Implementation of the European Arrest Warrant: dysfunctionalities and bureaucracy

A case study on Romania

May 2018

Co-funded by the Criminal Justice Programme of the European Commission

With coordination by:

Fair Trials
About the Association for the Defence of Human Rights in Romania-the Helsinki Committee (APADOR-CH)

The association for the Defence of Human Rights in Romania—the Helsinki Committee (APADOR-CH) is a non-governmental, not-for profit organization established in 1990. Its mission is to take action for the protection of human rights and the establishment of equilibrium when they are in danger or infringed upon.

APADOR-CH works for: the development of efficient legal and institutional mechanisms for respecting human rights and monitoring relevant institutions; the improvement of the legislative framework and of the practices regarding the right to free assembly and association, freedom of expression, right to private life; the development of practices and institutional mechanisms for increasing transparency and good governance; initiation of strategic litigation in cases which deal with infringement upon human rights; the monitoring of: police abuses, regulations and practices in the field of national security which have an impact on human rights; regulations and practices concerning deprivation of liberty.

This publication has been produced with the financial support of the Criminal Justice Programme of the European Commission. The contents of this publication are the sole responsibility of the Association for the Defence of Human Rights in Romania— the Helsinki Committee (APADOR-CH) and can in no way be taken to reflect the views of the European Commission.
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Introduction

The objective of this EU funded research project has been to document how the simplified system of surrender established by the European Arrest Warrant Framework Decision (EAW FD) is implemented in practice. The focus has been on four member states: Lithuania, Poland, Spain and Romania which were chosen because they issued among the top ten highest numbers of EAWs between 2007 and 2009.

The European Commission, the European Parliament, certain Member States and civil society have recognised that the main problems relate to: disproportionate use of EAWs, excessive and unjustified use of pre-trial detention and the failure of issuing states adequately to protect human rights.

Member States have responded to these problems by adopting different approaches to implementation, while judges in executing states increasingly face the dilemma of the proper relationship between the principle of mutual recognition and a commitment to fundamental rights and other principles of EU law. After decisions to surrender are made, judges and lawyers in the executing state do not generally monitor what follows, including whether assurances (where given) are upheld, whether fundamental rights are enjoyed and whether the outcome confirms that the EAW was the right instrument to have used.

Various steps have been taken at both the EU and the domestic level to address the above concerns. In 2009, the EU institutions adopted the European Supervision Order (ESO), intended to reduce the number of non-nationals in pre-trial detention. In 2010, the Council amended its guidance on EAWs to recommend the conduct of a proportionality assessment by the issuing state. The most significant step, however, was the adoption of the Procedural Rights Roadmap and four directives thereunder – on the right to interpretation and translation; the right to information; the right to access a lawyer; and the right to legal aid (the Roadmap Directives). These measures are intended to safeguard the fairness of criminal proceedings across the EU and, in so doing, enhance mutual trust.

The present report, a case study on Romania, fills a gap in the information available about EAW implementation and its relationship with the Roadmap Directives. Through the case studies monitored it gives an overview on the ability of persons requested and surrendered pursuant to an accusation EAW to enjoy their fundamental rights during the surrender procedure and also following surrender.
Note on methodology

During October-November 2017 APADOR-CH representatives interviewed 20 convicted persons: 19 of them were executing a sentence and were surrendered to Romania on the basis of a European arrest warrant (EAW) and another one surrendered to Italy for trafficking.¹ The interviews took place in the Rahova (Bucharest), Oradea, Timișoara and Târgșor penitentiaries. Unfortunately, the methodology of this research project remains limited as it was not possible to interview lawyers of the surrendered persons or members of their families. In order to complete or better understand the information obtained during the interviews, APADOR-CH representatives also studied the penitentiary casefiles of the detainees. Also, it was only possible to interview persons who had already been convicted when the European arrest warrant was issued. There was no monitoring of cases of defendants who have been surrendered to Romania in view of their participation during the criminal investigation.

This report is structured into 3 parts: the first one represents a description of the legal framework against which the 20 cases were analysed; the second part contains the most relevant case studies monitored by APADOR-CH during October 2018-May 2018 and the third part consists of recommendations for the improvement of both legislation and practice when it comes to the implementation of the EAW.

APADOR-CH would like to thank the National Administration of Penitentiaries for granting the organizations’ representatives access in the above mentioned penitentiaries and for the openness with which it approached this research project. Finally, it wouldn’t have been possible to bring the following issues to the publics’ and stakeholders’ attention had it not been for the voluntary participation of the detainees during the interviews.

¹ Except one case (involving a woman who was surrendered to Italy for trafficking), all 19 cases monitored by APADOR-CH all refer to active surrender (Romania asks another EU Member State to surrender a person).
I. Legislative framework

The European Arrest Warrant (EAW)²

The main legal provisions concerning the European arrest warrant are contained in law no. 302/2004 regarding judicial cooperation in criminal matters and the EU Council Framework Decision of 13 June 2002 (2002/584/JHA) on the European arrest warrant and the surrender procedures between Member States³ (which was implemented in the national legislation through Law No 302/2004).

The notion of ‘international judicial cooperation in criminal matters’ is complex. According to Art.1 of Law No 302/2004, it encompasses:

- extradition;
- surrender under a European arrest warrant;
- the transfer of proceedings in criminal matters;
- recognition and execution of the decisions;
- the transfer of sentenced persons;
- judicial assistance in criminal matters (for example, the establishment of rogatory commissions or the communication of legal documents between judicial authorities of different states);
- other forms of international judicial cooperation in criminal matters;

The European arrest warrant is regulated by Title III (Arts. 84 - 122) of law No 302/2004. This law is the transposition at the national level of the Council Framework Decision of 13 June 2002 (2002/584/JHA) on the European arrest warrant and the surrender procedures between Member States⁴.

According to art. 84 and 85 of law No 302/2004, the European arrest warrant is a judicial decision through which a court requests the arrest and surrender of a person by another EU Member State, for the purposes of conducting a criminal investigation, undergoing a trial or executing a sentence or a deprivation of liberty order. Therefore, the EAW is issued by a judicial authority only if there already exists a national pre-trial arrest warrant or one for the execution of

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² This is the acronym that will be used in this report.
the custodial sentence. The European arrest warrant consists of a form which the judicial authority fills in and which is included in the judicial decision. It is issued by the same judicial authority which issued the national pre-trial arrest warrant or the one concerning the execution of the custodial sentence.

The surrender under a European arrest warrant can be divided into:

- active surrender (Romania asks another EU Member State to surrender a person)
- passive surrender (another EU Member State asks Romania to surrender a person)

For the purpose of this report only active surrender will be analysed from a legislative point of view.

**Active surrender**

In the case of active surrender, the European arrest warrant is issued by a Romanian judicial authority and is communicated for execution to a judicial authority from another EU Member State.

