Chief Public Prosecutor of the Federal Republic of Gléck (appellant)

v.

Mx Theo Von Boles (respondent)

and

Chief Public Prosecutor of the Federal Republic of Gléck (appellant)

v.

Mrs Yania Deformis (respondent)

Mx Theo Von Boles

1. Mx Theo Von Boles is a 45-year-old citizen of the Kingdom of Fortis (a Member State of the European Union). He identifies as they/their and he is Adhucian. The Adhuc are indigenous people of Flaat Islands - an autonomous territory of Fortis. Since 2015 he has been residing in the Federal Republic of Gléck (a Member State of the European Union) where, from the date of arrival, he has been in full time employment as an art curator at the National Museum of Gléck. He is a world known and very respected art critic and curator.

2. In February 2025 a European Arrest Warrant was issued by a Municipal Court in Pealinn, the capital of Fortis. It requests the surrender of Mx Von Boles from Gléck to Fortis for the purposes of prosecution and sentencing for several criminal offences committed on the territory of Fortis.

3. According to the information provided by the requesting court, Mx Von Boles is the leader of "Taide Jengi" - an organised crime syndicate specialising in art robbery as well as making and selling forged works of art. On two consecutive nights (1-2 November 2024), Mx Von Boles, together with two other members of "Taide Jengi", stole six masterpieces from the National Museum of Fortis. During the second robbery he fatally wounded two security guards, who died as a result of receiving gunshots. On the same night he departed from Pealinn on a private jet owned by one of the regular clients of "Taide Jengi", a war lord and well-known drug dealer. As per the European Arrest Warrant issued by the requesting court, Mx Von Boles is being prosecuted in Fortis for participation in the organised crime, money laundering, drug trafficking, and a murder. If surrendered, he may face a custodial sentence of maximum twenty five years of imprisonment.

Mrs Yania Deformis

4. Mrs Yania Deformis is a citizen of the Republic of Trots. The Republic of Trots is a former Member State of the European Union, which formally exited on 3 January 2022. Its relations with the European Union are regulated by the EU-Trots Withdrawal Agreement (EU-Trots WA) and the EU-Trots Trade and Cooperation Agreement (EU-Trots TCA). The former regulates intertemporal issues connected with the withdrawal from the European Union, while the latter deals with the post-withdrawal relations. The legal basis for the EU-Trots TCA was Article 217 TFEU, therefore it is an association agreement.

5. Mrs Yania Deformis is 36 years old and has been residing for twelve years in the Federal Republic of Gléck. In accordance with Article 16 of Directive 2004/38 on citizens' rights, she benefits from the permanent right to reside in the Federal Republic of Gléck. Mrs Deformis is half deaf and has never been able to achieve fluency in Gléck, the official language of the Federal Republic of Gléck. In May 2024 she gave birth to a baby boy Xela, whose father is Mx Theo Von Boles. The couple married on 15 June 2024.

6. Mrs Yania Deformis is a qualified schoolteacher with almost ten years of experience in teaching sign language at schools in Gléck as well as other EU Member States. She is also a pastor and a proactive member of the Temple of Pudicita, an unaffiliated primitive church established and operating in Trots. For the past two years, the Temple has been under a strict surveillance of state authorities, and, following an in-depth investigation, it is now considered a hate group engaging is protests against LGBT+ community, non-married and divorced people, as well as Christian denominations. The authorities of Trost are yet to delegalise the Temple of Pudicita. Until the Ministry of Education of Trots issued a ban in August 2024, the Temple of Pudicita had organised numerous summer and winter camps for young children. During the investigation, the Trots police obtained evidence from the disgruntled former employee of the Temple of Pudicita, implicating that Pastor Deformis is a notorious shoplifter and illegally possesses guns. The authorities of Trots evaluated the evidence and found it trustworthy enough to issue an indictment.

7. On 14 January 2025, the City Court in Strot, the capital of Trots, has issued an arrest warrant pursuant to Article 599(1) of the EU-Trots TCA. The arrest warrant requests the surrender of Pastor Deformis for the purposes of prosecution and sentencing for multiple thefts, illegal possession of weapons, and one instance of hate crime. If surrendered, she may face a custodial sentence of maximum seven years of imprisonment.

Decisions on the execution of arrest warrants

8. Both arrest warrants were received by the Municipal Court of Empuzjon, the capital of Gléck. It is a designated executing judicial authority within the meaning of Article 9 of the Framework Decision 2002/584/JHA on the European Arrest Warrant (EAW FD) and Article 598(b) of the EU-Trots TCA. Hearings in both cases took place on 12 February 2025.

