DECISION NO. 216 YEAR 2021

The Milan Court of Appeal was called upon to decide whether to execute a European arrest warrant ("EAW") issued by the Court of Zadar against an Italian citizen for trial in Croatia for the crime of possession and sale of narcotics. According to an expert medical report ordered by the Court of Appeal, the accused suffers from a chronic psychiatric disorder of indefinite duration, which would be incompatible with his detention under Italian law. As the Italian transposition law on the European arrest warrant does not allow Italian judicial authorities to refuse surrender when the duration of an illness cannot be foreseen, the Court of Appeal asked the Constitutional Court to declare the relevant Italian legislation incompatible with the right to health protected under Articles 2 and 32 of the Constitution.

Equally, the Constitutional Court observed that the Framework Decision on the EAW makes no provision for refusing surrender in such circumstances. Therefore, doubt as to the compatibility of the national legislation with the fundamental rights of the accused person must also extend to the provisions of the Framework Decision. However, the Court noted that in the areas of law fully harmonised at EU level, including the European arrest warrant, it is primarily for EU law to "establish standards for the protection of fundamental rights that must be fulfilled by the law on the European arrest warrant and its execution at the national level". Indeed, as stated on several occasions by the Court of Justice, any other solution would impair the primacy, unity, and effectiveness of EU law.

Therefore, the Constitutional Court deemed it necessary to refer the matter to the Court of Justice. In particular, the Luxemburg Court is asked to clarify whether, and to what extent, the principles and procedures governing grounds for refusing surrender not expressly set out in the Framework Decision (such as systemic prison overcrowding or serious problems relating to lack of judicial independence in the requesting State) also apply when surrender may expose the person in question to the risk of serious harm.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

ORDER

within proceedings concerning the constitutionality of Articles 18 and 18-bis of Law No. 69 of 22 April 2005 (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) initiated by the Milan Court of Appeal, Fifth Criminal Division, in criminal proceedings against E.D.L, with the referral order of 17 September 2020, registered as Case No. 194 in the 2020 Register of Referral Orders and published in the *Official Journal of the Republic* No. 2, first special series, 2021.

Having regard to the entry of appearance filed by E.D.L. and the statement in intervention filed by the President of the Council of Ministers;

after hearing Judge Rapporteur Francesco Viganò at the public hearing of 22 September 2022;

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

after deliberations in chambers on 23 September 2021.

The facts of the case

1.– By an order of 17 September 2020, the Fifth Criminal Division of the Milan Court of Appeal raised questions, with reference to Articles 2, 3, 32 and 111 of the Constitution, as to the constitutionality of Articles 18 and 18-bis of Law No. 69 of 22 April 2005 [...], insofar as they do not envisage "chronic health reasons of indefinite duration entailing the risk of exceptionally serious consequences for the requested person" as a ground for refusing surrender under European arrest warrant procedures.

1.1.– The referring court states that on 9 September 2019, the Općinski sud u Zadru (Municipal Court, Zadar, Croatia) issued a European arrest warrant (EAW) for the purpose of prosecuting E.D.L., charged with the offence of possession with intent to distribute and the sale of drugs, committed in Croatian territory in 2014.

After considering the medical document presented by the defence, attesting to major psychiatric disorders, some of which related to past abuse of narcotics, in particular cannabis and methamphetamine, the Milan Court of Appeal, competent to carry out the surrender procedure, ordered that E.D.L undergo a psychiatric examination, which revealed the presence of an "otherwise unspecified psychotic disorder", requiring ongoing pharmacological treatment and psychotherapy to avoid likely episodes of psychological disturbance. The report also pointed to a "high risk of suicide" associated with possible imprisonment, concluding that the person concerned "is not fit for prison life and needs to continue treatment, which is unquestionably far from completed".

