



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT

delivered on 10 March 2022¹

Case C-804/21 PPU

C,
CD,
Other party:
Syyttäjä

(Request for a preliminary ruling
from the Korkein oikeus (Supreme Court, Finland))

(Reference for a preliminary ruling – Cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Surrender of requested persons to the requesting judicial authority – Time limit for surrender – Impossibility of surrender due to *force majeure* – Competence to determine whether a situation of *force majeure* exists – Expiry of the time limit for surrender – COVID-19 – Application for asylum)

I. Introduction

1. Article 23 of Framework Decision 2002/584/JHA² provides for the surrender of persons requested on the basis of a European arrest warrant after the competent authorities of the executing Member State have taken a final decision to extradite them. If the requested person is not surrendered within a very short period of time, he or she is to be released in accordance with Article 23(5). If surrender is prevented by *force majeure*, that period of time may be extended in accordance with Article 23(3). In that regard, the provision does not draw a distinction as to whether the purpose of the arrest warrant is prosecution or the execution of a custodial sentence.

2. The present request for a preliminary ruling gives the Court the opportunity to clarify how Article 23(3) of Framework Decision 2002/584 must be interpreted with regard to whether police authorities of the executing Member State may determine that a situation of *force majeure* exists. In addition, clarification is required as to what significance an application for asylum made by the requested person has with regard to time limits for surrender and with regard to release. The question also arises as to the conditions under which Article 23 is applicable at all.

¹ Original language: German.

² Council Framework Decision 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).

II. Legal framework

A. Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

3. The right to liberty and security is laid down in Article 5 ECHR:

‘1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. ...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. ...’

B. Framework Decision 2002/584

4. Article 1(1) of Framework Decision 2002/584 describes the scope of the European arrest warrant:

‘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.’

5. Article 6(1) and (2) of Framework Decision 2002/584 determines the competent authorities:

‘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.

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.’

6. Recital 8 of Framework Decision 2002/584 explains the role of the executing judicial authority:

‘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.’

7. Article 7 of Framework Decision 2002/584 permits the involvement of a central authority:

‘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.

...’

8. Recital 9 of Framework Decision 2002/584 states the following in that regard:

‘The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.’

9. Article 23 of Framework Decision 2002/584 governs the time limits for the surrender of the requested person after the competent authorities of the executing Member State have taken a final decision on the execution of the European arrest warrant:

‘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.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

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.’

C. Finnish implementation

10. Finland implemented Framework Decision 2002/584 by means of the Laki rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä (1286/2003) (Law 1286/2003 on surrender, by reason of an offence, between Finland and the other Member States of the European Union – ‘the Law on surrender within the European Union’). The provisions implementing Article 23 of the framework decision are found in Paragraphs 46 to 48.

11. Attention should be drawn to Paragraph 46(2) of the Law on surrender within the European Union, which implements Article 23(3) of Framework Decision 2002/584 and provides that the ‘competent authorities’ (toimivaltaisten viranomaisten) are to agree on a new surrender date. By contrast, Article 23(3) of the framework decision uses the term ‘judicial authority’, including in the Finnish version (oikeusviranomaisen).

12. The judicial authorities which decide on surrender and continuation of detention are the Helsingin käräjäoikeus (District Court, Helsinki, Finland) and, on appeal, the Korkein oikeus (Supreme Court, Finland) (Paragraphs 11, 19 and 37 of the Law on surrender within the European Union). By virtue of Paragraph 44 of that law, however, it is the keskusrikospoliisi (National Bureau of Investigation, Finland) that is competent to execute a decision on surrender.

III. Facts and request for a preliminary ruling

13. The request for a preliminary ruling sets out the background to the case as follows.

14. The competent Romanian judicial authority issued a European arrest warrant on 19 May 2015 in respect of C, and on 27 May 2015 in respect of CD, both C and CD being Romanian nationals, with a view to their surrender to Romania for the purpose of executing prison sentences of five years and additional sentences of three years. Those sentences were imposed for the trafficking of dangerous and very dangerous narcotics and participation in a criminal organisation.

15. According to the information available, C and CD were initially in Sweden. Therefore, the Swedish Supreme Court, by decision of 8 April 2020 (NJA 2020 p. 430), ordered the surrender of C to Romania. By decision of 30 July 2020, the Court of Appeal, Svea, Sweden, ordered the surrender of CD to Romania. However, both individuals left Sweden for Finland before those decisions on surrender were executed.

16. On 15 December 2020, C and CD were arrested in Finland on the basis of the European arrest warrant and placed in detention. By final decisions of 16 April 2021 (KKO 2021:24 and No 582/2021), the Korkein oikeus (Supreme Court) ordered the surrender of C and CD to Romania. At the request of the Romanian authorities, the Finnish National Bureau of Investigation initially set a surrender date of 7 May 2021, as no suitable flight was available before that date because of the COVID-19 pandemic.

17. On 3 May 2021, C and CD brought an appeal before the Korkein oikeus (Supreme Court), seeking the annulment of the decisions on surrender. The Korkein oikeus (Supreme Court) initially, on 4 May 2021, made a provisional order preventing execution of the decisions on surrender, and subsequently, on 31 May 2021, dismissed the appeals seeking annulment. That dismissal nullified the decision preventing execution. The second date agreed for the surrender, 11 June 2021, was also postponed, as there were no direct flights to Romania and it was not possible to arrange air transport via another Member State without departing from the agreed schedule. C and CD subsequently made several other applications for a stay of execution of the decisions on surrender.