9. A number of arguments was raised by the defence lawyers of Mx Von Boles and Pastor Deformis as to why the Municipal Court of Empuzjon should refuse to surrender their clients to Fortis and Trots, respectively.

10. As for EAW requesting surrender of Mx Von Boles, it was submitted that following the change of government in 2017, the Kingdom of Fortis has been undergoing radical reforms of judiciary and prosecution services. Several of them, including the procedures for making judicial and prosecutorial appointments, have been under the scrutiny of the European Union

institutions, leading up to judgments of the Court of Justice finding them to be in breach of Article 19 TEU (interpreted in the light of Article 2 TEU). Furthermore, the executive has instigated a widespread smear campaign aiming at individual judges who join public demonstrations against the reforms and who openly question their legality. The Government of Fortis has recently proposed a bill which, if adopted by the national Parliament of Fortis, will create a fast-track disciplinary procedure aiming at judges and prosecutors who refuse to follow instructions received from the chief public prosecutor who, as of 2017, is *ex lege* also the Minister of Justice. All these reforms received negative evaluations from the Venice Commission of the Council of Europe. Furthermore, the Government through the megaphones of the state-owned media has been tacitly supporting hate campaigns targeting ethnic minorities, in particular citizens of Adhucian origin, as well as LGBT+ community.

11. With the above in mind, the lawyers representing Mx Von Boles argued in front of the Municipal Court of Empuzjon, that surrender of Mx Von Boles to the Kingdom of Fortis would be in breach of Article 1(3) EAW FD. Based on the evidence presented to the Court, the defence lawyers argued that Mx Von Boles's life would be potentially in danger, furthermore, he would, if surrendered, unlikely undergo a fair trial.

12. In its decision of 14 February 2025, the Municipal Court of Empuzjon decided to refuse to surrender Mx Von Boles to the Kingdom of Fortis. The decision was based on Article 466 of the Criminal Procedure Code of the Federal Republic of Gléck (CPC), which lists the mandatory and optional grounds for refusal to surrender. While Article 466 CPC does not envisage risks to respect for human rights as one of the grounds for refusal, the sitting judge applied the judgment of CJEU in the case *Pupino* and interpreted Article 466 CPC in the light of Article 1(3) EAW FD. It proceeded without a reference for preliminary ruling under Article 267 TFEU. Furthermore, the sitting judge relied on the fact that, to her knowledge, the courts of the United States of Opir (another Member State of the European Union), already - as a matter of principle - refuse to surrender requested persons to the Kingdom of Fortis. Thus, there was no need to follow the two-step procedure envisaged by the CJEU in the *Aranyosi and Căldăraru* ruling.

13. In the case of Pastor Deformis, it was submitted that after its withdrawal from the European Union, the Republic of Trots has pursued large-scale deregulation, cutting ties with international institutions, and openly challenging multilateral human rights conventions. It particularly targeted the Council of Europe, including the European Court of Human Rights for its decisions finding the Republic of Trots to be in breach of the ECHR by imposing a blanket ban on voting rights of prisoners as well as finding that the detention conditions did not meet the required human rights standards. Furthermore, the Committee for Prevention of Torture of the Council of Europe (CPT) in several recent reports found that inmates in prisons all around the Republic of Trots were subject to inhumane treatment and conditions were not satisfactory, in particular, for disabled persons. On 24 September 2024, the government of Trots has tabled a Freedom from International Human Rights Bill, which – if adopted by the Parliament of the Republic of Trots – will give it the constitutionally required permission to withdraw from the European Convention of Human Rights and the European Court of Human Rights in Strasbourg. Bearing in mind that the 'Trots Sovereignty Party', which forms the government of Trots, has a large majority in the Parliament, the adoption of the bill is considered as *fait accompli*. According to the election manifesto of the 'Trots Sovereignty Party', after withdrawal from the Council of Europe, a Bill of Rights for the Republic of Trots would be tabled in the Parliament.

14. The defence team of Pastor Deformis made several submissions before the Municipal Court of Empuzjon. Firstly, it was argued that the prospect of withdrawal from the Council of Europe and the European Convention of Human Rights would undermine the right to fair trial. Secondly, pursuant to Article 692 EU-Trots TCA, the European Union as a consequence of the withdrawal, will terminate Part Four of the EU-Trots TCA. Thus, it is likely that by the time the trial of Pastor Deformis would commence, the surrender mechanism under the EU-Trots TCA may no longer exist. Thirdly, since Pastor Deformis's command of the Gléck language was not satisfactory enough to follow the legal proceedings, interpretation into Trotsy language was requested. This request, however, was not entertained by the sitting judge who, having assessed the language skills of Pastor Deformis, concluded that her case did not merit translation and interpretation within the meaning of Directive 2010/64/EU on the right to translation and interpretation in criminal proceedings (Directive 2010/64). Fourthly, doubts were raised as to the quality of evidence which had been obtained by the Police, and subsequently used by the prosecution service, to issue an indictment, and - in turn – by the issuing authority – to issue the arrest warrant.