On the basis of this report, the referring court held that the "transfer [of the person concerned] to Croatia in execution of the EAW would not only interrupt treatment, thus worsening his general state of wellbeing, but would constitute a real health risk, with possibly serious consequences, given the risk that he might commit suicide, as stressed by the expert".

1.2.– The Milan Court of Appeal points out, however, that the obligation to execute an EAW is limited only by the grounds for refusal exhaustively established in Articles 18 and 18-bis of Law No. 69/2005, whereas there is no general ground for refusal based on the need to avoid infringements of the fundamental rights of the surrendered person, such as the right to health.

Furthermore, it observes that, according to Article 23(3) of Law No. 69/2005, if the Court of Appeal orders the surrender of the person concerned, the President of the Court or their delegate may then suspend execution. Nevertheless, in the opinion of the referring court, this solution would not ensure full protection of the rights of the person concerned. The health of the person concerned would be assessed outside the judicial phase of the procedure, and no remedy would be available against the decision. Moreover, in cases such as the one at issue, the stay of the proceeding would be of indefinite duration, given the chronic nature of the requested person's illness, whilst Article 23(3) of Law No. 69 2005 only allows suspension of the arrest warrant leading to trial "in the event of a diagnosed illness of foreseeable duration".

Lastly, the referring court stresses that there is no question of any structural or systemic flaws in the issuing State liable to undermine the presumption that it respects human rights. The issue regards solely the specific nature of the psychiatric illness of the person concerned (and the treatment he requires).

[omitted]

Conclusions on points of law

1.– The Fifth Criminal Division of the Milan Court of Appeal raised questions as to the constitutionality of Articles 18 and 18-bis of Law No 69 of 22 April 2005 [...], insofar as they do not provide for "chronic health reasons of indefinite duration entailing the risk of exceptionally serious consequences for the requested person" as a ground for refusing surrender.

According to the referring court, the failure to provide for such a ground for refusal infringes the right to health of the person concerned, protected by Articles 2 and 32 of the Constitution.

Moreover, the referring court points to a difference, incompatible with Article 3 of the Constitution, between the regulations in question and those governing extradition procedures, namely Article 705(2)(c)-bis of the Code of Criminal Procedure, which expressly states that extradition must be refused "if reasons of health or age entail the risk of exceptionally serious consequences for the requested person".

Lastly, the disputed rule is contrary to the principle of reasonable duration of proceedings laid down in Article 111(2) of the Italian Constitution and would result in indefinite procedural paralysis, which could be avoided if the Italian court were allowed to conclude the proceedings with a refusal to surrender.

[omitted]

3.– It must [omitted] be clarified from the outset that after the referral order was filed, both Article 18 of Law No. 69 of 2005, concerning the grounds for compulsory refusal to surrender, and Article 18-bis of the same law, concerning the grounds for optional refusal of surrender, were amended by Legislative Decree No. 10 of 2 February 2021 (Provisions to ensure the full adaptation of national legislation to the provisions of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, in implementation of the delegation provided for in Article 6 of Law No. 117 of 4 October 2019).

Neither of these new provisions address the question whether the surrender of a person must, or may, be refused, if doing so would expose them to an exceptionally serious health risk, so the questions raised by the referring court could equally be directed to the new rules.

In any case, the amendments Article 28(1) of Legislative Decree No. 10 of 2021 made to Law No. 69 of 2005 do not apply to existing arrest warrant execution proceedings, such as the one pending before the referring court. Therefore, the provisions previously in force, under examination here, continue to apply to these proceedings.

[omitted]

5.– On the merits, the questions this Court is called upon to decide do not only concern the compatibility of the challenged provisions with the Italian Constitution but, first and foremost, the interpretation of EU law, which the challenged national law specifically implements.

