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European Commission
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10th March 2016



AG Bot's Opinion in Aranyosi and Căldăraru – a Threat to Justice in Europe

As experts in criminal justice and procedural rights from across the European Union, we are writing to express our grave concerns about the opinion of Advocate-General Bot in C-404/15 and C-659/15 dated 3rd March 2016.

As lawyers and human rights NGOs we have a long-standing interest in the two issues at stake:

1. The fair operation of the European Arrest Warrant: between us we have represented dozens of clients in Arrest Warrant cases and are keenly aware of the injustice Arrest Warrants can cause when operated without regard for proportionality and human rights.
2. Prison conditions in EU member states: while recognising the need for effective extradition in the EU, many of us have worked to address the inhumane conditions in some of our countries' prisons, conditions which have been condemned as systematically abusive of human rights in pilot judgments of the European Court of Human Rights.

Given our first-hand experience of the courts' disregard for human rights in the operation of the Arrest Warrant in most of our jurisdictions, we have long supported the case for an explicit refusal ground to surrender where "[t]here are substantial grounds to believe that the execution of the measure would be incompatible with the executing Member State's obligations in accordance with Article 6 TEU and the Charter" (Annex to Parliament Resolution 27 February 2014).

As you know, the Commission has, to date, rejected the Parliament's recommendations due to:

1. The challenges in negotiating amendments to the Arrest Warrant Framework Decision;
2. The ongoing efforts to create minimum defence rights standards to provide a basis of trust for mutual recognition measures like the Arrest Warrant, efforts which we have vigorously supported as members of the Legal Experts Advisory Panel coordinated by Fair Trials Europe. Specifically, we have called repeatedly for a Directive to address the overuse of pre-trial detention – a considerable factor in the inhumane conditions addressed in this case.
3. The Commission's interpretation of the Arrest Warrant Framework Decision as containing an implicit human rights refusal ground, including as a result of Article 1(3): the Arrest Warrant "shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union."

We believe that the Opinion of AG Bot should prompt a fundamental review of the Commission's approach. In outline, his conclusion is that "Article 1(3) ... must be interpreted in a way that it does not create a ground for non-execution of an Arrest Warrant ... on the basis of a risk of a violation in the requesting state of the human rights of the requested person". We recognise, of course, that this is not a legally-binding decision and that the Court will ultimately issue an opinion. However, we are writing now given the grave importance of the Court's ultimate response to the questions referred to it and the Advocate General's unexpected and deeply troubling advice to the Court.

The implications of this approach – according to the principle of mutual recognition a higher legal status than protection for fundamental human rights - cannot be under-stated. If adopted by the Court, it would place the EU legal order out of line with overwhelming global consensus that there is an absolute and non-derogable right for a person not to be extradited to countries in which there is a real risk that they would be subject to torture or inhuman or degrading treatment. Despite AG Bot's arguments, international human rights standards allow for no "balancing" of this right against the interests of law-enforcement or judicial efficiency.

As well as the legal implications, there can be little doubt that such an approach could have wide-ranging implications for public perception of the EU's area of justice, freedom and security. Such a decision of the Court would result in the EU legal order being responsible for removing EU citizens' fundamental human rights in the name of increased police and judicial cooperation.

Many of us watched with great excitement your Opening Statement to the European Parliament in which you described your own ordeal in a prison cell in the Czech Republic. We were inspired by your decision to "fight for justice" and, based on your personal experience, your desire if confirmed as Commissioner "to build trust in our Justice systems." In our own ways, as fellow lawyers and EU citizens, we are all working to fight for justice in Europe. We hope that, as Europe's Justice Commissioner, you will do everything within your power to prevent the EU's area of justice, freedom and security, having the opposite result: creating injustice and denying people their rights.

We respectfully urge you, Commissioner, to:

1. Re-emphasise the Commission's long-standing position that mutual recognition should not operate to undermine human rights - founding values for the EU.
2. Commit, should the Court follow the reasoning of AG Bot, to introducing legislation to make explicit that the Arrest Warrant Framework Decision and other mutual recognition measures, are subject to proper protection for fundamental rights, in line with the recommendations of the European Parliament and the text of more recent mutual recognition measures such as Directive 2014/41/EU on the Investigation Order.
3. Commit to effective EU-wide legislation as a matter of urgency to tackle the unjustified use of pre-trial detention, following the Commission's Green Paper on the issue published five years ago. As AG Bot suggests, had action been taken on this pressing issue earlier, it might have reduced the prevalence of inhumane conditions in Europe's prisons.

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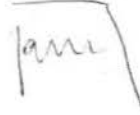
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