



UNIVERSITA' DEGLI STUDI DI PERUGIA  
DIPARTIMENTO DI DIRITTO PUBBLICO

*"L'effettività dei diritti alla luce della giurisprudenza della Corte europea  
dei diritti dell'uomo di Strasburgo"*

JUDGMENT OF THE COURT (Grand Chamber)

5 April 2016 (\*)

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Grounds for refusal to execute — Charter of Fundamental Rights of the European Union — Article 4 — Prohibition of inhuman or degrading treatment — Conditions of detention in the issuing Member State)

In Joined Cases C-404/15 and C-659/15 PPU,

REQUESTS for a preliminary ruling under Article 267 TFEU, made by the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen, Germany), made by decisions of 23 July and 8 December 2015, received at the Court on 24 July and 9 December 2015 respectively, in proceedings relating to the execution of European arrest warrants issued in respect of

Pál Aranyosi (C-404/15)

Robert Căldăraru (C-659/15 PPU),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz and D. Šváby, Presidents of Chambers, A. Rosas, E. Juhász, A. Borg Barthet, J. Malenovský, M. Safjan (Rapporteur), M. Berger, A. Prechal, E. Jarašiūnas, M. Vilaras and E. Regan, Judges,

Advocate General: Y. Bot,



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Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 15 February 2016,

after considering the observations submitted on behalf of:

- Mr Aranyosi, by R. Chekerov, Rechtsanwältin,
  
- Mr Căldăraru, by J. van Lengerich, Rechtsanwalt,
  
- the Generalstaatsanwaltschaft Bremen, by M. Glasbrenner, Oberstaatsanwalt,
  
- the German Government, by T. Henze, M. Hellmann and J. Kemper, acting as Agents,
  
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
  
- Ireland, by E. Creedon, L. Williams, G. Mullan and A. Joyce, acting as Agents,
  
- the Spanish Government, by A. Sampol Pucurull, acting as Agent,
  
- the French Government, by F.-X. Bréchet, D. Colas and G. de Bergues, acting as Agents,
  
- the Lithuanian Government, by D. Kriauciūnas and J. Nasutavičienė, acting as Agents,
  
- the Hungarian Government, by M. Fehér, G. Koós and M. Bóra, acting as Agents,



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- the Netherlands Government, by M. Bulterman and J. Langer, acting as Agents,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the Romanian Government, by R. Radu and M. Bejenar, acting as Agents,
- the United Kingdom Government, by V. Kaye, acting as Agent, and by J. Holmes, Barrister,
- the European Commission, by W. Bogensberger and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 March 2016,

gives the following

#### Judgment

1 The requests for a preliminary ruling concern the interpretation of Article 1(3), Article 5 and Article 6(1) of 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 Framework Decision').

2 These requests have been made in the context of the execution, in Germany, of two European arrest warrants issued in respect of Mr Aranyosi on 4 November and 31 December 2014 respectively by the examining magistrate at the Miskolci járásbíróóság (District Court of Miskolc, Hungary), and of a European arrest warrant issued in respect of Mr Căldăraru on 29 October 2015 by the Judecătoria Făgăraş (Court of first instance of Fagaras, Romania).

Legal context



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ECHR

3 Under the heading 'Prohibition of torture', Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), signed in Rome on 4 November 1950, provides:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

4 Article 15 ECHR, headed 'Derogation in time of emergency', provides:

'1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from ... or from Articles 3 ... shall be made under this provision.

...'

5 Article 46(2) ECHR, that article being headed 'Binding force and execution of judgments', provides:

'The final judgment of the [European Court of Human Rights; 'EctHR'] shall be transmitted to the Committee of Ministers, which shall supervise its execution.'

EU law

The Charter



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6 Article 1 of the Charter of Fundamental Rights of the European Union ('the Charter'), headed 'Human dignity', states:

'Human dignity is inviolable. It must be respected and protected.'

7 Article 4 of the Charter, headed 'Prohibition of torture and inhuman or degrading treatment or punishment', states:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

8 The Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17; 'the Explanations relating to the Charter') state that '[t]he right in Article 4 [of the Charter] is the right guaranteed by Article 3 of the ECHR which has the same wording ... By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article'.

