



**An assessment of detention conditions in the issuing Member State made prior to the execution of a European arrest warrant must be limited to the prisons in which it is actually intended that the person concerned will be held**

*The fact that the person concerned can challenge the conditions of his detention in the issuing Member State is not sufficient to rule out a real risk of inhuman treatment*

ML, a Hungarian national, was prosecuted in Hungary for offences of bodily harm, criminal damage, fraud and burglary. He was sentenced *in absentia* to a custodial sentence of 1 year and 8 months and the Nyíregyházi Járásbíróság (District Court, Nyíregyháza, Hungary) issued a European arrest warrant against him so that he might serve that sentence in Hungary. ML has been in detention in Germany pending extradition since 23 November 2017.

The Hanseatisches Oberlandesgericht in Bremen ('OLG Bremen') (Higher Regional Court, Bremen, Germany) is nevertheless uncertain, in view of the general conditions of detention in Hungary, whether ML may be surrendered to the Hungarian authorities. That court considers that it has information showing there to be systemic or generalised deficiencies in detention conditions in Hungary,<sup>1</sup> with the result that ML might be exposed there to a risk of inhuman or degrading treatment.<sup>2</sup> Having regard to the judgment of the Court of Justice in the cases of Aranyosi and Căldăraru,<sup>3</sup> OLG Bremen therefore considers it necessary to obtain additional information concerning the conditions in which ML might be detained in Hungary. It asks the Court for other clarification concerning the steps to be taken in that connection.

In today's judgment, the Court makes clear at the outset that it is not being asked about the existence of systemic or generalised deficiencies in detention conditions in Hungary. Although it replies to OLG Bremen on the premiss that such deficiencies exist, that premiss is a matter for OLG Bremen alone, which must ascertain whether it is accurate by taking account of properly updated information.

The Court goes on to state, first, that, even if the issuing Member State provides — as Hungary has done since the start of 2017,<sup>4</sup> — for legal remedies that make it possible to review the legality of detention conditions from the perspective of the fundamental rights, the executing judicial authorities are still bound to undertake an individual assessment of the situation of each person concerned, in order to satisfy themselves that their decision on the surrender of that individual will not expose him to a real risk of inhuman or degrading treatment on account of those conditions.

Secondly, the Court recalls that the executing judicial authorities responsible for deciding whether a person in respect of whom a European arrest warrant has been issued should be surrendered must determine, specifically and precisely, whether, in the circumstances of a particular case, there

<sup>1</sup> The OLG Bremen relies in that regard on, inter alia, the judgment of the European Court of Human Rights of 10 March 2015, *Varga and Others v. Hungary*.

<sup>2</sup> Within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

<sup>3</sup> Case: [C-404/15 and C-659/15 PPU](#) *Aranyosi and Căldăraru*, see also Press Release No. [36/16](#), which was given in response to a request for a preliminary ruling from the same German court.

<sup>4</sup> Detainees in Hungary have, since 1 January 2017, been able to challenge, before the courts, the legality of the conditions of their detention from the perspective of the fundamental rights.

is a real risk that that person will be subjected in the issuing Member State to inhuman or degrading treatment.

The Court makes clear in that regard that those authorities are solely required to assess the conditions of detention in the prisons in which, according to the information available to them, it is specifically intended that the person concerned will be detained, including on a temporary or transitional basis. The compatibility with the fundamental rights of the conditions of detention in the other prisons in which that person may possibly be held at a later stage is a matter that falls exclusively within the jurisdiction of the courts of the issuing Member State.

Thirdly, the Court holds that the executing judicial authority must review solely the actual and precise conditions of detention of the person concerned that are relevant for determining whether that person will be exposed to a real risk of inhuman or degrading treatment. Thus, matters such as opportunities for religious worship, whether it is possible to smoke, arrangements for washing inmates' clothing and whether there are bars or slatted shutters on cell windows are, as a rule, aspects of detention that are of no obvious relevance.

In any event, an executing judicial authority which considers it necessary to request that the issuing judicial authority provide it, as a matter of urgency, with supplementary information on conditions of detention must ensure that its questions do not, because of their number and scope, result in the operation of the European arrest warrant being brought to a standstill, as the purpose of that warrant is specifically to accelerate and facilitate surrenders in the common area of freedom, security and justice.

Fourthly, when the issuing judicial authority gives an assurance<sup>5</sup> that the person concerned, irrespective of the prison he is detained in, will not be subjected to inhuman or degrading treatment on account of the actual and precise conditions of his detention, the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the Member States and on which the European arrest warrant system is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of the prohibition of inhuman or degrading treatment.

When, as in the present case, such an assurance is not given by a judicial authority, the safeguard that it represents must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority.

In the present case, the Court considers that ML's surrender to the Hungarian authorities would appear to be permitted without any breach of his fundamental right not to be subjected to inhuman or degrading treatment, a matter which must, however, be verified by OLG Bremen.

In fact, OLG Bremen itself is of the opinion that the information available to it concerning detention conditions at Szombathely prison, in which it is accepted that ML should serve the majority of his custodial sentence, rules out the existence of a real risk of him being subjected to inhuman or degrading treatment. In addition, as regards Budapest prison, in which ML will be detained for the first three weeks before being transferred to Szombathely, an assurance given by the Hungarian Ministry of Justice and the information available to the Bremen Public Prosecutor's Office appear to support the view that detention conditions within that prison, through which every person who is the subject of a European arrest warrant transits, are likewise not in breach of that fundamental right.

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**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.

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<sup>5</sup> That assurance must be given by the issuing judicial authority itself or at least be endorsed by it, if need be after requesting the assistance of the central authority, or one of the central authorities, of the issuing Member State.

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

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