

# CJEU Rules on Suspension of European Arrest Warrant in Case of Serious Illness



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News

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By its [judgment of 18 April 2023](#), the CJEU, sitting in for the Grand Chamber, added another important decision on the possibilities to suspend or refuse European Arrest Warrants (EAWs) in the event of fundamental rights problems. The Luxembourg judges decided that a manifest risk endangering the requested person's health can justify temporary suspension of his/her surrender. The executing judicial authority is obliged to ask the issuing authority for information concerning the conditions in which it intends to prosecute or detain that person.

## Background of the case and AG's opinion

The CJEU had to rule on a reference for preliminary ruling from the Italian Constitutional Court ([Case C-699/21, E.D.L.](#)). The referring court had to decide on an EAW from Croatia against E.D.L. An expert report revealed the existence of a psychotic disorder requiring medication and psychotherapy and it was said that E.D.L. is at increased risk of suicide if placed in a detention centre. The Italian Constitutional Court wonders in essence whether the CJEU's previous case law, which refers to the so-called Aranyosi test, can be extended, by analogy, to the situation of chronic illness of potentially indefinite duration, in order to avoid a serious harm to the person's health. The referring court makes clear that the case at issue is different from the *Aranyosi/Căldăraru* case in which the CJEU developed its case law on the interpretation of Art. 1(3) FD EAW allowing the suspension of EAW due to fundamental rights infringements in the issuing state (Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru* → [eu-crim 1/2016, 16](#)). According to the Aranyosi test, systemic or generalised deficiencies in the issuing state as well as the realisation of a concrete danger of fundamental rights infringements in the issuing state are required. The Italian Constitutional Court particularly asked whether the Italian judicial authorities must enter into a dialogue with the issuing authority in Croatia and under which conditions Italy may even refuse the surrender of the requested person.

In its opinion of 1 December 2023, AG *Sánchez-Bordona* advised 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. If necessary, the executing authority can postpone the surrender of the requested person for as long as serious health risks remain. The executing authority is obliged to communicate with the issuing authority (→ [eu-crim 4/2022, 253-254](#)).

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ISSN: 1862-6947

<https://eu-crim.eu>

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## The CJEU's judgment

The CJEU follows the AG's opinion. It stresses that, on the basis of the principle of mutual recognition, a refusal to execute is to be understood as an exception and must be interpreted strictly. In principle, there is the assumption of an adequate health treatment of the requested person in the issuing state. It is nevertheless apparent from Art. 23(4) FD EAW that, in exceptional circumstances, relating, *inter alia*, to the life or health of the requested person being manifestly endangered, surrender may be temporarily postponed. The executing authority is therefore entitled to verify whether the execution of the arrest warrant manifestly risks endangering the health of the requested person, if there are substantial grounds, based on objective material, in this respect. The discretion must be exercised in accordance with Art. 4 CFR, which prohibits, *inter alia*, inhuman and degrading treatment.

If the executing judicial authority concludes that there are substantial and established grounds for believing that the surrender would expose the person concerned to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health, it must postpone that surrender and ask the issuing judicial authority to provide all information relating to the conditions under which it intends to prosecute or detain that person and to the possibility of adapting those conditions to his or her state of health in order to prevent such a risk from materialising.

If, after this assessment, this risk cannot be ruled out within a reasonable period of time, the executing authority must exceptionally refuse the EAW.

## Put in focus

The *E.D.L* case supplements the CJEU's case law on the interpretation of Art. 1(3) FD EAW and the refusal of EAWs due to the European *ordre public*. As the AG, the judges in Luxembourg acknowledge that the cases of a refusal based on illness must be treated slightly differently as the cases decided to date in the context of Art. 1(3). In the latter cases, the CJEU had to decide on potential infringements by the issuing state, be it because of providing bad prison conditions (cf. the *Aranyosi and Căldăraru* decision above) or be it because of not guaranteeing a fair trial before an independent and impartial court ("*LM*" decision → [eucrim 2/2018, 104-105](#)). By contrast, in the *E.D.L* case, the concern over fundamental rights already existed in the executing state, i.e. the risk of infringing the defendant's right to life if surrendered. Other constellations in this regard would be possible infringements of the right to family life (Art. 7 CFR) if close family or social connections are interrupted by the surrender.

Hence, the "*Aranyosi test*" had to be adapted. Although the CJEU renounces the two-step examination as established in *Aranyosi and Căldăraru*, the Court sticks to its line of argumentation that refusal to execute EAWs due to potential fundamental rights infringements can only happen under exceptional circumstances. It is the executing judicial authority's task to ensure, by means of communication with the issuing authority, the exclusion of fundamental rights risks and give priority to surrender. In the cases of illness, the second preferred option must be the postponement of surrender. The final refusal of surrender can only be considered as the very last resort.

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



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