EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Joint Factsheet

European Arrest Warrant and Fundamental Rights
ECtHR and CJEU Case-Law

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This factsheet has been prepared by the Registry of the European Court of Human Rights ("ECtHR")[1] and the European Union Agency for Fundamental Rights as part of a collaborative effort to highlight jurisprudence in selected areas where European Union ("EU") law and that of the European Convention on Human Rights ("ECHR" or "the Convention") interact.

I. The European Arrest Warrant

The European arrest warrant (EAW) was established under Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ("the Framework Decision")[2]. The Framework Decision entered into force in 2004, replacing the multilateral extradition system established under the European Convention on Extradition[3]. The EAW is a judicial decision issued by one Member State (issuing State) directed to judicial authorities of another Member State (executing State) to secure the arrest and surrender of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order[4].

Relying on the principles of mutual recognition and trust between Member States the executing authorities should as a principle execute the EAW, meaning arrest and surrender a requested person[5]. Nevertheless, the Framework Decision does not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union ("the Charter")[6].

Recognizing the applicability of Article 47 of the Charter, the EU legislator included the EAW proceedings in the set of directives on procedural rights of suspects and accused persons (the so called Criminal Procedural Roadmap).

[1] The content of this factsheet is not binding on the Court.
[2] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, p. 1).
[3] European Convention on Extradition, opened for signature in Paris on 13 December 1957.
[4] Paragraph 1 of Article 1 of the Framework Decision.
[5] Recitals 2, 6 and 10, and paragraph 2 of Article 1 of the Framework Decision.
[6] Recital 12 and paragraph 3 of Article 1 of the Framework Decision. Note that the Charter has, in accordance with paragraph 1 of Article 6 of the Treaty on European Union, the same legal value as the EU Treaties. For more details on the fundamental rights of requested persons see: European Arrest Warrant proceedings – Room for improvement to guarantee rights in practice, EU Agency for Fundamental Rights (FRA), 2024.

II. Interaction between the EAW and the ECHR: Convention principles

When applying EU law, the States Parties to the Convention remain bound by the obligations they have voluntarily assumed when acceding to the Convention[7]. These obligations must be assessed in the light of the presumption of equivalent protection established by the ECtHR in the *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*[8] judgment, developed in the *Michaud v. France*[9] judgment and applied to the EAW[10].

In accordance with the principles established in the judgments cited above, the presumption is that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the EU, on the condition that the full potential of the mechanism for supervising fundamental rights provided for by EU law has been deployed[11]. However, this presumption can be rebutted if, in a particular case, the ECtHR determines that the protection of Convention rights was manifestly deficient[12].

The ECtHR considers the creation of an area of freedom, security and justice in Europe and the adoption of the means necessary to achieve it to be legitimate in principle from the standpoint of the Convention[13]. As a result, the EAW system is not, in its view, inherently incompatible with the Convention[14]. The ECtHR therefore takes into account the aim of effectiveness of the mutual-recognition mechanism which is at the heart of the EAW. It must nevertheless verify that it is not applied "automatically and mechanically" to the detriment of fundamental rights[15].

Thus, where the courts of an EU Member State are called upon to apply a mutual-recognition mechanism established by EU law, such as that prescribed for the execution of an EAW issued by another EU member State, and where there is no manifest deficiency regarding the rights protected by the Convention, they will give full effect to that mechanism[16]. However, if a serious and substantiated complaint is raised before them to the effect that the protection of a Convention right has been "manifestly deficient" and that the situation cannot be remedied by EU law, the courts cannot refrain from examining that complaint on the sole ground that they are applying EU law[17]. In such cases they must read and apply the rules of EU law in conformity with the Convention[18].

III. Case-law of the Court of Justice of the European Union (CJEU) and of the ECtHR concerning the EAW

A. Positive procedural obligation to cooperate (Article 2 of the Convention / Article 2 of the Charter)

ECtHR, Romeo Castaño v. Belgium, no. 8351/17, 9 July 2019

[7] *Avotiņš v. Latvia* [GC], no. 17502/07, § 101, 23 May 2016.
[8] *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI.
[9] *Michaud v. France*, no. 12323/11, ECHR 2012.
[10] *Bivolaru and Moldovan v. France*, nos. 40324/16 and 12623/17, 25 March 2021.
[11] *Avotiņš*, cited above, § 105.
[12] *Michaud*, cited above, § 103.
[13] *Avotiņš*, cited above, § 113.
[14] *Pirozzi v. Belgium*, no. 21055/11, § 60, 17 April 2018.
[15] *Avotiņš*, cited above, § 116.
[16] *Bivolaru and Moldovan*, cited above, § 102.
[17] *Avotiņš*, cited above, § 116.
[18] *Pirozzi*, cited above, § 64, and *Bivolaru and Moldovan*, cited above, § 103.

Facts – The applicants' father was killed during an attack carried out in Spain by a commando unit claiming to belong to the terrorist organisation ETA. N.J.E., who was suspected of having been involved in the murder, had fled and taken up residence in Belgium. Three EAWs requesting the surrender of N.J.E. with a view to criminal proceedings were issued by a Spanish investigating judge and sent to the Belgian authorities in 2004, 2005 and 2015. The Belgian courts refused to execute these EAWs on the grounds that there were substantial reasons to believe that their execution would infringe N.J.E.'s fundamental rights.

Law – Article 2 (procedural aspect): The applicants complained that the Belgian authorities' refusal to execute the EAWs was preventing the Spanish authorities from prosecuting N.J.E., which they claimed constituted a violation of the procedural obligation under Article 2 of the Convention.

The ECtHR found that the risk that N.J.E. might be subjected to inhuman or degrading treatment on account of the conditions of detention in Spain could constitute a legitimate ground for refusing to execute the EAW. Nevertheless, such a risk had to have a sufficient factual basis. In this case, the Belgian courts had essentially based their findings on international reports, without conducting a detailed, updated examination or seeking to identify a real and individualised risk. Consequently, the refusal to execute the EAW had lacked a sufficient factual basis. The ECtHR concluded that Belgium had failed in its obligation to cooperate arising out of the procedural aspect of Article 2 of the Convention. It nevertheless clarified that this did not imply that the Belgian Government were required to execute the EAW issued by the Spanish authorities and in no way lessened the obligation for the Belgian authorities to verify that N.J.E. would not run a risk of treatment contrary to Article 3 of the Convention if she were surrendered to the Spanish authorities.

