Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

28 April 2022*

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 23(3) – Requirement of intervention on the part of the executing judicial authority – Article 6(2) – Police services – Not included – *Force majeure* – Concept – Legal obstacles to surrender – Legal actions brought by the requested person – Application for international protection – Not included – Article 23(5) – Expiry of the time limits provided for surrender – Consequences – Release – Obligation to adopt any other measures necessary to prevent absconding)

In Case C-804/21 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 20 December 2021, received at the Court on 20 December 2021, in proceedings relating to the execution of European arrest warrants issued in respect of

C,

CD

v

Syyttäjä,

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, J. Passer, F. Biltgen, N. Wahl and M.L. Arastey Sahún, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 2 March 2022,

after considering the observations submitted on behalf of:

– C and CD, by H. Nevala, asianajaja,

* Language of the case: Finnish.

– the Finnish Government, by H. Leppo, acting as Agent,

– the Netherlands Government, by J. Langer, acting as Agent,

– the Romanian Government, by E. Gane and L.-E. Baţagoi, acting as Agents,

– the European Commission, by S. Grünheid and I. Söderlund, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(2) and Article 23(3) and (5) 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) ('Framework Decision 2002/584').

2 The request has been made in the context of the execution, in Finland, of European arrest warrants issued by a Romanian court against C and CD, who are Romanian nationals.

Legal context

Framework Decision 2002/584

3 Recitals 8 and 9 of Framework Decision 2002/584 are worded as follows:

'(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.

(9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.'

4 Article 1 of that framework decision, entitled 'Definition of the European arrest warrant and obligation to execute it', provides, in paragraphs 1 and 2 thereof:

'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.'

5 Under Article 6 of that framework decision, entitled 'Determination of the competent judicial 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 Article 7 of that framework decision, entitled 'Recourse to the central authority', is worded 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.

…'

7 Article 23 of Framework Decision 2002/584, entitled '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.

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.'

Finnish law

The Law on Surrender

8 The national provisions adopted in order to implement Framework Decision 2002/584 are found in 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) of 30 December 2003 ('the Law on Surrender').

9 In accordance with Paragraphs 11, 19 and 37 of the Law on Surrender, in Finland, the executing judicial authorities that are competent to decide on surrender and continuation of detention are the Helsingin käräjäoikeus (District Court, Helsinki, Finland), and, on appeal, the Korkein oikeus (Supreme Court, Finland). By virtue of Paragraph 44 of that law, it is the Keskusrikospoliisi (National Bureau of Investigation, Finland) that is competent to execute a decision on surrender.

10 By virtue of the first subparagraph of Paragraph 46 of that law, a person who is the subject of a European arrest warrant is to be surrendered to the competent authorities of the requesting Member State as soon as possible, on a date agreed between the authorities concerned. However, he or she is to be surrendered no later than 10 days after the decision on surrender has become final.

11 By virtue of the second subparagraph of Paragraph 46 of that law, if the surrender of that person within the period laid down in the first subparagraph of that provision is prevented by circumstances beyond the control of Finland or the requesting Member State, the competent authorities must agree on a new surrender date. The surrender must take place within 10 days of the new date thus agreed.

12 In accordance with Paragraph 48 of the Law on Surrender, if, upon expiry of the time limits referred to in Paragraphs 46 and 47 thereof, the person is still being held in custody, he or she must be released.

The Law on Foreign Nationals

13 The national provisions on asylum are contained in the ulkomaalaislaki (301/2004) (Law 301/2004 on Foreign Nationals) of 30 April 2004 ('the Law on Foreign Nationals'), which corresponds to the provisions of the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967. The provisions of the Law on Foreign Nationals apply to all foreign nationals residing in Finland, including EU citizens.

14 Pursuant to the third subparagraph of Paragraph 40 of the Law on Foreign Nationals, a foreign national has the right to reside in Finnish territory for the duration of the examination of his or her application, until a final decision has been taken regarding that application or an enforceable decision has been taken regarding his or her removal.