18. Arrangements were ultimately made for CD to be surrendered to Romania on 17 June 2021, and C on 22 June 2021. However, in each case their surrender was prevented by an application for asylum in Finland. The Maahanmuuttovirasto (National Immigration Office, Finland) rejected the applications for asylum on 12 November 2021, but C and CD brought an action against those decisions before the Hallinto-oikeus (Administrative Court, Finland).

19. In parallel with the proceedings on their applications for asylum, C and CD have sought their release from detention before the ordinary courts. On 20 December 2021, the Korkein oikeus (Supreme Court) referred to the Court of Justice the following questions arising from these proceedings:

- ‘(1) Does Article 23(3) of [Framework Decision 2002/584], read in conjunction with Article 23(5) thereof, require that, if a person in detention has not been surrendered within the time limits, the executing judicial authority referred to in Article 6(2) of the framework decision is to decide on a new surrender date and must determine whether a situation of *force majeure* exists and if the conditions required for detention are met, or is a procedure under which the court only examines those matters where the parties so request also compatible with the framework decision? If action on the part of the judicial authority is required in order for the time limit to be extended, does the lack of any such action necessarily mean that the time limits laid down in the framework decision have expired, in which case the person in detention must be released pursuant to Article 23(5) thereof?
- (2) Is Article 23(3) of [Framework Decision 2002/584] to be interpreted as meaning that the concept of *force majeure* includes legal obstacles to the surrender which are based on the national legislation of the executing Member State, such as an order preventing execution which has effect for the duration of the legal proceedings, or the right of an asylum seeker to remain in the executing Member State until his or her application for asylum has been determined?’

20. The Court has received written observations from C and CD, Romania and the European Commission. C and CD, the Republic of Finland, the Kingdom of the Netherlands and the Commission attended the hearing on 2 March 2022.

IV. Legal assessment

21. Article 23 of Framework Decision 2002/584 imposes strict time limits on the surrender of a person requested under a European arrest warrant. The person must be surrendered as soon as possible (paragraph 1), but as a rule no later than 10 days after the final decision on the execution of the European arrest warrant (paragraph 2). However, Article 23(3) provides for the possibility

to agree on a new surrender date when surrender of the requested person within the period laid down in Article 23(2) is not possible by reason of *force majeure*.³

22. The preliminary ruling raises three questions in connection with the concept of *force majeure*, which has to be taken into account in the application of Article 23(3) of Framework Decision 2002/584.

23. The first part of the first question seeks clarification as to whether, for the purposes of the application of Article 23(3) of Framework Decision 2002/584, it is always a judicial authority that must assess whether a situation of *force majeure* exists and agree a new surrender date, or whether a police authority may first take those measures, subject to judicial review on application (see Section C).

24. The second question concerns the interpretation of the concept of *force majeure* with regard to whether an application for asylum by the requested person and the ensuing delays in surrender are to be regarded as *force majeure* (see Section D).

25. Those two questions are relevant in the present case because Article 23(5) of Framework Decision 2002/584 provides, without further qualification, that, upon expiry of the time limits referred to in Article 23(2) to (4), if the requested person is still being held in custody he or she is to be released. Therefore, by the second part of the first question, the Korkein oikeus (Supreme Court) seeks to ascertain whether release is already necessary if a court has not assessed whether there is a case of *force majeure* that triggers a new time limit. Although it raises that question only in the event that judicial review is in fact necessary, I will – before turning to the other two questions – discuss whether release actually has to take place upon expiry of the time limits, because this will clarify the interests and legal positions affected (see Section B).

26. First, however, it is necessary to consider the Commission's argument at the hearing that Article 23 of Framework Decision 2002/584 is not applicable so long as an appeal against surrender is pending.

A. Applicability of Article 23 of Framework Decision 2002/584

27. It can be inferred from Article 23(2) of the framework decision that the time limits set out in that article do not start to run until a final decision on the execution of the European arrest warrant has been taken.

28. Article 23 is thus placed at the very end of a rather complex surrender procedure provided for in Chapter 2 of Framework Decision 2002/584. It comes into play after all the other necessary steps, including the decision on the execution of the European arrest warrant, have already been taken by the executing judicial authority.⁴

29. At first sight, that point in time arrived in the present case with the final decision of the Korkein oikeus (Supreme Court) of 16 April 2021.

³ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraphs 45 to 52). See also the Opinion of Advocate General Bobek in *Vilkas* (EU:C:2016:826, points 59 to 64). In that regard, see point 84 et seq. below.

⁴ Opinion of Advocate General Bobek in *Vilkas* (C-640/15, EU:C:2016:826, point 31).

30. However, the Commission argues convincingly that such a decision loses its definitive character as soon as an appeal is lodged against surrender. Such an appeal can only be effective if it precludes surrender. In addition, if national law provides for such appeals, it must be possible at least in theory that, if successful, they will prevent surrender at least provisionally. As a result, the previous decision on execution loses its definitive character. Consequently, Article 23 of Framework Decision 2002/584 can only become applicable again after the appeal has been dismissed.