Conclusion – Violation of Article 2 of the Convention

ECtHR, *Gray v. Germany*, no. 49278/09, 22 May 2014

Facts – The applicants' father died in the United Kingdom as a result of medical malpractice by a German doctor. The British and German authorities instituted criminal proceedings against the doctor. A UK court issued an EAW in respect of the doctor but the German authorities refused to execute it on the grounds that the doctor had meanwhile been convicted in connection with the same offences by the German authorities. As a result, the criminal proceedings were discontinued in the United Kingdom.

Law – Article 2 (*procedural aspect*): The applicants complained, in particular, that the German authorities had refused to extradite the doctor to the United Kingdom to be tried there.

The ECtHR noted that the criminal proceedings conducted in Germany had enabled the investigative authorities to determine the cause of death of the applicants' father and to establish the doctor's responsibility. It considered that, in reality, the applicants' complaint was that the doctor had been convicted in Germany and not in the United Kingdom, where the penalty might have been heavier. However, the procedural aspect of Article 2 of the Convention did not entail a right or an obligation to secure a particular sentence under the domestic law of a given State. In addition to the criminal proceedings, other investigations that had been apt to fulfil the procedural requirement of Article 2 had been conducted by the German authorities in that case.

Conclusion – No violation of Article 2 of the Convention

B. Risk of inhuman or degrading treatment (Article 3 of the Convention / Articles 4 and 19 of the Charter)

ECtHR, *Bivolaru and Moldovan v. France*, nos. 40324/16 and 12623/17, 25 March 2021

Facts – The French authorities executed two EAWs and surrendered the applicants (both Romanian nationals, one of whom had been recognised as a refugee in Sweden) to the Romanian authorities for the purpose of serving the prison terms to which they had been sentenced in Romania.

Law – Article 3: The applicants alleged that their surrender to the Romanian authorities under the EAWs had entailed a violation of Article 3 of the Convention on the grounds that it had exposed them to inhuman and degrading treatment on account of the detention conditions in the relevant prisons.

1. *Second applicant*

The ECtHR verified whether the presumption of equivalent protection applied in this case. It considered that, as interpreted by the CJEU, the obligation laid down by the Framework Decision to refuse execution of an EAW where there was a real and individualised risk of being subjected to inhuman or degrading detention conditions in the issuing State (in this case, Romania) did not afford the executing State an autonomous margin of manoeuvre. There being no serious difficulty with regard to the interpretation of the Framework Decision on this point, there had been no need for a preliminary ruling from the CJEU in order to satisfy the second condition of application of the presumption of equal protection. The ECtHR concluded that the presumption of equal protection applied in the case at issue.
That being so, the ECtHR considered that a real risk of a violation of Article 3 had been established in this case. Firstly, the conditions of detention with regard to personal space gave rise to a strong presumption of a violation of Article 3 of the Convention. Secondly, the other aspects of the detention conditions had been described in stock language by the Romanian authorities and had not been part of the French authority's assessment. Thirdly, the recommendation that the applicant should, if necessary, be held in an institution providing identical if not better conditions than the executing State's institution was insufficient to preclude a real risk of inhuman or degrading treatment, as it did not enable that risk to be assessed in relation to a specific institution and the information that had been available to the French authorities suggested that many prisons did not provide conditions of detention compatible with the ECtHR's standards. The ECtHR concluded that the protection of fundamental rights had been manifestly deficient, such that the presumption of equivalent protection was rebutted. Accordingly, it found that there had been a violation of Article 3 of the Convention in respect of the second applicant.

Conclusion: Violation of Article 3 of the Convention in respect of the second applicant

2. *First applicant*

(a) *Consequences of the applicant's refugee status*

Since the French court had refused to refer the matter to the CJEU for a preliminary ruling despite there being a genuine and serious issue with regard to the protection of fundamental rights by EU law and its relationship with the protection afforded by the 1951 Refugee Convention, an issue which the CJEU had never previously examined, the ECtHR considered that the presumption of equivalent protection did not apply.
In the ECtHR's view, the fact that the Swedish authorities had granted the applicant refugee status revealed that, at the time when that status had been granted, those authorities had considered that there was sufficient evidence that the applicant was at risk of being persecuted in his country of origin, but this did not in itself entail a violation of Article 3 of the Convention by the executing State in the event of surrender to the issuing State. The ECtHR found that, when making its decision, the executing State had to gauge whether or not the applicant was at risk of inhuman or degrading treatment if surrendered. It took the view that there had not been a sufficient factual basis to

establish the existence of a real risk of persecution constituting a potential violation of Article 3 of the Convention and to refuse execution of the EAW on that ground.

(b) *Conditions of detention in the issuing State*

Pursuing the same line of reasoning as in the case of the second applicant, the ECtHR considered that the presumption of equivalent protection applied to this limb of the complaint. However, it found that the evidence provided by the applicant did not warrant deeper examination and that a real risk of a violation of Article 3 of the Convention could not be established. The protection of fundamental rights afforded by the executing judicial authority had therefore not been affected in this case by a manifest deficiency capable of rebutting the presumption of equivalent protection.

Conclusion – No violation of Article 3 of the Convention in respect of the first applicant

ECtHR, *Ignaoua and Others v. the United Kingdom* (dec.), no. 46706/08, 13 March 2014

Facts – The case concerned the execution in the United Kingdom of EAWs issued by the Italian authorities in respect of the applicants.

Law – Article 3: The applicants complained that the execution of the EAWs had exposed them to a real risk of onward removal to Tunisia, where they would be at risk of torture and inhuman and degrading treatment in breach of Article 3 of the Convention.

The ECtHR considered that the applicants' surrender to an intermediary country, which was also a Contracting State, did not affect the responsibility of the executing State to ensure that the applicants were not exposed to treatment contrary to Article 3 of the Convention if surrendered to the issuing authority. The risk of expulsion to Tunisia by the Italian authorities had to be assessed with reference to those facts which were known at the time of the applicants' surrender. In the ECtHR's view, the mutual trust underpinning police and judicial cooperation among EU member States should be accorded some weight. This reflected its own general assumption that the Contracting States of the Council of Europe would fulfil their international law obligations. In the particular circumstances of the case, the ECtHR found that the applicants had failed to provide evidence rebutting the presumption that the Italian authorities would comply with their Convention obligations.

Conclusion – Inadmissible (manifestly ill-founded)

CJEU, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198

Facts – In case C-404/15, a Hungarian examining magistrate had issued two EAWs in respect of a Hungarian national for the purposes of criminal proceedings against him in Hungary. In case C-659/15 PPU, a Romanian court had issued an EAW in respect of a Romanian national for the purpose of serving a prison sentence of one year and eight months for driving without a licence. As both individuals in question had been found in Germany, it had fallen to the German authorities to examine whether the EAWs should be executed.

