



## PRESS RELEASE No 207/23

Luxembourg, 21 December 2023

Judgment of the Court in Case C-261/22 | GN (Ground for refusal based on the best interests of the child)

### **European arrest warrant: the surrender of a requested person cannot be refused on the sole ground that she is the mother of young children**

*It is only where there are systemic or generalised deficiencies in the issuing Member State and where there is a risk of breach of the fundamental rights of the persons concerned that such a surrender may exceptionally be refused*

A court cannot refuse to execute an European arrest warrant (EAW) on the sole ground that the requested person is the mother of young children living with her. However, that court may exceptionally refuse that person's surrender if two conditions are satisfied: first, there must be a real risk of breach of the mother's fundamental right to respect for her private and family life and of disregard for the best interests of her children, on account of systemic or generalised deficiencies in the conditions of detention of mothers of young children and of the care of those children in the State issuing the EAW, and second, there must be substantial grounds for believing that, in the light of their personal situation, the persons concerned will run that risk on account of those conditions.

A woman was convicted *in absentia* in Belgium to a term of imprisonment of five years for the offences of trafficking in human beings and facilitating illegal immigration. A Belgian court issued an EAW in respect of her for the purpose of enforcing that sentence. Several months later, that woman was arrested in Bologna (Italy). At the time of her arrest, she was pregnant and in the company of her son who was almost three years old.

The Italian court responsible for the execution of the EAW did not receive any information from the Belgian court regarding the detailed arrangements for enforcement, in Belgium, of sentences imposed on mothers living with their minor children. It refused the surrender.

The Italian Court of Cassation, before which the case was brought, has asked the Court of Justice whether and, as the case may be, under what conditions the Italian court may refuse to execute an EAW in a situation such as the one at hand, to which the framework decision on the EAW does not make any reference as one of the grounds for non-execution of an EAW <sup>1</sup>.

The Court of Justice answers that the court **cannot refuse to execute an EAW on the sole ground that the requested person is the mother of young children living with her**. Having regard to the principle of mutual trust between the Member States, there is a presumption that the conditions of detention of a mother of young children in the Member State issuing the EAW are appropriate to such a situation.

The **surrender** of the person concerned **may nevertheless be exceptionally refused where there is information**

that serves to demonstrate that:

- **there is a real risk of breach of the mother's fundamental right to respect for her private and family life** and of disregard for the best interests of her children, **on account of systemic or generalised deficiencies** in the conditions of detention of mothers of young children and of the care of their children in the Member State issuing the EAW, and
- **there are substantial grounds for believing that, in the light of their personal situation, the persons concerned will run that risk on account of those conditions.**

**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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text, and, as the case may be, the abstract](#) of the judgment are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Pictures of the delivery of the judgment are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

Stay Connected!



<sup>1</sup> [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.