31. If the present request for a preliminary ruling on questions on Article 23 of Framework Decision 2002/584 would have arisen out of the proceedings relating to such an appeal, it would therefore not be relevant to the decision to be given and would not have to be answered. It would be sufficient to inform the Korkein oikeus (Supreme Court) that Article 23 is not applicable.

32. However, the main proceedings do not, strictly speaking, concern an appeal against surrender, but arose out of the asylum procedures of the requested persons. The subject matter of those procedures differs from that of an appeal against surrender. In addition, the Court of Justice has already ruled that the right to asylum on the basis of Protocol (No 24) on asylum for nationals of Member States of the European Union is not a ground for non-execution of a European arrest warrant.⁵ The decision on surrender would consequently remain final.

33. However, in the present case the asylum procedure in fact prevents surrender and, in the unlikely event that the applications for asylum are successful, would call into question the decision on the execution of the European arrest warrant. Accordingly, for the purpose of applying Article 23 of the framework decision, that procedure must have the same effect as an appeal against surrender.

34. Consequently, Article 23 of Framework Decision 2002/584 is not applicable where surrender is not possible because of an asylum procedure.

35. In view of this conclusion, the answer to the questions put by the Korkein oikeus (Supreme Court) is irrelevant to the decision to be given in the main proceedings. I will nevertheless discuss them should the Court disagree with my assessment.

B. Release of the requested person

36. The second part of the first question concerns the release of the requested person. In that respect, I will first examine the normative requirements and consequences of release and then address a number of doubts as to its appropriateness. Lastly, I will place those considerations in the context of the fundamental right to liberty under Article 6 of the Charter of Fundamental Rights of the European Union ('the Charter').

1. Normative requirements and consequences of release

37. In accordance with Article 23(5) of Framework Decision 2002/584, the person concerned is to be released upon expiry of the time limits referred to in Article 23(2) to (4) if he or she is still being held in custody.

⁵ Judgment of 21 October 2010, *I.B.* (C-306/09, EU:C:2010:626, paragraphs 43 to 45).

38. Article 23(2) of Framework Decision 2002/584 sets a very short time limit. According to that provision, the person concerned is to be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant. The exact date of surrender within that period is to be agreed between the authorities concerned (Article 23(1)).

39. By contrast, where Article 23(3) or (4) of Framework Decision 2002/584 applies, the end of the time limit cannot be automatically determined. Although both those provisions also refer to a time limit of 10 days, it starts to run only on the new surrender date that has been agreed.

40. The agreement of such a new surrender date is possible where surrender on the date initially agreed is prevented by *force majeure* (Article 23(3) of Framework Decision 2002/584) or serious humanitarian reasons (Article 23(4)).

41. The point in time of that new surrender date is not specified in Article 23(3) and (4) of Framework Decision 2002/584. It is true that, in respect of those cases also, it can be inferred from Article 23(1) that the surrender should take place as soon as possible. As the Court has held, a person may continue to be held in custody only in so far as the surrender procedure has been carried out in a sufficiently diligent manner – including in the light of Article 6 of the Charter⁶ – and in so far as, consequently, the duration of the custody is not excessive.⁷

42. In any event, the new surrender date pursuant to Article 23(3) and (4) of Framework Decision 2002/584 is not subject to the time limit of 10 days pursuant to Article 23(2). This is already apparent from the fact that the legislature expressly set short time limits of 10 days in those two provisions, but those time limits begin to run only on the newly agreed surrender date and do not, however, relate to the determination of that date. A time limit for the new surrender date would also not make sense, because, in the cases of Article 23(3) and (4), it is not foreseeable how long the respective obstacle will exist.

43. However, in accordance with Article 23(5) of Framework Decision 2002/584, the requested person is to be released upon expiry of the time limits if he or she is still being held in custody. There is no provision for exceptions to that rule.

44. That outcome, confirmed by the Court in *Vilkas*,⁸ is surprising because it creates the risk that the requested person will abscond to evade subsequent execution of the arrest warrant.

45. In that respect, Advocate General Bobek even took the view that release under Article 23(5) of Framework Decision 2002/584 amounts to genuine and unconditional release, which precludes measures, taken on the basis of the European arrest warrant, to prevent the requested person from absconding.⁹

46. However, I understand the Court's findings in *Vilkas* to mean that, even after release under Article 23(5) of Framework Decision 2002/584, the executing State is obliged to take further necessary measures to ensure the surrender, as long as it does not hold the requested person in custody for that purpose. This is because the judicial authorities of that Member State continue

⁶ Judgments of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraphs 57 to 59), and of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 100).

⁷ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 43).

⁸ Judgment of 25 January 2017 (C-640/15, EU:C:2017:39, paragraph 73). See also judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraphs 47 to 49).