The Bremen Higher Regional Court (Germany) had found that the conditions of detention to which the individuals in question might be subjected in Hungarian and Romanian prisons, respectively, were in breach of fundamental rights, in particular of Article 4 of the Charter. The German court therefore referred the case to the CJEU and asked whether, in such circumstances, execution of the

EAWs could or should be refused or made conditional upon obtaining information from the issuing Member State such that the executing authority was satisfied that detention conditions were compliant with fundamental rights.

Law – The CJEU reiterated that the absolute prohibition of inhuman or degrading treatment or punishment formed part of the fundamental rights protected by EU law. Thus, where the authority responsible for executing the warrant was in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, it was bound to assess that risk before deciding on the surrender of the individual concerned. Nonetheless, the CJEU pointed out that, where the risk stemmed from general conditions of detention in the relevant Member State, the finding of such a risk could not lead, in itself, to a refusal to execute the warrant. It was necessary to demonstrate that there were substantial grounds to believe that the individual concerned would, in fact, be exposed to that risk because of his or her envisaged detention conditions. To assess the existence of that risk, the CJEU indicated that the authority responsible for executing the warrant was to request of the issuing authority that it be provided, as a matter of urgency, with all necessary information on the conditions of detention. If, in the light of the information provided or of any other information at its disposal, the authority responsible for executing the warrant found that there existed, for the individual who was the subject of the warrant, a real risk of inhuman or degrading treatment, the execution of that warrant was to be postponed until such time as supplementary information was obtained that allowed the authority to discount the existence of such a risk. If that risk could not be discounted within a reasonable time, the authority was to decide whether the surrender procedure should be brought to an end.

CJEU, judgment of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589

Facts – A Hungarian court had issued an EAW in respect of a Hungarian national for the purposes of serving a prison sentence of one year and eight months in Hungary. As the individual in question had been found in Germany, it had fallen to the German authorities to examine the EAW.

The Bremen Higher Regional Court (Germany) asked whether, in the light of the detention conditions prevailing in Hungary, the individual in question could be surrendered to the Hungarian authorities. It considered that it was in possession of information showing systemic or generalised deficiencies in the detention conditions in Hungary, such that the requested person might be exposed to a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

Law – The CJEU found, firstly, that, even if the issuing Member State provided for legal remedies that made it possible to review the legality of detention conditions from the perspective of fundamental rights, the executing judicial authorities were still bound to undertake an individual assessment of the situation of each person concerned in order to satisfy themselves that their decision on the surrender of that person would not expose him or her, on account of those conditions, to a real risk of inhuman or degrading treatment.

Secondly, the CJEU reiterated that the executing judicial authorities responsible for deciding on the surrender of a person who was the subject of an EAW were bound to determine, specifically and precisely, whether, in the circumstances of the particular case, there was a real risk that that person would be subjected in the issuing Member State to inhuman or degrading treatment. It clarified in

this connection that those authorities were solely required to assess the conditions of detention in the prisons in which it was actually intended that the person concerned would be detained.

Thirdly, the CJEU held that the executing judicial authority was to verify only the actual and precise conditions of detention of the person concerned. Thus, opportunities for religious worship, whether it was possible to smoke, the arrangements for the washing of clothing and whether there were bars or slatted shutters on cell windows were aspects of detention that were not, at first sight, relevant. In any event, an executing judicial authority which deemed it necessary to request the issuing judicial authority that supplementary information on detention conditions be furnished as a matter of urgency was to ensure that the number and scope of its questions did not result in the operation of the EAW being brought to a standstill.

Fourthly, when the issuing judicial authority gave an assurance that the person concerned would not suffer inhuman or degrading treatment on account of the actual and precise conditions of his or her detention, the executing judicial authority, in view of the mutual trust between the judicial authorities of the Member States and on which the EAW system was based, was to rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre were in breach of the prohibition of inhuman and degrading treatment. Where such an assurance was not given by a judicial authority, the guarantee that it represented was to be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority.

In this case the CJEU found that it appeared that the requested person could be surrendered to the Hungarian authorities in compliance with his fundamental right not to suffer inhuman or degrading treatment – a matter which was, however, to be verified by the German court.

CJEU, judgment of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857

Facts – The main proceedings concerned the execution, in Germany, of an EAW issued by a Romanian court in respect of 'a Romanian national. A German court, in its capacity as executing authority for that EAW, enquired as to the criteria to be used to assess, whether the conditions of detention to which that national would be subjected if surrendered to the Romanian authorities were in compliance with the requirements of Article 4 of the Charter.

Law – The CJEU held that, when the executing judicial authority had objective, reliable, specific and properly updated information showing there to be systemic or generalised deficiencies in the conditions of detention in the prisons of the issuing Member State, it was to take account of all the relevant physical aspects of the conditions of detention in the prison in which it was actually intended that the person in question would be detained. That verification was not limited to the review of obvious inadequacies. For the purposes of verifying the conditions of detention in the prison in which it was actually intended that the person concerned would be detained, the executing judicial authority was to request from the issuing judicial authority the information that it deemed necessary and, in the absence of any specific indications that the conditions of detention infringed Article 4 of the Charter, was in principle to rely on the assurances given by the latter.

The CJEU further held that the possibility of subsequent judicial review of detention conditions in the issuing Member State could be taken into account by the executing judicial authorities when making an overall assessment of the conditions in which it was intended that a person who was the subject of an EAW would be held. However, the executing judicial authority could not rule out the existence of a real risk of inhuman or degrading treatment merely because the person concerned had, in the issuing Member State, a legal remedy enabling that person to challenge the conditions

of his or her detention or because there were legislative or structural measures that were intended to reinforce the monitoring of detention conditions.

Lastly, the CJEU ruled that a finding, by the executing judicial authority, that there were substantial grounds for believing that, following the surrender of the person concerned to the issuing Member State, that person would run such a risk because of the conditions of detention prevailing in the prison in which it was actually intended that he or she would be detained, could not be weighed, for the purposes of deciding on that surrender, against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition.

CJEU, judgment of 12 May 2023, *E. D. L. (Refusal on the grounds of illness)*, C-699/21, EU:C:2023:295

Facts – An EAW had been issued in respect of an Italian resident by the Zadar Municipal Court (Croatia) for the purposes of conducting a criminal prosecution in Croatia. Based on a psychiatric expert's report, the Milan Court of Appeal (Italy), which had jurisdiction to execute that EAW, had found the existence of a psychotic disorder requiring treatment with medication and psychotherapy and a significant risk of suicide in the event of imprisonment. That court had held, first, that the execution of the EAW would have interrupted the treatment the person concerned was undergoing and led to a deterioration in his general state of health, the effects of which could have been exceptionally serious, or even to an increased risk of suicide.

