

# *Case C-128/18 Dorobantu*

**A case study on the European Arrest  
Warrant and fundamental rights**



Case C-128/18 *Dorobantu* (15 October 2019)



## Instructions

Read through the case facts first and consider what you think the issue is from the scenario given

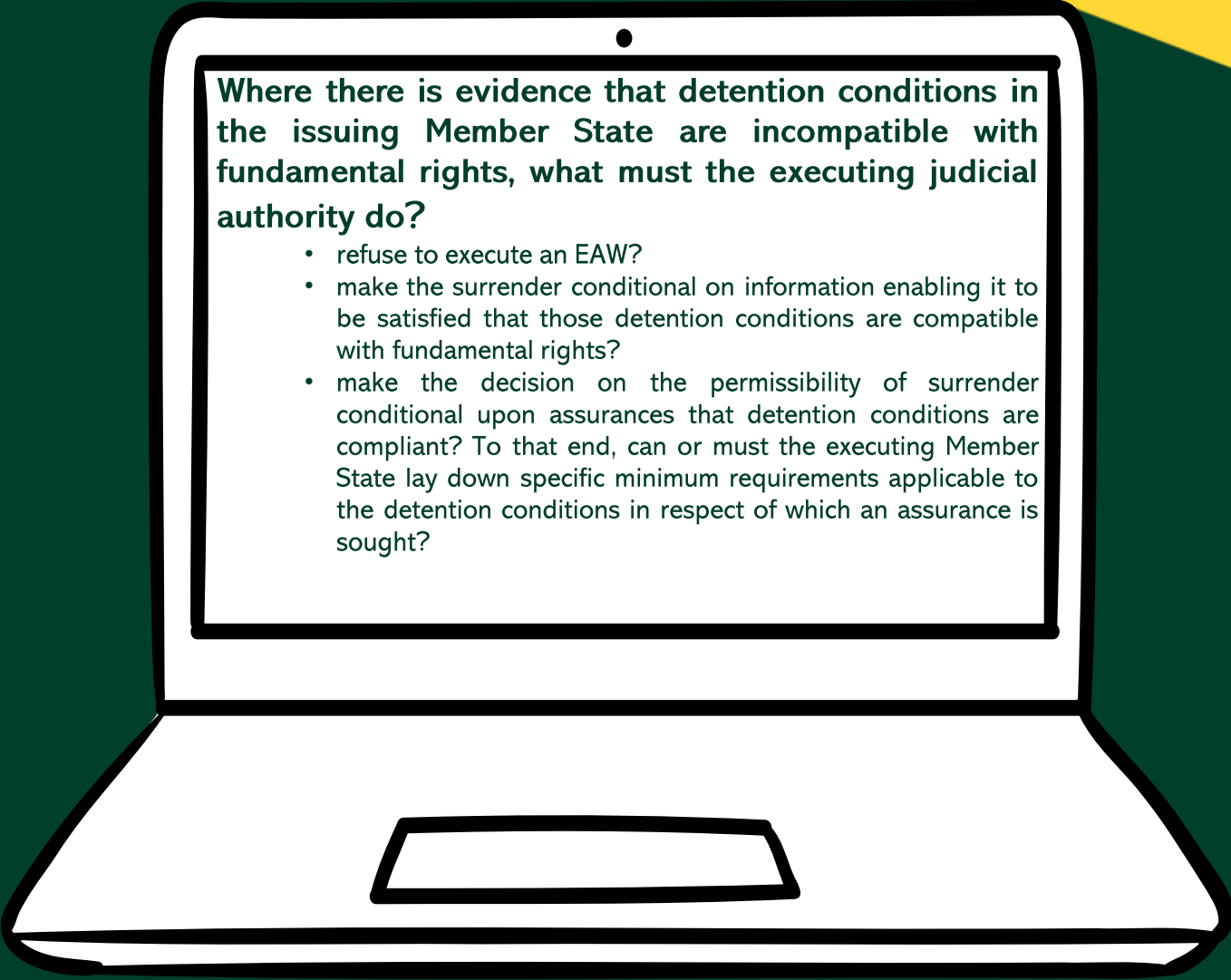
Then read through the question and attempt to answer it from your own understanding based on what you have learned so far.

Digest the answer and visit the case law to read it more in depth



## Case Facts

- A Rumanian Court issued an EAW for Mr Dorobantu for the purposes of prosecution (for offences relating to property and to forgery or the use of forged documents)
- Hamburg Regional Court declared the surrender of Mr Dorobantu to be lawful
- Specific evidence that the conditions of detention in Romania do not satisfy the minimum standards required by international law (Decisions of the ECtHR and a report of the Federal Ministry of Justice and Consumer Protection of Germany)
- Mr Dorobantu would, while being held on remand during his trial, be detained in a 4-person cell measuring 12.30 m<sup>2</sup>, 12.67 m<sup>2</sup> or 13.50 m<sup>2</sup>, or in a 10-person cell measuring 36.25 m<sup>2</sup>. Should Mr Dorobantu be given a custodial sentence, he would be detained, initially, in a penal institution in which each prisoner has an area of 3 m<sup>2</sup>, and subsequently in the same conditions if serving a custodial sentence in a closed prison, or, if he were to be held in an open or semi-open prison, in a cell with 2 m<sup>2</sup> of space per person.
- Romania had introduced an effective mechanism for monitoring conditions of detention.

