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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

18 April 2023 (*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Article 23(4) – Surrender procedures between Member States – Grounds for non-execution – Article 4(3) TEU – Duty of sincere cooperation – Postponement of the execution of the European arrest warrant – Article 4 of the Charter of Fundamental Rights of the European Union – Prohibition of inhuman or degrading treatment – Serious, chronic and potentially irreversible illness – Risk of serious harm to health affecting the person concerned by the European arrest warrant)

Case C-699/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte costituzionale (Constitutional Court, Italy), made by decision of 18 November 2021, received at the Court on 22 November 2021, in the proceedings relating to the execution of a European arrest warrant issued against

E.D.L.

intervener:

Presidente del Consiglio dei Ministri,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Prechal, K. Jürimäe (Rapporteur), C. Lycourgos, M. Safjan, L.S. Rossi and D. Gratsias, Presidents of Chambers, J.-C. Bonichot, I. Jarukaitis, A. Kumin, N. Jääskinen, M. Gavalec, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 27 September 2022,

after considering the observations submitted on behalf of:

- E.D.L., by N. Canestrini and V. Manes, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by S. Faraci, avvocato dello Stato,
- the Croatian Government, by G. Vidović Mesarek, acting as Agent,
- the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,
- the Polish Government, by B. Majczyna and J. Sawicka, acting as Agents,
- the Romanian Government, by E. Gane, O.-C. Ichim and A. Wellman, acting as Agents,
- the Finnish Government, by M. Pere, acting as Agent,
- the European Commission, by S. Grünheid and A. Spina, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 December 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'), read in the light of Articles 3, 4 and 35 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in the context of the execution, in Italy, of a European arrest warrant issued by the Općinski sud u Zadru (Municipal Court, Zadar, Croatia) for the purposes of conducting a criminal prosecution against E.D.L.

Legal context

European Union law

3 Recitals 6 and 12 of Framework Decision 2002/584 are worded as follows:

'(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [TEU] and reflected in the [Charter], in particular Chapter VI thereof. ...'

4 Article 1 of that framework decision, headed ‘Definition of the European arrest warrant and obligation to execute it’, provides:

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].’

5 Article 3 of Framework Decision 2002/584 sets out the grounds for mandatory non-execution of a European arrest warrant. The grounds for optional non-execution are listed in Articles 4 and 4a of that framework decision.

6 Article 23 of the Framework Decision 2002/584, headed ‘Time limits for surrender of the person’, provides:

‘1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person’s life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.’

Italian law

7 Article 1(1) of legge n. 69 – Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d’arresto europeo e alle procedure di consegna tra Stati membri (Law No 69, Provisions to bring national law into line with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States), of 22 April 2005 (GURI No 98 of 29 April 2005, p. 6), in the version applicable to the facts in the main proceedings (‘Law No 69/2005’), provides:

‘This law shall transpose into national law the provisions of [Framework Decision 2002/584] on the European arrest warrant and the surrender procedures between Member States, in so far as those provisions are not incompatible with the overriding principles of the constitutional order on fundamental rights, fundamental freedoms and the right to a fair trial.’

The dispute in the main proceedings and the question referred for a preliminary ruling

8 On 9 September 2019, the Općinski sud u Zadru (Municipal Court, Zadar) issued a European arrest warrant against E.D.L., who resides in Italy, for the purposes of conducting a criminal prosecution in Croatia. He is suspected of having committed, in 2014 and on Croatian territory, the offence of possession of narcotics for the purpose of distribution and sale.

9 The Corte d’appello di Milano (Court of Appeal, Milan, Italy) is the judicial authority competent to execute that European arrest warrant. Before that court, E.D.L. produced several medical documents attesting to significant psychiatric problems. On the basis of those documents, the Corte d’appello di Milano (Court of Appeal, Milan) required E.D.L. to be assessed by a psychiatrist.