Since the Framework Decision did not include chronic illness of a potentially indefinite duration among the grounds for refusal to surrender a requested person, the Italian Constitutional Court asked the CJEU how to mitigate the risk of serious harm to that person's health, which was likely to deteriorate significantly in the event of surrender.

Law – The CJEU reiterated that the executing judicial authorities could refuse to execute an EAW only on grounds stemming from the Framework Decision and that refusal to execute was intended to be an exception which was to be interpreted strictly. There was indeed a presumption that the care and treatment provided in the Member States for the management of, in particular, serious, chronic and potentially irreversible illnesses were adequate. Nevertheless, where there were substantial grounds, on the basis of objective material, to believe that the surrender of a requested person manifestly risked endangering his or her health, the executing judicial authority could, exceptionally, postpone that surrender temporarily. That discretion was to be exercised by the executing judicial authority in compliance with the prohibition of inhuman and degrading treatment under the Charter. Thus, where the executing judicial authority concluded that, in the light of the objective material at its disposal, there were substantial and established grounds for believing that the surrender of a requested person who was seriously ill would expose that person to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health, it was to postpone that surrender. In such cases, it was to ask the issuing judicial authority to provide all information relating to the conditions under which the latter intended to prosecute or detain the requested person. If that risk could be ruled out on the basis of the assurances provided by the issuing judicial authority, the EAW would then have to be executed. However, it was nevertheless possible that, in exceptional circumstances, the executing judicial authority might come to the conclusion, first, that in the event of surrender to the issuing Member State, the person concerned would be subject to a real risk of inhuman or degrading treatment and, second, that that risk could not be ruled out within a reasonable period of time. In that case, the executing judicial authority was to refuse to execute the EAW. On the other hand, if that risk could be ruled out within such a period of time, a new surrender date was to be agreed with the issuing judicial authority.

C. Lawfulness of deprivation of liberty (Article 5 of the Convention / Article 6 of the Charter)

ECtHR, *Paci v. Belgium*, no. 45597/09, 17 April 2018

Facts – The Belgian authorities issued an EAW in respect of the applicant, an Italian national, which was executed by the Italian authorities on the condition that the applicant be returned to Italy after his hearing for the purposes of any custodial sentence or preventive measure imposed on him in Belgium.

Law – Article 5 § 1: The applicant complained that his detention had become unlawful since he had not been surrendered to the Italian authorities immediately after the close of the investigation.

The ECtHR pointed out that the observance of a "procedure prescribed by law", within the meaning of Article 5 § 1 of the Convention, including as to the "lawfulness" of detention, included compliance with EU law. It found that the interpretation of domestic and EU law by the national courts as meaning that surrender to the executing State should take place only upon completion of the proceedings in the issuing State could not be characterised as arbitrary or manifestly unreasonable. Given that neither the applicant nor the Italian authorities had taken any steps with a view to the former's surrender, while the Belgian authorities had sent several reminders to their Italian counterparts, the ECtHR found that the applicant's continued detention after the end of the proceedings against him had not been arbitrary and had been justified under Article 5 § 1.

Conclusion – No violation of Article 5 § 1 of the Convention

ECtHR, *Giza v. Poland* (dec.), no. 1997/11, 13 October 2012

Facts – A EAW issued by the Belgian authorities in respect of the applicant, a Polish national, was executed by the Polish authorities on the condition that, following the trial, he was to be sent back to Poland to serve his sentence. The applicant was sentenced in Belgium to twenty years' imprisonment and was surrendered to Poland. The Polish authorities decided not to apply the Belgian law under which the applicant would have been eligible to apply for conditional release after serving one-third of the length of the total term of imprisonment, but rather the Polish law providing that such an application could be lodged only after half of the sentence had been served.

Law – Article 5 § 1: The question was whether the applicant's transfer to Poland with the risk of a *de facto* longer sentence had been in breach of Article 5 of the Convention.

The ECtHR found that the necessary causal connection between the applicant's conviction in Belgium and his deprivation of liberty in Poland still existed. The possibility of a longer period of imprisonment in the administering State did not in itself render the deprivation of liberty arbitrary as long as that period did not exceed the length of the sentence handed down as a result of the criminal proceedings in the other State. In this case, the total period of detention could not in any case exceed the term of twenty years to which the applicant had been sentenced in Belgium, such that there was no appearance of a violation of the rights and freedoms secured by the Convention.

Conclusion – Inadmissible (manifestly ill-founded)

ECtHR, *West v. Hungary* (dec.), no. 5380/12, 25 June 2019

Facts – The applicant, a British national, was surrendered to Hungary by the UK authorities under an EAW for the purposes of criminal proceedings. Once in Hungary, his detention with a view to surrender to Finland under another EAW was extended pending the necessary consent of the United Kingdom to such surrender.

Law – Article 5 § 1: The applicant complained, in particular, that his detention had been extended even though, he alleged, the deadline for his surrender to Finland had expired.

The ECtHR reiterated that the observance of a "procedure prescribed by law", within the meaning of Article 5 § 1 of the Convention, included compliance with EU law and that it was primarily for the national authorities, especially the courts, to interpret and apply domestic legislation, if necessary in conformity with EU law. In this case the ECtHR considered that the Hungarian courts' interpretation of the domestic provision implementing the Framework Decision had been neither arbitrary nor unreasonable. This was especially true given the interpretation subsequently given by the CJEU in *Vilkas* (judgment of 25 January 2017, C-640/15, EU:C:2017:39). The ECtHR accordingly concluded that the extension of the applicant's detention had been lawful and that it had pursued a purpose consistent with Article 5 § 1 (f) of the Convention.

Conclusion – Inadmissible (manifestly ill-founded)

ECtHR, *De Sousa v. Portugal* (dec.), no. 28/17, 7 December 2021

Facts – The application concerned the applicant's deprivation of liberty in Portugal under an EAW issued by the Italian authorities with a view to her surrender for the purposes of serving the prison sentence imposed on her *in absentia* by the Italian courts. The applicant had been placed in detention for ten days, following which the Italian authorities had withdrawn the EAW and the applicant had been released the same day.

Law – Article 5 § 1: The applicant alleged that her detention had disregarded the requirements of Article 5 § 1 (f) in so far as she would not be entitled to fresh first-instance or appeal proceedings in Italy.