⁹ Opinion of Advocate General Bobek in *Vilkas* (C-640/15, EU:C:2016:826, point 35).

to be obliged to carry on with the procedure for executing a European arrest warrant and to surrender the requested person. The authorities concerned must agree, for that purpose, on a new surrender date.¹⁰ In order to comply with its obligation, the executing State must, in particular, have the power to take the necessary enforcement measures in direct connection with the surrender. It would be contrary to the obligation to continue the procedure¹¹ if the executing State were prevented from taking, up until the point of surrender, other measures involving a restriction of liberty to prevent the person from absconding that do not reach the threshold of measures involving deprivation of liberty.¹²

47. However, in accordance with Article 12 of Framework Decision 2002/584, in conjunction with Article 6 and Article 52(1) of the Charter, the detention of a requested person is permissible only if it is necessary.¹³ Accordingly, there must not be the possibility to ensure the execution of the European arrest warrant by other less coercive means. The fact that requested persons are often held in custody in the executing Member State therefore shows that alternative measures may not be an equally appropriate means of preventing absconding.¹⁴

2. Appropriateness of release

48. Therefore, the circumstances of the present case give rise to doubts as to the appropriateness of release under Article 23(5) of Framework Decision 2002/584.

49. First, there are strong indications that there is a substantial risk of absconding. Indeed, the requested persons had already fled Sweden to avoid execution of the European arrest warrant, and possibly Romania before that. However, in connection with the time limits for deciding on the execution of a European arrest warrant, the Court has already ruled that release from detention is incompatible with Framework Decision 2002/584 where an existing risk of absconding cannot be reduced to an acceptable level by the imposition of appropriate measures.¹⁵

50. Second, the delays in surrender in the case in the main proceedings are attributable at least in part to the conduct of the requested persons, since they first appealed against the surrender and later applied for asylum, despite the fact that, *prima facie*, none of the few remaining exceptional cases in which asylum may be granted under Protocol (No 24) on asylum for nationals of Member States of the European Union exists. According to Romania, they even contributed to the impossibility of overcoming the obstacles to surrender due to COVID-19 by refusing to carry out the necessary tests. Their release would therefore be liable to encourage tactics aimed at obstructing the execution of European arrest warrants.¹⁶

¹⁰ Judgment of 25 January 2017 (C-640/15, EU:C:2017:39, paragraph 72).

¹¹ See judgments of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 61), and of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 102).

¹² See, for example, the measures described in the judgment of 28 July 2016, *JZ* (C-294/16 PPU, EU:C:2016:610, paragraph 16). Regarding the distinction between measures involving deprivation of liberty and those involving a restriction of liberty, see paragraph 47 et seq. of that judgment.

¹³ See judgments of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 55); of 15 March 2017, *Al Chodor* (C-528/15, EU:C:2017:213, paragraph 37); and of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108, paragraph 56).

¹⁴ See judgment of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108, paragraphs 51 and 52).

¹⁵ Judgment of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108, paragraph 63). See also judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 61).

¹⁶ Judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 41).

51. And third, the courts of Romania, that is to say, courts of a Member State, have imposed years-long custodial sentences on the requested persons by final judgment. Despite possible measures to reduce the risk of absconding, the release of requested persons increases the risk of non-enforcement of those sentences. Such an outcome would be contrary to the trust existing between Member States and the principle of mutual recognition put into effect by Framework Decision 2002/584.¹⁷ By contrast, in the case of the present arrest warrants for the purposes of executing custodial sentences, the burden on the requested persons in the event of further detention would remain very limited, if not entirely non-existent, because, under Article 26 of Framework Decision 2002/584, the issuing Member State is to deduct periods of detention arising from the execution of a European arrest warrant.¹⁸

52. Nevertheless, in the *Vilkas* judgment, the Court held in favour of release in respect of such cases also.¹⁹

53. A risk of absconding was at least conceivable in *Vilkas*, as the resistance to surrender indicated that the requested person was not willing to serve the sentence imposed on him and submit to further prosecution.

54. Moreover, the delays that occurred in that case were also due to the conduct of the requested person, as he had successfully resisted the surrender being effected by means of a commercial flight,²⁰ and the Court would consider such a circumstance to constitute *force majeure* only in rare exceptional cases.²¹

55. The judgment in *Vilkas* ultimately concerned – as in the present case – a warrant for the purposes of executing a custodial sentence. It is true that neither the Opinion,²² the judgment²³ nor the request for a preliminary ruling in that case mentions the ground for the two arrest warrants at issue in the dispute. However, Ireland submitted in that case that one of the arrest warrants was issued for the purposes of prosecution for, inter alia, grievous bodily harm, and the other for the purposes of executing a custodial sentence for, inter alia, robbery and disturbance of public order.²⁴ The Court was therefore unable to proceed on the assumption that the arrest warrants were issued solely for the purposes of prosecution. At the least, Advocate General Bobek's line of argument that the foreseeability of disturbances by the requested person must be assessed in the light of the 'crimes for which the person is requested or has been convicted'²⁵ and the 'file and the facts of the individual case'²⁶ suggests that he was aware of the basis of the two arrest warrants.

56. However, it must be taken into account that, in *Vilkas*, the Court did not expressly state that, in the case also of a European arrest warrant for the purposes of executing a custodial sentence, release under Article 23(5) of Framework Decision 2002/584 is unconditionally required after the

¹⁷ See judgments of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 28); of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 76); and of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 31). See also Article 1(2) and recitals 6 and 10 of Framework Decision 2002/584.

¹⁸ See judgment of 28 July 2016, *JZ* (C-294/16 PPU, EU:C:2016:610).

¹⁹ Judgment of 25 January 2017 (C-640/15, EU:C:2017:39, paragraph 73).

²⁰ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraphs 14 and 15).

²¹ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraphs 59 to 65).

²² Opinion of Advocate General Bobek in *Vilkas* (C-640/15, EU:C:2016:826, point 7).

