



## PRESS RELEASE No 193/22

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Advocate General's Opinion in Case C-699/21 | E. D. L. (Ground for refusal based on illness)

### **According to Advocate General Campos Sánchez-Bordona, a serious risk to the person whose surrender is requested may justify the postponement of a European arrest warrant, but not the refusal, with no further justification, to execute it**

In September 2019, the Zadar Municipal Court (Croatia) issued a European arrest warrant ('EAW') for the purpose of conducting a criminal prosecution against E.D.L., residing in Italy, who was charged with the offence of possession of drugs with intent to distribute and sell, committed on Croatian territory in 2014. According to an expert report, E.D.L. suffers from a psychiatric disorder requiring treatment and is at high risk of suicide associated with the possibility of his imprisonment. The Italian court ruling on the execution of the EAW referred a question concerning the constitutionality of the law transposing Framework Decision 2002/584/JAI<sup>1</sup> before the Constitutional Court, as it may infringe the right to health, guaranteed by the Italian Constitution. The Constitutional Court made a reference for a preliminary ruling to the Court of Justice asking it for an interpretation of the Framework Decision.

The Italian Constitutional Court asks whether it is possible to apply, by analogy, the line of case-law, which began with the judgment in *Aranyosi and Căldăraru*,<sup>2</sup> and according to which the execution of an EAW may be refused, in exceptional circumstances, where there is a risk that, as a consequence of **systemic and generalised deficiencies in the issuing Member State**, the person whose surrender is requested ('the requested person') may be exposed to conditions involving inhuman and degrading detention (in contravention of Article 4 of the Charter of Fundamental Rights of the European Union; 'the Charter') or that he or she may be subject to proceedings which do not respect his or her right to an effective remedy and to a fair trial (Article 47 of the Charter). The Court of Justice has insisted on a **two-stage examination** in order to determine the plausibility of that risk: in the first stage, the existence of generalised and systemic deficiencies which undermine the protection of the requested person's fundamental rights in the issuing Member State must be established and, in the second stage, it is necessary to verify whether there are substantial grounds for believing that that specific person will be exposed to a real risk of infringement of his or her fundamental rights as a result of his or her surrender.

In his opinion delivered today, Advocate General Campos Sánchez-Bordona considers that, **in the present case, the first of those two stages can be dispensed with, since the risk to the health of the requested person is**

<sup>1</sup> Council Framework Decision of 13 June 2002 on the [EAW] 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).

<sup>2</sup> Judgment of the Court of Justice in joined cases [C-404/15](#) and [C-659/15 PPU](#) *Pál Aranyosi and Robert Căldăraru* (see [PR 36/16](#)). See also judgments of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)* ([C-220/18 PPU](#); see [PR 114/18](#)), and *Minister for Justice and Equality (Deficiencies in the system of justice)* ([C-216/18 PPU](#); see [PR 113/18](#)), and of 15 October 2019, *Dorobantu* ([C-128/18](#)), and of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)* (joined cases [C-354/20 PPU](#) and [C-412/20 PPU](#); see [PR 164/20](#)).

**not related to possible generalised deficiencies affecting health care or prison conditions in the issuing Member State**, about which no one has complained, but rather to the possible lack of appropriate treatment for the psychiatric disorder from which that specific person suffers. **Therefore, it is sufficient to examine whether the requested person will be guaranteed, in the Member State issuing the EAW, any medical treatment that he or she may require.**

In addition, reiterating once again that **the cornerstones of the system introduced by the Framework Decision are mutual trust and recognition**, and that **the refusal to execute an EAW must be an exception to the rule**, Advocate General Campos Sánchez-Bordona recommends that, instead of extending by judicial means the grounds for refusal to execute, use is made of the means made available by the Framework Decision itself, where it provides for **the possibility of postponing the surrender of the requested person, exceptionally and for serious humanitarian reasons**, such as danger to the requested person's life or health.

As an alternative to the creation of a new ground for refusal to execute an EAW, the Advocate General suggests keeping to the option set out in **Article 23(4) of the Framework Decision**, which provides for **a communication channel between the issuing and executing judicial authorities**. **On the one hand, those exchanges** would allow the executing judicial authority to obtain from the issuing judicial authority explanations regarding the medical treatment available in places of detention or imprisonment, in line with the medical needs of the requested person and, on the other hand, provide the issuing authority with useful information in order to assess the risk to the requested person's health and, where appropriate, decide whether to withdraw the EAW on a temporary or definitive basis. **The serious risk to health thus becomes a ground which presupposes that execution of the EAW has been authorised and justifies the decision to postpone it.**

Advocate General Campos Sánchez-Bordona notes that **the postponement must be temporary** since the execution of the EAW must take place as soon as the serious humanitarian reasons justifying postponement cease to exist. Should the postponement need to be prolonged, the judicial authorities concerned will have to identify specific solutions and the non-execution of the surrender order will only arise if a reasonable period of time has elapsed.

Therefore, Advocate General Campos Sánchez-Bordona proposes that the answer that the Court should give to the Italian Constitutional Court is that **where** the executing judicial authority considers that **the surrender of a requested 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** (resulting from the infringement of Article 3 – **Right to integrity of the person** – or Article 4 – **Prohibition of torture and inhuman or degrading treatment or punishment** – of the Charter **for reasons associated with the requested person's state of health**), it must request that the issuing judicial authority provide **information allowing the existence of such a risk to be ruled out, and, if necessary, postpone, exceptionally and on a temporary basis, the surrender of that person** for as long as that serious risk remains.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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](#) of the Opinion is published on the CURIA website on the day of delivery.

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