligation that has been formally assumed, failure to give effect to that**

**assurance can then be relied on before the issuing State's judicial authorities by the person whose surrender is sought.**

As regards the German court's doubts on the source of the information required to determine the conditions of detention, the Advocate General considers that **the information relevant in assessing whether the person whose surrender is sought runs the risk of being subjected to inhuman or degrading treatment as a consequence of the individual conditions of detention must, as a rule, be requested and received from the issuing judicial authority.** Information accepted or endorsed by the issuing judicial authority must prevail in the assessment to be made by the executing judicial authority. That is the case because the only *active protagonists* in the handling of the European arrest warrant are the issuing and executing judicial authorities; mutual recognition is established in their dialogue *inter pares*.

As far as concerns the fact that the executing judicial authority did not receive all the information required within the time period that it had set, the Advocate General points out that **the information requested must be limited to that required for the purposes of determining whether there is a real risk that the person whose surrender is sought will be subjected to inhuman or degrading treatment.** In this case, he takes the view that some of the questions addressed by the German court to the Hungarian court clearly went beyond what was necessary to determine whether such a risk existed. In that connection, the Advocate General emphasises that **detention centres in respect of which information must be requested are those in which the person sought is likely to be detained in order to serve the sentence which has been passed.** This concerns both the detention centre in which the person whose surrender is sought will be held immediately following the surrender and the centre to which he will be taken for his subsequent imprisonment, whilst other centres to which he might be transferred in future are excluded.

Lastly, the Advocate General points out that, if the issuing court fails to respond to the request for information made by the executing court, the latter **will have to assess, before deciding that it will not continue the surrender procedure, whether the information that it already possesses allows it to rule out the risk of inhuman or degrading treatment in the centres mentioned above.** That assessment, however, cannot extend beyond the factors that are strictly necessary to discount that risk, which cannot simply be identified on the basis of the conditions of greater or lesser well-being in the prison. If the issuing judicial authority fails to provide the information requested by the executing judicial authority to enable it to rule on the surrender, in accordance with the Framework Decision, the executing judicial authority can inform the issuing authority that, in those circumstances, it will not continue the surrender procedure.

---

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher 📞 (+352) 4303 3355