JUDGMENT NO 177 YEAR 2023

In this judgment, the Constitutional Court held, in accordance with the *E.D.L.* judgment by the Court of Justice of the European Union, that the execution of a European arrest warrant (EAW) should never expose the requested person to a serious health risk, since this would amount to a violation of their right not to be subjected to inhuman or degrading treatment, enshrined in Article 4 of the Charter of Fundamental Rights of the European Union. Should there be substantial grounds to believe that such a risk exists, the executing Italian judicial authority must postpone the surrender. It must also ask the issuing judicial authority to provide all information pertaining to the conditions under which it intends to prosecute or detain that person, including the possibility of adapting them to their state of health in order to prevent such a risk from materialising. If, in the light of the information received, it appears that such a risk cannot be ruled out within a reasonable period of time, the Italian judicial authority must refuse to execute the EAW.

The case originated from a referral order filed by the Milan Court of Appeal, which had asked the Constitutional Court to rule on the compatibility of the Italian provision on the grounds for refusal of an EAW with various constitutional provisions, in particular with Articles 2 and 32, protecting the right to health. The referring court complained that the challenged provisions did not allow the executing authority to deny the surrender of a requested person when there are substantial grounds to believe that they could be exposed to a serious risk for their health, or even life, in the requesting State.

In its Order No 216/2021, the Constitutional Court noted, firstly, that Articles 3, 4 and 4a of Framework Decision 2002/584 themselves did not include among the grounds for mandatory or optional non-execution of an EAW the scenario of a serious threat to the health of the person concerned due to potentially indefinite chronic illnesses that might arise from surrender. Secondly, it determined that the prospect of a temporary postponement of surrender, as prescribed by Italian law in accordance with Article 23 of Framework Decision 2002/584, could not be deemed an appropriate remedy under such circumstances.

Therefore, the Constitutional Court submitted a request for a preliminary ruling to the Court of Justice, asking whether Article 1(3) of Framework Decision 2002/584, examined in the light of Articles 3, 4 and 35 of the Charter, "must 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 deny surrender of the person in question if it does not obtain assurances to that effect within a reasonable period of time".

The Court of Justice responded with its *E.D.L.* judgment on 18 April 2023 in the aforementioned terms.

In the light of this decision, the Constitutional Court refrained from declaring the challenged provisions unconstitutional since they can now be interpreted in conformity with the fundamental rights in question.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 18 and 18-*bis* of Law No 69 of 22 April 2005 (Provisions to bring domestic 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), initiated by the Fifth Criminal Division of the Milan Appeal Court (*Corte d'appello di Milano, sezione quinta penale*) in criminal proceedings against E.D.L., by referral order of 17 September 2020, registered as number 194 of the 2020 Register of Referral Orders and published in the *Official Journal of the Italian Republic*, number 2, first special series 2021.

Considering the entry of appearance by E.D.L., as well as the entry of appearance by the President of the Council of Ministers;

after hearing Judge Rapporteur Francesco Viganò at the public hearing of 4 July 2023;

after hearing Counsel Vittorio Manes and Counsel Nicola Canestrini for E.D.L. and the State Counsel (*Avvocato dello Stato*) Maurizio Greco for the President of the Council of Ministers;

after deliberation in chambers on 17 July 2023.

The facts of the case

1.– By referral order of 17 September 2020 (Register of Referral Orders No194/2020), the Fifth Criminal Division of the Milan Appeal Court raised questions as to the constitutionality of Articles 18 and 18-*bis* of Law No 69 of 22 April 2005 (Provisions to bring domestic 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), with reference to Articles 2, 3, 32 and [...] 111 [...] of the Constitution to the extent that, in the context of European arrest warrant procedures, they do not envisage "chronic health reasons of indefinite duration entailing the risk of exceptionally serious consequences for the requested person" as grounds for refusing surrender.