The competent right and liberties judge issues the European arrest warrant if the following **conditions** are met:

- issuing the warrant is considered timely, taking into account:
  - the nature of the offence committed
  - the requested person’s age
  - the requested person’s criminal records
  - other circumstances of the case
- the requested person is on the territory of another EU Member State
- the national pre-trial arrest warrant or the warrant for the execution of the custodial sentence is valid
- according to Romanian law, neither the prescription for the criminal liability intervened, or the prescription for the execution of the sentence; nor amnesty or pardon.

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5 Art. 88(1) of law no. 302/2004.
7 The rights and liberties judge designated by the president of the court which would be competent to adjudicate the merits of the case (Art. 88(3) of Law No 302/2004).
8 Art. 88(1) of law no. 302/2004.
• the offence committed is sufficiently serious (in the case of pre-trial detention, it must have been ordered for an offence punishable by at least 2 years’ imprisonment, and in the case of a custodial sentence, the sentence or the remaining of the sentence must be of at least 1 year).

• the condition of double criminalization, with the exception of 32 offences, if they are punishable in the issuing Member State with a sentence of at least 3 years imprisonment. For these 32 offences, the executing Member State shall decide on whether to surrender the requested person without verifying if the condition of double criminalization is met. 9

The judicial authority can be notified in view of issuing a European arrest warrant in one of the following ways: 10

• ex officio

• by the prosecutor

• by the state authority which has to execute the pre-trial detention warrant or the one warrant for the execution of the custodial sentence (for instance, the police – art. 231 of the Romanian Criminal Procedure Code (CPC) provides that, when pre-trial detention was ordered in absentia, two original copies of the warrant are communicated for execution to the police body of the defendant’s domicile or residence. Similarly, art. 556 of the CPC provides that for carrying out the execution warrant, two copies of the warrant are communicated to the police body of the defendant’s domicile or residence.)

If the judicial authority finds that all the legal conditions are met, it issues the European arrest warrant, delivering a judicial decision to this effect. If the judicial authority finds that it is not appropriate to issue the European arrest warrant, this decision can be appealed by the prosecutor within three days from the date when it was communicated. The appeal is adjudicated by a higher judicial authority, within three days after it was lodged, in closed session, without notifying the parties, and with the participation of the prosecutor. If the appeal is upheld, the rights and liberties judge must issue a European arrest warrant.

The European arrest warrant shall contain the following information:11

• the identity and nationality of the requested person;

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9 The 32 offences are listed in art. 2(2) of the Framework Decision 2002/584 and in art.96 of law no. 302/2004.
10 Art. 88(3) of law no. 303/2004.
11 Art. 86(1) and (2) of law no. 302/2004.
• the name, address, telephone and fax numbers, as well as the e-mail address of the issuing judicial authority;
• an indication of the existence of a final judicial decision, a pre-trial detention warrant or any other enforceable judicial decision having the same effect;
• the nature and legal classification of the offence;
• a description of the circumstances in which the offence was committed, including the time, place, and the degree of participation in the offence by the requested person;
• the sentence ordered, if there is a final judicial decision, or the sentence prescribed for the offence by the law of the issuing Member State,
• if possible, other consequences of the offence.

Translation of the EAW

The European arrest warrant which was communicated to the competent judicial authority of another EU Member States must be translated into the official language or one of the official languages of the executing Member States, or into one or more other official languages of the institutions of the European Union which the executing Member State has declared that it accepts (according to the declaration deposited with the General Secretariat of the Council of the European Union).  

The translation of the European arrest warrant must be done by an **authorised translator**, as a matter of urgency, at the request the issuing judicial authority. If, on the lists of the courts of appeal corresponding to the constituency of the issuing judicial authority, there are no authorised translators for the language in which the European warrant must be translated, or, if there is a translator but he or she refuses to do the translation, the issuing judicial authority shall request the specialized direction of the Ministry of Justice to take measures so that the warrant can be translated. A European arrest warrant communicated for execution to the Romanian judicial authorities must be translated in Romanian, or in English or French.  

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12 Art. 86(3) of law no. 302/2004.
13 Art. 89(7) of law no. 302/2004.
The confidentiality of the procedure

The law expressly provides that the procedure for issuing the European arrest warrant is confidential until the person is arrested in the executing Member State. After corroborating this with Art. 88(4)(b) of Law No 302/2004, it becomes clear that the procedure for issuing the EAW takes place in a closed session, without notifying the parties, and with the participation of the prosecutor only. This means that neither the defendant nor his lawyer will be present.

According to art. 11 of the Council Framework Decision of 13 June 2002 (2002/584/JHA), the requested person is informed of the existence and content of the European arrest warrant only after he was arrested in the executing Member State. At the same time, the person is informed about the possibility to consent to his surrender to the issuing State. The same article provides that a requested person who is arrested for the purpose of the execution of a European arrest warrant has the right to be assisted by a lawyer and an interpreter, in accordance with the national law of the executing Member State.

Similarly, when Romania is the executing State, the law provides that the person arrested under a European arrest warrant has the right to:

- be informed regarding the content of the EAW
- be assisted by a defender of his choice or a legal aid lawyer
- be assisted by an interpreter, if he does not understand or speak Romanian. The judicial authority provides an interpreter free of charge

The European arrest warrant can be withdrawn if the reasons which justified issuing it in the first place have ceased to exist. For example, if the national pre-trial arrest warrant on the basis of which the EAW was issued is revoked.

To sum up, until the person’s arrest, the EAW procedure is confidential and does not involve the participation of the requested person or of his lawyer.

An issue which emerged in practice refers to the possibility that the executing judicial authority might refuse to surrender the requested person under the EAW, if there is a real risk that the person will be subjected to inhuman or degrading treatment as a result of the detention

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17 Art. 94(1) of Law No 302/2004.
conditions in the issuing State, as this contravenes art. 3 of the European Convention on Human Rights (‘ECHR’).

In relation to this matter, law no. 302/2004 contains a specific provision which applies only to extradition, not also to surrender under the EAW. This provision expressly prohibits extraditing a person to a ‘state where his life or freedom would be threatened, or where he would be subjected to torture, inhuman or degrading treatment’.

One explanation for this is that surrender under a EAW applies between Romania and the other EU Member States, all of which supposedly abide by certain human rights standards. By contrast, extradition applies between Romania and all non-EU countries, including countries with lower human rights standards.

However, this problem was not raised before the Romanian judicial authorities. It was raised before the judicial authorities of other EU Member States in relation to persons who were requested by the Romanian authorities on the basis of an EAW. These persons have argued that the EAW should not be executed because the detention conditions in Romania are inadequate and infringe art. 3 of the ECHR.

The following provisions can be invoked in support of the refusal to surrender a requested person under an EAW because there is a real risk of infringing art. 3 ECHR:

- art.1 (3) of the Council Framework Decision of 13 June 2002 (2002/584/JHA): This article provides that the Framework Decision ‘shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Art. 6 of the Treaty on European Union (TEU)’.

- Art. 6(3) TEU provides that ‘fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law’.

- paragraph 13 of the Preamble to the Framework Decision provides that ‘No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.’ The text of paragraph 13 is not limited to extradition. It includes any form of ‘removal’ of the person by a state. It therefore applies to the surrender under a European arrest warrant.