The ECtHR reiterated that Article 5 § 1 (f) required that extradition proceedings be ongoing and that, if such proceedings were not prosecuted with due diligence, the detention would cease to be permissible under that provision. That being so, in this case the ECtHR failed to discern any indication of bad faith on the part of the Portuguese authorities. It could be seen from the case file that the authorities had endeavoured to apply the domestic legislation properly and to respect the applicant's rights. As to the applicant's allegation of a flagrant denial of justice, the ECtHR observed that she had had sufficient knowledge of the prosecution and charges against her and that she had appointed a lawyer to represent her. It therefore did not appear that the principle of mutual recognition had been applied to the detriment of her fundamental rights.

Conclusion – Inadmissible (manifestly ill-founded)

CJEU, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474

Facts – In December 2012 the United Kingdom (UK) authorities had issued an EAW in respect of Mr Francis Lanigan in the context of a criminal prosecution initiated in the UK for murder and possession of a firearm with intent to endanger life, offences which had been committed in the UK

in 1998. Mr Lanigan had been arrested under the EAW by the Irish authorities in January 2013. He had then stated that he did not consent to his surrender to the UK judicial authorities and had been placed in custody pending a decision in that regard.

The Irish High Court's examination of Mr Lanigan's situation had ultimately been able to commence only on 30 June 2014, following a series of adjournments resulting, in particular, from procedural incidents. The examination of the file had carried on until Mr Lanigan had submitted, in December 2014, that, since the time-limits laid down in the Framework Decision for a decision to be taken on the execution of the EAW (namely 60 days from his arrest, which could be extended by a further 30 days) had been exceeded, any continuation of the proceedings was prohibited. The High Court asked the CJEU whether it could still rule on the execution of the EAW despite the failure to observe these time-limits and whether Mr Lanigan could be kept in detention given that the total duration of his detention had exceeded those time-limits.

Law – In its judgment, the CJEU found that in light, in particular, of the central function of the obligation to execute the EAW and in the absence of any explicit indication to the contrary in the Framework Decision, the national authorities were required to carry out the warrant execution procedure and to rule on the warrant's execution, even where the allotted time-limits had been exceeded. To abandon the procedure in the event that the time-limits were exceeded would run counter to the objective of accelerating and simplifying judicial cooperation and would encourage delaying tactics.

As to the continued detention of the requested person, the CJEU considered that the Framework Decision made no provision for that person's release upon expiry of the time-limits. In addition, in so far as the execution procedure for the EAW was to continue after expiry of the time-limits, a general and unconditional obligation to release the requested person upon expiry of those time-limits could limit the effectiveness of the surrender system put in place by the Framework Decision and, consequently, obstruct the attainment of the objectives pursued by it.

However, the CJEU pointed out that the Framework Decision was to be interpreted in conformity with the Charter. Accordingly, a person detained under an EAW pending his or her surrender could be held in custody only in so far as the total duration of the custody was not excessive. In order to ensure that that was not the case, the executing judicial authority was required to carry out a concrete review of the situation at issue, taking account of all of the relevant factors with a view to evaluating the justification for the duration of the procedure (including the possible failure to act on the part of the authorities of the Member States concerned and any contribution of the requested person to that duration). Likewise, it had to take into consideration the sentence potentially faced by the requested person or delivered in his or her regard, the potential risk of that person absconding and the fact that he or she had been held in custody for a period the total of which had greatly exceeded the time-limits set by the Framework Decision for taking a decision on the execution of the warrant.

CJEU, judgment of 12 February 2019, *TC*, C-492/18 PPU, EU:C:2019:108

Facts – The main proceedings concerned the detention of a British national in the Netherlands under an EAW issued by the United Kingdom authorities. The Dutch authorities requested a preliminary ruling from the CJEU to establish whether a domestic provision providing that a requested person could not be kept in custody under an EAW for more than 90 days contravened Article 6 of the Charter.

Law – The CJEU ruled that the Framework Decision was to be interpreted as precluding a national provision which laid down a general and unconditional obligation to release a requested person

arrested pursuant to an EAW as soon as a period of 90 days from that person's arrest had elapsed, where there was a very serious risk of that person absconding and that risk could be reduced to an acceptable level by the imposition of appropriate measures.

The CJEU further held that Article 6 of the Charter was to be interpreted as precluding national case-law which allowed the requested person to be kept in detention beyond that 90-day period, on the basis of an interpretation of that national provision according to which that period was suspended when the executing judicial authority decided to refer a question to the CJEU for a preliminary ruling, or to await the reply to a request for a preliminary ruling made by another executing judicial authority, or to postpone the decision on surrender on the ground that there could be, in the issuing Member State, a real risk of inhuman or degrading detention conditions, in so far as that case-law did not ensure that that national provision was interpreted in conformity with the Framework Decision and entailed variations that could result in different periods of continued detention.

CJEU, judgment of 30 June 2022, *Spetsializirana prokuratura (Information on the national arrest decision)*, C-105/21, EU:C:2022:511

Facts – In the main proceedings, the referring court raised various questions with a view to clarifying the manner in which it should draft the new EAW it intended to issue in respect of the requested person after the annulment of the initial EAW issued by that same court.

Law – The CJEU held that Articles 6 and 47 of the Charter, the right to freedom of movement and residence and the principles of equality and mutual trust were to be interpreted as meaning that the judicial authority issuing an EAW was under no obligation to forward to the person who was the subject of that arrest warrant the national decision on the arrest of that person and information on the possibilities of challenging that decision, while that person was in the Member State executing the EAW and had not been surrendered to the competent authorities of the Member State issuing that arrest warrant.

D. Right to a fair trial and right to an effective remedy (Articles 6 and 13 of the Convention / Articles 47 and 48 of the Charter)

ECtHR, *Monedero Angora v. Spain* (dec.), no. 41138/05, 7 October 2008

Facts – The applicant was arrested in Spain and taken into custody under an EAW issued by the French authorities. The applicant's surrender to the French authorities was granted by the Spanish authorities.

Law – Article 6: The applicant complained of various violations of Article 6 of the Convention.

The ECtHR pointed out that the extradition procedure did not involve the determination of the applicant's civil rights and obligations or of a criminal charge against him or her within the meaning of Article 6. It noted that the EAW procedure replaced the standard extradition procedure between member States of the EU and pursued the same aim, namely the surrender to the authorities of the applicant State of a person who was suspected of having committed an offence or who was trying to escape justice after having been convicted by a final decision. It concluded that this procedure did not concern the determination of a criminal charge. See also, to similar effect, ECtHR, *West v. Hungary* (dec.), no. 5380/12, 25 June 2019.