1.1.– The referring court stated that it had to decide on the surrender of E.D.L., in execution of a European arrest warrant issued by the Municipal Court of Zadar (Croatia) on 9 September 2019 for the prosecution of the requested person, charged with the offence of possession with the intent to distribute and sell drugs, committed in Croatian territory in 2014.

The expert's psychiatric report on E.D.L. revealed the presence of an "otherwise unspecified psychotic disorder", which required ongoing pharmacological and psychotherapeutic treatment to avoid possible episodes of psychological disturbance. The report also pointed to a "high risk of suicide" associated with possible imprisonment; therefore, in the referring court's opinion, transferring the person concerned to Croatia would not only interrupt treatment but would constitute "a real risk to his health with possible exceptionally serious consequences".

1.2.– The Milan Appeal Court pointed out, however, that there is no general ground for refusing to execute a European arrest warrant, exhaustively established in Articles 18 and 18-*bis* of Law No 69/2005, based on the necessity to avoid infringement of the fundamental rights of the requested person, and specifically the right to health.

Nor – if the Court of Appeal ordered the surrender of the person concerned – would postponement of execution by the President of the Court or their delegate under Article 23(3) of Law No 69/2005 assure full protection of the rights of the person concerned. The person's health would be assessed after the judicial stage of the procedure, and no remedy would be available against the decision. Given the chronic nature of the requested

person's medical condition, deferral of the proceedings would, furthermore, be of indefinite duration, which is incompatible with the rationale of the remedy established by Article 2(3), prescribing postponement of the arrest warrant "in the event of a diagnosed illness of foreseeable duration".

1.3.– The referring court observes that in such circumstances the decision to order the surrender of the person concerned would result in the infringement of their right to health, "interpreted in the various meanings of the right to physical integrity and the right to adequate care", and protected as such both by Articles 2 and 32 of the Constitution and – in European law – by Article 35 of the Charter of Fundamental Rights of the European Union.

In addition, the applicable law allegedly breaches the principle of equality set out in Article 3 of the Constitution by treating persons subject to a European arrest warrant less favourably than those subject to extradition procedures, regarding whom Article 705(2)(c-*bis*) of the Code of Criminal Procedure provides that the court of appeal must deny extradition "if reasons of health or age entail the risk of exceptionally serious consequences for the requested person".

Lastly, according to the referring court the lack of provision for a ground for refusal connected with the state of health of the person concerned, in the case of chronic and potentially irreversible illness, is incompatible with the principle of the reasonable duration of proceedings established by Article 111 of the Constitution. In similar cases, as a consequence of postponing execution following a surrender order under Article 23(3) of Law No 69/2005, the applicable law would produce "an indefinite procedural paralysis", detrimental to both the "need to avoid lengthy proceedings" and the "right of the defendant to be judged – or in any case to have the procedural step to which they are subjected concluded – within a reasonable period of time".

[…]

4.– Written submissions were filed by the Union of Italian Criminal Chambers (*Unione delle camere penali italiane*, *UCPI*), the European Criminal Bar Association, and Fair Trials Europe acting as *amici curiae*.

[…]

Conclusions on points of law

[…]

4.– [...] First of all, the questions concerning compatibility with Article 3 of the Constitution take as a *tertium comparationis* Article 705(2)(c-*bis*) of the Code of Criminal Procedure, which provides that the court of appeal must rule against extradition "if reasons of health or age entail the risk of exceptionally serious consequences for the requested person". These questions must be declared unfounded.

The *tertium comparationis* evoked is not appropriate. In fact, Framework Decision 2002/584/JHA aims to replace the traditional extradition procedures with a simplified surrender system based on the direct relationship between the judicial authorities of the Member States, inspired by the principle of the "free movement of judicial decisions" (Recital No 5), which is in turn based on the idea, set out in the conclusions of the Tampere European Council of 15 and 16 October 1999, of their "mutual recognition" (Recital No 6). This system "is based on a high level of confidence between Member States" (Recital No 10) concerning the respect by each Member State of the fundamental rights recognised in European Union law (Court of Justice, *E.D.L.*, paragraph 30, and further references therein).