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• paragraph 12 of the Preamble to the Framework Decision provides that ‘nothing in the Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person’s position may be prejudiced for any of these reasons.’

Also, the Court of Justice of the European Union (CJEU), dealing with a similar situation\(^\text{19}\), held that: “Article 1(3), Article 5 and Article 6(1) of the Council Framework Decision of 13 June 2002 (2002/584/JHA) on the European arrest warrant and the surrender procedures between Member States as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 must be interpreted as meaning that where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the

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existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.’

The Record of the European arrest warrants is prepared and kept in order to monitor the judicial authority’s activity regarding the **issuing** (active surrender) and **execution** (passive surrender) of European arrest warrants. The following information is registered in the Record:

- the reference number;
- the surname, forename and nationality of the requested person;
- the reference number and the date of the prosecutor’s office request or that of the court who will decide on the criminal case; the number of the case file of the executing judicial authority;
- the date when the EAW was issued;
- the date when the EAW was communicated;
- information regarding the execution of the EAW;
- the reasons why the EAW was not executed;
- the date when the requested person was surrendered;
- if applicable, the date when the EAW was withdrawn.

According to the law, this Register is *not intended to be public*\(^\text{20}\).

Once it is issued, the EAW is communicated by the issuing judicial authority for execution. Identifying the foreign authority which is competent to receive or to execute the EAW is done through the national points of contact to the European Judicial Network or through the specialized directions of the Ministry of Justice.

When the issuing judicial authority is notified with regard to the localisation or arrest of the requested person on the territory of another Member State, the issuing authority transmits the EAW to the competent foreign authority, both in Romanian and in the other foreign language, by fax, e-mail or by any other means of communication which is secure and leaves written traces, by the deadline indicated by the foreign authority, and also by informing the Centre for International Police Cooperation (‘CCPI’).

Temporary measures 21

Certain temporary measures can be taken in respect of the requested person until the date when the foreign judicial authority delivers a final decision on the surrender request issued by the Romanian authorities under the EAW, or if the foreign judicial authority decides to postpone the surrender of the requested person. These temporary measures are:

- the temporary transfer to Romania (for a period of time agreed jointly with the foreign authority); 22
- the hearing of the person, if this is requested by the Romanian judicial authorities. The hearing can be done directly (through videoconferencing or, if the law of the foreign state allows it, at the person’s location) or indirectly (conducted by the foreign judicial authority in the presence of a representative of the Romanian authority);
- the temporary surrender 23, for the purposes of a hearing or participating in the criminal investigation or the trial;

After the foreign judicial authority agreed, through a final decision, to surrender the person in respect of whom the Romanian judicial authority had issued the EAW, the Centre for International Police Cooperation (CCPI) ensures that the person is brought back into the country, under escort.

If the person was sentenced in absentia, the executing judicial authority communicates to him the sentencing decision within 10 days of the person’s reception, as applicable, in the police

22 The temporary transfer to Romania of the person in respect of whom the EAW was issued can be requested only in emergency situations, when the presence of the person is compulsory under law, or when, depending on the circumstances of the case, the prosecutor who conducts/supervises the criminal investigation or the court considers that the person needs to be present. The temporary transfer must not infringe upon the person’s right to participate during the proceedings concerning the request for surrender issued by the Romanian judicial authority under a EAW.

The person who was temporarily transferred to Romania is held in custody until his return to the executing state. The person’s reception into the police arrests or pre-trial detention centres which are organized and function under the Ministry of Internal Affairs will be made on the basis of a national arrest warrant or one for the execution of a sentence, which form the basis of the EAW. The length of the deprivation of liberty is maintained or extended in accordance with the Romanian Criminal Procedure Code. The Centre for International Police Cooperation (CCPI) is in charge of bringing the person back into Romania and then returning the person to the executing state.

23 This is a temporary measure which can be taken when the foreign authority decides to postpone the surrender. Under Art. 24 of the Framework Decision 2002/584, the executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may participate in the criminal investigation in the executing Member State or, if he or she has already been sentenced, so that he or she may serve a sentence for an offence other than that referred to in the European arrest warrant. Art.58 of Law No. 302/2004 contains a similar provision regarding the postponed surrender.
arrest or penitentiaries. Also, the executing judicial authority must inform the sentenced person that he or she has the right to a retrial. The High Court of Cassation and Justice has established that, if the request for a retrial made by the persons sentenced in absentia is admitted, then the retrial starts at the first instance court.

As soon as it receives notification that the surrendered person has been brought back into the country, the issuing judicial authority must request directly from the executing State information regarding the length of the surrendered person’s arrest on the basis of the EAW. It must communicate this information, as applicable, to the executing judicial authority, to the judicial authority adjudicating the case if these are different from the issuing judicial authority, or to the prosecutor who conducts or supervises the criminal investigation.

II. Case studies: problematic aspects concerning the implementation of the European Arrest warrant

i) Right to information and legal assistance during the surrender procedure

L.T is a 37 years old ethnic Hungarian executing his sentence in the Rahova penitentiary (Bucharest). A resident of the Covasna city, he is divorced and has a 16 years old child. He also holds a university degree and before serving time in the Romanian prison he earned his living as owner of a company which imports cars from Germany.

In 2012 T. was sentenced to 3 years and 4 months in prison for a bank fraud committed in Germany. In April 2014 he was surrendered to Romania and banned from entering the country. The Romanian authorities released him shortly after that and he resumed his economic activities, travelling frequently between Romania and Germany. L.T claims that in 2015 he has travelled to Germany 7-8 times (airplane included) but he was never told that he has an interdiction to enter the county although his documents have always been checked. In august 2015, during a routine control, he was arrested again in Germany for violation of the ban. He was informed that he has to execute the remaining period of his 2012 sentence and in addition, another 7 months for

24 According to art. 466 - 469 Romanian Criminal Procedure Code.
25 Decision No 13 of 03/07/2017 regarding the examination of the appeal in the interest of the law for the uniform interpretation and application of the provisions of Art. 469(3) of the Romanian Criminal Procedure Code.
26 Interviewed by APADOR-CH representatives on 4th October 2017 in the Rahova penitentiary.
committing an offence related to handling narcotic substances (for which he was sentenced in December 2015).

Meanwhile, in 2015, he was also sentenced by a Romanian court to 4 years and 6 months imprisonment for fraud related crimes. The length of the sentence represents a merger of three, former, not entirely executed sentences. In November 2015 the Romanian state issues a European arrest warrant on his name.

Since 2015 when he was arrested for the second time in Germany, T. has been executing his initial sentence- finalized on 3rd September 2017. He claims to have lived in good conditions in the German penitentiary, he worked in a toy factory and benefited from very good medical conditions for the chronical disease that he suffers from.

On 29th August 2017, a few days before his release, he was transferred to Munchen, in a special penitentiary for persons to be surrendered. He stayed there one month, in tough conditions and in isolation. T. maintains that he never attended a hearing in relation to his European arrest warrant and he was not provided with a lawyer. He was only informed by a judge and a translator that a European arrest warrant had been issued on his name. He was never informed about the possibility to challenge the arrest warrant but claims that at that time he wouldn’t have done it anyways because of the attitude of the German authorities.