Conclusion – Inadmissible (incompatible *ratione materiae*)

Article 13: The ECtHR reiterated that the effectiveness of an appeal did not depend on the certainty of a favourable outcome. In any event, the applicant had been able to lodge an *amparo* appeal against the alleged infringements of his fundamental rights that he considered to have occurred as a result of the decision in question. The fact that he had lodged that appeal out of time could not in itself entail a violation of Article 13 of the Convention.

Conclusion – Inadmissible (manifestly ill-founded)

ECtHR, *Stapleton v. Ireland* (dec.) no. 56588/07, ECHR 2010

Facts – The Irish Supreme Court ordered the applicant's surrender to the British authorities pursuant to an EAW issued by the United Kingdom in 2005 in respect of offences committed between 1978 and 1982.

Law – Article 6 § 1: At issue was whether the Irish courts' decision to surrender the applicant to the United Kingdom had been in breach of Article 6 § 1 of the Convention.

The ECtHR considered that the facts of the case did not disclose substantial grounds for believing that there would be a real risk that the applicant would be exposed to a "flagrant denial" of his rights under Article 6 of the Convention in the United Kingdom. Moreover, the ECtHR took the view that the executing State was not required to determine whether there had been established a real risk of unfairness in the criminal proceedings in the issuing State. In the ECtHR's view, the UK courts were better placed to assess the effect of the delay in pursuing charges – the cause of the alleged unfairness – on the proceedings brought in that country.

Conclusion – Inadmissible (manifestly ill-founded)

ECtHR, *Pirozzi v. Belgium*, no. 21055/11, 17 April 2018

Facts – The application concerned the Belgian authorities' execution of an EAW issued in respect of the applicant by the Italian authorities for the purposes of serving a prison sentence that had been imposed on him as a result of a trial *in absentia* in Italy.

Law – Article 6 § 1: The applicant complained that the Belgian authorities had surrendered him to the Italian authorities without having reviewed the lawfulness and propriety of the EAW, although it had been based on a conviction resulting from a trial *in absentia*, allegedly in breach of Article 6 of the Convention.

The ECtHR noted that the Belgian authority did not have discretion to assess the appropriateness of the arrest and that the Belgian courts could have refused to execute it only on the grounds laid down by law. The ECtHR considered that the review carried out by the Belgian authorities, thus limited, had not given rise to any problem in relation to the Convention in so far as the Belgian courts had examined the merits of the complaints raised by the applicant. They had thus verified that the enforcement of the EAW in the applicant's case did not give rise to manifestly deficient protection of the rights guaranteed by the Convention. In the ECtHR's view, in the specific circumstance of the case, the implementation of the EAW had not been manifestly deficient such that it rebutted the presumption of equivalent protection and the applicant's surrender to the Italian authorities could not be considered as having been based on a trial amounting to a flagrant denial of justice.

Conclusion – No violation of Article 6 § 1 of the Convention

CJEU, judgment of 29 January 2013, *Radu*, C-396/11, EU:C:2013:39

Facts – In the main proceedings, the Constanţa Court of Appeal (Romania) had been seized of requests made by the German judicial authorities concerning the surrender of a requested person under four EAWs issued for the purposes of conducting criminal prosecutions in Germany. The requested person had not consented to the execution of the EAWs on the ground that they had been issued without her having been heard by the issuing judicial authorities, in breach of Articles 47 and 48 of the Charter and of Article 6 of the Convention.

Law – The CJEU held that the executing judicial authorities could not refuse to execute an EAW issued for the purposes of conducting a criminal prosecution on the ground that the requested person had not been heard in the issuing Member State before that arrest warrant was issued. Firstly, the CJEU noted that this ground did not feature among the grounds for non-execution of such a warrant as provided for by the Framework Decision. Secondly, the CJEU found that the right to be heard, which was enshrined in Articles 47 and 48 of the Charter, did not require that a judicial authority of a Member State should be able to refuse to execute an EAW issued for the purposes of conducting a criminal prosecution on that ground, as such an obligation would inevitably lead to the failure of the very system of surrender provided for by the Framework Decision. In any event, the CJEU noted that the EU legislator had ensured that the right to be heard would be observed in the executing Member State in such a way as not to compromise the effectiveness of the EAW system.

CJEU, judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107

Facts – In the main proceedings, the Criminal Division of the Spanish High Court had declared that Mr Melloni's extradition to Italy to be tried there was justified. After being released on bail, he had fled and it had not been possible to surrender him to the Italian authorities. The Ferrara District Court (Italy), having noted his failure to appear in court, had sentenced him *in absentia* to 10 years' imprisonment. That judgment had been upheld on appeal, including on appeal to the Supreme Court of Cassation. Following his arrest by the Spanish police, Mr Melloni had opposed his surrender to the Italian authorities, contending in particular that under Italian procedural law it was impossible to appeal against sentences imposed *in absentia*, for which reason the EAW should, where appropriate, be made conditional upon Italy's guaranteeing the possibility of appealing against that judgment. The Criminal Division of the Spanish High Court had decided to surrender Mr Melloni to the Italian authorities for the purpose of serving the sentence that had been imposed on him by the Ferrara District Court. The Spanish Constitutional Court asked the CJEU whether the Framework Decision allowed Spanish courts – as required by the Constitutional Court's own case-law – to make Mr Melloni's surrender conditional upon his conviction being open to review.

Law – The CJEU reiterated that the executing judicial authority could make the execution of an EAW subject solely to the conditions set out in the Framework Decision. Article 4a(1)(a) and (b) of the Framework Decision precluded the executing judicial authorities, in the circumstances specified in that provision, from refusing to execute an EAW issued for the purposes of executing a sentence, in a situation such as that in the present case, where the person concerned had failed to appear for trial and, being aware of the scheduled trial, had given a mandate to a legal counsellor to defend him and had indeed been defended by that counsellor at the trial. Consequently, the CJEU considered that the wording, scheme and purpose of the above-mentioned provision precluded the executing judicial authority (Spain) from making the execution of an EAW conditional upon the

conviction rendered *in absentia* being open to review in the Member State having issued the warrant (Italy).

Secondly, the CJEU considered that this provision of the Framework Decision was compatible with the right to an effective judicial remedy and to a fair trial, and with the rights of the defence guaranteed by the Charter. Although the right of the accused to appear in person at his or her trial was an essential component of the right to a fair trial, that right was not absolute since the accused was free to waive it, subject to certain safeguards.