9 Article 6 of the Charter, headed 'Right to liberty and security', provides:

'Everyone has the right to liberty and security of person.'

10 Article 48(1) of the Charter, that article being headed 'Presumption of innocence and rights of defence', provides:

'Everyone who has been charged shall be presumed innocent until proved guilty according to law.'

11 Article 51(1) of the Charter, that article being headed 'Field of application', provides:

'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. ...'



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12 Article 52(1) of the Charter, that article being headed 'Scope and interpretation of rights and principles', provides:

'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.'

The Framework Decision

13 Recitals 5 to 8, 10 and 12 in the preamble of the Framework Decision are worded as follows:

(5) ... the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. ...

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 [EU] and Article 5 [EC]. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.



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...

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) [EU, now after amendment, Article 2 TEU], determined by the Council pursuant to Article 7(1) [EU, now after amendment, Article 7(2) TEU] with the consequences set out in Article [7(2) EU].

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [EU] and reflected by the Charter ..., in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

...'

14 Article 1 of the Framework Decision, headed 'Definition of the European arrest warrant and obligation to execute it', provides:

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [EU].'



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15 Articles 3, 4 and 4a of the Framework Decision set out the grounds for mandatory and optional non-execution of the European arrest warrant.

16 Article 5 of the Framework Decision, headed 'Guarantees to be given by the issuing Member State in particular cases', provides:

'The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

...

2) if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

3) where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.'

17 Article 6 of the Framework Decision, headed 'Determination of the competent judicial authorities', provides:

'1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.



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2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.'

18 Article 7 of the Framework Decision, headed 'Recourse to the central authority', reads as follows:

'1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State[s] wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.'

19 Article 12 of the Framework Decision, headed 'Keeping the person in detention', states:

'When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.'

20 Article 15 of the Framework Decision, headed 'Surrender decision', provides:

'1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.



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2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.'

21 Article 17 of the Framework Decision, headed 'Time limits and procedures for the decision to execute the European arrest warrant', provides:

'1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

...



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7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.'

22 Article 23 of the Framework Decision, headed 'Time limits for surrender of the person', provides:

'1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

...

4. 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 European arrest warrant 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.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.'

German law

23 The Framework Decision was transposed into the German legal system by Paragraphs 78 to 83k of the Law on international mutual legal assistance in criminal matters (Gesetz über die internationale Rechtshilfe



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in Strafsachen) of 23 December 1982, as amended by the Law on the European arrest warrant (Europäisches Haftbefehlsgesetz) of 20 July 2006 (BGBl. 2006 I, p. 1721; 'the IRG').

24 Under Paragraph 15 of the IRG, headed 'Detention pending extradition':

'1. On receipt of the request for extradition, an order may be made for the individual sought to be detained pending extradition, where

1) there is a risk that the individual will not cooperate with the extradition procedure or the enforcement of the extradition, or

2) there is specific evidence to support a strong suspicion that the individual sought will hinder the determination of the facts in the foreign proceedings or in the extradition procedure.

2. Subparagraph (1) shall not apply where the extradition appears to be prima facie unlawful.'

25 Paragraph 24 of the IRG, headed 'Suspension of execution of the arrest warrant issued for the purposes of extradition', provides:

'1. An arrest warrant issued for the purposes of extradition must be suspended forthwith when the conditions for provisional detention pending extradition are no longer met or the extradition has been declared to be unlawful.

2. An arrest warrant issued for the purposes of extradition must also be suspended at the request of the Public Prosecutor at the Higher Regional Court. When that request is made, the Public Prosecutor shall order the release of the individual sought.'

26 Under Paragraph 29(1) of the IRG, the Higher Regional Court is to give a ruling, at the request of the Public Prosecutor, on the legality of the extradition where the individual sought has not consented to extradition. The decision is to be made by order, in accordance with Paragraph 32 of the IRG.