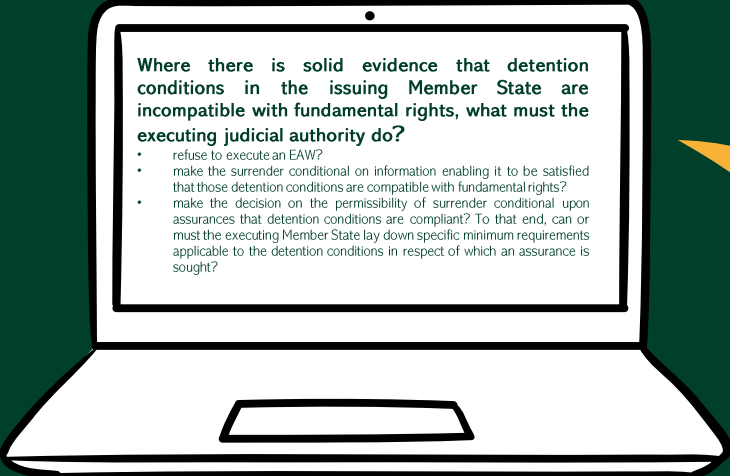


**Where there is evidence that detention conditions in the issuing Member State are incompatible with fundamental rights, what must the executing judicial authority do?**

- refuse to execute an EAW?
- make the surrender conditional on information enabling it to be satisfied that those detention conditions are compatible with fundamental rights?
- make the decision on the permissibility of surrender conditional upon assurances that detention conditions are compliant? To that end, can or must the executing Member State lay down specific minimum requirements applicable to the detention conditions in respect of which an assurance is sought?



Question



Where there is solid evidence that detention conditions in the issuing Member State are incompatible with fundamental rights, what must the executing judicial authority do?

- refuse to execute an EAW?
- make the surrender conditional on information enabling it to be satisfied that those detention conditions are compatible with fundamental rights?
- make the decision on the permissibility of surrender conditional upon assurances that detention conditions are compliant? To that end, can or must the executing Member State lay down specific minimum requirements applicable to the detention conditions in respect of which an assurance is sought?

Apply the ‘two-stage test’



Article 4 of the Charter of Fundamental Rights and Article 3 of ECHR enshrine an absolute prohibition. This is closely linked to Article 1 ECHR (respect for human dignity) → enshrine a fundamental value of the EU and the Member States

Article 3 of the ECHR imposes a positive obligation on the executing judicial authority to ensure that prisoners are detained in conditions which uphold the rights enshrined in the provision



The consequence of the execution of a EAW must not be that a person suffers inhuman or degrading treatment: where the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, that judicial authority is bound to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual sought by a EAW

# Apply the 'two-stage test'



1

## Systemic or generalised deficiencies

or which may affect certain groups of people, or which may affect certain places of detention;  
and

2

## Individualised real risk

the executing judicial authority must make a further assessment, **specific and precise**, of whether there are **substantial grounds** to believe that the individual concerned will run a **real risk** of being subject to inhuman and degrading treatment

# Apply the 'two-stage test'

1

## Systemic or generalised deficiencies

or which may affect certain groups of people, or which may affect certain places of detention; and

The executing judicial authority must rely on information that is objective, reliable, specific and properly updated, such as:

- Judgments of international courts such as the ECHR
- Judgments of courts of the issuing Member States
- Decisions, reports, and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations



## Evidence of the Case

- Decisions of the ECtHR
- Report of the Federal Ministry of Justice and Consumer Protection of Germany



# Apply the 'two-stage test'

2

## Individualised real risk

the executing judicial authority must make a further assessment, **specific and precise**, of whether there are **substantial grounds** to believe that the individual concerned will run a **real risk** of being subject to inhuman and degrading treatment



Executing judicial authority



Issuing judicial authority

The executing judicial authority must request from the issuing Member State all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State

# Apply the 'two-stage test'



Despite the Romanian mechanism for monitoring conditions of detention, the executing judicial authority is bound to conduct the two-step test

## Individual real risk

2

The ill-treatment must attain a minimum level of severity, which must be assessed by taking account of all the circumstances of the case, such as:

- > The duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the individual.
- > The conditions of detention in the prisons in which, according to the information available, it is actually intended that the person concerned will be detained, including on a temporary or transitional basis.
- > Inappropriate physical conditions of detention, including lack of access to outdoor exercise, natural light or air, poor ventilation, inadequacy of room temperature, the impossibility of using the toilet in private, and non-compliance with basic sanitary and hygienic requirements (It is relevant also in cases where a detainee disposes of more than 4 m<sup>2</sup> of personal space!!)

# Apply the 'two-stage test'



Time frame



Executing judicial authority

The executing judicial authority may fix a time limit for the receipt of the supplementary information requested from the judicial authority



The time limit must be adjusted to the particular case to allow the authority the time required to collect the info and where necessary seek assistance from the central authorities of the issuing MS

! The issuing judicial authority is obliged to provide that info to the executing judicial authority