Lastly, the CJEU noted that Article 53 of the Charter, which provided that the Charter not adversely affect the human rights recognised, *inter alia*, in the Member States' constitutions, also did not allow a Member State to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by that State's constitution. Making a person's surrender subject to a condition not provided for in the Framework Decision would amount to undermining the principles of mutual trust and recognition which that decision purported to uphold and would, therefore, compromise its efficacy.

CJEU, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586

Facts – A Polish national was the subject of three EAWs issued by Polish courts for the purposes of conducting criminal prosecutions. Having been arrested in Ireland, the requested person had not consented to his surrender to the Polish authorities on the ground that, owing to reforms of the Polish justice system, he was exposed to a real risk of being denied a fair trial in Poland.

The High Court (Ireland) asked the CJEU whether the executing judicial authority 'should – in accordance with the *Aranyosi and Căldăraru* judgment (cited above) – find both that there was a real risk of a violation of that fundamental right owing to deficiencies in the Polish justice system and that the person concerned was exposed to such a risk, or whether it sufficed for it to find that there were deficiencies in the Polish justice system, without having to assess whether the requested person was actually exposed to them. The High Court had also asked the CJEU what information and guarantees it should, where appropriate, obtain from the issuing judicial authority so as to discount the existence of that risk.

Law – The CJEU emphasised that maintaining the independence of judicial authorities was essential to ensure effective judicial protection of individuals under the law. It followed that, where the person in respect of whom an EAW had been issued pleaded, in order to oppose his or her surrender to the issuing judicial authority, that there were systemic or generalised deficiencies which, according to him or her, were liable to affect the independence of the judiciary in the issuing Member State and his or her fundamental right to a fair trial, the executing judicial authority was required, as a first step, to assess, on the basis of material that was objective, reliable, specific and properly updated, whether there was a real risk, connected with a lack of independence of the courts of that Member State on account of such deficiencies, of a breach of such a right in the issuing Member State. The CJEU considered that information in a reasoned proposal recently addressed by the Commission to the Council on the basis of Article 7(1) of the Treaty on European Union ("TEU") was particularly relevant for the purposes of that assessment.

The CJEU next clarified that, if the executing judicial authority found that there was a real risk of a violation of the fundamental right to a fair trial in the issuing Member State, it should, as a second step, assess specifically and precisely whether, in the particular circumstances of the case, there were substantial grounds for believing that, following his or her surrender, the requested person

would run that risk. That specific assessment was also necessary where the executing judicial authority considered that it was in possession of material showing that there were systemic deficiencies in the light of the values of the EU referred to in Article 2 of the TEU.

To assess the real risk to which the requested person was exposed, the executing judicial authority was to examine to what extent the systemic or generalised deficiencies to which the material available to it attested were liable to have an impact at the level of that State's courts with jurisdiction over the proceedings to which the requested person would be subject. If that examination showed that those deficiencies were liable to affect those courts, the executing judicial authority was also to assess whether there were substantial grounds for believing that the requested person would run a real risk of a breach of his or her fundamental right to an independent tribunal and, therefore, of the essence of his or her fundamental right to a fair trial, having regard to his or her personal situation, the nature of the offence for which he or she was being prosecuted and the factual context that formed the basis of the EAW. Furthermore, the executing judicial authority was to request from the issuing judicial authority any supplementary information that it considered necessary for assessing whether there was such a risk.

CJEU, judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033

Facts – Two EAWs had been issued by the Polish courts in April 2021 in respect of two Polish nationals for the purposes, respectively, of serving a detention order and conducting a criminal prosecution. Since the individuals in question were in the Netherlands and had not consented to their surrender, a request had been made of the Amsterdam District Court (Netherlands) to execute these EAWs. That court enquired as to the scope of the *Minister for Justice and Equality (Deficiencies in the system of justice)* judgment (cited above). Owing to recent developments, the referring court considered that the deficiencies of the Polish justice system were such that the independence of all Polish courts and, consequently, the right to an independent tribunal of all individuals subject to Polish law were no longer ensured. Accordingly, the referring court asked whether that finding was, in itself, sufficient to justify refusal to execute an EAW issued by a Polish court, without its being necessary, in addition, to examine the effect of those deficiencies on the particular circumstances of the case.

Law – The CJEU replied in the negative and confirmed the case-law established in the *Minister for Justice and Equality (Deficiencies in the system of justice)* judgment (cited above).

CJEU, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100

Facts – Two EAWs had been issued by Polish courts in April 2021 in respect of two Polish nationals for the purposes of serving a custodial sentence and of criminal proceedings, respectively. As the requested persons were in the Netherlands and had not consented to their surrender, the requests for execution of these EAWs had been referred to the Amsterdam District Court (Netherlands). That court asked the CJEU whether, in the light of the guarantees of independence and impartiality inherent in the fundamental right to a fair trial, the established, two-step examination pertaining to matters of surrender under EAWs also applied where the guarantee – also inherent in that fundamental right – of a tribunal previously established by law was at issue.

Law – The CJEU confirmed that, where the executing judicial authority had evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, it could refuse to surrender the requested person only if it found that there had been a breach of that person's fundamental right to a fair trial before an independent and impartial tribunal previously established by law, or that there was a risk of such a breach if he or she were surrendered.

CJEU, judgment of 13 January 2021, *MM*, C-414/20 PPU, EU:C:2021:4

Facts – In the main proceedings, MM had absconded after criminal proceedings had been initiated against him in Bulgaria. With the authorisation of the public prosecutor, the Bulgarian investigating body had put MM under investigation. Since MM had absconded, the corresponding order had been intended solely to notify him of the charges against him. The public prosecutor had then issued an EAW against MM. In the section concerning the "decision on which the arrest warrant [was] based", reference was made only to the order putting MM under investigation. In execution of that warrant, MM had been arrested in Spain, had been surrendered to the Bulgarian judicial authorities and had been placed in pre-trial detention. On appeal by MM, the Specialised Criminal Court (Bulgaria) asked the CJEU several questions concerning, *inter alia*, the validity of the EAW.

Law – First, the CJEU clarified that the status of "issuing judicial authority", within the meaning of the Framework Decision, was not conditional on there being review by a court of the decision to issue the EAW and of the national decision upon which that warrant was based. It pointed out that, in so far as EU law provided, in particular, that the EAW was to be based on a "arrest warrant or any other enforceable judicial decision having the same effect", a measure serving as the basis for a European arrest warrant, even if it was not referred to as a "national arrest warrant", was to produce equivalent legal effects, namely to enable the arrest of the requested person with a view to bringing that person before a court for the purpose of conducting the stages of the criminal proceedings.