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27 Paragraph 73 of the IRG states:

'In the absence of a request to that effect, mutual legal assistance and the transmission of information shall be unlawful if contrary to the essential principles of the German legal system. In the event of a request under Parts VIII, IX and X, mutual legal assistance shall be unlawful if contrary to the principles stated in Article 6 TEU.'

The main proceedings and the questions referred for a preliminary ruling

Case C-404/15

28 Mr Aranyosi is a Hungarian national born on 14 July 1996 in Szikszó (Hungary).

29 The examining magistrate at the Miskolci járásbíróság (Court of first instance, Miskolc) issued two European arrest warrants, on 4 November and 31 December 2014 respectively, with respect to Mr Aranyosi, seeking his surrender to the Hungarian judicial authorities for the purposes of prosecution.

30 According to the European arrest warrant of 4 November 2014, on 3 August 2014 Mr Aranyosi forced entry to a dwelling house in Sajohidveg (Hungary). Having done so, he stole, inter alia, EUR 2 500 and HUF 100 000 (Hungarian forints; approximately EUR 313) in cash, and various objects of value.

31 Further, according to the European arrest warrant of 31 December 2014, Mr Aranyosi was accused of entering by a window, on 19 January 2014, a school in Sajohidveg, and forcing open a number of doors within the building and stealing technical equipment and cash. The stated value of the theft was HUF 244 000 (approximately EUR 760) and the value of material damage was HUF 55 000 (approximately EUR 170).

32 Mr Aranyosi was temporarily arrested on 14 January 2015 in Bremen (Germany) as a result of an alert having been entered in the Schengen Information System. He was heard on the same day by the investigating magistrate of the Amtsgericht Bremen (District Court of Bremen, Germany).



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33 Mr Aranyosi stated that he was a Hungarian national, that he lived in Bremerhaven (Germany) with his mother, that he was unmarried, that he had a girlfriend and an eight-month-old child. He denied the offences of which he was accused and declined to consent to the simplified surrender procedure.

34 The representative of the Public Prosecutor of Bremen ordered that Mr Aranyosi be released from custody because there was no apparent risk that he would not cooperate with the surrender procedure. On 14 January 2015 the Generalstaatsanwaltschaft Bremen (Office of the Public Prosecutor of Bremen), referring to detention conditions in a number of Hungarian prisons that did not satisfy minimum European standards, asked the Miskolci járásbíróság (District Court of Miskolc) to state in which prison Mr Aranyosi would be held in the event that he was surrendered.

35 By letter of 20 February 2015, received by fax on 15 April 2015 via the Hungarian Minister of Justice, the Public Prosecutor of the district of Miskolc stated that, in this case, it was not inevitable that there would be an enforcement measure of preventive detention in criminal proceedings and that a custodial sentence would be requested.

36 The Public Prosecutor stated that, under Hungarian criminal law, there are a number of enforcement measures that are less onerous than detention and that a number of penalties other than a custodial sentence come into consideration. What form of enforcement measure would be requested prior to the decision to indict and what penalty would be requested in that decision are exclusively within the discretion of the Public Prosecutor, who is independent.

37 Further, the Public Prosecutor of the district of Miskolc said that the determination of the offence and the choice of penalties to be imposed fall within the competence of the Hungarian judicial authorities. In that regard, Hungarian legislation provides, in criminal proceedings, equivalent safeguards based on European values.

38 On 21 April 2015 the Public Prosecutor of Bremen requested that the surrender of Mr Aranyosi to the issuing judicial authority for the purposes of criminal prosecution should be declared to be lawful. He stated, inter alia, that, while the Public Prosecutor of the district of Miskolc had not stated in which prison Mr Aranyosi would be held in the event of his being surrendered to Hungary, there was however no specific evidence that, if he were surrendered, Mr Aranyosi might be the victim of torture or other cruel, inhuman or degrading treatment.



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39 Mr Aranyosi's lawyer claimed that the request of the Public Prosecutor of Bremen should be rejected on the ground that the Public Prosecutor of the district of Miskolc had not stated in which prison Mr Aranyosi would be held. It was therefore impossible to ascertain the conditions of detention.