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 C and CD, who are Romanian nationals, were the subjects of European arrest warrants issued on 19 and 27 May 2015, respectively, by a Romanian judicial authority for the purpose of executing prison sentences of five years and additional sentences of three years (together, 'the European arrest warrants at issue'). Those sentences were imposed for the trafficking of dangerous and very dangerous narcotics and for participation in a criminal organisation.

16 C and CD were the subjects of procedures for the execution of those European arrest warrants in Sweden. By decision of 8 April 2020, the Högsta domstolen (Supreme Court, Sweden) ordered that C be surrendered to the Romanian authorities and, by decision of 30 July 2020, the Svea hovrätt (Svea Court of Appeal, Stockholm, Sweden) ordered that CD be surrendered to the same authorities. However, C and CD left Sweden for Finland before those decisions on surrender were implemented.

17 On 15 December 2020, C and CD were arrested and placed in detention in Finland on the basis of the European arrest warrants at issue.

18 By decisions of 16 April 2021, the Korkein oikeus (Supreme Court) ordered that they be surrendered to the Romanian authorities. At the request of the Romanian authorities, the National Bureau of Investigation initially set a surrender date of 7 May 2021. C and CD's air transport to Romania could not be organised before that date on account of the COVID-19 pandemic.

19 On 3 May 2021, C and CD brought an appeal before the Korkein oikeus (Supreme Court). On 4 May 2021, that court made a provisional order prohibiting the execution of the decisions on surrender. On 31 May 2021, that court dismissed the appeals, which nullified the provisional order prohibiting the execution of those decisions on surrender.

20 A second surrender date was set for 11 June 2021. However, that surrender was once again postponed, owing to the absence of direct flights to Romania and the impossibility of arranging air transport via another Member State without departing from the agreed schedule.

21 C and CD submitted several other applications to the Helsingin käräjäoikeus (District Court, Helsinki) and the Korkein oikeus (Supreme Court) seeking a stay of execution of the decisions on surrender. All of those applications were dismissed or declared inadmissible.

22 A third surrender date was set for 17 June 2021 for CD, and 22 June 2021 for C. However, it was once again not possible to proceed with that surrender, this time because C and CD had lodged applications for international protection in Finland. By decisions of 12 November 2021, the Maahanmuuttovirasto (National Immigration Office, Finland) rejected those applications. C and CD brought an action against those decisions before the hallinto-oikeus (Administrative Court, Finland).

23 C and CD then brought an action before the Helsingin käräjäoikeus (District Court, Helsinki) requesting, first, their release on the ground that the time limit for surrender had expired and, second, the postponement of their surrender on account of their applications for international protection. By decisions of 8 and 29 October 2021, the Helsingin käräjäoikeus (District Court, Helsinki) declared those requests inadmissible.

24 The main proceedings concern the appeals brought by C and CD against those decisions before the referring court, the Korkein oikeus (Supreme Court). In support of their appeals, C and CD have put forward the same grounds as those which were rejected by the Helsingin käräjäoikeus (District Court, Helsinki). In the response, the syyttäjä (Public Prosecutor, Finland) contends that the appellants in the main proceedings should remain in custody and that their surrender to the Romanian authorities should not be postponed.

25 The referring court, in a decision of principle delivered on 8 December 2021, ruled that persons who are the subjects of a decision on surrender are entitled to have their request regarding their remaining in custody examined by a court. In order to avoid any delay, that court seised itself directly of the main proceedings.

26 The referring court has doubts as regards the interpretation of Article 23(3) of Framework Decision 2002/584, from both a procedural and a substantive point of view.

27 As regards, in the first place, the procedural aspects, the referring court has doubts as regards the requirements arising from that provision in respect of the assessment of whether there is a situation of *force majeure*.

28 According to the explanations provided by the referring court, the rules of national law make the National Bureau of Investigation responsible for the tasks related to the execution of the surrender once the decision on surrender taken by the court has become final. In its decision, the court does not set the surrender date, but that decision is to be executed in conformity with the time limits laid down in that regard by the Law on Surrender, in accordance with Framework Decision 2002/584.

29 Furthermore, according to that court, the National Bureau of Investigation is responsible for the practical implementation of the decision on surrender, liaises with the competent authorities of the issuing Member State and agrees on a new surrender date where that surrender has not taken place within the 10-day time limit, as in the case in the main proceedings.