The CJEU also held that, where the procedural law of the issuing Member State did not provide for a separate legal remedy allowing a court to review the conditions under which the EAW had been issued and its proportionality, whether before, after, or at the same time as its adoption, the Framework Decision, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, was to be interpreted as meaning that a court which was called upon to give a ruling at a stage in the criminal proceedings which followed the surrender of the requested person had to be able to carry out an indirect review of the conditions under which that warrant had been issued, where the validity of that warrant had been challenged before it.

Lastly, the CJEU noted that, where the requested person had been arrested and then surrendered to the issuing Member State, the EAW had, in principle, exhausted its legal effects. Consequently, it held that it was solely for the national court having jurisdiction to determine, in the light of the national law of the issuing Member State, what consequences the absence of a valid national arrest warrant might have on the decision to place and then keep the person who was the subject of a criminal prosecution in pre-trial detention.

E. Respect for private and family life (Article 8 of the Convention / Article 7 of the Charter)

ECtHR, *E.B. v. the United Kingdom* (dec.), no. 63019/10, 20 May 2014

Facts – The Polish authorities issued an EAW for the purposes of serving a prison term to which the applicant, a Polish national living in the United Kingdom with her children, had been sentenced. The UK courts decided to execute the EAW.

Law – Article 8: The applicant alleged that her surrender to Poland would separate her from her minor children and would amount to a disproportionate interference with her family life given the minor nature of the offences of which she had been convicted in Poland.

The ECtHR took note of the fact that at the time when the UK authorities had taken their decision, the applicant's children had in any event been placed in foster care for reasons unconnected to the possible execution of the EAW. There was therefore nothing to suggest that the applicant's surrender would amount to a violation of her right to respect for family life.

Conclusion – Inadmissible (manifestly ill-founded)

ECtHR, *West v. Hungary* (dec.), no. 5380/12, 25 June 2019

En fait – Article 8: The applicant, a British national, was surrendered to Hungary by the United Kingdom authorities under an EAW for the purposes of criminal proceedings. Once in Hungary, his detention with a view to surrender to Finland under another EAW was extended pending the necessary consent of the United Kingdom to such surrender.

Law – The applicant complained that the Hungarian authorities had failed to consider the possibility of returning him to the United Kingdom to serve his Finnish sentence in his home country.

Given that detention inevitably restricted the detained person's private and family life, that the Convention did not grant such persons the right to choose their place of detention and that the separation and distance from their families were inevitable consequences of any detention, the ECtHR considered, *a fortiori*, that the Convention did not grant a right to avoid having to serve a prison sentence in a foreign State or to choose in which State the convicted person would prefer to serve the sentence.

Conclusion – Inadmissible (manifestly ill-founded)

CJEU, judgment of 21 December 2023, *GN (Grounds for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017

Facts – The case concerned an EAW issued by the Belgian authorities against GN for the purposes of serving a prison sentence. GN had been arrested in Italy while she was pregnant and living with her son, who was less than three years old. The Bologna Court of Appeal (Italy) had refused GN's surrender on the grounds that, in the absence of a satisfactory response by the Belgian authorities to requests for information, it was by no means certain that Belgian law provided for custodial arrangements that protected mothers and small children to an extent comparable to those in force in Italy. The Italian Court of Cassation, which was the referring court, asked the CJEU whether it could refuse to execute an EAW where the surrender of the mother of young children to the issuing

Member State would risk infringing her right to respect for private and family life and would be contrary to the best interests of her children, as protected by Articles 7 and 24 of the Charter respectively.

Law – The CJEU held that the Framework Decision, read in the light of the Charter, precluded the executing judicial authority from refusing to surrender the person who was the subject of an EAW on the ground that that person was the mother of young children living with her, unless, first, that authority had available to it information demonstrating that there was a real risk of breach of that person's fundamental right to respect for her private and family life and of disregard for the best interests of her children on account of systemic or generalised deficiencies in the conditions of detention of mothers of young children and of the care those children in the issuing Member State and, second, there were substantial grounds for believing that, in the light of their personal situation, the persons concerned would run that risk on account of those conditions.

F. *Ne bis in idem* (Article 4 of Protocol No. 7 to the Convention / Article 50 of the Charter)

ECtHR, *Krombach v. France* (dec.), no. 67521/14, 20 February 2018

Facts – The applicant complained of a violation of his right not to be tried twice for the same offences as a result of his having been convicted in France for offences in respect of which he alleged that a discontinuance order had been issued in his favour in Germany. He relied on Article 4 of Protocol No. 7 to the Convention.

Law – The ECtHR reiterated that, as could be seen from the wording of that provision, Article 4 of Protocol No. 7 did not prevent an individual from being prosecuted or punished by the courts of a State Party to the Convention on the grounds of an offence of which he or she had been acquitted or convicted by a final judgment in another State Party. In the ECtHR's view, the fact that France and Germany were members of the EU and that EU law lent a cross-border dimension to the *ne bis in idem* principle at the EU level did not affect the question of the applicability of Article 4 of Protocol No. 7 in this case. In this regard, the ECtHR reiterated that it had no jurisdiction to apply EU rules or to assess alleged violations of the latter, unless and in so far as such violations might have infringed the rights secured under the Convention, and that the Convention did not prevent States Parties from granting wider legal protection to the rights and freedoms which it guaranteed, whether under domestic law, other international treaties or EU law.

Conclusion – Inadmissible (incompatible *ratione materiae*)

CJEU, judgment of 16 December 2021, *AB and Others (Revocation of an amnesty)*, C-203/20, EU:C:2021:1016

Facts – Several persons accused of having committed a series of offences had been granted amnesty in Slovakia, which had produced the same effects as acquittal and had led to the final discontinuation of the prosecutions. More than 15 years later, that amnesty had been revoked, the criminal prosecutions had been resumed and an EAW had been issued against one of the accused. The Bratislava District Court (Slovakia) asked the CJEU whether the issue of such an EAW and the revocation of amnesty were compatible with EU law, in particular with the *ne bis in idem* principle

secured by the Charter, since the criminal proceedings that had been brought against the person concerned in respect of the offences in question had already been finally discontinued.

Law – The CJEU reiterated that the *ne bis in idem* principle could be relied on only where the accused person's criminal liability had been examined and a determination in that regard had been made. In this case, however, the CJEU considered that it appeared from the material before it that the sole effect of the amnesty decision had been to discontinue the criminal prosecutions before the Slovak courts had been able to rule on the accused's criminal liability. Accordingly, the *ne bis in idem* principle did not preclude the issue of an EAW against them.