40 The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) states that the request submitted by Hungary satisfies the conditions to which requests for surrender are subject under the IRG.

41 In particular, what Mr Aranyosi is accused of constitutes a criminal offence both under Article 370(1) of the Hungarian Criminal Code and Paragraphs 242, 243(1) point 1, and 244(1) point 3, of the German Criminal Code. There is criminality in both Member States concerned and the penalty that can be imposed is a minimum of one year's imprisonment under Hungarian and German law.

42 Nonetheless, in the opinion of the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen), it would be necessary to declare the surrender to be unlawful if there were an impediment to surrender under Paragraph 73 of the IRG. Having regard to the information currently available, the referring court is satisfied that there is probative evidence that, in the event of surrender to the Hungarian judicial authority, Mr Aranyosi might be subject to conditions of detention that are in breach of Article 3 ECHR and the fundamental rights and general principles of law enshrined in Article 6 TEU.

43 The ECtHR has found Hungary to be in violation by reason of the overcrowding in its prisons (ECtHR, Varga and Others v. Hungary, Nos 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13, of 10 March 2015). The ECtHR held that it was established that Hungary was in violation of Article 3 ECHR by imprisoning the applicants in cells that were too small and that were overcrowded. The ECtHR treated those proceedings as a pilot case after 450 similar cases against Hungary were brought before it with respect to inhuman conditions of detention.

44 The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) states that specific evidence that the conditions of detention to which Mr Aranyosi would be subject, if he were surrendered to the Hungarian authorities, do not satisfy the minimum standards required by international law is also to be found in a report issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The findings in that report refer in particular to the significant prison overcrowding identified in the course of visits made between 2009 and 2013.



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45 On the basis of that information, the referring court considers that it is not in a position to give a ruling on the lawfulness of the surrender of Mr Aranyosi to the Hungarian authorities, having regard to the restrictions imposed in Paragraph 73 of the IRG and Article 1(3) of the Framework Decision. The decision of the referring court will depend essentially on whether or not the impediment to surrender can still be overcome, in accordance with the Framework Decision, by means of assurances given by the issuing Member State. If that impediment cannot be removed by such assurances, the surrender would then be unlawful.

46 In those circumstances, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 1(3) of the Framework Decision to be interpreted as meaning that a request for surrender for the purposes of prosecution is inadmissible where there are strong indications that detention conditions in the issuing Member State infringe the fundamental rights of the person concerned and the fundamental legal principles as enshrined in Article 6 TEU, or is it to be interpreted as meaning that, in such circumstances, the executing Member State can or must make the decision on the admissibility of the request for surrender conditional upon assurances that detention conditions are compliant? To that end, can or must the executing Member State lay down specific minimum requirements applicable to the detention conditions in respect of which an assurance is sought?

2. Are Articles 5 and 6(1) of the Framework Decision to be interpreted as meaning that the issuing judicial authority is also entitled to give assurances that detention conditions are compliant, or do assurances in this regard remain subject to the domestic rules of competence in the issuing Member State?'

Case C-659/15 PPU

47 Mr Căldăraru is a Romanian national born on 7 December 1985 in Braşov (Romania).

48 By judgment of the Judecătoria Făgăraş (Court of First Instance of Făgăraş, Romania) of 16 April 2015, Mr Căldăraru was convicted and sentenced to an overall period of imprisonment of one year and eight months, for the offence of driving without a driving licence.



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49 According to the grounds of that judgment, as set out by the referring court in its request for a preliminary ruling, that sentence included a period of imprisonment of one year, for the offence of driving without a driving licence, execution of which was suspended on 17 December 2013 by the Judecătoria Făgăraş (Court of First Instance of Făgăraş).

50 That conviction and sentence became final following a judgment of the Curtea de Apel Braşov (Court of Appeal of Braşov) of 15 October 2015.

51 On 29 October 2015 the Judecătoria Făgăraş (Court of First Instance of Fagaras) issued a European arrest warrant in respect of Mr Căldăraru and entered in the Schengen Information System an alert concerning him.

