

# AG: Postponement of Surrender in Case of Serious Health Risk

Thomas Wahl

## News

On 1 December 2023, Advocate General (AG) *Campos Sánchez-Bordona* presented his opinion on the question under which conditions the execution of a European Arrest Warrant can be refused if the requested person concerned is exposed to serious health risks in the issuing Member State.

The case (*C-699/21, E.D.L.*) was referred by the Italian Constitutional Court and brings in an additional aspect to the interpretation of Art. 1(3) [protection of fundamental rights] of Framework Decision 2002/584 on the European Arrest Warrant (FD EAW). In the case at issue, E.D.L. is to be surrendered from Italy to Croatia for the offence of possession of drugs. According to an expert report, E.D.L. suffers from a psychotic disorder requiring treatment and is at high risk of suicide associated with the possibility of his imprisonment. The judicial authorities in Italy had doubts on whether E.D.L.'s health treatment in Croatia is sufficient and have not obtained assurances to that effect within a reasonable period of time. The Constitutional Court believed that surrender would result in an infringement of Art. 3 (right to integrity) and Art. 4 (prohibition of inhuman/degrading treatment or punishment) of the Charter and wondered whether the CJEU's case law on the protection of fundamental rights within the EAW system as established in *Aranyosi and Căldăraru* (→*eucri*m 1/2016, 16) also applies here.

According to AG Sánchez-Bordona, the two-step examination as established in *Aranyosi and Căldăraru* cannot be transferred to the kind of cases at issue. It suffices to examine whether the requested person will be guaranteed any medical treatment that he/she may require in the issuing Member State. The AG pointed out that the solution can be found in Art. 23(4) FD EAW, which stipulates that the surrender may exceptionally be temporarily postponed for serious humanitarian reasons. The AG additionally stressed that the provision provides for a communication channel between the executing and issuing judicial authorities. As a result, the executing authority must request the issuing authority to provide information allowing the existence of a serious health risk to be ruled out. If necessary, the executing authority can postpone the surrender of the requested person for as long as that serious risk remains. Postponement, i.e. the halt of surrender on a temporary basis, must remain the rule. A non-execution of the EAW can only be considered if, in the light of all the circumstances, the postponement of surrender has to be extended beyond a reasonable period of time, and a dialogue with the issuing judicial authority has been maintained.

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Published in  
2022, Vol. 17(4) *eucri*m pp 253  
– 254

ISSN: 1862-6947



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**Co-funded by  
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