30 According to the case-law of the referring court, a person in custody may, at any time, apply to the court having jurisdiction to examine whether there are still grounds for keeping him or her in custody. It is therefore for the court to assess, inter alia, whether the fact that surrender has not taken place is the result of a situation of *force majeure* for the purposes of Article 23(3) of Framework Decision 2002/584. By contrast, the National Bureau of Investigation and the other authorities do not systematically put the question of continued detention to the competent court for assessment.

31 The referring court thus has doubts as to the compatibility of that national procedure with Article 23(3) of Framework Decision 2002/584 and the consequences of any incompatibility.

32 As regards, in the second place, the substantive aspects of Article 23(3) of Framework Decision 2002/584, the referring court asks whether the concept of *force majeure* extends to legal obstacles which have their basis in the national legislation of a Member State and have the effect of preventing surrender within the period initially prescribed.

33 That court states that, in the judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39), the Court of Justice held that the concept of *force majeure* may apply to a situation in which the person in custody puts up physical resistance making his or her surrender impossible, provided

that, on account of exceptional circumstances, that resistance could not be foreseen by the executing judicial authority or the issuing judicial authority and that the consequences of that resistance for the surrender could not have been avoided in spite of the exercise of all due care by those authorities.

34 In the case in the main proceedings, while the COVID-19 pandemic complicated the practical implementation of the surrender and compliance with the time limits, the main obstacles to that surrender were (i) the prohibition on execution ordered by the referring court during the examination of the appeals brought by C and CD and (ii) the applications for asylum, also submitted by C and CD. In that regard, the referring court states that, pursuant to the national legislation, an asylum seeker has the right to remain in Finnish territory while his or her application is being examined or until a decision has been taken regarding his or her removal.

35 In those circumstances, the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(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 [that 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?’

The request for the application of the urgent preliminary ruling procedure

36 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.

37 In the present case, it must be stated that the conditions laid down for the application of that procedure have been satisfied.

38 First, the request for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which comes within the areas referred to in Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice. Accordingly, that request may form the

subject matter of the urgent preliminary ruling procedure, in accordance with the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union and Article 107(1) of the Rules of Procedure.

39 Second, as regards the criterion relating to urgency, it follows from the settled case-law of the Court that that criterion is satisfied when the person concerned in the case in the main proceedings is, as at the date when the request for a preliminary ruling is made, deprived of his or her liberty and the question as to whether he or she may continue to be held in custody depends on the outcome of the dispute in the main proceedings (see, in particular, judgments of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 24, and of 16 November 2021, *Governor of Cloverhill Prison and Others*, C-479/21 PPU, EU:C:2021:929, paragraph 34 and the case-law cited).

40 In that regard, it is apparent from the request for a preliminary ruling that C and CD were in fact deprived of their liberty as at the date when that request was made.

41 In addition, the questions referred concern the interpretation of Article 23 of Framework Decision 2002/584, paragraph 5 of which provides, in the event of expiry of the time limits referred to in paragraphs 2 to 4 of that article, for the release of the requested person. Thus, depending on the answer that the Court gives to the questions referred, the referring court might be required to order the release of C and CD.

42 In those circumstances, the Second Chamber of the Court of Justice, on 17 January 2022, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

The second question

43 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 23(3) of Framework Decision 2002/584 is to be interpreted as meaning that the concept of *force majeure* extends to legal obstacles to surrender which arise from legal actions brought by the person who is the subject of the European arrest warrant and are based on the law of the executing Member State, in cases where the final decision on surrender has been adopted by the executing judicial authority in accordance with Article 15(1) of that framework decision.

44 It is apparent from the settled case-law of the Court, established in various spheres of EU law, that the concept of *force majeure* must be understood as referring to abnormal and unforeseeable circumstances which were outside the control of the party by whom it is pleaded and the consequences of which could not have been avoided in spite of the exercise of all due care (judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 53 and the case-law cited).