At the date of the first interview with APADOR-CH’s representatives, T. has been in the Rahova penitentiary for 5 days. He had not been consulted by a doctor although he informed the staff that he suffers from a chronical disease which requires permanent treatment. His medicine was confiscated on grounds that they were not recognized in Romania and his health condition worsened in lack of any treatment. He describes the detention conditions in the quarantine section of the Rahova penitentiary as “terror” as he has the right to only 1 hour of walking per day and he lives in one room with 6 other inmates (compared to Germany where he stayed alone in a room). On 6th October 2016 he was transferred to the Jilava Hospital Penitentiary for the establishment of a specific treatment in his case.

In retrospective, T. claims that had he known he could challenge his European arrest warrant, he would have argued not to be surrendered. This is because of the bad detention conditions in Romania, especially from the perspective of his chronical disease for which he needs permanent treatment. Therefore, the lack of a lawyer he could communicate with is especially problematic in this case. At the moment of the visit, the period he spent arrested in
Muchen, from the moment he finished executing his sentence in Germany and until he arrived in the Rahova penitentiary has not been deducted from his sentence.

T. is the only case out of the 20 monitored where a lawyer was not present during the surrender hearing. However, several convicted persons interviewed have complained about the fact that they did not meet or speak with their lawyers (especially when the hearing took place through the videoconference) or that their presence was not at all effective.

Another illustrative case for the lack of information of convicted persons during the surrender procedure is that of J.S.

J. S is a 33 years old ethnic Hungarian from Covasna. 27 He graduated elementary school and has two children. He claims he was legally working in agriculture when he was arrested in Hungary in August 2017. He was surrendered to Romania on 21 November 2017 and brought to the Oradea penitentiary.

S. was arrested for the first time in August 2017 but the police officers did not inform him what the reason was. After 55 days he was released, on grounds that “we cannot do anything with you as the crime was committed in Romania”. Shortly after that, the Hungarian authorities arrested him again and after 10 days surrendered him to Romania. He stated that he participated in a hearing after his first arrest and benefited from a legal aid lawyer (state paid). Only after his second arrest was he informed that following a trial in absentia in Romania, he was sentenced to 7 years in prison and was going to be surrendered. He was never informed about the possibility to challenge his surrender but he wouldn’t have liked to stay in Hungary anyways because in Romania he can be visited by his family.

In relation to the sentences for which he was surrendered he told APADOR-CH representatives that he did not know how to read them but said that somebody explained what they meant and he understood that he has to go to prison for 7 years for having cut 10 fir trees. S. was bothered by the fact that his sentence did not reflect the truth, namely that he only cut 9 fir trees. He recalled that when he was caught cutting the trees he was questioned only by the police,

27 Interviewed by APADOR-CH representatives on 13 December 2017 in the Oradea penitentiary. He does not speak Romanian but the prisons’ psychologist offered to act as translator.
he did not know he was prosecuted, sent to trial and sentenced. He would have attended his trial had he known. He did not know whether he was represented by a lawyer during the trial or if the 65 days period he spent in arrest in Hungary was deducted from his sentence. He does not have money for a lawyer in order to challenge the execution of his sentence and he does not know how to do it by himself.

ii) Effectiveness of the legal aid lawyers during the surrender hearing

E.P was arrested at the Romanian Consulate in Barcelona on 25 October 2016 on the basis of a European arrest warrant issued on 19 June 2007. On 10 October 2016, E.P had just been released from the Aranjuez penitentiary after having served 10 years and 6 months for the offences of drug traffic and robbery.

After his release, he wanted to come to Romania and went to the Consulate to renew his passport. The consulate called the police who arrested and handcuffed him, informing him that there is an arrest warrant on his name. “How is this possible? Why did you release me from the penitentiary if there is an arrest warrant on my name?” He was told that an error occurred. After having spent 13 days outside the prison system, E.P claims he was taken to the police station where he was undressed and put in “a cellar” with a robe on. He was handed a letter of rights and appointed a legal aid lawyer. The only thing the lawyer told him was “Romania asks for you, you have to go”. E.P was not informed about the right to challenge the execution of his arrest warrant. At the court hearing, the judge in Madrid told him the same: that he has to go because Romania asks for his surrender. He was told that even if he does not consent to his surrender, he will be nevertheless transferred to Romania, but it will take longer, app. 45 days. If he consents, it will only take 10 days.

This case raises questions about the quality of legal representation in cases involving the execution of the European arrest warrant and also about the often formal nature of the surrender procedure which in this case renders totally ineffective the right to consent to surrender. The judge also does not seem to want to consider if detention conditions in Romania might potentially infringe upon the fundamental rights of the arrested person.

29 Interview with E.P, 6 October 2017, Rahova Penitentiary.
Especially since P. accuses mental health problems and has been complaining about the fact that the medication which he was taking in Spain was not allowed in the Romanian penitentiaries and his condition deteriorated. He rarely goes to the psychiatrist and the treatment he receives is sporadic. This is an unsolved systemic issue in Romania and has been recognized as such by the European Court of Human Rights in the case of Ticu v. Romania (app. 24575/10).

**iii) Legal assistance at the police station**

B. was arrested in London on 12 February 2016 on the basis of a European arrest warrant issued on 22 January 2016. At the time of the arrest he was in hospital where he claims that some personal belongings were stolen from him so he called the police which placed him in police arrest. B. was not allowed to inform his employer that he was arrested and nobody visited him while he was deprived of liberty “I stayed three days in the police station before going in court, I was sad and scared because I did not know what the charges against me where.”

In court, he did benefit from a legal aid lawyer and an interpreter but although he refused to consent to his surrender to Romania, invoking the poor detention conditions he was surrendered on 9th of March 2016.

**iv) The right to an interpreter**

P.M is a 29 years old man from Mogoșoaia (Ilfov). He is divorced with no children and used to work as an engineer in a television. At the time of his first arrest in 2008 he was a first year student but following his several convictions he dropped out of university. On 31 December 2008 he was arrested for the first time for allegedly having stolen a car. He was deprived of liberty for 15 days but his case was dismissed for failure to prosecute. During 2008-2010 he had several interactions with the Car Theft Service in Bucharest. His first arrest got him in the data base of the Service and several other arrests followed: March 2009 (6 months), February 2010 (1 year and 9 months). In March 2012 he was condemned by the Supreme Court to 15 years imprisonment for several robberies and vehicle thefts (a merger of previous sentences).

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30 Interview with T.B, 5 October 2017, Rahova Penitentiary.
31 Interviewed by APADOR-CH representatives on 6th October 2017 in the Rahova Penitentiary.
A few days before the final sentence he fled the country through Bulgaria. From Sofia he flew to London and then Spain (living one month there). In May 2012 he arrived in the Netherlands where he lived with false documents for a while. He was once arrested by the Dutch authorities for possessing false documents but immediately released.