52 Mr Căldăraru was arrested in Bremen on 8 November 2015.

53 On the same date the Amtsgericht Bremen (District Court of Bremen) issued an arrest warrant with respect to Mr Căldăraru. At his hearing before that court, Mr Căldăraru stated that he would not consent to the simplified surrender procedure.

54 On 9 November 2015 the Public Prosecutor of Bremen applied to the court for Mr Căldăraru to be detained pending extradition.

55 By decision of 11 November 2015 the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) granted that application. That court held that the fact of Mr Căldăraru being detained pending extradition did not appear to be 'prima face unlawful' under Paragraph 15(2) of the IRG, and found that there was a risk that Mr Căldăraru would not cooperate with the procedure of surrender to the Romanian authorities, and that his being detained pending extradition, in accordance with Paragraph 15(1) of the IRG, was therefore justified.

56 On 20 November 2015 the Public Prosecutor of Bremen applied to the court for Mr Căldăraru's surrender to the Romanian authorities to be declared to be lawful. In addition, that authority stated that the Judecătoria Făgăraş (Court of First Instance of Fagaras) was unable to provide information as to the prison in which Mr Căldăraru would be held in Romania.



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57 The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) states that the application presented by Romania complies with the conditions in the IRG governing requests for surrender.

58 In particular, what Mr Căldăraru was convicted of constitutes a criminal offence under both Article 86 of the Romanian Law No 195 of 2002 and Paragraph 21 of the German Road Traffic law (Straßenverkehrsgesetz). There is criminality in both Member States concerned, the attached penalty being not less than four months imprisonment.

59 Nonetheless, in the opinion of the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen), it would be necessary to declare the surrender to be unlawful if there were an impediment to surrender under Paragraph 73 of the IRG. Having regard to the information currently available, the referring court states that there is probative evidence that, in the event of surrender to the Romanian judicial authority, Mr Căldăraru might be subject to conditions of detention that are in breach of Article 3 ECHR and the fundamental rights and general principles of law enshrined in Article 6 TEU.

60 In a number of judgments issued on 10 June 2014, the ECtHR found Romania to be in violation by reason of the overcrowding in its prisons (ECtHR, Voicu v. Romania, No 22015/10; Bujorean v. Romania, No 13054/12; Mihai Laurențiu Marin v. Romania, No 79857/12, and Constantin Aurelian Burlacu v. Romania, No 51318/12). The ECtHR held it to be established that Romania was in violation of Article 3 ECHR by imprisoning the applicants in cells that were too small and overcrowded, that lacked adequate heating, that were dirty and lacking in hot water for showers.

61 The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) states that specific evidence that the conditions of detention to which Mr Căldăraru would be subject, if he were to be surrendered to the Romanian authorities, do not satisfy the minimum standards required by international law is also to be found in a report issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The findings in that report refer in particular to the significant prison overcrowding identified in visits made between 5 and 17 June 2014.

62 On the basis of that information, the referring court considers that it is not in a position to give a ruling on the lawfulness of the surrender of Mr Căldăraru to the Romanian authorities, having regard to the restrictions imposed in Paragraph 73 of the IRG and Article 1(3) of the Framework Decision. The decision of the referring court will depend essentially on whether or not the impediment to surrender can still be



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overcome, in accordance with the Framework Decision, by means of assurances given by the issuing Member State. If that impediment cannot be removed by such assurances, the surrender would then be unlawful.

63 In those circumstances, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 1(3) of the Framework Decision to be interpreted as meaning that surrender for the purposes of execution of a criminal sentence is impermissible where there are strong indications that detention conditions in the issuing Member State infringe the fundamental rights of the person concerned and the fundamental legal principles as enshrined in Article 6 TEU, or is it to be interpreted as meaning that, in such circumstances, the executing Member State can or must make the decision on the permissibility of surrender conditional upon assurances that detention conditions are compliant? To that end, can or must the executing Member State lay down specific minimum requirements applicable to the detention conditions in respect of which an assurance is sought?

2. Are Articles 5 and 6(1) of the Framework Decision to be interpreted as meaning that the issuing judicial authorities are also entitled to give assurances that detention conditions are compliant, or do assurances in this regard remain subject to the domestic rules of competence in the issuing Member State?'

