CJEU Interprets Time Limits for Surrender in FD EAW

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In the case C-804/21 PPU (*C and CD*), the CJEU had the opportunity to decide on the consequences of the time limits set out in Art. 23 of the Framework Decision 2002/584 on the European arrest warrant (FD EAW). Pursuant to Art. 23 FD EAW, the requested person must be actually surrendered within a very short period of time (10 days) once the final admissibility decision has been taken by the executing judicial authorities. Another time limit of 10 days for surrender can only be set in cases of *force majeure*. A temporary postponement is possible if the requested person's life or health is endangered. If the requested person is not surrendered within the time limits, he/she must be released (Art. 23(5)).

In the case at issue, surrender of two Romanian nationals from Finland to Romania failed three times. The first and second time, surrender failed due to COVID-19 issues. The third time, the requested persons lodged applications for international protection in Finland.

The referring Finnish court first asked whether the concept of "*force majeure*" extends to legal obstacles.

In its judgement of 28 April 2022, the CJEU clarified that the bringing of legal actions by the requested person, in the context of proceedings provided for by the national law of the executing Member State, with a view to challenging or delaying the surrender, cannot be regarded as an unforeseeable circumstance, and thus cannot constitute a situation of "*force majeure*". within the meaning of Art. 23(3) FD EAW. As a consequence, the authorities of the executing Member State are bound to the time limits set in Art. 23 FD EAW, because no situation of suspension is given.

Second, the referring court asked whether the requirements of Art. 23(3) are fulfilled if the executing judicial authority makes a police service responsible for ascertaining whether there is a situation of *force majeure*. Here, the CJEU held that the finding of a situation of *force majeure* by the police services of the executing Member State and the setting of a new surrender date, without intervention on the part of the executing judicial authority, does not meet the formal requirements laid down in Art. 23 FD EAW, irrespective of whether a situation of *force majeure* actually exists. As a consequence, the time limits in the case must be regarded as expired and the requested person in custody must be released in accordance with Art. 23(5) FD EAW. The CJEU clarified that the FD EAW does not provide for any exceptions from this obligation. However, the executing Member State can take any measure (except deprivation of liberty) to prevent the requested person from absconding.

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