Articles 3, 4, and 4a of Framework Decision 2002/584/JHA on the EAW, governing the mandatory and optional grounds for refusing surrender, make no explicit reference to situations where surrender would jeopardise the health of the person concerned due to a chronic illness of potentially indefinite duration. Accordingly, the doubts raised by the referring court as to the compatibility of Articles 18 and 18-bis of Law No. 69 of 2005 with the Italian Constitution must also be extended to the provisions of Articles 3, 4 and 4-bis of the Framework Decision, concerning the corresponding fundamental rights recognised by the Charter and Article 6 TEU.

6.– To settle the referred questions, it must be established whether the possible danger of serious health risk to the person being surrendered to the judicial authority of the issuing State can be adequately dealt with by suspending the surrender under Article 23(3) of Law 69/2005, which transposes Article 23(4) of Framework Decision 2002/584/JHA into Italian law.

According to the Milan Court of Appeal, suspension does not constitute an adequate remedy to ensure the health of persons suffering from chronic illness of an indefinite duration, as in this case.

However, the *Avvocatura generale dello Stato* challenges this assumption (shared by the defence), stating in its pleading that in the case in question suspension could certainly have been ordered.

The Court agrees with the referring court for the following reasons.

6.1. – According to Article 23(3) of Law No. 69 of 2005, "When there are humanitarian reasons or serious reasons to believe that surrender would endanger the life or health of the person concerned, the President of the Court of Appeal, or the judge delegated by him or her, may by reasoned order to suspend the execution of the surrender measure, giving immediate notice to the Minister for Justice".

6.2.– As mentioned above, this provision is a transposition into national law of Article 23(4) of Framework Decision 2002/584/JHA, which in turn establishes that "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 EAW 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."

According to the provisions of the Framework Decision, which must guide interpretation of the Italian provision, the 'exceptional' postponement of surrender therefore seems to be permitted in merely 'temporary' situations, which would make immediate surrender of the person concerned contrary to human dignity.

6.3.– Conversely, this remedy cannot be considered appropriate in the case of serious chronic medical conditions of indefinite duration, as in the case of the person concerned. In such circumstances, the execution of the EAW, even if already authorised by the Court of Appeal, would be likely to lead to execution being postponed indefinitely. This would deprive the surrender measure itself of any practical effect and might prevent the issuing State from prosecuting the person or executing the sentence against him or her.

Moreover, this remedy would not even provide full protection for the person concerned, who – as the referring court rightly observes – cannot invoke chronic illness during surrender proceedings, so they have to invoke it at a later stage in the proceedings prior to the decision of the President of the Court or their delegate (see Court of Cassation, Sixth Criminal Division, Judgment No. 19389 of 25-26 June 2020, and No. 5933 of 12-14 February 2020: the state of health of the person concerned cannot be invoked during surrender proceedings).

Lastly, continued deferrals preventing surrender based on chronic health reasons would keep the person concerned in a situation of constant 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.

6.4.– Thus, in the opinion of this Court, the suspension of surrender under Article 23(3) of Law No. 69 of 2005 cannot be considered an appropriate remedy when serious chronic health conditions of indefinite duration prevent the surrender being executed.

7.– The next issue to be ascertained is whether the wording of the general clauses in Articles 1 and 2 of Law No. 69 of 2005 applicable in the main proceedings and prior to the amendments brought by Legislative Decree No 10 of 2021, authorises the Italian judicial authority not to order surrender also in cases other than those mentioned in Articles 18 and 18-bis, if doing so would risk breaching a fundamental right of the person concerned protected by the Italian Constitution or European Union law.

This was the interpretation of the defendant's Counsel of the new wording of Article 2 of Law No 69 2005, introduced by Legislative Decree No 10 of 2021 but not applicable in the main proceedings. However, the same arguments could be made regarding the

previous wording of Articles 1 and 2, still applicable in the main proceedings. The interpretation in question therefore deserves thorough examination. Were it correct, the referring court would be able to refuse surrender under the law in force with no need for a ruling on its unconstitutionality.

In the opinion of this Court, however, this interpretation cannot be endorsed.