Procedure before the Court

Case C-404/15

64 The referring court requested that this request for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court's Rules of Procedure.

65 In support of its request, the referring court stated that Mr Aranyosi had been temporarily arrested on the basis of a European arrest warrant issued by the Hungarian authorities, but that he was not currently in custody, since the Public Prosecutor in Bremen had ordered that he be released, on the ground that there was at that time no risk that the accused would abscond, given his social ties.



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66 On 31 July 2015 the Fourth Chamber of the Court, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided not to grant the request of the referring court that Case C-404/15 be dealt with under the urgent preliminary ruling procedure.

67 By decision of 4 August 2015, the President of the Court ordered that Case C-404/15 should be given priority over others.

Case C-659/15 PPU

68 The referring court requested that this request for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court's Rules of Procedure.

69 In support of its request, the referring court stated that Mr Căldăraru had been temporarily arrested on the basis of a European arrest warrant issued by the Romanian authorities and that he was currently held in custody on the basis of that arrest warrant for the purposes of his surrender to those authorities. The referring court added that whether Mr Căldăraru's detention was well founded depended on the answer of the Court to the questions referred by it for a preliminary ruling.

70 In that respect, it must be observed that the reference for a preliminary ruling in Case C-659/15 PPU concerns the interpretation of the Framework Decision, which is within the field covered by Part Three, Title V, of the FEU Treaty, relating to the area of freedom, security and justice. It may therefore be dealt with under the urgent preliminary ruling procedure. Further, Mr Căldăraru is currently held in custody and whether his detention should continue depends on the answer of the Court to the questions referred to it by the national court.

71 In those circumstances, on 16 December 2015 the Third Chamber of the Court decided, on the Judge-Rapporteur's proposal and after hearing the Advocate General, to grant the referring court's request that the reference for a preliminary ruling in Case C-659/15 PPU be dealt with under the urgent procedure.

72 It was also decided that Case C-659/15 PPU, and, because of the connection between the cases, Case C-404/15, should be referred to the Court for assignment to the Grand Chamber.



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73 Given that connection, confirmed at the hearing of oral argument, the two cases C-404/15 and C-659/15 PPU are to be joined for the purposes of judgment.

Consideration of the questions referred for a preliminary ruling

74 By its questions, which can be examined together, the referring court seeks, in essence, to ascertain whether Article 1(3) of the Framework Decision must be interpreted as meaning that, where there is solid evidence that detention conditions in the issuing Member State are incompatible with fundamental rights, in particular with Article 4 of the Charter, the executing judicial authority may or must refuse to execute a European arrest warrant issued in respect of a person for the purposes of conducting a criminal prosecution or executing a custodial sentence, or whether it may or must make the surrender of that person conditional on there being obtained from the issuing Member State information enabling it to be satisfied that those detention conditions are compatible with fundamental rights. Further, the referring court seeks to ascertain whether Articles 5 and 6(1) of the Framework Decision must be interpreted as meaning that such information may be supplied by the judicial authority of the issuing Member State or whether the supply of that information is governed by the domestic rules of competence in that Member State.

75 It should be recalled, as a preliminary point, that the purpose of the Framework Decision, as is apparent in particular from Article 1(1) and (2) thereof and recitals 5 and 7 in the preamble thereto, is to replace the multilateral system of extradition based on the European Convention on Extradition of 13 December 1957 with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, that system of surrender being based on the principle of mutual recognition (see judgments in West, C-192/12 PPU, EU:C:2012:404, paragraph 54; Melloni, C-399/11, EU:C:2013:107, paragraph 36; F., C-168/13 PPU, EU:C:2013:358, paragraph 34; and Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 27).

76 The Framework Decision thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States (see judgments in Melloni, C-399/11, EU:C:2013:107, paragraph 37; F., C-168/13 PPU, EU:C:2013:358, paragraph 35; and Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 28).