M. claims that in February 2015 several police officers came to his home and showed him a paper with his photo on it, informing him in Dutch and English that there was a European arrest warrant issued on his name. He was aware that he was going to be surrendered to Romania but complaints about the fact that he could not call his family and that he did not know he could contact the embassy.

At the police station he was told what was going to happen to him; he says he had a legal aid lawyer but he could not understand much of what he was saying because he talked more Dutch than English. At no point during the procedure was there a translator present. He was allowed to contact another lawyer whom he knew, who spoke English (state paid). He remained deprived of liberty - in good detention conditions - for one month before being surrendered to Romania.

“I did not know I could challenge the decision to be surrendered. I don’t know if I was told or not, maybe I was too upset and I did not understand; in any case my lawyer continued to visit me while arrested.”

On 31st of March 2015 he was brought by the Interpol on the Otopeni airport and sent to the Rahova penitentiary. In the Rahova penitentiary he stays in a 17m2 room with 6 other persons. M. complained that the food was bad, the mattresses were infested and the prison stuff was verbally aggressive. He has an anxiety disorder and goes to a psychologist.

A problematic issue, which has been identified in several monitored cases, is related to the fact that the period he spent arrested (app. one month) has not been deduced from the sentence he has to execute. M. claims he has taken no steps to remedy this situation and he would not know how to do it. At the moment of the interview, two and a half years had passed since his arrival to the Rahova penitentiary. His prison file (reviewed on 10 October 2017) contained no evidence of the period he spent arrested in the Netherlands, awaiting to be surrendered (February-March 2015).

32 The Interpol lost his luggage, he claims he sued them and won (damages amounting to app. 850 euros).
According to the law\(^{33}\), the court which issued the European arrest warrant, as soon as it has been informed that the person has been surrendered to Romania, asks the executing state information about the length of time spent in arrest during the surrender procedure. This information will be kept by the court in the persons’ case file. The obligation to inform the court about the persons’ arrival belongs to the Romanian Police. There is no provision in the law obliging the court to send the National Administration of Penitentiaries the information obtained. APADOR-CH representatives could not verify his court file and cannot confirm or infirm the fact that the competent court has asked this information in relation to Mr. M.’s case. What is certain is that P.M did not know about the fact that he can ask the court for a deduction of the arrest period from his sentence.

There are also a few cases in which detainees managed to go through this procedure by themselves. Such is the case of V.A.T, a 32 years old taxi driver, who at the time of the arrest was working illegally in the UK.\(^{34}\) On 26 March 2014 he was arrested in London on the basis of a European arrest warrant issued by Romania in 2010 for the offence of attempted murder. He was surrendered to Romania on the 4\(^{th}\) of July 2015 and while in the Arad penitentiary, with the help of his colleagues, he did challenge the execution of his sentence and the period he spent arrested in the UK was deducted.

\(v\) Access to medical services in the executing state; formalistic surrender procedure

H.S is an ethnic Hungarian with a rich criminal record in Romania starting in 1994. In 2015 he was arrested in Austria for illegally transporting migrants between Budapest and Vienna. On 20 august 2016 he was sentenced to 2 years and 6 months in prison and also received an interdiction to enter Austria for 8 years. At the same time, in December 2016, he was sentenced in Romania for having stolen 10 gas tanks in 2014 and a European arrest warrant was issued on 17\(^{th}\) January 2017.

The court hearing in view of his surrender happened through a video-conference. H.S claims he does not know if a lawyer was present during the hearing, he could only recall that there was a translator and that the judge told him that even though he can challenge his surrender, he will be nevertheless sent to Romania in maximum 1 month. “Under these

\(^{33}\) Article 95 of Law 302/2004 concerning the European arrest warrant.

\(^{34}\) Interviewed by APADOR-CH representatives on 14\(^{th}\) December 2017 in Timișoara.
circumstances, I did not oppose, although I would have preferred to execute my sentences there.”

While he was waiting to be surrendered, H.S stressed that the detention conditions in Austria were good, however he complained about the poor health care services. H.S emphasized that it was in the Austrian penitentiary that he got hepatitis and that in the last months of detention there his legs were hurting very much “Instead of treating me they gave me some crutches and avoided taking me to the doctor so that they could surrender me faster”.

He was taken to Vienna where he should have been transferred to Romania by plane but as the legs condition was getting worse he was taken to the hospital, diagnosed with thrombosis and received a counter indication to fly by plane.

On 5 September 2017 he was surrendered through the Borș customs by car (a 12 hours’ drive) and received no food, water or medication. H.S also claims that the Austrian authorities did not give him any medical papers concerning the treatments and procedures he underwent so he cannot prove the ill treatment. In Romania, he was immediately consulted by a doctor which diagnosed him with hepatitis and pneumonia and hospitalized in the Rahova Penitentiary Hospital for medical check-ups.

The penitentiary case file which was analysed by APADOR-CH representatives contains some mistakes (for example, a certificate of the National Administration of Penitentiaries stating that H.S was arrested on the 5th of September in Linz; in fact this is the date of his surrender to Romania).

In relation to the casefiles studied in all 20 monitored cases, the organization has noticed that most of them are either incomplete (they do not contain the European arrest warrant or any documents certifying the period the person has been arrested in the executing state) or incorrect (H.S’s case).

vi) Right to retrial

D.P is a 41 years old man with double residency Romania/UK. He has graduated university, has two stepchildren and a construction firm. In 2012 he had a bank lawsuit and in

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36 Idem 3.
37 Interviewed by APADOR-CH representatives on 14 December 2017 in the Timișoara penitentiary.
2013 was convicted to 5 years in prison for fraud. At the moment the sentence was issued he was already in London, working in his construction firm. He was informed about his legal situation by his sister. He claims that the lawyer representing him during the trial made an appeal without any power of attorney and in 2014 he was sentenced in absentia to 3 years in prison. P. was planning to hire another lawyer for a retrial.

In July 2015 he was visited by police officers at his home and informed that there was a European arrest warrant issued on his name. P. was taken to the police station for 24 hours where he was handed a letter containing his rights. The authorities allowed him to call his partner and advised him to also contact the embassy. It was his partner who hired a lawyer which was present at the court hearing. He was released on bail, put in house arrest and electronically monitored. He also had the obligation to be at home between 22.00-5.00. “Compared to the money I had in my bank account, the value of the bail was not high”. A few months later, during the winter holidays of 2015, the Romanian authorities issued another European arrest warrant, he was again brought to the police station, established a new bail and released again under the same previous conditions (electronic monitoring).

During the trial he challenged the surrender to Romania on two grounds: lack of a fair trial as he was hospitalized in the UK when the Romanian authorities summoned him to appear before the court and he was trialled in absentia; the detention conditions in Romania but the authorities sent evidence that the conditions in the Arad Penitentiary were appropriate.

P. claimed that the judge refused to surrender him on grounds that he did not have a fair trial back home. Meanwhile, the Arad Tribunal sent the UK court a notification according to which there was going to be a retrial of his case. Against his will, the surrender was decided for 12 December 2016. On January 18th 2018, the Arad Tribunal rejected his request for a retrial, motivating that the evidence was sufficient the first time.