7.1.– Prior to the most recent amendments brought by Legislative Decree No. 10 of 2021, Article 1(1) of Law No. 69 of 2005 stated: "This law implements, in national law, the provisions of Council Framework Decision 2002/584/JHA of 13 June 2002, ('the Framework Decision') on the European arrest warrant and the surrender procedures between Member States of the European Union in so far as such provisions are not incompatible with the highest principles of the Constitution governing fundamental rights, and the rights of liberty and due process of law". The final clause, starting from the words "to the extent that", has now been repealed by Legislative Decree No 10 of 2021.

As it stood before the amendments brought by Legislative Decree No. 10 of 2021, Article 2 of Law No. 69 2005 required Italy to respect the fundamental rights protected by the ECHR when executing European arrest warrants, in particular Articles 5 and 6 and its additional Protocols, in addition to the "principles and rules pertaining to due process contained in the Constitution of the Republic", referring in particular to those on the protection of personal liberty, the right of defence, criminal liability, and the nature of criminal penalties. Legislative Decree No. 10 of 2021 reformulates this rule entirely. It now states that "[t]he execution of the European arrest warrant cannot, in any case, lead to a violation of the highest principles of the constitutional order of the State or of inalienable rights of the person recognised by the Constitution, the fundamental rights and the fundamental legal principles embodied in Article 6 of the Treaty on the European Union, or the fundamental rights guaranteed by the [ECHR] and its additional Protocols". The current wording thus restricts the scope of the original clause, no longer mentioning the full range of constitutional principles and rules but referring only to the "highest principles of the constitutional order of the State" and the "inalienable rights of the person" protected by the Constitution.

7.2.–. Moreover, neither the text of Articles 1 and 2 of Law No. 69 of 2005 previously in force nor the current Article 2 expressly clarify whether the individual judicial authority competent for the surrender procedure (in the Italian legal system the Court of Appeal designated in Article 5) must verify in each case whether the execution of a European arrest warrant issued by the judicial authority of another Member State might infringe one of the (national and European) rights or principles to which Law No. 69 of 2005, both in its former and current wording, states that it is bound.

These provisions must, therefore, be interpreted in the light of the overall regulation of Framework Decision 2002/584/JHA, entirely transposed into national law by Law No. 69 of 2005.

7.3.– Both recital No. 12 and Article 1(3) of the Framework Decision explicitly affirm the general principle that the Framework Decision on the EAW, and therefore its transposition into the law of each Member State, must respect the fundamental rights embodied in Article 6 TEU. Furthermore, this principle underpins the entire legal order of the European Union, for which – as stated by Article 51(1) of the Charter of Fundamental Rights of the European Union (CFREU) – fundamental rights are binding both on the institutions, bodies, organs, and agencies of the Union, and on the Member States when transposing European Union law.

As held by the Court of Justice, Member States are, however, precluded from making the implementation of EU law in areas subject to full harmonisation conditional on compliance with purely national standards of protection of fundamental rights, where this

could compromise the primacy, unity and effectiveness of EU law (judgments of 26 February 2013, *Fransson*, C-617/10, paragraph 29, and of 26 February 2013, *Melloni*, C-399/11, paragraph 60).. Rather, the fundamental rights that the Framework Decision must respect under Article 1(3) are those – defined, inter alia, by the constitutional traditions common to the Member States (Article 6(3) TEU and Article 52(4) CFREU) – that are protected in EU law and therefore by all the Member States when they implement EU law.

7.4.– Thus, it falls primarily to EU law to determine the standards of protection of fundamental rights. As this is an area requiring complete harmonisation, the legitimacy of the rules governing the EAW and its execution at national level are subordinate to these standards.

The enumeration in Articles 3, 4 and 4-bis of Framework Decision 2002/584/JHA of the possible mandatory or optional grounds for refusal aims to ensure that execution of the European arrest warrant respects the fundamental rights of the individual within the limits recognised by the Charter, in the light of the ECHR and shared constitutional traditions, and in accordance with Recital 12 and Article 1(3) of the Framework Decision.