45 In addition, the concept of *force majeure* as provided for in Article 23(3) of Framework Decision 2002/584 must be interpreted strictly, given that that provision constitutes an exception to the rule laid down in Article 23(2) of that framework decision (see, to that effect, judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 56).

46 As regards legal obstacles to surrender which arise from legal actions brought by the person who is the subject of the European arrest warrant, it must, admittedly, be noted that such obstacles are not connected with the conduct of the authorities of the executing Member State and that their consequences, namely the impossibility of surrendering that person within the prescribed period, could not have been avoided in spite of the exercise of all due care.

47 However, and as C and CD, the Romanian Government and the European Commission have correctly observed, the bringing of legal actions by the person who is the subject of the European arrest warrant, in the context of proceedings provided for by the national law of the executing Member State, with a view to challenging his or her surrender to the authorities of the issuing Member State or having the effect of delaying that surrender, cannot be regarded as an unforeseeable circumstance.

48 Consequently, such legal obstacles to surrender, which arise from legal actions brought by that person, cannot constitute a situation of *force majeure* for the purposes of Article 23(3) of Framework Decision 2002/584.

49 It follows from the foregoing that the time limits for surrender laid down in Article 23 of that framework decision cannot be regarded as suspended on account of proceedings pending in the executing Member State, brought by the person who is the subject of the European arrest warrant, in cases where the final decision on surrender has been adopted by the executing judicial authority in accordance with Article 15(1) of that framework decision. Accordingly, the authorities of the executing Member State are still, in principle, required to surrender that person to the authorities of the issuing Member State within those time limits.

50 At that last stage of the surrender procedure, governed by Article 23 of that framework decision, all the legal matters have, in principle, been examined by the executing judicial authority which has already – it is assumed – delivered a final decision on surrender.

51 That interpretation is also dictated by the objective, pursued by Framework Decision 2002/584, of accelerating and simplifying judicial cooperation between Member States. That framework decision 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 attainment of 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, in particular, judgments of 29 January 2013, *Radu*, C-396/11, EU:C:2013:39, paragraph 34, and of 17 March 2021, *JR (Arrest warrant – Conviction in a third State, Member of the EEA)*, C-488/19, EU:C:2021:206, paragraph 71).

52 In the present case, there is nothing in the file before the Court to suggest that the legal actions brought by C and CD related, even indirectly, to a breach of a fundamental right which could not have been relied on by those persons before the executing judicial authority during the procedure leading to the adoption of the final decision on surrender in accordance with Article 15(1) of Framework Decision 2002/584.

53 As regards, more specifically, the applications for international protection lodged in Finland by C and CD, it is apparent from the observations submitted by them that those applications were largely based on arguments relating to detention conditions in the issuing Member State, namely Romania, and referred to the relevant case-law of the Court in that area, in particular the

judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198); of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)* (C-220/18 PPU, EU:C:2018:589); and of 15 October 2019, *Dorobantu* (C-128/18, EU:C:2019:857). It is apparent from the file before the Court that those arguments were raised by C and CD before the executing judicial authority during the procedure leading to the adoption of the final decisions on surrender.

54 Moreover, as the Commission has stated, the sole article of Protocol (No 24) on asylum for nationals of Member States of the European Union, annexed to the FEU Treaty, states that, given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States are to be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters.

55 That article adds that, accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in four situations, which form an exhaustive list.

56 There is nothing in the file before the Court to suggest that the situation of C and CD comes within any of those four situations envisaged in the sole article of that protocol, in respect of which the referring court has not, moreover, put any questions to the Court of Justice.

57 Lastly, it must also be borne in mind that an application for international protection is not one of the grounds for non-execution of a European arrest warrant listed in Articles 3 and 4 of Framework Decision 2002/584 (see, to that effect, judgment of 21 October 2010, *I.B.*, C-306/09, EU:C:2010:626, paragraphs 43 to 46).

58 In the light of the foregoing, the answer to the second question is that Article 23(3) of Framework Decision 2002/584 must be interpreted as meaning that the concept of *force majeure* does not extend to legal obstacles to surrender which arise from legal actions brought by the person who is the subject of the European arrest warrant and are based on the law of the executing Member State, in cases where the final decision on surrender has been adopted by the executing judicial authority in accordance with Article 15(1) of that framework decision.