10 The expert’s report revealed, *inter alia*, the existence of a psychotic disorder requiring treatment with medication and psychotherapy in order to avoid probable episodes of psychiatric decompensation. That report also identified a significant risk of suicide in the event of imprisonment. It concluded that, in view of the need to continue therapy, E.D.L. was an individual unsuitable for prison life.

11 On the basis of that expert’s report, the Corte d’appello di Milano (Court of Appeal, Milan) held, first, that the execution of the European arrest warrant would interrupt E.D.L.’s treatment and lead to a deterioration in his general state of health, the effects of which could be exceptionally serious, or even to an increased risk of suicide. Second, that court found that the relevant provisions of Law No 69/2005 do not provide that health reasons of that kind may constitute a ground for refusing to surrender in proceedings for the execution of a European arrest warrant.

12 It was in that context that, by order of 17 September 2020, it asked the Corte costituzionale (Constitutional Court, Italy), which is the referring court in the present case, about the constitutionality of those provisions.

13 The referring court points out, in that regard, that the questions which it is called upon to resolve concern not only the compatibility of those provisions with the Italian Constitution, but also the interpretation of the provisions of EU law which they implement. Like Law No 69/2005, Articles 3, 4 and 4a of Framework Decision 2002/584 do not include, among the grounds for mandatory or optional non-execution of a European arrest warrant, the situation of a serious threat to the health of the person concerned which would result from surrender due to chronic illnesses of a potentially indefinite duration.

14 That said, the referring court is uncertain whether it would be possible adequately to remedy the risk of harm to the health of the requested person by postponing his surrender on the basis of Article 23(4) of Framework Decision 2002/584. It states, however, that that solution does not seem to it to be suitable for chronic illnesses of indefinite duration, such as those suffered by E.D.L.

15 Furthermore, the referring court recalls that the principle that Framework Decision 2002/584, as transposed by the Member States, cannot have the effect of modifying the obligation to observe

fundamental rights, as enshrined in Article 6 TEU, is affirmed both in recital 12 and in Article 1(3) of that framework decision.

16 It is precisely in order to prevent the implementation of Framework Decision 2002/584 from leading to infringements of the fundamental rights of the requested person that the Court has defined, in addition to the grounds for non-execution provided for in that framework decision, an examination framework designed to reconcile the requirements of mutual recognition and enforcement of judicial decisions in criminal matters with observance of those fundamental rights.

17 That is the case, according to the case-law of the Court, where the execution of a European arrest warrant exposes the requested person to the risk of suffering inhuman or degrading conditions of detention in the issuing Member State as a result of systemic or generalised deficiencies or deficiencies which may affect certain groups of people, or certain places of detention, or to the risk of being subject to proceedings which do not respect the guarantees laid down in Article 47 of the Charter, on account of systemic or generalised deficiencies in so far as concerns the independence of the issuing Member State's judiciary.

18 The referring court notes, however, that that case-law concerns only situations of a risk of a failure to observe the fundamental rights of the requested person linked to systemic and generalised deficiencies in the issuing Member State, or situations concerning certain groups of people or entire detention centres. The questions raised before it relate to a different situation, namely a situation in which the person whose surrender is sought suffers from serious chronic illnesses of indefinite duration which are likely to deteriorate significantly in the event of surrender, in particular if the issuing Member State were to decide to detain him.

19 That court is therefore uncertain whether the principles deriving from that case-law must be extended, by analogy, to that situation. In particular, it is uncertain whether there is an obligation on the executing judicial authority to establish a dialogue with the issuing judicial authority and whether it is possible for the executing judicial authority to terminate the surrender procedure where the fact that there is a risk that the fundamental rights of the requested person will not be observed cannot be ruled out within a reasonable period of time.

20 In those circumstances, the Corte costituzionale (Constitutional Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 1(3) of [Framework Decision 2002/584], examined in the light of Articles 3, 4 and 35 of the [Charter], be interpreted as meaning that, where it considers that the surrender of a person suffering from a serious chronic and potentially irreversible disease may expose that person to the risk of suffering serious harm to his or her health, the executing judicial authority must request that the issuing judicial authority provide information [allowing] the existence of such a risk to be ruled out, and must refuse to surrender the person in question if it does not obtain assurances to that effect within a reasonable period of time?’