At the same time, such detailed rules seek to ensure the uniform and effective application of legislation relating to the EAW, based on mutual trust between the Member States regarding fundamental rights. Requirements of uniformity and effectiveness prevent the judicial authorities of the executing State from refusing surrender beyond the cases imposed or permitted by the Framework Decision, according to purely national standards of protection of fundamental rights of the person concerned, not shared at EU level (Court of Justice of the European Union, Judgment of 5 April 2016, in Joined Cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, paragraph 80).

7.5.– Consequently, it would be manifestly contrary to this principle if national law were interpreted as allowing the executing judicial authority to refuse surrender in cases that are not expressly envisaged in the Framework Decision, on the basis of general provisions such as those of Articles 1 and 2 of Law No. 69 of 2005 before the amendments brought by Legislative Decree No. 10 of 2021 or Article 2 of the same law, in force today.

And this would be true even if the competent court held that executing the EAW in a given case would lead to consequences contrary to the highest principles of the Constitution or the inviolable rights of the individual. The Constitutional Court alone can assess the compatibility of European Union law, or national law implementing European Union law, with these highest principles and inviolable rights (Order No. 24 of 2017, paragraph 6).

8.– On the other hand, EU law itself could not 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.

8.1.– Precisely to prevent the implementation of the Framework Decision on the EAW occasionally leading to violation of the fundamental rights of the person concerned when the Framework Decision does not expressly provide for grounds for refusing surrender, the Court of Justice has recently (and on several occasions) established procedures to define, by way of interpretation, procedures to reconcile the need for the mutual recognition and enforcement of judicial decisions in criminal matters with respect for the fundamental rights of the person concerned.

This has been especially true when executing a European arrest warrant might expose the person concerned to inhumane and degrading detention in the issuing State due to systemic and generalised flaws or circumstances that would affect specific categories of persons or detention centres (Court of Justice of the European Union, *Aranyosi*, cit.; 25 July 2018, in Case C-220/18 PPU, ML; 15 October 2019, in Case C-128/18, *Dorobantu*). A further risk is that the person concerned may face trial without the protection guaranteed

by Article 47 CFREU, due to systemic and generalised flaws concerning the independence of the judiciary in the issuing State (judgments of 25 July 2018, in Case C-216/18 PPU, LM; 17 December 2020, in Joined Cases C-354/20 PPU and C-412/20 PPU, L and P).

These procedures, based on direct dialogue between the judicial authorities of the executing and issuing States under Article 15(2) of the Framework Decision, enable the executing judicial authorities to ensure, in specific cases, that surrendering the person concerned will not expose them to infringements of their fundamental rights. Only when dialogue fails to produce such assurance can the executing judicial authority refrain from executing the EAW and refuse surrender in cases other than those expressly authorised by Articles 3, 4 and 4a of the Framework Decision.

The judgments of the Court of Justice mentioned above have introduced mechanisms into Union law to protect the fundamental rights of persons subject to an EAW within the framework of a system of shared rules binding on all the Member States.

8.2.– The *Avvocatura generale dello Stato* argued that, in the light of these judgments, the Milan Court of Appeal could enter into dialogue with the judicial authorities of the issuing State to ascertain whether the person concerned will be treated in such a way during trial as to avoid serious health risks, and, if dialogue fails, refuse the surrender.

The Court does not find this argument persuasive.

The judgments of the Court of Justice cited above all concern the risk of infringement of the fundamental rights of the person concerned due to systemic and generalised flaws within the issuing State or in situations involving selected groups of persons or entire detention centres. The questions raised by the Milan Court of Appeal, which this Court is called upon to decide, concern a different scenario, namely the situation in which the chronic illness of the individual requested is likely to worsen if surrendered, in particular when the issuing State requires them to be remanded in custody.

