



The concept of “*force majeure*” rendering impossible the execution of a European arrest warrant does not extend to legal obstacles which arise from legal actions brought by the requested person

Where the person concerned has not been surrendered within the prescribed period, he or she must be released

C and CD, who are Romanian nationals, were the subjects of European arrest warrants issued in 2015 by a Romanian judicial authority for the purpose of executing prison sentences of five years and additional sentences of three years. Those sentences were imposed for the trafficking of dangerous and very dangerous narcotics and for participation in a criminal organisation.

C and CD were the subjects of procedures for the execution of those European arrest warrants in Sweden. By decisions delivered in 2020, the Swedish authorities ordered that C and CD be surrendered to the Romanian authorities. However, C and CD left Sweden for Finland before those decisions on surrender were implemented. On 15 December 2020, C and CD were arrested and placed in detention in Finland on the basis of the European arrest warrants at issue.

By decisions of 16 April 2021, the Supreme Court of Finland ordered that they be surrendered to the Romanian authorities. The Finnish National Bureau of Investigation initially set a surrender date of 7 May 2021. C and CD's air transport to Romania could not be organised before that date on account of the COVID-19 pandemic. A second surrender date was set for 11 June 2021. However, the surrender was once again postponed, owing to air transport issues. A third surrender date was set for 17 June 2021 for CD and for 22 June 2021 for C. However, it was once again not possible to proceed with that surrender, this time because C and CD had lodged applications for international protection in Finland.

C and CD then brought an action seeking, first, their release on the ground that the time limit for surrender had expired and, second, the postponement of their surrender on account of their applications for international protection. Those actions were declared inadmissible. The main proceedings concern the appeals brought by C and CD against those decisions before the Supreme Court.

Article 23 of Framework Decision 2002/584¹ lays down the rules applicable to the surrender of persons requested under a European arrest warrant once the final decision to surrender those persons has been taken by the competent authorities of the executing Member State. If the requested person is not surrendered within a very short period, he or she must be released pursuant to Article 23(5). If the surrender is prevented because of a situation of *force majeure*, that period may be extended pursuant to Article 23(3), provided that the executing judicial authority and the issuing judicial authority immediately agree on a new surrender date.

The referring court asks, first of all, whether the concept of “*force majeure*” extends to legal obstacles to surrender which arise from legal actions brought by the person who is the subject of

¹ 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).

the European arrest warrant and are based on the law of the executing Member State, in cases where the final decision on surrender has been adopted by the executing judicial authority.

In its judgment delivered today, the Court confirms that **the bringing of legal actions by the person who is the subject of the European arrest warrant**, in the context of proceedings provided for by the national law of the executing Member State, **with a view to challenging his or her surrender to the authorities of the issuing Member State or having the effect of delaying that surrender, cannot be regarded as an unforeseeable circumstance**. Consequently, **such legal obstacles to surrender, which arise from legal actions brought by that person, do not constitute a situation of *force majeure***.

Accordingly, the time limits for surrender laid down in Article 23 of the framework decision cannot be regarded as suspended on account of proceedings pending in the executing Member State, brought by the person who is the subject of the European arrest warrant, where the final decision on surrender has been adopted by the executing judicial authority. Accordingly, the authorities of the executing Member State are still, in principle, required to surrender that person to the authorities of the issuing Member State within the time limits set.

Next, the referring court asks, first, whether the requirement for intervention on the part of the executing judicial authority is satisfied where the executing Member State makes a police service responsible for ascertaining whether there is a situation of *force majeure* and whether the necessary conditions for the continued detention of the person concerned are satisfied, on the understanding that that person is entitled to apply to the executing judicial authority at any time for a decision on the abovementioned matters. Second, that court asks whether the time limits referred to in Article 23 must be regarded as having expired, with the result that that person must be released, in the event that it is necessary to regard the requirement for intervention by the executing judicial authority as not having been met.

The Court finds, in the first place, that **the intervention on the part of the executing judicial authority** required under Article 23 of the framework decision, **for the purpose of assessing whether there is a situation of *force majeure*** and, as the case may be, setting a new surrender date, **cannot be made the responsibility of a police service** of the executing Member State, such as the National Bureau of Investigation in the dispute in the main proceedings. The finding of a situation of *force majeure* by the police services of the executing Member State and the setting of a new surrender date, without intervention on the part of the executing judicial authority, does not meet the formal requirements laid down in Article 23 of the framework decision, irrespective of whether a situation of *force majeure* actually exists.

Consequently, **where there is no intervention on the part of the executing judicial authority, the time limits** laid down in Article 23 of the framework decision **cannot be validly extended and**, in a situation such as that at issue in the main proceedings, **those time limits must be regarded as expired**.

The Court recalls that it is clear from the wording of Article 23 of the framework decision that **the person who is the subject of a European arrest warrant, if still in custody, must, if those time limits have expired, be released**. No provision is made for an exception to that obligation on the part of the executing Member State in such a case. Having regard to the obligation of the executing Member State to carry on with the procedure for executing a European arrest warrant, the competent authority of that Member State is required, if the person who is the subject of that warrant is released, to take any measures it deems necessary to prevent that person from absconding, with the exception of measures involving deprivation of liberty.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and the résumé](#) of the judgment are published on the CURIA website on the day of delivery.

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