On 12th December 2016 he went to the Heathrow airport where he met the police officer from Interpol. He was brought to the Rahova penitentiary in Bucharest and stayed there until the 17th of January 2017. He was subsequently transferred to the Arad penitentiary for his retrial. Although “this is the prison the authorities brag about whenever they ask for a person to be surrendered”, he claims that the detention conditions were miserable: 8 people in one room, hot water twice a week, bad food and deplorable mattresses.
On the 19th of January 2017 he was transferred to Timișoara in a semi-open regime prison. He works in a call centre within the prison (for an Italian firm). In May 2017 he appealed his final sentence for a deduction of the period he spent in house arrest in London. The proving documents form the British authorities had not arrived at the moment of the interview.

vii) Excessive bureaucracy in implementing an EAW

P.M is a 50 years old man who, since 2011, was commuting regularly between Vienna and Bistrița for work. On 22 October 2017 he was arrested in Debrecen (Hungary) on the basis of a European arrest warrant issued by Romania on 26th October 2016 (for illegal wood cutting). The day of his arrest, going to Vienna, he was crossing the Hungarian border through Debrecen, when he was stopped by the custom officer who told him that he has problems and is sought by the Romanian authorities. Paradoxically, the Romanian customs officer had just verified his documents and had not told him anything. He spent a night in the Debrecen police arrest and then transferred to Budapest. P.M asked the Hungarian authorities to send him back to Romania, as Oradea was closer than Budapest, but they did not want to do that. Ten days later, on 31 October 2017 he was taken back to Oradea.

viii) Almost a good practice example

No case monitored by APADOR-CH is without problems. The closest to being a good practice example is that of A.M.C., a 26 years old man with dual Romanian-UK residence. He has graduated high school. On 17th December 2015 he fled the country after he was sentenced to 1 year and 6 months to prison for shoplifting. He claims he has been working in the United Kingdom legally until he was arrested in view of his surrender to Romania. While he was abroad he found out that on 20th of April 2016 he had been convicted in absentia to 2 years and 3 months for other crimes. The convictions were merged.

On 23rd November 2016 he was arrested on the streets of London. He was taken to the police station where he was told that there is a European arrest warrant issued on his name. He was handed a letter enumerating his rights and was also allowed to call his family and the

38 Interviewd by APADOR-Ch representatives on 13th December 2017 in Oradea.
39 Interviewed by APADOR-CH representatives on 14 December 2017 in Timișoara.
employer. During his court proceedings he was assisted by a legal aid lawyer (state paid) with whom he discussed confidentially for 15 minutes before the hearing. He also had a translator, but claims he understood the language of the court proceedings. The judge informed him that he will be surrendered to Romania and if he agrees and signs the papers he will be sent to his country in 10 days. In case of refusal, he was told that the procedure will last longer. C. communicated to the judge that he does not agree to the surrender because the detention conditions in Romania are bad.

On 23 November 2016 he was taken to the Wandsworth Penitentiary near London where he stayed until 12 of January 2017. He describes the detention conditions as good: 2 persons in one room, permanent hot water and food of choice (in accordance to a weekly menu). The only inconvenience was the limited, outside walking program (one hour a day). While he was in prison he had a video conference hearing but “because he was bored with the UK” he signed the agreement to be surrendered on 9th of December 2016.

However, during the interview Mr. C. recalled with horror the way he was received on the Otopeni airport on 12 of January 2017: he had to get in a cage for surrendered persons and put up with the offensive behaviour of the border police.

During his 3 weeks stay in the Rahova prison he claims he had no money to shop or make a phone call because he only had British pounds and it took very long to change them to Romanian currency. He stayed in a room with 5-6 other people and it was very cold (January-February). On 25th February 2017 he was transferred to the Jilava penitentiary in a semi-open regime but made a request to be transferred to Timișoara in order to be visited by his family (mother). He emphasizes that the detention conditions in Timișoara are good; the only thing that bothers him is the overcrowding (20 persons in a 24 beds room and one toilet). Here, he can even go to work outside the prison.

C. emphasizes that while he was deprived of liberty he read the Criminal Code and knew how to challenge the decision to execute his sentence. Thus, at his own initiative, the judge deducted from his sentence both the arrest period in the UK and a 6 month pre-trial detention period from his first conviction.


Detention conditions in Romania

In 2015, the European Court of Human Rights (ECtHR) found 27 Article 3 violations against Romania, the second highest number of cases lost in 2015 that year in respect to inhuman and degrading treatment.40 The same year, the Court decided to join four applications (Rezmives and others v. Romania) and asked the parties if the cases were suitable for the application of the pilot judgment procedure.

This decision to join the cases followed a semi-pilot judgment in the case of Iacov Stanciu v. Romania (no. 35972/05, 24 July 2012), in which the ECtHR emphasized that “the Court had regularly found violations of Article 3 of the Convention in respect of the conditions of detention that have existed over a number of years in Romanian prisons, in particular overcrowding, inappropriate hygiene and lack of appropriate health care.”41 Concerning the existence of effective domestic remedies, the Court noticed that they were not present in Romanian legislation and urged the state to take all measures to remedy the situation. The ECtHR emphasized that “the remedy—which, under Romanian law, relies mainly on a “delegate judge’s” should allow the delegate judge and the domestic courts to put an end to the situation and to grant compensation where appropriate”.

In 2016, for the first time in 25 years, the Government (a “technocratic” one, following the resignation of Prime Minister Victor Ponta in November 2015) decided to pay attention to the situation of prison conditions. Thus, on 27 April 2016 the Romanian Government adopted a memorandum for the approval of a timetable for measures aimed to improve the detention conditions and the probation system. The document includes the plans for the construction of new prisons, envisaged to be ready by 2023.

On 1 July 2016, the Ministry of Justice and the National Administration of Penitentiaries adopted the Action Plan aimed at improving detention conditions. Its focus is on social reintegration, primarily on activities which will increase professional training that will facilitate access to work after release. The assumption is that on a long term this would lead to a lower reoffending rate and therefore to a decrease of the prison population.

41 ECtHR, IacovStanciu v. Romania, Application no. 35972/05, Judgment of 24 July 2012, para. 195
42 ECtHR, IacovStanciu v. Romania, Application no. 35972/05, Judgment of 24 July 2012, para. 198
In the summer of 2016 riots took place in 8 out of 45 prisons in the context of rumors about the initiation of a draft bill on amnesty and pardoning. In only one prison there were violent incidents, 8 inmates climbing the roof. The rest refused the food.

On 23 November 2016, the Government also adopted a draft law amending and supplementing Law no. 254/2013 on the execution of sentences and custodial measures ordered by the court during the trial. The bill has two purposes: (1) to provide compensation to persons serving sentences of imprisonment in conditions of severe overcrowding; and (2) to contribute at the same time to relieving the prison population. Thus, all persons deprived of their liberty shall automatically have the right to benefit from conditional release if they meet the conditions set by the draft law or who have been or are housed in overcrowded conditions (defined as a space smaller than or equal to 3 sqm). The draft law provides that for every 30 days spent by a prisoner in an inadequate space, three days are deducted from his/her original sentence (the 30 days need not be consecutive).