The question therefore arises whether the principles already laid down by the Court of Justice in the abovementioned judgments should also be extended by analogy to this scenario, especially regarding the need for a dialogue between the judicial authorities involved and the possibility for the executing State to halt the surrender procedure, should it turn out that it is impossible to avoid the risk, within a reasonable time, of violating the fundamental rights of the person concerned.

The need for uniformity and effectiveness in applying the EAW in the legal area of the European Union determines that only the Court of Justice, as the eminent interpreter of European Union law (Article 19(1) TEU), can provide the answer.

9. – However, "in a framework of constructive and loyal cooperation between the different systems of protection" (Order Nos. 182 of 2020 and 117 of 2019; Judgment No. 269 of 2017), this Court argues in favour of extending the principles enshrined by the Court of Justice in the judgments mentioned above to the case at hand.

9.1.– Article 32(1) of the Italian Constitution protects health as a "fundamental right of the individual" also in the interests of society. And there is no doubt, in the case law of the Constitutional Court, that it is one of "inviolable human rights" protected by Article 2 of the Constitution. It is therefore not only the duty of the public authorities to refrain from harmful conduct, but they must also ensure essential health care. In Italian law, persons in custody enjoy this right to the fullest extent, whether after conviction (most recently, Judgment No. 245 of 2020) or on remand.

To protect this right, Italian criminal procedural law does not permit pre-trial detention of a person suffering from a "particularly serious health condition incompatible with detention and for which adequate treatment in prison would not be possible" (Article 275(4-bis), Code of Criminal Procedure). This principle is interpreted further, and specifically, in the rules on defendants in rehabilitation for drug or alcohol dependence

under Article 89 of Decree of the President of the Republic No. 309 of 9 October 1990, which allows for the replacement of pre-trial detention with house arrest for those undergoing, or intending to undergo, a rehabilitation programme.

9.2.– There is also no doubt that health is a fundamental right under EU law.

While Article 3 of the CFREU appears to protect health primarily as a (negative) right not to be physically harmed, Article 35 of the CFREU enshrines the right to obtain medical treatment and commits Member States to ensuring a "high level of human health protection". Also the rights of those accused of a criminal offence – as in the case in the main proceedings – must be fully protected.

Moreover, in terms analogous to those deriving from Article 3 ECHR, surrendering a person to the issuing State would expose them to serious health risks in breach of Article 4 CFREU, enshrining the right not to be subjected to inhuman or degrading treatment. As an absolute right, Article 4 CFREU cannot be balanced against any other interest (*Aranyosi*, paragraph 85). It should be noted in this regard that, according to the ECtHR, extraditing a person with a severe mental illness to a State where they are likely to be held in pre-trial custody without access to appropriate medical treatment constitutes a violation of Article 3 ECHR (Judgment of 16 April 2013, *Aswat v the United Kingdom*; see also – holding that the expulsion of an applicant suffering from a serious illness without adequate assurances from the issuing State on the availability of the necessary treatment *in situ* constitutes a breach of Article 3 ECHR – ECtHR, Judgment of 1 October 2019, *Savran v Denmark*, concerning a person suffering from psychiatric problems, and ECtHR, Grand Chamber, Judgment of 13 December 2016, Paposhvili v. Belgium, regarding a person suffering from serious physical illness).

The Court of Justice has affirmed the same principle in a judgment concerning the European asylum system, prohibiting, under Article 4 CFREU, transfer to the State of entry of an applicant for international protection suffering from "periodic suicidal tendencies", where transfer entails "a real and proven risk that the person concerned will be subjected to inhuman or degrading treatment", not arising from any systemic flaws in the Member State responsible for examining the asylum application, but from the asylum seeker's suffering, which is likely to be "exacerbated by treatment flowing from detention" (Judgment of 16 February 2017 in Case C-578/16 *PPU, C. K. and Others v. Republika Slovenija*, paragraphs 37 and 68).