As most recently observed in the *E.D.L.* judgment, it is precisely this mutual trust that precludes, as a rule, "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" (paragraph 35). This presumption can be rebutted, in individual cases, only under the strict conditions set out by the Court of Justice, to which we shall shortly return.

The presumption does not apply, however, to traditional extradition mechanisms. This renders a meaningful comparison between the two forms of cooperation mechanisms unfeasible.

5.– In the light of the *E.D.L.* judgment, the remaining questions concerning compatibility with Articles 2, 32 and 111 of the Constitution must be held unfounded in the terms set out below.

5.1. – According to the referring court, the failure of Law No 69/2005 to provide a ground for non-execution of the European arrest warrant where there is a "risk of exceptionally serious consequences" arising from "chronic health reasons of indefinite duration" affecting the requested person, is incompatible with their inviolable right to health enshrined in Articles 2 and 32 of the Constitution.

Secondly, the same court remarks that postponing execution as envisaged in Article 23(3) of Law No 69/2005 is not sufficient to avert the risk. Due to the chronic nature of the illness from which the requested person suffers, such a remedy would entail indefinite procedural paralysis, resulting especially in prejudice to the right of the person concerned to have their procedural position defined within a reasonable time.

5.2.– In Order No 216/2021, this Court concurred, firstly, with the referring court's assessment of the unsuitability of the remedy provided in Article 23(3) of Law No 69/2005 in relation to the need to protect the right to health of the requested person. In this respect, this Court remarked that – within the context of the Framework Decision, in the light of which the Italian provision must be interpreted – the "exceptional" postponement of surrender appears to be envisaged for situations of a merely "temporary" nature. Consequently, this remedy seems inappropriate in situations of chronic illnesses of indefinite duration. In such scenarios, "deferral of the execution of the European arrest warrant [...] would risk being prolonged indefinitely", with two problematic consequences. On the one hand, the issuing State would be prevented from prosecuting or executing the sentence against the person concerned indefinitely. On the other, the person concerned would not be able to invoke their chronic illness during the surrender proceedings – in which all procedural guarantees are provided to them – but only at a later stage in the proceedings, before the President of the Court or their delegate, so that the person concerned would remain "in a situation of continuous uncertainty regarding his or her fate, which would conflict with the need to guarantee a reasonable duration in all proceedings liable to affect his or her freedom" (paragraph 6.3. of the *Conclusions on points of law*).

Secondly, this Court remarked that the executing judicial authority cannot refrain from surrendering in the situation under examination simply based on the general clause currently contained in Article 2 of Law No 69/2005, as reworded by Legislative Decree No 10/2021, stating that the execution of a EAW must comply with the "supreme principles of the constitutional order of the State" and the "inalienable rights of the person". In fact, this clause – with those set forth in the prior wording of Articles 1 and 2 of Law No 69/2005, both applicable *ratione temporis* in the main proceedings, which allowed the execution of a EAW only insofar as this did not infringe "the principles and the rules contained in the Constitution" – cannot be interpreted as authorising the competent court of appeal to refuse to surrender *beyond* the cases provided for in

European Union law, as interpreted by the Court of Justice. Indeed, the Constitutional Court alone has the authority to assess "the compatibility of European Union law, or national law implementing European Union law, with these highest principles and inviolable rights" (paragraph 7.5. of the *Conclusions on points of law*).

Order No 216/2021 recalled, however, that EU law itself cannot "tolerate that the execution of an EAW could lead to the infringement of the fundamental rights of the person concerned protected by the Charter and Article 6(3) TEU" (paragraph 8 of the *Conclusions on points of law*), as Article 1(3) of Framework Decision 2002/584/JHA clearly shows.