Procedure before the Court

21 The referring court requested that the present reference for a preliminary ruling be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice.

22 While acknowledging that E.D.L. is not the subject of any measure involving deprivation of liberty, that court submits that the question referred for a preliminary ruling concerns essential

aspects of the functioning of the European arrest warrant. That question is likely, moreover, to have general consequences, both for the authorities called upon to cooperate in European arrest warrant proceedings and for the rights of the persons concerned.

23 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.

24 It must be borne in mind, in that regard, that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency (judgment of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 37 and the case-law cited).

25 In the present case, the President of the Court decided, on 20 December 2021, after hearing the Judge-Rapporteur and the Advocate General, to refuse the request referred to in paragraph 21 of the present judgment.

26 The fact that the case concerns one or more essential aspects of the functioning of the European arrest warrant is not, as such, a reason that establishes the exceptional urgency necessary to justify an expedited procedure. The same is true of the fact that a large number of persons or legal situations are potentially concerned by the questions referred (see, to that effect, judgment of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 39).

27 Nevertheless, having regard to the nature and importance of the questions referred, the President of the Court decided that the present case should be given priority treatment in accordance with Article 53(3) of the Rules of Procedure.

Consideration of the question referred

28 By its question, the referring court asks, in essence, whether Article 1(3) of Framework Decision 2002/584, read in the light of Articles 3, 4 and 35 of the Charter, must be interpreted as meaning that, where the executing judicial authority called upon to decide on the surrender, in execution of a European arrest warrant, of a person suffering from a serious chronic and potentially irreversible illness concludes that that surrender could expose that person to the risk of suffering serious harm to his or her health, it must request from the issuing judicial authority the information enabling such a risk to be ruled out and is required to refuse to execute that surrender if it does not obtain, within a reasonable period of time, the assurances required to rule out that risk.

29 As a preliminary point, the Court notes that, even if, formally, the referring court has limited its question, which concerns Framework Decision 2002/584, to the interpretation of Article 1(3) of that framework decision in isolation, that does not, however, prevent the Court from providing the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has specifically referred to them in the wording of its questions (see, to that effect, judgments of 12 December 1990, *SARPP*, C-241/89, EU:C:1990:459, paragraph 8, and of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 22).

30 That preliminary point having been made, the Court notes that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow

an area without internal borders to be created and maintained. Specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgments of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 40, and of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 93).

31 Thus, when Member States implement EU law, they may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but also, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the European Union (Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 192, and judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 94).

32 In that respect, Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 42 and the case-law cited).

33 The principle of mutual recognition, which, according to recital 6 of that framework decision, constitutes the ‘cornerstone’ of judicial cooperation in criminal matters, is expressed in Article 1(2) thereof which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 43 and the case-law cited).

34 It follows, first, that the executing judicial authorities may refuse to execute a European arrest warrant only on grounds stemming from Framework Decision 2002/584, as interpreted by the Court (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraphs 69 to 73). Second, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 44 and the case-law cited).

35 That framework decision does not provide that the executing judicial authorities may refuse to execute a European arrest warrant solely on the ground that the person who is the subject of such an arrest warrant suffers from serious, chronic and potentially irreversible illnesses. Having regard to the principle of mutual trust which underlies the area of freedom, security and justice, there is a presumption that the care and treatment provided in the Member States for the management of, inter alia, such illnesses will be adequate (see, by analogy, judgment of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 70), whether in prisons or in the context of alternative arrangements for making that person available to the judicial authorities of the issuing Member State.

36 It is nevertheless apparent from Article 23(4) of Framework Decision 2002/584 that, in exceptional circumstances, relating, inter alia, to the life or health of the requested person being manifestly endangered, surrender may be temporarily postponed.