9.3.– On the other hand, the need to protect the fundamental rights of the requested person must be reconciled with the interest in prosecuting suspected offenders, establishing their responsibility and, if found guilty, ensuring they are punished. This interest cannot be attributed solely to the issuing State, as Framework Decision 2002/584/JHA presupposes the joint commitment by the Member States to "to combat the impunity of a requested person who is present in a territory other than that in which he or she has allegedly committed an offence" (Court of Justice, Judgment L and P, paragraph 62, and other precedents cited therein).

It should also be recalled that in a recent case where a Member State had refused to execute an EAW issued by another Member State in connection with a criminal trial for murder, the European Court of Human Rights found the refusal unjustified, stating that the executing State had breached its procedural obligations to ensure (under Article 2 ECHR) that persons suspected of having committed murder are tried and, if found guilty, sentenced in the State where the crime was committed (ECtHR, Judgment of 9 July 2019, *Romeo Castaño v Belgium*). In short, the essential protection of the fundamental right to health of the person in question cannot lead to solutions that result in the systematic impunity of serious crimes.

9.4.– Nor would it be possible to leave the issuing State with the sole option of proceeding against the person concerned *in absentia,* as the referring court seems to suggest. On the one hand, not all Member States allow trials *in absentia* and, even if this were legally possible, such a solution would damage the person concerned, as they would be deprived of the possibility of mounting an effective defence during a trial that may well result in their being sentenced.

9.5.– On the other hand, this Court considers, by analogy with the rulings of the Court of Justice in the abovementioned judgments (point 8.1.), that direct dialogue between the judicial authorities of the issuing State and executing States could make it possible to find 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, by placing them, for example, in a suitable facility in the issuing State during the trial. The executing judicial authority should be permitted to refuse surrender only if, following discussion, no suitable solution is found within a reasonable period of time.

10.– Therefore, this Court stays the proceedings and, pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU), requests the Court of Justice of the European Union to pronounce on whether Article 1(3) of Framework Decision 2002/584/JHA on the European arrest warrant, examined in the light of Articles 3, 4, and 35 CFREU, must be interpreted as meaning that, where the executing judicial authority deems that the surrender of a person suffering from a serious, chronic, and potentially irreversible illness could put them at risk of suffering serious damage to their health, it must request information from the issuing judicial authority in order to rule out any such risk and refuse to surrender the person if no such assurances are obtained within a reasonable period of time.

Lastly, the present case – although it originates from proceedings concerning a person not currently subject to any supervision measure – raises questions of interpretation relating to central aspects of the operation of the EAW. Furthermore, the interpretation sought is likely to have a general effect, both for the authorities called upon to cooperate in the context of the EAW and for the rights of requested persons. This Court asks the Court of Justice for a preliminary ruling under an expedited procedure pursuant to Article 105 of the Rules of Procedure of the Court of Justice.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *orders* that the following reference be made for a preliminary ruling to the Court of Justice of the European Union pursuant to and for the purposes of Article 267 of the Treaty on the Functioning of the European Union (TFEU):

Must Article 1(3) of Framework Decision 2002/584/JHA on the European arrest Warrant, examined in the light of Articles 3, 4 and 35 of the Charter of Fundamental Rights of the European Union, 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 authority must request that the issuing judicial authority provide information enabling the existence of such a risk to be ruled out, and must refuse to surrender if it does not obtain assurances to that effect within a reasonable period of time?;

2) *asks* that the question be decided under an expedited procedure;

3) *stays* the proceedings pending a decision on the aforementioned reference for a preliminary ruling;

4). *orders* that a copy of this order be transferred along with the case file to the Registry of the Court of Justice of the European Union.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 23 September 2021.

Signed:

Giancarlo CORAGGIO, President

Francesco VIGANÒ, Author of the Judgment