This Court therefore asked the Court of Justice whether the principles already established by the latter, concerning cases where surrendering the requested person might expose them to a serious risk of the infringement of their fundamental rights due to systemic deficiencies in the issuing State – notably, in instances of prison overcrowding or lack of judicial independence – should also be extended to a scenario such as the one currently under consideration.

This Court argued that such a solution would allow direct dialogue between the judicial authorities of the issuing State and those of the executing State in order to avoid the risk of serious harm to the health of the requested person arising from the surrender, and to halt the surrender procedure if the existence of such a risk cannot be avoided within a reasonable time (point 8.2. of the *Conclusions on point of law* and operative part).

This Court's request for preliminary ruling, moreover, underlined the need to strike a fair balance between safeguarding the health of the requested person – which is protected both at the national level, under Articles 2 and 32 of the Constitution, and in European Union law, under Articles 3, 4 and 35 CFREU (paragraphs 9.1. and 9.2. of the *Conclusions on points of law*) – and "the interest in prosecuting suspected offenders, establishing their responsibility and, if found guilty, ensuring they are punished" in the European legal space, the latter interest underpinning both the European Union rules and the national provisions concerning the European arrest warrant (paragraph 9.3. of the *Conclusions on points of law*).

Such a balance – this Court concluded – may best be achieved through dialogue between the judicial authorities of the issuing and executing States in order to find "practical solutions that would, in specific cases, allow the person concerned to be tried in the issuing State, ensuring all rights of defence and avoiding the risk of serious damage to their health, for example by placing them in a suitable facility in the issuing State during the trial" (paragraph 9.5. of the *Conclusions on points of law*).

5.3.– In response to the question, the Court of Justice first of all reiterated, in its *E.D.L.* judgment [...], that the judicial authorities of the executing State may, as a general rule, refrain from surrendering the requested person only in the cases provided for in Framework Decision 2002/584/JHA, on the specific assumption that all Member States are able to assure appropriate treatment for the illness from which the requested person suffers.

However, the Court of Justice also recalled that, according to Article 23(4) of the Framework Decision, the executing judicial authority may temporarily postpone the surrender of the requested person where this would entail them facing "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" or, even more so, danger to their own life, also in light of the lack of suitable treatment for their illness in the issuing State. Indeed, if surrendering the requested person would expose them to such risks, the execution of the arrest warrant would be incompatible with that person's right not to be subjected to inhuman or degrading treatment, pursuant to Article 4 CFREU (paragraphs

39 to 41).

Consequently, the Court of Justice stated that 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 a seriously ill requested person would expose them to such a risk, it must order the postponement of the surrender provided for in Article 23(4) of Framework Decision 2002/584 (paragraph 42).

As this Court had proposed in its Order No 216/2021, the Court of Justice stated that, in such cases, the executing judicial authority "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" (paragraph 47).

If, within a reasonable time, the judicial authority of the issuing State provides assurances regarding the treatment and care that the requested person will receive – whether in prison or otherwise – making it possible to exclude such a risk, the arrest warrant must be executed (paragraphs 48 and 49).

If, on the contrary, it appears that it is not possible to rule out such a risk within a reasonable period of time, the executing judicial authority can only "refrain, exceptionally and following an appropriate examination, from giving effect to a European arrest warrant" and consequently "refuse to execute [it]", taking into account the general prohibition of infringing the fundamental rights of the requested person as laid down in Article 1(3) of the Framework Decision (paragraphs 52 and 53 and operative part). In fact, according to the Court of Justice, a deferral of execution that would leave the person concerned indefinitely subject to a procedure that might limit their fundamental rights, despite there being no realistic prospect of being surrendered to the issuing judicial authority, would be intolerable (paragraph 51).

5.4.– This Court shares the view, expressed in agreement by the referring court and the Court of Justice itself, that the execution of a European arrest warrant – whether issued for the purposes of prosecution or execution of a custodial sentence – should never entail subjecting the requested person to a risk of rapid, significant and irreversible deterioration in their state of health, and, all the more so, of a reduction in their life expectancy.

