

French procedural aspects of EAW cases

France as the Executing State

- The procedure before the “*Chambre de l’Instruction*” is usually a written one. It means that you have to issue a brief at which the Court is bound to answer. Orality remains present as the case is pleaded.
- When a person is arrested in execution of an EAW, he has to be presented before the “*Procureur general*” (i.e. the Prosecutor before the Court of appeal territorially competent) within 48 hours and may then be assisted by a lawyer (Art. 695-27 of French code of criminal procedure).
- The arrested person can consent to his transfer to the IS and renounce to the speciality rule.
- If the Prosecutor decides not to let the arrested person free, he has to present him before the “*Premier Président*” of the Court of appeal on the same day and it is this judge who decides to place him in pre-trial detention or to release him with some obligations to observe (judicial review) (Art. 695-28 of French code of criminal procedure).
- The arrested person has then to be presented before the “*Chambre de l’Instruction*” within a 5-days delay after his presentation to the “*Premier Président*” (Art. 695-29 of French code of criminal procedure) and this is when you have to present your defense and your evidence.
- The arrested person’s lawyer can issue a brief to present his defence and his evidence until the hearing.
- If the arrested person does not consent to his transfer, the decision of the “*Chambre de l’Instruction*” on the transfer of the arrested person has to be taken within a 20-day delay from his appearance in Court unless further information is held by the Court (Art. 695-31 of French code of criminal procedure).
- Any kind of evidence is accepted but the difficulty is to have it established before the hearing on a very short time basis.
- Assistance by a lawyer is not mandatory. Legal aid is foreseen but not sufficient enough (approx. 150 € VAT excluded for the assistance of an arrested person before the “*Chambre de l’Instruction*”).
- The consent to transfer by the arrested person is irrevocable and the decision of the “*Chambre de l’instruction*” is not appealable (Art. 695-31 of French code of criminal procedure).

- If the arrested person does not consent to his transfer, then an appeal before the “*Cour de cassation*” (French Supreme Court) is possible within a 3-day delay (Art. 695-31 and 568-1 of French code of criminal procedure).
- A request for preliminary ruling is possible but quite rare in practical
- It is possible for the arrested person to receive bail during EAW proceedings as part of a judicial review. It depends of course of the person’s situation and the gravity of the facts
- If the FD deadlines are not respected, it constitutes a ground on which the release of the person can be searched.

France as the Issuing State / Avenues to try to challenge an EAW

- Formal grounds: mandatory details and translation - Art. 695-14 and 695-15 of French code of criminal procedure
- Substantive conditions: offense punished of at least 2-year of incarceration or sentence of more than 4 months of incarceration – Art. 695-12 of French code of criminal procedure.
- In some cases, it can also be argued that French prisons or some of them do not respect standard of human rights if such an argument can be raised before the ES authorities.

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3 October 2018