37 Consequently, the executing judicial authority is authorised to postpone temporarily the surrender of the requested person, provided that there are serious reasons for believing, on the basis of objective material, such as medical certificates or expert reports, that the execution of the arrest warrant manifestly risks endangering the health of that person, for example because of a temporary illness or condition of that person existing before the date on which he or she is to be surrendered.

38 That said, that discretion must be exercised in accordance with Article 4 of the Charter, which prohibits, inter alia, inhuman and degrading treatment, since such a prohibition is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 85, and of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraph 57).

39 In that regard, it cannot be ruled out that the surrender of a person who is seriously ill may cause that person to be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, either as a result of or, in certain circumstances, regardless of the level of quality of the care available in the issuing Member State (see, by analogy, judgment of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 73).

40 In order to fall within the scope of that provision, the treatment must nevertheless reach a minimum level of severity exceeding the unavoidable level of suffering inherent in detention (see, to that effect, judgment of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraph 90).

41 That is true of the surrender of a person who is seriously ill where he or she is at risk of imminent death or where there are substantial grounds for believing that, although not at imminent risk of dying, he or she would face a real risk, in the circumstances of the case, of suffering a serious, rapid and irreversible decline in his or her state of health or a significant reduction in life expectancy (see, to that effect, judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraphs 63 to 66).

42 It follows that, in a situation where the executing judicial authority has, in the light of the objective material before it, substantial and established grounds for believing that the surrender of the requested person, who is seriously ill, would expose him or her to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health, that authority is required, in accordance with Article 4 of the Charter, to exercise the power provided for in Article 23(4) of Framework Decision 2002/584 by deciding to postpone the surrender.

43 In that regard, the Court adds that that framework decision, in particular Article 23(4) thereof, must not be interpreted in such a way as to call into question the effectiveness of the system of judicial cooperation between the Member States, of which the European arrest warrant, as provided for by the EU legislature, constitutes one of the essential elements (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 47 and the case-law cited).

44 That is particularly the case given that the objective of the mechanism of the European arrest warrant is also to combat the impunity of a requested person who is present in a territory other than the one in which he or she is suspected of having committed an offence (see, to that effect, judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 62).

45 That is why the Court has held that, in order, in particular, to ensure that the operation of the European arrest warrant is not brought to a standstill, the duty of sincere cooperation laid down in the first subparagraph of Article 4(3) TEU must inform the dialogue between the executing judicial authorities and the issuing ones. It follows from the principle of sincere cooperation, *inter alia*, that the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 48 and the case-law cited).

46 Therefore, the issuing and executing judicial authorities must, in order to ensure effective cooperation in criminal matters, make full use of the instruments provided for in Framework Decision 2002/584 in order to foster mutual trust on the basis of that cooperation (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 49 and the case-law cited).

47 It follows that, in the situation referred to in paragraph 42 of the present judgment, where the executing judicial authority decides, by way of exception, to postpone temporarily the surrender of the requested person on the basis of Article 23(4) of Framework Decision 2002/584, read in conjunction with Article 4 of the Charter, it must ask the issuing judicial authority to provide it with all the information necessary to ensure that the manner in which the criminal proceedings on which the European arrest warrant is based will be conducted or the conditions of any detention of that person make it possible to rule out the risk referred to in that paragraph (see, by analogy, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 95).

48 If such safeguards are provided by the issuing judicial authority, it follows from Article 23(4) of Framework Decision 2002/584 that the European arrest warrant must be executed. In accordance with that provision, the executing judicial authority is to inform the issuing judicial authority immediately and agree on a new surrender date.

49 In that regard, the Court points out that the chronic and potentially long-lasting nature of the exceptionally serious illness suffered by the requested person does not, however, preclude the executing judicial authority which decided to postpone the surrender of that person from obtaining assurances from the issuing Member State to the effect that that illness will be subject, in that Member State, to appropriate treatment or care, whether in prison or otherwise in a manner which keeps that person available to the judicial authorities of that Member State.