²³ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 12).

²⁴ Observations of Ireland of 10 March 2016 in *Vilkas* (C-640/15, paragraph 7).

²⁵ Opinion in *Vilkas* (C-640/15, EU:C:2016:826, point 68).

²⁶ Opinion in *Vilkas* (C-640/15, EU:C:2016:826, point 84).

expiry of the time limit. It would therefore not constitute a departure from that judgment if the Court were to interpret the application of Article 23(5) to such arrest warrants in a restrictive manner in the present case. That must be assessed in the light of the fundamental right to liberty under Article 6 of the Charter.

3. *The fundamental right to liberty*

57. According to Article 6 of the Charter, everyone – that is to say, including an offender who has been sentenced to imprisonment but has absconded – has the right to liberty and security of person.

58. Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights such as those set forth in Article 6 of the Charter, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.²⁷

59. Moreover, according to Article 52(3) of the Charter, in so far as it contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are to be the same as those laid down by the Convention. Article 53 of the Charter further states that nothing in the Charter is to be interpreted as restricting or adversely affecting the rights recognised *inter alia* by the ECHR.²⁸

60. In line with the case-law of the European Court of Human Rights, a restriction of the right to liberty therefore requires, in particular, a legal basis that is sufficiently accessible, precise and foreseeable in its application to avoid all risk of arbitrariness.²⁹ This must apply, in particular, to convicted offenders being held in custody, because the risk of arbitrary treatment is particularly pronounced in that situation.

61. In extradition proceedings, the legal basis for detention must first be sought in the provisions of Framework Decision 2002/584 and in the national legislation adopted to implement it.³⁰ However, both Article 23(5) of Framework Decision 2002/584 and Paragraph 48 of the Finnish Law on surrender within the European Union provide, without any restriction, that the requested person must be released upon expiry of the time limits set out in Article 23 of the framework decision. An interpretation of those provisions that allows detention despite the expiry of the time limits would no longer be foreseeable, and would indeed even be *contra legem*. It is therefore doubtful whether it would be compatible with the fundamental right to liberty under Article 6 of the Charter and Article 5 ECHR to restrict the application of Article 23(5) of the framework decision in the case of European arrest warrants for the purposes of executing custodial sentences.

²⁷ Judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 55).

²⁸ Judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 56).

²⁹ Judgments of 15 March 2017, *Al Chodor* (C-528/15, EU:C:2017:213, paragraph 40); of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraph 46); and of 17 September 2020, *JZ (Custodial sentence in the case of an entry ban)* (C-806/18, EU:C:2020:724, paragraph 41), each citing the judgment of the ECtHR of 21 October 2013, *Del Río Prada v. Spain* (CE:ECHR:2013:1021JUD004275009, § 125); and, regarding the European arrest warrant, judgment of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108, paragraphs 58 and 60).

³⁰ By way of illustration, judgment of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108, paragraph 61 et seq.).

62. Moreover, in the case of an arrest warrant for the purposes of executing a custodial sentence, it could be considered that that sentence, together with the criminal provisions applied, constitutes a legal basis for further detention. However, Framework Decision 2002/584 does not contain a specific provision for that.

63. Rather, Framework Decision 2008/909/JHA would be relevant to the execution of custodial sentences imposed in other Member States.³¹ However, neither the request for a preliminary ruling nor the observations in the present case contain any indication that the conditions for such execution are met. Nor is there any evidence of suitable provisions in Finnish law.

64. Therefore, as long as the legislature does not amend Article 23(5) of the framework decision, it must be assumed, in the case also of European arrest warrants for the purposes of executing custodial sentences, that the requested persons must be released if they are still in custody upon expiry of the time limits set out in Article 23(2) to (4).

65. The other two questions, which are aimed at determining the circumstances in which the extension of the time limit under Article 23(3) of the framework decision applies, are all the more important.

C. Involvement of the judicial authority

66. By the first part of the first question, the Korkein oikeus (Supreme Court) seeks to ascertain whether the extension of the time limit under Article 23(3) of Framework Decision 2002/584 applies only in the event that a judicial authority finds that *force majeure* has prevented a surrender within the time limit.

67. That question is based on the fact that, under Finnish law, tasks relating to the execution of the surrender are transferred to the National Bureau of Investigation once the court's decision on surrender has become final. It takes responsibility for the practical implementation of the decision on surrender, liaises with the competent authorities of the issuing Member State and agrees a new surrender date where surrender has not taken place within the time limit of 10 days, as in the present case.

68. The person to be surrendered always retains the right to put before the court the issue of whether it is justified to keep him or her in detention, or whether he or she ought to be released on the ground that detention is excessive. It is then incumbent on the court to consider, amongst other things, whether the fact that surrender has not taken place is due to circumstances amounting for the purposes of Article 23(3) of Framework Decision 2002/584 to *force majeure*, in which case the time limit for surrender can be extended and the person to be surrendered can remain in detention, notwithstanding Article 23(5). However, neither the National Bureau of Investigation nor any other authority systematically puts the question of continued detention before a court.