Executing an arrest warrant in such a case would entail – as the Court of Justice observed – a breach of Article 4 CFREU, exposing the person concerned to the risk of inhuman and degrading treatment, and would lead, from a constitutional perspective, to an infringement of the inviolable right to health of the requested person, based on Articles 2 and 32 of the Constitution.

On the other hand, the remedy originally envisaged by the State Counsel's Office – namely the mere, and potentially indefinite, deferral of execution if the requested person suffers from a serious chronic illness – is incompatible with the latter's right, protected by Article 111(2) of the Constitution, to a timely decision regarding their case.

The solution identified by the Court of Justice in the *E.D.L.* judgment now provides a way of averting such a scenario through a three-step process: (a) postponement of the decision to surrender, (b) direct dialogue between the judicial authorities in order to find an appropriate solution to avoid serious risk to the health of the requested person, and (c) either execution of the surrender or a final decision to deny it in the event that no such solution can be found.

5.5.– It remains, at this point, to be determined how the Court of Justice's solution envisaged for the entire legal space of the European Union must be implemented within the normative framework of Law No 69/2005, transposing Framework Decision 2002/584/JHA. In doing so, this Court must ensure that the resulting state of the law is

compatible both with the Constitution and the fundamental rights recognised in European Union law.

5.5.1.– First of all, it must be borne in mind that the interpretation now provided by the Court of Justice relates to an instrument – Framework Decision 2002/584/JHA – which is "binding upon the Member States as to the result to be achieved without prejudice to the powers of the national authorities as to form and methods", and in any event has no direct effect in Member States' legal orders, as set out by Article 34(2)(b) of the Treaty on European Union, in the text resulting from the Treaty of Amsterdam in force at the time of its adoption.

Accordingly, in incorporating the procedural mechanism identified by the Court of Justice into Italian law, it is necessary to take into account the specific regulatory context represented by Law No 69/2005, in which Parliament made use of the wide discretion regarding the choice of "form" and "means" that the Framework Decision grants it in order to adapt its provisions to the special context of Italian proceedings.

Consequently, the indications now given by the Court of Justice concerning the result to be achieved – namely to prevent the infringement of the fundamental rights of a seriously ill requested person through direct dialogue between the judicial authorities of the issuing and the executing States – must also be tailored to this legal context.

5.5.2.– The *E.D.L.* judgment focuses on Article 23(4) of the Framework Decision, which allows the "executing judicial authority" to temporarily postpone surrender if, for example, there are "substantial grounds for believing that it would manifestly endanger the requested person's life or health". In the light of Article 1(3) of the Framework Decision, the Court of Justice interprets this clause to mean that the "executing judicial authority" should ask for information from the issuing judicial authorities in order to find an appropriate solution to avoid risks to the requested person's health, and possibly deny surrender if dialogue proves fruitless.

The Italian legislature transposed Article 23(4) of the Framework Decision through Article 23(3) of Law No 69/2005. This provision confers the power to postpone surrender – if, among other things, there are "substantial grounds for believing that it would manifestly endanger the requested person's life or health" – not on the authority competent to decide on surrender (namely the court of appeal sitting as a collegial body, as laid down in Article 5 of Law No 69/2005), but on the "President of the Court of Appeal" or a "single judge delegated by him or her", whom the law generally empowers to handle the execution of the arrest warrant *after* the court of appeal has decided in favour of surrender.

This Court has already held in its Order No 216/2021 that such a remedy – entrusted to a judge sitting alone and not the collegial body that ordered the surrender, and resulting in an order that cannot be reviewed by the Court of Cassation (Court of Cassation, Sixth Criminal Division Judgment No 20849 of 26 April–10 May 2018) – cannot assure adequate protection of the inviolable right to health, or to life itself, of the requested person. The nature of the fundamental rights in question demands, in fact, full scrutiny within judicial proceedings regulated by the law and in compliance with all fair trial guarantees, including the possibility of an appeal to the Court of Cassation, in accordance with the provisions of Article 111(7) of the Constitution.