50 However, it cannot be ruled out that, in exceptional circumstances, in the light of the information provided by the issuing judicial authority, and of any other information available to the executing judicial authority, the latter authority may come to the conclusion, first, that there are substantial and established grounds for believing that, if he or she is surrendered to the issuing Member State, the requested person will be subject to a risk such as that described in paragraph 42 of the present judgment and, second, that that risk cannot be ruled out within a reasonable period of time.

51 First, Article 23(4) of Framework Decision 2002/584 constitutes an exception to the executing judicial authority's obligation to ensure the surrender of the requested person as soon as possible, contained in Article 23(1) of that framework decision. It would therefore be contrary both to the wording of Article 23(4) of that framework decision, which refers to the 'temporary' nature of the postponement of the surrender, and to the general scheme of that article for an executing judicial authority to be able to defer the surrender of a requested person for a considerable or even indefinite period of time in order to avoid such a risk materialising. Moreover, in such a situation, the requested person could remain indefinitely subject to the European arrest warrant issued against him or her and any coercive measures adopted, as the case may be, by the executing Member State, even though there is no realistic prospect that that person will be surrendered to the issuing Member State.

52 Second, in a case such as that described in paragraph 50 of the present judgment, regard must also be had to Article 1(3) of Framework Decision 2002/584, under which the existence of a risk of infringement of fundamental rights is capable of permitting the executing judicial authority to refrain, exceptionally and following an appropriate examination, from giving effect to a European arrest warrant (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 72 and the case-law cited).

53 In such a case, the executing judicial authority cannot, in accordance with Article 1(3) of Framework Decision 2002/584, interpreted in the light of Article 4 of the Charter, give effect to the European arrest warrant (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 104, and, by analogy, of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 66).

54 In those circumstances, it does not appear necessary to interpret Article 1(3) of Framework Decision 2002/584 in the light of Articles 3 and 35 of the Charter.

55 In the light of all the grounds set out above, the answer to the question referred is that Article 1(3) and Article 23(4) of Framework Decision 2002/584, read in the light of Article 4 of the Charter, must be interpreted as meaning that:

- where there are substantial grounds to believe that the surrender of a requested person in execution of a European arrest warrant manifestly risks endangering his or her health, the executing judicial authority may, exceptionally, postpone that surrender temporarily;
- where the executing judicial authority called upon to decide on the surrender of a requested person who is seriously ill in execution of a European arrest warrant concludes that there are substantial and established grounds for believing that that surrender would expose that person to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health, it must postpone that surrender and ask the issuing judicial authority to provide all information relating to the conditions under which it intends to prosecute or detain that person and to the possibility of adapting those conditions to his or her state of health in order to prevent such a risk from materialising;
- if, in the light of the information provided by the issuing judicial authority and all the other information available to the executing judicial authority, it appears that that risk cannot be ruled out within a reasonable period of time, the executing judicial authority must refuse to execute the European arrest warrant. On the other hand, if that risk can be ruled out within such a period of time, a new surrender date must be agreed with the issuing judicial authority.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Articles 1(3) and 23(4) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that:

- **where there are substantial grounds to believe that the surrender of a requested person in execution of a European arrest warrant manifestly risks endangering his or her health, the executing judicial authority may, exceptionally, postpone that surrender temporarily;**
- **where the executing judicial authority called upon to decide on the surrender of a requested person who is seriously ill in execution of a European arrest warrant concludes that there are substantial and established grounds for believing that that surrender would expose that person to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health, it must postpone that surrender and ask the issuing judicial authority to provide all information relating to the conditions under which it intends to prosecute or detain that person and to the possibility of adapting those conditions to his or her state of health in order to prevent such a risk from materialising;**
- **if, in the light of the information provided by the issuing judicial authority and all the other information available to the executing judicial authority, it appears that that risk cannot be ruled out within a reasonable period of time, the executing judicial authority must refuse to execute the European arrest warrant. On the other hand, if that risk can be ruled out within such a period of time, a new surrender date must be agreed with the issuing judicial authority.**

[Signatures]

* Language of the case: Italian.