³¹ Council Framework Decision of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27)

69. As emphasised by the Korkein oikeus (Supreme Court), however, the first sentence of Article 23(3) of Framework Decision 2002/584 expressly provides that the executing and issuing judicial authorities are immediately to contact each other and agree on a new surrender date if the surrender of the requested person within the period laid down in Article 23(2) is prevented by *force majeure*.³²

70. Although, at least according to its wording, that provision does not specify which body is to determine whether a situation of *force majeure* exists, the agreement of a new surrender date presupposes a finding of *force majeure*. Therefore, the executing and issuing judicial authorities may enter into such an agreement only if they find that a situation of *force majeure* exists.

71. However, the Finnish National Bureau of Investigation is not to be regarded as a judicial authority.

72. The term ‘judicial authority’ as referred to in the framework decision constitutes an autonomous concept of EU law.³³ It refers to either a judge or a court, or a judicial authority, such as the public prosecution service of a Member State, which participates in the administration of justice of that Member State and which enjoys the necessary independence vis-à-vis the executive.³⁴ In accordance with recital 8 of Framework Decision 2002/584, decisions on the execution of a European arrest warrant and, in particular, on the surrender of the requested person must be taken by the executing judicial authority.

73. By contrast, ministries or police authorities are not judicial authorities, because they are part of the executive branch.³⁵ In respect of such authorities, Article 7 of Framework Decision 2002/584 merely provides that, as ‘central authorities’, they can be made responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto. According to recital 9, their role in the execution of a European arrest warrant must be limited to practical and administrative assistance.

74. The mere agreement of surrender arrangements would be a conceivable part of practical and administrative assistance.

75. However, in the context of the application of Article 23(3) of Framework Decision 2002/584, that practical aspect is linked to a decision on the continuation of detention: first, a decision is required as to whether the conditions for the application of the provision are met, that is say, in particular, *force majeure*. In addition, the subsequent fixing of a new surrender date establishes an additional time limit for detention. In that respect, it must be ensured, on the basis of a concrete review of the situation at issue, taking account of all of the relevant factors, that the surrender procedure has been carried out in a sufficiently diligent manner and, consequently, the duration of the custody is not excessive.³⁶

³² Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraphs 45 to 52).

³³ Judgments of 10 November 2016, *Poltorak* (C-452/16 PPU, EU:C:2016:858, paragraph 32), and of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953, paragraph 41).

³⁴ Judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953, paragraph 54).

³⁵ Judgments of 10 November 2016, *Poltorak* (C-452/16 PPU, EU:C:2016:858, paragraph 34), and of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953, paragraph 42).

³⁶ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 43).

76. As also stated by the Commission, that is a decision on the execution of the European arrest warrant which, according to recital 8, is to be taken by the judicial authorities. Accordingly, in Romania, according to its government, the continuation of detention is ordered by courts in cases of *force majeure*.

77. That protection under Article 23(3) of Framework Decision 2002/584 goes further than what is required by Article 5 ECHR. Article 5(3) ECHR requires only that remand in custody pending trial within the meaning of Article 5(1)(c) is subject to prompt judicial review. By contrast, in the case of detention for the purpose of extradition under Article 5(1)(f), it is sufficient if the person concerned is able to take proceedings by which the lawfulness of his or her detention is decided speedily by a court and his or her release ordered if the detention is not lawful.

78. In that regard, it can be left open whether Article 6 of the Charter is limited to that minimum standard or provides more extensive protection within the meaning of the second sentence of Article 52(3) of the Charter. In any event, Framework Decision 2002/584, and in particular Article 23(3), expressly provides for such more extensive protection.

79. If a Member State deviates from that rule by entrusting the decision on the existence of a situation of *force majeure* and a new surrender date to a police authority, it infringes Article 23(3) of the framework decision. In the event of such an infringement, the extension of the period of detention brought about by an extension of the time limit would no longer be regulated in a manner which is sufficiently accessible, precise and foreseeable in its application and it would therefore be incompatible with Article 6 of the Charter.

80. Thus, an extension of the time limit for surrender under Article 23(3) of Framework Decision 2002/584 and a continuation of detention after the expiry of the time limit under Article 23(2) is permissible only if a judicial authority finds that surrender within 10 days of the final decision on the execution of the European arrest warrant was prevented by *force majeure* and agrees to a new surrender date.

81. However, the absence of such a finding by a judicial authority does not lead to the immediate release of the requested person. This is because a police authority is also not permitted to decide on the release of a requested person and thereby potentially prevent the requested person from being extradited, which is the very objective of Framework Decision 2002/584.

82. Rather, if it is initially a police authority that has decided whether *force majeure* prevented the surrender, and has perhaps even already agreed a new surrender date, it must, in order to remedy that error, immediately take the matter before a court so that the latter can review those decisions. Depending on how that court assesses those issues, it must order either continued detention or release.

D. The effect of the applications for asylum

83. The second question of the Korkein oikeus (Supreme Court) concerns the effect that the applications for asylum made by the two requested persons have on the time limits laid down in Article 23 of Framework Decision 2002/584. The court seeks to ascertain whether an associated order preventing execution which has effect for the duration of the legal proceedings, or the right of the asylum seeker to remain in the executing Member State until his or her application for asylum has been determined, is to be regarded as *force majeure*.

1. Interpretation of Article 23(3) of the framework decision

84. On the basis of some of the language versions of Article 23(3) of Framework Decision 2002/584, the answer to that question is clear. According to that provision, prevention of surrender by circumstances beyond the control of the Member States³⁷ is sufficient to allow the agreement of a new surrender date. Whether or not requested persons apply for asylum is generally beyond the control of the Member States.