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77 The principle of mutual recognition on which the European arrest warrant system is based is itself founded on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter (see, to that effect, judgment in F., C-168/13 PPU, EU:C:2013:358, paragraph 50, and, by analogy, with respect to judicial cooperation in civil matters, the judgment in Aguirre Zarraga, C-491/10 PPU, EU:C:2010:828, paragraph 70).

78 Both the principle of mutual trust between the Member States and the principle of mutual recognition are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, Opinion 2/13, EU:C:2014:2454, paragraph 191).

79 In the area governed by the Framework Decision, the principle of mutual recognition, which constitutes, as is stated notably in recital (6) of that Framework Decision, the 'cornerstone' of judicial cooperation in criminal matters, is given effect in Article 1(2) of the Framework Decision, pursuant to which Member States are in principle obliged to give effect to a European arrest warrant (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).

80 It follows that the executing judicial authority may refuse to execute such a warrant only in the cases, exhaustively listed, of obligatory non-execution, laid down in Article 3 of the Framework Decision, or of optional non-execution, laid down in Articles 4 and 4a of the Framework Decision. Moreover, the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of that Framework Decision (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).

81 It must, in that context, be noted that recital 10 of the Framework Decision states that the implementation of the mechanism of the European arrest warrant as such may be suspended only in the event of serious and persistent breach by one of the Member States of the principles referred to in Article 2 TEU, and in accordance with the procedure provided for in Article 7 TEU.

82 However, first, the Court has recognised that limitations of the principles of mutual recognition and mutual trust between Member States can be made 'in exceptional circumstances' (see, to that effect,



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Opinion 2/13, EU:C:2014:2454, paragraph 191).

83 Second, as is stated in Article 1(3) thereof, the Framework Decision is not to have the effect of modifying the obligation to respect fundamental rights as enshrined in, inter alia, the Charter.

84 In that regard, it must be stated that compliance with Article 4 of the Charter, concerning the prohibition of inhuman or degrading treatment or punishment, is binding, as is stated in Article 51(1) of the Charter, on the Member States and, consequently, on their courts, where they are implementing EU law, which is the case when the issuing judicial authority and the executing judicial authority are applying the provisions of national law adopted to transpose the Framework Decision (see, by analogy, judgments in *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 72, and *Peftiev and Others*, C-314/13, EU:C:2014:1645, paragraph 24).

85 As regards the prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the Charter, that prohibition is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter (see, to that effect, judgment in *Schmidberger*, C-112/00, EU:C:2003:333, paragraph 80).

86 That the right guaranteed by Article 4 of the Charter is absolute is confirmed by Article 3 ECHR, to which Article 4 of the Charter corresponds. As is stated in Article 15(2) ECHR, no derogation is possible from Article 3 ECHR.

87 Articles 1 and 4 of the Charter and Article 3 ECHR enshrine one of the fundamental values of the Union and its Member States. That is why, in any circumstances, including those of the fight against terrorism and organised crime, the ECHR prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see judgment of the ECtHR in *Bouyid v. Belgium*, No 23380/09 of 28 September 2015, § 81 and the case-law cited).

88 It follows that, where the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, having regard to the standard of protection of fundamental rights guaranteed by EU law and, in particular, by Article 4 of the Charter (see, to that effect, judgment in *Melloni*, C-399/11, EU:C:2013:107, paragraphs 59 and 63, and Opinion 2/13, EU:C:2014:2454, paragraph 192), that judicial authority is bound



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to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual sought by a European arrest warrant. The consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment.

89 To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN.

90 In that regard, it follows from the case-law of the ECtHR that Article 3 ECHR imposes, on the authorities of the State on whose territory an individual is detained, a positive obligation to ensure that any prisoner is detained in conditions which guarantee respect for human dignity, that the way in which detention is enforced does not cause the individual concerned distress or hardship of an intensity exceeding the unavoidable level of suffering that is inherent in detention and that, having regard to the practical requirements of imprisonment, the health and well-being of the prisoner are adequately protected (see judgment of the ECtHR in *Torreggiani and Others v. Italy*, Nos 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10, and 37818/10, of 8 January 2013, § 65).