The first question

59 By its first question, the referring court asks, in essence, first, whether Article 23(3) of Framework Decision 2002/584 is to be interpreted as meaning that the requirement of intervention on the part of the executing judicial authority, referred to in that provision, is met where the executing Member State makes a police service responsible for ascertaining whether there is a situation of *force majeure* and whether the necessary conditions for the continued detention of the person who is the subject of the European arrest warrant are satisfied and for deciding, as the case may be, on a new surrender date, on the understanding that that person is entitled to apply to the executing judicial authority at any time for a decision on the abovementioned matters. Second, that court asks whether Article 23(5) of that framework decision is to be interpreted as meaning that the time limits referred to in Article 23(2) to (4) must be regarded as having expired, with the result that that person must be released, in the event that it is necessary to regard the requirement of intervention on the part of the executing judicial authority, referred to in Article 23(3) of that framework decision, as not having been met.

60 In the event that there is a situation of *force majeure* precluding surrender within the time limit laid down in Article 23(2) of Framework Decision 2002/584, it is apparent from the wording of Article 23(3) of that framework decision that it is for the executing and issuing judicial authorities concerned immediately to contact each other and agree on a new surrender date.

61 The Court has previously stated that the concept of 'executing judicial authority' within the meaning of Article 6(2) of Framework Decision 2002/584 refers, like the concept of 'issuing judicial authority' within the meaning of Article 6(1) of that framework decision, 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 (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 54).

62 By contrast, according to the settled case-law of the Court, the police services of a Member State cannot be covered by the concept of 'judicial authority' within the meaning of Article 6 of Framework Decision 2002/584 (see, to that effect, judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 42 and the case-law cited).

63 Accordingly, the intervention on the part of the executing judicial authority required under Article 23(3) of that framework decision, for the purpose of assessing whether there is a situation of *force majeure* and, as the case may be, setting a new surrender date, cannot be made the responsibility of a police service of the executing Member State, such as the National Bureau of Investigation in the dispute in the main proceedings.

64 It is true that Article 7(1) of that framework decision authorises the Member States to designate one – or more than one – 'central authority' to assist the competent judicial authorities. In addition, it is common ground that the police services of a Member State may be covered by the concept of 'central authority' for the purposes of that article (see, to that effect, judgment of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 42).

65 Nevertheless, it is apparent from Article 7 of Framework Decision 2002/584, read in the light of recital 9 thereof, that intervention on the part of such a central authority must be limited to practical and administrative assistance for the competent judicial authorities. Accordingly, the possibility envisaged in that article cannot extend to permitting Member States to substitute that central authority for the competent judicial authorities in relation to the assessment of whether there is a situation of *force majeure*, for the purposes of Article 23(3) of that framework decision, and, as the case may be, the setting of a new surrender date (see, to that effect, judgment of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 42).

66 As the Advocate General stated in points 73 to 76 of her Opinion, the assessment of whether there is a situation of *force majeure*, for the purposes of that provision, and, where appropriate, the setting of a new surrender date constitute decisions on the execution of the European arrest warrant, which is a matter for the executing judicial authority pursuant to Article 6(2) of Framework Decision 2002/584, read in the light of recital 8 thereof. On that basis, and as the referring court also acknowledges, such decisions go beyond the mere 'practical and administrative assistance' that may be made the responsibility of police services under Article 7 of that framework decision, read in the light of recital 9 thereof.

67 As regards the inferences to be drawn from non-intervention on the part of the executing judicial authority, it must be stated, in the first place, that the time limits laid down in Article 23(2) to (4) of Framework Decision 2002/584 must indeed be regarded as having expired in such circumstances.

68 The finding of a situation of *force majeure* by the police services of the executing Member State, followed by 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 Article 23(3) of Framework Decision 2002/584, irrespective of whether that situation of *force majeure* actually exists.