85. Other language versions refer to the concept of *force majeure*, however.³⁸

86. In view of those different language versions, the Court held in the judgment in *Vilkas*, in agreement with Advocate General Bobek,³⁹ that, in the light of the legislative history,⁴⁰ Article 23(3) of the framework decision is applicable only in cases of *force majeure*.⁴¹

87. As in other areas of EU law, '*force majeure*' must be understood as referring to abnormal and unforeseeable circumstances which are beyond the control of the party by whom it is pleaded and the consequences of which could not have been avoided even if all due care had been exercised.⁴² In that regard, the scope of that exception must be interpreted narrowly⁴³ to the effect that it covers only genuine cases of impossibility, not the circumstance of surrender being simply made more difficult.⁴⁴

88. However, I doubt whether that interpretation of Article 23(3) of Framework Decision 2002/584 is compatible with the objectives of the framework decision or is required in the light of Article 6 of the Charter. In the present case, the prevention of surrender is based on an application for asylum, the prospects of success of which are highly doubtful on the basis of Protocol (No 24) on asylum for nationals of Member States of the European Union. Both that circumstance and also the conduct of the requested person in *Vilkas* clearly demonstrate the risk of requested persons preventing surrender by abusive conduct, without the conditions of *force majeure* being met. According to settled case-law, however, EU law cannot be relied on for abusive or fraudulent ends.⁴⁵

89. I therefore consider that it is necessary that the interpretation of the first sentence of Article 23(3) of Framework Decision 2002/584 be clarified to the effect that that provision covers all circumstances which, in spite of the exercise of all due care,⁴⁶ prevent surrender and are beyond the control of the Member States.

³⁷ The judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 46), refers to the Spanish, Czech, Danish, German, Greek, English, Dutch, Polish, Slovak and Swedish versions in that regard.

³⁸ In the judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 46), the Court refers to the Greek, French, Italian, Portuguese, Romanian and Finnish versions in that regard.

³⁹ Opinion in *Vilkas* (C-640/15, EU:C:2016:826, points 59 to 64).

⁴⁰ That interpretation is supported, in particular, by the explanatory report to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on simplified extradition procedure between the Member States of the European Union (OJ 1996 C 375, p. 4 (9 f.)) as well as by the explanatory notes to Article 23 of the Commission Proposal for a Council framework Decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 final).

⁴¹ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraphs 45 to 52).

⁴² Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 53).

⁴³ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 56).

⁴⁴ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 57).

⁴⁵ Judgments of 12 May 1998, *Kefalas and Others* (C-367/96, EU:C:1998:222, paragraph 20); of 9 March 1999, *Centros* (C-212/97, EU:C:1999:126, paragraph 24); of 17 July 2014, *Torresi* (C-58/13 and C-59/13, EU:C:2014:2088, paragraph 42); and of 11 November 2021, *Ferimet* (C-281/20, EU:C:2021:910, paragraph 45).

⁴⁶ See judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 61).

90. Nevertheless, in accordance with Articles 18, 47 and 48 of the Charter, the requested persons are in principle entitled to an appropriate examination of their application for asylum as well as to effective judicial protection. Although Protocol (No 24) on asylum for nationals of Member States of the European Union significantly restricts the right of Union citizens to seek asylum in other Member States and an application for asylum also does not allow refusal of extradition,⁴⁷ that right is not definitively eliminated. The authorities therefore have no means, even when exercising the utmost due care, to prevent the requested persons from delaying surrender in such a manner.

2. In the alternative: interruption of the time limits due to the application for asylum

91. However, in the event that the Court maintains that Article 23(3) of Framework Decision 2002/584 is limited to cases of *force majeure*, the requirements of that provision are not met in the present case.

92. It is true that, as a rule, the executing Member State has no influence on whether a requested person applies for asylum. The Member State cannot avoid the ensuing delay to surrender, even where it exercises due care.⁴⁸ In certain circumstances, such an application may even be surprising.

93. Nevertheless, on a strict interpretation of the concept of *force majeure*, it is not an unusual and unforeseeable event. If it were to become apparent that requested persons could thereby prevent their surrender and bring about their release, such applications would even become commonplace. The possibility of regarding an application for asylum and the associated obstacle to extradition as *force majeure* would be ruled out upon the materialisation of such a practice, at the latest.

94. That outcome could therefore invite abusive behaviour by requested persons, but, in *Vilkas*, the Court accepted that possibility in principle. It took the view that – save a number of rare exceptions⁴⁹ – resistance put up by the requested person to his or her surrender is not unforeseeable and, consequently, does not constitute *force majeure* either.⁵⁰ Moreover, it emphasised that, in the event that *force majeure* cannot be established, the requested person must be released.⁵¹

95. However, those findings are based on the consideration that, where they exercise due care, the authorities concerned have means enabling them more often than not to overcome resistance put up by a requested person.⁵²

96. By contrast – as already stated⁵³ – the authorities do not have such means at their disposal in the case of an application for asylum. That circumstance justifies an interruption of the time limits under Article 23 of the framework decision due to such a delay, without it being necessary for the

⁴⁷ Judgment of 21 October 2010, *I.B.* (C-306/09, EU:C:2010:626, paragraphs 43 to 45).

