

Case study: navigating between Scylla and Charybdis

Introduction

A public prosecutor in MS A requests that the competent issuing court issue a prosecution-EAW against Mr W, a national of MS B. Mr W is accused of:

- (in two cases), selling marihuana to a minor in 2014 (25 grammes and 50 grammes respectively);
- (in fourteen cases) importing marihuana from Member State B into Member State A in 2014, the amounts of marihuana ranging from 500 grammes to 2.000 grammes.

Mr W lives in MS B with his daughter, H., who at present is thirteen years old. H has serious medical and psychological problems (see below). Mr W is her sole caregiver. The mother is definitely out of the picture.

Medical issues

The daughter was born ten weeks early with a hydrocephalus. A drain was put into her head. Over the years she has had to undergo numerous operations, and she will still have to undergo operations in the future on account of drain dysfunction. On the basis of the opinion of medical experts it has been established that the daughter has for many years had such complex medical problems that, given the close contact between the child, the father and the medical professionals:

- o either a transfer of care for the child to another person in the executing Member State (MS B), should the child be left behind in that Member State in the event of the surrender of the father,
- o or a transfer of the medical file and care to persons in the issuing Member State (MS A), should the child go and reside in that Member State in the event of the surrender of the father,

would create a serious risk that any symptoms would not be recognised in time and that the child would not receive the necessary treatment in time, which, in the worst case, could result in permanent brain damage or death.

Psychological issues

H is a vulnerable girl who has had to cope with a lot in her young life. As a result of her serious physical complaints, she has developed a learning disability. Furthermore, there appear to be post-traumatic stress complaints in view of the fear that she has developed for hospital visits, during which she needs the accompaniment of her father. She also has an attachment disorder. On the basis of the opinion of psychological experts it has been established that the daughter suffers from attachment issues to such an extent that the intensive contact between the child and her father cannot be configured in any way other than as it is now without causing serious problems such as disruption of the attachment process, difficulties with future hospital admissions and increased anxiety of the child.

Questions

Suppose that, at the time of taking a decision on whether to issue an EAW, the court has at its disposal all reports about the medical and psychological situation of the minor daughter of mr W mentioned above:

1. Which instruments/options for cross-border cooperation are available on the basis of the current EU legal framework?
2. Which instruments/options are not available on the basis of the current EU legal framework?
3. Which decision would you take in this situation from the viewpoint of proportionality?
Which decision from the viewpoint of effectiveness?