It is also worth mentioning that within the logic of the Framework Decision – and of the *E.D.L.* judgment itself – the "executing judicial authority", which is competent to decide whether the conditions for surrender set out in Articles 3, 4 and 4a of the Framework Decision are met, is in principle the same authority that is competent to decide on the postponement of surrender under Article 23(4). This authority is, indeed, also referred to as the "executing judicial authority" in the Framework Decision. In this light,

it is evident why the Court of Justice now empowers this same authority to "refuse" to execute the warrant when the dialogue envisaged by the *E.D.L.* judgment proves fruitless.

It follows that, in order to best assure in the Italian legal order the *effet utile* of Framework Decision 2002/584/JHA, as interpreted in the *E.D.L.* judgment, the same court competent to rule on surrender under Article 5(1) of Law No 69/2005 – namely, the court of appeal sitting as a collegial body – must have jurisdiction to assure the new procedural remedy put forth by the Court of Justice. Indeed, the Italian legislature has empowered precisely this collegial body to allow or deny the execution of European arrest warrants, with all the related effects on the fundamental rights of the requested person – starting from their personal freedom – through decisions that can be challenged before the Court of Cassation, in conformity with Article 111(7) of the Constitution.

5.5.3.– The detailed procedure outlined in the *E.D.L.* judgment can thus be easily situated, in the scheme of Law No 69/2005, within the broader procedure for decisions on requests for execution governed by Articles 17 *et seq*., and may usefully take place there after consideration of the positive and negative conditions specifically provided for in Articles 17, 18 and 18-*bis*, but *before* the decision on surrender is issued, this decision remaining then subject to a possible appeal in the Court of Cassation under Article 22.

This solution will prevent the risk that, following the dismissal of an appeal by the Court of Cassation against a first court of appeal's decision allowing surrender, the requested person would have to start new proceedings before the court of appeal for the sole purpose of assessing the conditions for surrender established by the *E.D.L.* judgment. This would also lead to a new decision, itself open to appeal before the Court of Cassation. Such an outcome would entail unnecessary prolongation of the proceedings, in direct contrast with one of the fundamental objectives of Framework Decision 2002/584/JHA, namely to assure swifter execution of surrender decisions than in the case of traditional extradition procedures.

Thus, once all positive conditions for surrender have been established, and any ground for refusal within the meaning of Articles 18 and 18-*bis* of Law No 69/2005 has been ruled out, the court of appeal will further assess whether the requested person is suffering from a serious illness, and whether "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" (Court of Justice, *E.D.L*, second sub-paragraph of the operative part).

If the court finds that such conditions do in fact exist, it will – pursuant to the second sub-paragraph of the operative part of the *E.D.L.* judgment – defer the decision on 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", in accordance with the procedures laid down in Article 16 of Law No 69/2005. Such procedures are, as a matter of course, already being used by the courts of appeal to ascertain the actual existence of a "real risk of inhuman or degrading treatment" as a result of prison overcrowding in the issuing State, as established by the *Aranyosi* and *Căldăraru* judgment, or the existence of a "real risk of breach of the fundamental right to a fair trial", as stated in the *LM* judgment.

If such dialogue leads to an appropriate solution to prevent this risk, the court of appeal will render a decision in favour of surrender.

If, on the contrary, after dialogue with the issuing judicial authority, no solution appropriate to the purpose could be found "within a reasonable time", the court of appeal will deny surrender, in accordance with the third sub-paragraph of the operative part of

the *E.D.L.* judgment.