69 Consequently, where there is no intervention on the part of the executing judicial authority, the time limits laid down in Article 23(2) to (4) of that framework decision cannot be validly extended pursuant to paragraph 3 of that article. It follows that, in a situation such as that at issue in the main proceedings, those time limits must be regarded as expired for the purposes of paragraph 5 of that article.

70 In the second place, it is necessary to recall the consequences of the expiry of the time limits laid down in Article 23(2) to (4) of Framework Decision 2002/584.

71 Admittedly, it is clear from the wording of Article 23(5) of Framework Decision 2002/584 that a person who is the subject of a European arrest warrant, if he or she is still being held in custody, must, if those time limits have expired, be released. No provision is made for an exception to that obligation on the part of the executing Member State in such a case.

72 That said, the EU legislature did not confer any other effect on the expiry of those time limits and did not, in particular, provide that their expiry deprives the authorities concerned of the possibility of agreeing on a surrender date pursuant to Article 23(1) of that framework decision or that it releases the executing Member State from the obligation to give effect to a European arrest warrant (judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 70).

73 Furthermore, an interpretation of Article 15(1) and Article 23 of Framework Decision 2002/584 to the effect that the executing judicial authority should no longer surrender the person who is the subject of the European arrest warrant or agree, for that purpose, on a new surrender date with the issuing judicial authority after the time limits referred to in Article 23 of that framework decision have expired would run counter to the objective pursued by that framework decision of accelerating and simplifying judicial cooperation, since such an interpretation could, in particular, force the issuing Member State to issue a second European arrest warrant in order to enable a new surrender procedure to take place (judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 71).

74 It follows from the foregoing that the mere expiry of the time limits prescribed in Article 23 of Framework Decision 2002/584 cannot have the effect of allowing the executing Member State to relieve itself of its obligation to carry on with the procedure for executing a European arrest warrant and to surrender the requested person, and the authorities concerned must agree, for that purpose, on a new surrender date (judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 72).

75 In addition, as the Advocate General stated in point 46 of her Opinion, having regard to the obligation on the part of the executing Member State to carry on with the procedure for executing a European arrest warrant, the competent authority of that Member State is required,

if the person who is the subject of that warrant is released pursuant to Article 23(5) of Framework Decision 2002/584, to take any measures it deems necessary to prevent that person from absconding, with the exception of measures involving deprivation of liberty.

76 In the light of the foregoing, the answer to the first question is, first, that Article 23(3) of Framework Decision 2002/584 must be interpreted as meaning that the requirement of intervention on the part of the executing judicial authority, referred to in that provision, is not met where the executing Member State makes a police service responsible for ascertaining whether there is a situation of *force majeure* and whether the necessary conditions for the continued detention of the person who is the subject of the European arrest warrant are satisfied and for deciding, as the case may be, on a new surrender date, even if that person is entitled to apply to the executing judicial authority at any time for a decision on the abovementioned matters. Second, Article 23(5) of Framework Decision 2002/584 must be interpreted as meaning that the time limits referred to in Article 23(2) to (4) must be regarded as having expired, with the result that that person must be released, where the requirement of intervention on the part of the executing judicial authority, referred to in Article 23(3) of that framework decision, has not been met.

Costs

77 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

1. **Article 23(3) 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 the concept of *force majeure* does not extend to legal obstacles to surrender which arise from legal actions brought by the person who is the subject of the European arrest warrant and are based on the law of the executing Member State, in cases where the final decision on surrender has been adopted by the executing judicial authority in accordance with Article 15(1) of that framework decision**.

2. **Article 23(3) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that the requirement of intervention on the part of the executing judicial authority, referred to in that provision, is not met where the executing Member State makes a police service responsible for ascertaining whether there is a situation of *force majeure* and whether the necessary conditions for the continued detention of the person who is the subject of the European arrest warrant are satisfied and for deciding, as the case may be, on a new surrender date, even if that person is entitled to apply to the executing judicial authority at any time for a decision on the abovementioned matters.**

   Article 23(5) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that the time limits referred to in Article 23(2) to (4) must be regarded as having expired, with the result that that person must be released, where the requirement of intervention on the part of the executing

judicial authority, referred to in Article 23(3) of that framework decision, has not been met.

[Signatures]