91 Nonetheless, a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing Member State cannot lead, in itself, to the refusal to execute a European arrest warrant.

92 Whenever the existence of such a risk is identified, it is then necessary that the executing judicial authority make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State.

93 The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subject to inhuman or degrading treatment in the event that he is surrendered to the authorities of that Member State.



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94 Consequently, in order to ensure respect for Article 4 of the Charter in the individual circumstances of the person who is the subject of the European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 4.

95 To that end, that authority must, pursuant to Article 15(2) of the Framework Decision, request of the judicial authority of the issuing Member State that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State.

96 That request may also relate to the existence, in the issuing Member State, of any national or international procedures and mechanisms for monitoring detention conditions, linked, for example, to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons.

97 In accordance with Article 15(2) of the Framework Decision, the executing judicial authority may fix a time limit for the receipt of the supplementary information requested from the issuing judicial authority. That time limit must be adjusted to the particular case, so as to allow to that authority the time required to collect the information, if necessary by seeking assistance to that end from the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision. Under Article 15(2) of the Framework Decision, that time limit must however take into account the need to observe the time limits set in Article 17 of that Framework Decision. The issuing judicial authority is obliged to provide that information to the executing judicial authority.

98 If, in the light of the information provided pursuant to Article 15(2) of the Framework Decision, and of any other information that may be available to the executing judicial authority, that authority finds that there exists, for the individual who is the subject of the European arrest warrant, a real risk of inhuman or degrading treatment, as referred to in paragraph 94 of this judgment, the execution of that warrant must be postponed but it cannot be abandoned (see, by analogy, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 38).

99 Where the executing authority decides on such a postponement, the executing Member State is to inform Eurojust, in accordance with Article 17(7) of the Framework Decision, giving the reasons for the



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delay. In addition, pursuant to that provision, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants for the reasons referred to in the preceding paragraph, is to inform the Council with a view to an evaluation, at Member State level, of the implementation of the Framework Decision.

100 Further, in accordance with Article 6 of the Charter, the executing judicial authority may decide to hold the person concerned in custody only in so far as the procedure for the execution of the European arrest warrant has been carried out in a sufficiently diligent manner and in so far as, consequently, the duration of the detention is not excessive (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraphs 58 to 60). The executing judicial authority must give due regard, with respect to individuals who are the subject of a European arrest warrant for the purposes of prosecution, to the principle of the presumption of innocence guaranteed by Article 48 of the Charter.

101 In that regard, the executing judicial authority must respect the requirement of proportionality, laid down in Article 52(1) of the Charter, with respect to the limitation of any right or freedom recognised by the Charter. The issue of a European arrest warrant cannot justify the individual concerned remaining in custody without any limit in time.

102 In any event, if the executing judicial authority concludes, following the review referred to in paragraphs 100 and 101 of this judgment, that it is required to bring the requested person's detention to an end, it is then required, pursuant to Articles 12 and 17(5) of the Framework Decision, to attach to the provisional release of that person any measures it deems necessary so as to prevent him from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the European arrest warrant has been taken (see judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 61).

103 In the event that the information received by the executing judicial authority from the issuing judicial authority is such as to permit it to discount the existence of a real risk that the individual concerned will be subject to inhuman and degrading treatment in the issuing Member State, the executing judicial authority must adopt, within the time limits prescribed by the Framework Decision, its decision on the execution of the European arrest warrant, without prejudice to the opportunity of the individual concerned, after surrender, to have recourse, within the legal system of the issuing Member State, to legal remedies that may enable him to challenge, where appropriate, the lawfulness of the conditions of his detention in a prison of that Member State (see, to that effect, judgment in F., C-168/13 PPU, EU:C:2013:358, paragraph 50).



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104 It follows from all the foregoing that the answer to the questions referred is that Article 1(3), Article 5 and Article 6(1) of the Framework Decision must be interpreted as meaning that where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.

#### Costs

105 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 1(3), Article 5 and Article 6(1) of 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, must be interpreted as meaning that, where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment,



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within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.

[Signatures]

\* Language of the case: German.