In January 2017 the Ministry of Justice initiated the bill on amnesty and pardoning. The bill is still in Parliament for debate.

In April 2017 the ECtHR issued a pilot judgement in the case of Rezmives and other v. Romania (no. 61467/12, 39516/13, 48231/13 and 68191/13, 25 April 2017) and gave Romania 6 months to present a precise timetable for the implementation of appropriate general measures to solve the problem of prison overcrowding and poor conditions of detention.

In July 2017 the Parliament adopted the bill initiated by the former Government that aimed to provide compensations for persons serving their sentences in severe conditions with important amendments. Thus, all persons deprived of their liberty shall automatically have the right to benefit from conditional release if they meet the conditions set by the law or who have been or are housed in improper conditions (defined as a space smaller than or equal to 4 sqm or a space with improper hygiene means). The law provides that for every 30 days spent by a prisoner in an inadequate space, 6 days are deducted from his/her original sentence. It was enforced on 19 October 2017. Since then and until the end of 2017, following the enforcement,

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43 This is the law on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceeding.
44 EcTHR, Rezmives and others v. Romania, Application no. 61467/12, 39516/13, 48231/13 and 68191/13, Judgement of 25 April 2017, para 126
45 Law no. 169/2017 for amending and completing the Law no. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceeding.
912 inmates were released for serving the entire sentence (actually about 20% less) and 2718 were released conditionally.

On 25 January 2018 the Ministry of Justice submitted the timetable requested by EctHR in the pilot judgement. The document was presented to the public at the beginning of the year and there were no debates or consultations on it. The annexes (action plans) are not public and there are no certain financial resources indicated with the exception of amounts already secured through EEA grants. Still, the government promises that by the end of 2024 for prisons there will be built 8095 accommodation places and for police lock-ups 1596.

The current situation in penitenciaries

Detention conditions in Romanian penitentiaries have, in part, improved over the years but they are still generally bad and in most cases they do not comply with applicable international standards. Also, detention conditions differ from one penitentiary to another and they can even differ widely within the same detention facility.

There are 45 prison units in Romania with different profiles:
- 16 for maximum security, closed regime and PTD sections – including the only one for women, Targsorul Nou
- 19 for semi-open and open regime
- 6 hospital-prisons
- 2 detention centers for minors and youth
- 2 re-educational centers for minors
In the ECtHR’s point of view the major problems regarding Romanian penitentiaries are: overcrowding, inappropriate hygiene, lack of appropriate health care.

Overcrowding

On 24 April 2018 the overall holding capacity and degree of occupation was the following:

<table>
<thead>
<tr>
<th>Prison</th>
<th>Total surface in sq.m</th>
<th>Number of inmates</th>
<th>Sq.m per inmate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>74188</td>
<td>22722</td>
<td>3.27</td>
</tr>
</tbody>
</table>

As already mentioned detention conditions differ from one penitenciary to another.

<table>
<thead>
<tr>
<th>Prison</th>
<th>Total surface in sq.m</th>
<th>Number of inmates</th>
<th>Sq.m per inmate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vaslui Prison – semi-open and open</td>
<td>1720</td>
<td>778</td>
<td>2.2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prison</th>
<th>Capacity</th>
<th>Inmates</th>
<th>Overcrowding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deva Prison – semi-open and open</td>
<td>2620</td>
<td>467</td>
<td>5.6</td>
</tr>
<tr>
<td>Focsani Prison – maximum security, closed regime and PTD</td>
<td>1200</td>
<td>569</td>
<td>2.1</td>
</tr>
<tr>
<td>Arad Prison – maximum security, closed regime and PTD</td>
<td>5192</td>
<td>1142</td>
<td>4.55</td>
</tr>
</tbody>
</table>

29 out of 45 prison units accommodate more people that their legal capacity (4sqm).

As a positive remarks we note that the hospital-prisons and also the facilities for minors are not overcrowded and, looking back, we might add that there are no more cases of people sharing beds.

**Hygiene** – in most cell hot water for bathing is available twice a week for an hour. For people sharing cells with a lot of other this is often a problem. Not all the rooms have own showers and toilets. The hygiene materials that penitentiaries provide are insufficient (for example two rolls of toilet paper/month) and that affects inmates that are not visited by the families and don’t have money to buy. There were many complaints about mattresses being infected with bad-bugs.

**Health care** – the lack of appropriate health care is mainly due to insufficient medical staff. Doctors are not financially motivated to work in prisons and they are also, due to their status of public servants, forbidden to engage in other medical activities. In our opinion the most affected inmates are those with mental health problems.

**The current situation in police lock-ups**

There are 52 police-lock-ups in Romania, one in capital-city of 40 counties and 12 in Bucharest. About 1000 people are accommodated in police lock-ups. There are not official information on capacity available. Still, in our monitoring visits often found overcrowded cells. The longest stay is (according to the law) 6 month, the medium stay is about 2 month.

Most of the facilities are in the basements of police stations. The windows are covered in double wire net so natural light and ventilation are insufficient. Not all the cells have toilets so inmates still depend on staff to use them.
It has to be noted that, with financial resources from EEA Grants, the General Inspectorate of Police stated to renovate some facilities. For instance, the Cluj Police lock-up that in 2013 seemed impossible to refurbish is now in compliance with human rights standards.

Surrendered persons are treated like regular detainees. If they are in pre-trial detention they are placed in a police lock-up (the closest to the Court of Appeal in charge with the case) and if they are custodial after they enter the country they will go firstly in the closest prison and then follow the regular legal procedure. According to this procedure the person will be placed in a quarantine section for 3 weeks and, a commission of the penitentiary will decide, based on the length of the sentence what detention regime is to serve: maximum security, closed, semi-open or open and also in what prison. The law also provides that: “When determining the prison setting the following issues should be taken into account: the criterion of proximity to home, the detention regime, the safety measures and social reintegration needs identified, sex and age.”

There were a lot of assurances issued by the Romanian Ministry of Justice about the conditions that surrendered people will be provided in the last several years and a lot of them breached and nothing significantly changed in regard to overall detention conditions. More to it, the former Justice Minister said several months ago that promises she made before the ECHR in which she claimed Romania has the budget to build 7 new prisons were false. She admitted the promises she made were based on what later proved to be false information. In light of this statement one can argue that there is a possibility that promises might not be follow-through, this is why it might be wise to treat them with caution. The Government designated after the December 2016 elections admitted that detention conditions are a very serious problem but so far the only improvement is regarding the overcrowding that slightly reduced following the implementation of the Law adopted in July 2017.

In the case of Timis Country Court (Romania) vs. Daniel Nicolae Rusu The Westminster Magistrates’ Court ruled in favor of Mr. Rusu who challenged the EAW on the ground of detention condition (August 2016). In this case several people who previously have received assurances from Romanian authorities testified that they have not been complied with after the surrender.