All this is without prejudice to the authority of the President of the court of appeal, or the judge delegated by them, provided for in Articles 23(2) to (4) of Law No 69/2005, to postpone the surrender for the reasons set out therein, including any transitory situations of danger to life or health, or in any case arising after the court of appeal's decision to surrender. These situations are referred to in the first sub-paragraph of the operative part of the *E.D.L.* judgment, in which the Court of Justice essentially reproduces what is already broadly provided for in Article 23(4) of the Framework Decision.

5.6.– This overall result can be achieved simply by interpreting the existing law, without the need to declare Articles 18 and 18-*bis* of Law No 69/2005 unconstitutional, as requested by the referring court.

The execution of European arrest warrants is, in fact, conditioned by observance of the fundamental rights of the requested person within the meaning of Article 1(3) of Framework Decision 2002/584/JHA. As previously mentioned, Law No 69/2005 had originally implemented this provision through its Articles 1 and 2 in their original wording, and now implements it through Article 2 in the new wording.

This Court has already held that those provisions did not – and do not – authorise the Italian courts to deny surrender of the requested persons on the basis of "purely national standards of protection of fundamental rights", since this could compromise the "primacy, unity and effectiveness of European Union law" (Court of Justice of the European Union, judgment of 26 February 2013, in Case C-617/10, *Fransson*, paragraph 29; judgment of 26 February 2013, in Case C-399/11, *Melloni*, paragraph 60). The fundamental rights that the Framework Decision and – consequently – the national transposing legislation must respect under Article 1(3) of the Framework Decision "are, rather, those protected by European Union law and therefore by all the Member States when they implement European Union law: defined, *inter alia*, by the constitutional traditions common to the Member States (Article 6(3) TEU and Article 52(4) CFREU)" (Order No 216/2021, point 7.3. of the *Conclusions on points of Law*; similarly, Order No 217/2021, point 7 of the *Conclusions on points of Law*).

However, the provisions in question can, and indeed must, be read in accordance with Article 1(3) of the Framework Decision, and thus operate as safety valves to prevent the execution of arrest warrants leading to breaches of fundamental rights in the meaning attributed to them by European Union law as interpreted by the Court of Justice.

It follows that, if the court of appeal ascertains that the health of the requested person cannot be adequately protected in the issuing State, it will deny surrender. It will do so in accordance with the procedure set out in the *E.D.L.* judgment, applying the general clauses just mentioned contained in Law No 69/2005, in conformity with the Court of Justice's precise indications on the scope of the fundamental rights at stake. Incidentally, the same national legal bases for the refusal to surrender have already been invoked in the Court of Cassation's case law in the event of a risk of inhuman or degrading treatment due to prison overcrowding within the meaning indicated in the *Aranyosi and Căldăraru* judgment (see Judgment No 44015 of 16-18 November 2022 by the Court of Cassation, Sixth Criminal Division).

5.7. – In conclusion, the questions concerning compatibility with Articles 2, 32 and 111 of the Constitution are unfounded, since the failure of Law No 69/2005 to provide for a ground for refusal based on a serious risk to the health of the person concerned can be remedied through a systematic interpretation of the same law, in the light of the *E.D.L.* judgment. This interpretation, in the terms set out above, ensures the conformity of the impugned provision with the constitutional principles referred to.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* that the questions as to the constitutionality of Articles 18 and 18-*bis* of Law No 69 of 22 April 2005 (Provisions to bring domestic 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) raised with reference to Article 3 of the Constitution by the Fifth Criminal Division of the Milan Appeal Court with the referral order mentioned in the headnote, are unfounded;

2) *declares* that, in the terms set out in the grounds, the questions as to the constitutionality of Articles 18 and 18-*bis* of Law No 69/2005, raised with reference to Articles 2, 32 and 111 of the Constitution by the Fifth Criminal Division of the Milan Appeal Court with the referral order mentioned in the headnote, are unfounded.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 17 July 2023.

Signed:

Silvana SCIARRA, President

Francesco VIGANÒ, Judge Rapporteur