⁴⁸ See point 89 above.

⁴⁹ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 64).

⁵⁰ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 59).

⁵¹ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 73).

⁵² Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 61).

⁵³ See point 89 above.

application for asylum to be regarded as *force majeure* for that purpose. This follows from an interpretation of Article 23 in the light of the objectives of the framework decision and the general principles of EU law.

97. This is because various rules of EU law which provide that acts of enforcement, investigation and prosecution⁵⁴ interrupt limitation periods show that such an interruption reflects a general principle.

98. This principle also reflects the Commission's view, referred to above, that appeals against surrender preclude the application of Article 23 of Framework Decision 2002/584.⁵⁵

99. In that respect, the Court has ruled that domestic rules on short limitation periods for the right to compensation under EU law in respect of competition infringements, which do not provide for interruption due to judicial proceedings conducted to establish the infringement in question, are in principle incompatible with the principle of effectiveness.⁵⁶

100. The judgment in *Arslan*, in which the Court held that the continued detention of a third-country national already held in custody pending removal on the ground of a risk of absconding may be compatible with the relevant rules of EU law if he or she delays removal by applying for asylum, is closer to the circumstances of the present case.⁵⁷

101. It is true that it would be in line with the requirements for a legal basis for deprivation of liberty if that interruption were to be expressly regulated in a similar way to the cases of *force majeure* and the humanitarian grounds under Article 23(3) and (4) of Framework Decision 2002/584 or to the interruptions of the limitation period referred to just above. However, if requested persons deliberately trigger insurmountable legal obstacles to surrender by way of their own decisions, they cannot claim that that delay and the need for prolonged detention were not foreseeable to them.

102. It is therefore only after the definitive conclusion of the procedure relating to the application for asylum and the removal of the relevant obstacle to surrender that the time limits under Article 23 of the framework decision apply again.

103. However, in that respect, it does not make sense simply to let the time limit that was interrupted by the application for asylum continue to run. This is because there may not be sufficient time left to effect surrender within the remaining period if the requested person has timed his or her application for asylum skilfully.

⁵⁴ See the third subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1), Article 25(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1), Article 17(2) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9) and Article 105(3) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ 2018 L 193, p. 1).

⁵⁵ See point 30 above.

⁵⁶ Judgment of 28 March 2019, *Cogeco Communications* (C-637/17, EU:C:2019:263, paragraphs 51 to 53). See also judgment of 13 July 2006, *Manfredi and Others* (C-295/04 to C-298/04, EU:C:2006:461, paragraph 78), and judgment of the EFTA Court of 17 September 2018, *Nye Kystlink AS v Color Group AS and Color Line AS* (E-10/17, paragraph 119).

⁵⁷ Judgment of 30 May 2013, *Arslan* (C-534/11, EU:C:2013:343, paragraphs 57 to 60).

104. Nor does it appear appropriate to reapply the time limit of 10 days under Article 23(2) of Framework Decision 2002/584. That time limit applies to the executing judicial authority or its assisting authorities which are directly involved in the procedure for deciding on the execution of the European arrest warrant. Those authorities will therefore not be surprised by the start of the time limit and can take the necessary measures to ensure that the surrender is effected within the time limit.

105. The decision on an application for asylum, on the other hand, is in the hands of other authorities. The conclusion of that procedure is therefore much more comparable to the end of an obstacle based on *force majeure*. Accordingly, a new surrender date must be agreed in accordance with Article 23(3).

106. Consequently, the order – issued in connection with an application for asylum – preventing the execution of a European arrest warrant which has effect for the duration of the legal proceedings, or the right of the asylum seeker to remain in the executing Member State until his or her application for asylum has been determined, interrupt the time limits laid down in Article 23 of Framework Decision 2002/584. If the application for asylum is refused by final decision, a new surrender date must be agreed in accordance with Article 23(3).

107. Lastly, it must be stated that the duty of care to keep the surrender phase as short as possible⁵⁸ also applies to the authorities and courts that decide on the application for asylum. However, that does not mean that they must give absolute priority to that procedure over all other pending procedures or proceedings. It is sufficient if they take due account of the specific urgency of the procedure in comparison to the urgency of the other procedures or proceedings.

V. Conclusion

108. I therefore propose that the Court give the following answer to the request for a preliminary ruling:

Article 23 of Framework Decision 2002/584 is not applicable if surrender is not possible because of an asylum procedure.

109. If the Court does not concur with this view, I propose that the Court give the following answer to the request for a preliminary ruling:

- (1) An extension of the time limit for surrender under Article 23(3) of Council Framework Decision 2002/584 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 and a continuation of detention after the expiry of the time limit under Article 23(2) of Framework Decision 2002/584 is permissible only if a judicial authority finds that surrender within 10 days of the final decision on the execution of the European arrest warrant was prevented by *force majeure* and agrees to a new surrender date. If it is initially a police authority that has taken a decision on those questions, it must, for the purposes of remedying that error, immediately take the matter before a court so that the latter can review those decisions.

⁵⁸ Judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 43). See also judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraphs 58 and 59).

- (2) The first sentence of Article 23(3) of Framework Decision 2002/584 covers all circumstances which, in spite of the exercise of all due care, prevent surrender and are beyond the control of the Member States.