47 Art.11 (5), Law no. 254/2013.
48 Press coverage of Ms. Pruna’s statement made before a meeting with the Superior Council of Magistrates are available in Romanian at this article: http://www.mediafax.ro/social/sindicat-amp-catre-raluca-pruna-ati-mintit-caveti-capacitatea-de-a-gestiona-sistemul-justitiei-15786301.
III. Conclusions and recommendations

Concerning the issue of deducting form the final sentence the period spent arrested in the executing state

One of the most problematic aspects identified during this research is the fact that the persons who are transferred to Romania on the basis of a European arrest warrant do not have any documents on them which would attest the period they spent arrested. The penitentiary case-files also do not contain this information. Most of the convicted persons interviewed did not know that they had the right to have the period spent arrested in the executing state deducted from the sentence or what the procedure was.

According to the law, as soon as it receives notification that the surrendered person has been brought back into the country, the Romanian judicial authority which issued the European arrest warrant must request directly from the executing State information regarding the length of the surrendered person’s arrest under the EAW and adds this information to the file concerning the European arrest warrant.\(^{49}\) The Interpol Centre within the General Inspectorate of the Romanian Police must inform the judicial authority that the person has been brought back into the country.\(^{50}\)

The law however does not stipulate who exactly must notify the person that the information regarding the length of the sentence served abroad has been communicated, so that the person knows when to ask for a deduction from his or her sentence. As the situation is now, the surrendered person has to make a request “in blank” for the deduction of his arrest period from his sentence, which will determine the court to ask this information from the executing judicial authority. This is a very lengthy procedure.

**APADOR-CH recommends that the law should be changed in order to be clearer concerning who should inform the accused/convicted person that the length of the sentence served abroad has been communicated so he can ask the court for a deduction. The organization also urges the General Inspectorate of the Romanian Police, relevant judicial authorities and the National Administration of Penitentiaries to be prompt and proactive in**

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\(^{49}\) Art. 95 of Law No 302/2004.

\(^{50}\) Art.95 (1) (b) of Law no 302/2004.
their obligation to communicate, ask and attach to the penitentiary case file the relevant information related to the period spent arrested and inform the defendant/convicted person about the right to have this period deducted from his sentence. In relation to the casefiles studied in all 20 monitored cases, the organization has noticed that most of them are either incomplete (they do not contain the European arrest warrant or any documents certifying the period the person has been arrested in the executing state) or incorrect. APADOR-CH recommends the National Administration of Penitentiaries to take measures to correct this situation, including through better coordination with the Romanian Police and the relevant judicial authorities.

Concerning the issue of an European arrest warrant that was issued on the basis of a sentencing decision given in absentia

In some of the monitored cases the convicted persons did not know that they have the right to a retrial or what the procedure to do that was, even though they had complained about being sentenced *in absencia*, in breach of their right to a fair trial.

According to the law, the procedure should be the following: the Romanian judicial authority which issues the European arrest warrant examines the case file of the sentenced person. It checks, depending on the documents in that file, among other things, whether the person was present during the proceedings and if the sentencing decision was personally handed to him or her.

If, after examining the case file, the issuing authority finds that the sentencing decision was not personally handed to the person, the foreign executing judicial authority will be notified that:

(a) within 10 days since the reception of the surrendered person in the police arrest or penitentiary the sentencing decision will have to be personally ‘communicated’ to him, in accordance with the Romanian Criminal Procedure Code.\(^51\)

\(^51\) This means that the case file of the executing judicial authority must contain proof that the final sentencing decision was communicated to the person. If there is no proof of this, then this means that the sentencing decision was not communicated to him. This applies even if the person received a copy of the sentencing decision. According to the Romanian Criminal Procedure Code, if there is no document called ‘proof of communication’ of the sentencing decision, then, from a procedural perspective, the sentencing decision was not communicated to the person.
(b) when being handed the sentencing decision, the person will be also notified that he or she has the right to:

(i) appeal the decision, according to the Romanian Criminal Procedure Code.
(ii) a retrial, according to the Romanian Criminal Procedure Code.

Therefore, the sentenced person can receive a copy of the sentencing decision twice: a) before he or she is brought into the country, for information purposes only – This happens only if the foreign judicial authority asks for a copy of the sentencing decision in order to communicate it to the sentenced person for information only. No term starts running to the detriment of the sentenced person b) he or she can receive a copy from the Romanian judicial authority after he is placed in a penitentiary, on the basis of a proof of communication as a matter of procedure under the Romanian Criminal Procedure Code. The one-month term for asking for a retrial starts running from the date of the receipt of this communication. The surrendered person has to be notified that he or she can ask for a retrial within one month after being informed of the sentencing decision. 52

Therefore, from the moment it fills in the European arrest warrant form, the Romanian judicial authority undertakes the obligation to send these communications and notifications to the sentenced person, as there is a special heading in the EAW form to this effect.

In its interviews with judges in other research projects, APADOR-CH has noticed that many of them are not fully knowledgeable about the content of Law 302/2004 or the procedure of surrender. 53 According to the law the issuing judicial authority must communicate to the sentenced person both the final sentencing decision and the fact that he or she can ask for a retrial, including the deadline by which he can do this. The organization recommends that more training materials (including practical cases) and courses should be made available to judges of the relevant judicial authorities about the European arrest warrant.

52 Art. 92(2) (b) of Law No. 302/2004.
53 Interviews with judges from the Bucharest Tribunal during April 2018 which also contained questions about the European arrest warrant.
Concerning the observance of procedural rights during the surrender procedure

During the course of this research APADOR-CH has noticed that in many cases, during the surrender procedure, EU member states have violated provisions of the EAW as well as those of the EU procedural rights Directives (2010/64/UE on the right to interpretation and translation; 2012/13/UE on the right to information; 2013/48/UE on the right to access a lawyer).

As exemplified during the course of this report, in one of the monitored cases, there was no lawyer present during the surrender hearing before the German judicial authorities. In another one, legal assistance was not guaranteed during the police arrest in London. Several other convicted persons interviewed have complained about the fact that they did not meet or speak with their lawyers (especially when the hearing took place through the videoconference) or that their presence was not at all effective. Some of these cases raise questions about the quality of legal representation in cases involving the execution of the EAW and also about the often formal nature of the surrender procedure which in this case renders totally ineffective the right to consent to surrender. It is also problematic the fact that some convicted persons did not even know that they had the right to challenge the EAW even though they had a lawyer. In one case, there was no translator present during the court hearing. The situation where the lawyer also acts as an interpreter/translator also seems to be quite common practice. It is not certain whether the lawyers also have qualifications as interpreters or if they undertake this task by virtue of their linguistic skills.

With a few exceptions, judges also did not seem to want to consider if detention conditions in Romania might potentially infringe upon the fundamental rights of the arrested person.

APADOR-CH urges the Romanian Government to work towards full implementation of the ECHR pilot judgment Rezmiveș and others v. Romania in order to significantly improve detention conditions at the national level.