15. On 14 February 2025 the Municipal Court of Empuzjon decided to refuse the surrender of Pastor Deformis to the Republic of Trots. The sitting judge based her decision on the likely withdrawal of Trots from the Council of Europe and the European Convention for Human Rights. In her words, 'it would seriously undermine the rule of law standards in the Republic of Trots and could negatively impact the fairness of trial that the requested person would face upon surrender'. Furthermore, the uncertain future of EU relations with the Republic of Trots, including the possible termination of Part Four of the EU-Trots TCA, made the future of the arrest warrant *modus operandi* questionable. The sitting judge also ruled that there was no need to proceed with a reference for preliminary ruling to the CJEU (Article 267 TFEU).

Appeals to the Federal Court of Appeal of Gléck

16. Decisions of the Municipal Court of Empuzjon to refuse the surrender of Mx Theo Von Boles to the Kingdom of Fortis and Pastor Deformis to the Republic of Trots, have been appealed by the Chief Public Prosecutor of the Federal Republic of Gléck. In accordance with the CPC, they are heard in the second and final instance by the Federal Court of Appeal.

Case of Mx Theo Von Boles

17. In case of Mx Theo Von Boles, the Chief Public Prosecutor submitted that the Municipal Court of Empuzjon by refusing to surrender erred in law on the following grounds:

A. The fast-track extradition system established by the EAW FD is based on the mutual recognition and mutual trust between the Member States. With this in mind, the grounds for mandatory and optional non-execution of the European Arrest Warrant listed in Articles 3 and 4 EAW FD should be interpreted strictly and in accordance with case law of the Court of Justice. Furthermore, their interpretation and application to the facts of the case, should preclude impunity from prosecution and imposition of sanctions for committed crimes. Since all criminal offences that Mx Theo Von Boles is accused of had been allegedly committed solely on the territory of the Kingdom of Fortis, the law of the Federal Republic of Gléck precludes prosecution of these crimes in front of Gléck courts. Consequently, the refusal to execute the EAW, would result in impunity of Mx Theo Von Boles.

B. The way the Municipal Court applied the doctrine of indirect effect to Article 466 CPC and interpreted the provision in question in the light of Article 1(3) EAW FD, went beyond the parameters of the interpretative tool established by the CJEU in *von Colson*, *Marleasing*, and *Pupino*. The appealed decision amounted to setting aside domestic law within the meaning of the *Simmenthal II* judgment, and the application of the doctrine of direct effect to Article 1(3) EAW FD. This is contrary to the former Article 34 TEU (which precluded direct effect of framework decisions), and its interpretation by the CJEU in *Poplawski II*.

C. In the alternative, if the Municipal Court stayed within the limits of indirect effect as per *Pupino*, it should have applied, before taking a decision on the execution of the EAW, the two-tier test established by the CJEU in the joined cases *Aranyosi and Căldăraru*. The fact that the courts of the United States of Opir, already - as a matter of principle - refuse to surrender requested persons to the Kingdom of Fortis is irrelevant and should not be a point of reference for the Municipal Court. The latter should seek assurances that the right of fair trial would be respected and that the rights of the Adhucian minority would be accepted, too.

18. The defence team of Mx Theo Von Boles submitted that the appeal brought by the Chief Public Prosecutor should be dismissed as ungrounded for the following reasons:

A. It is well established in the case law of the CJEU, that the executing authorities may rely on Article 1(3) EAW FD to decide on non-execution of European Arrest Warrants on the human rights grounds, even though Articles 3-4 EAW FD do not include such grounds on the lists of mandatory and optional grounds for refusal. The distinction between the direct effect and the indirect effect of framework decisions is irrelevant in this case.
B. In case of very strong evidence available to the executing authority about non-compliance of the requesting state with the values of the European Union listed in Article 2 TEU, in particular with the rule of law principles, and consequential major risks to the respect for the fundamental rights of the requested person, the executing authority may conduct the two stage test laid down in the joined cases *Aranyosi and Căldăraru* fully by itself, that is without contacting the issuing authority. Even if it did fully apply the *Aranyosi and Căldăraru* test and received further information from the issuing judicial authority, it should refuse to surrender Mx Theo Von Boles.

Case of Pastor Deformis

19. In case of Pastor Deformis, the Chief Public Prosecutor submitted that the Municipal Court of Empuzjon by refusing to surrender erred in law on the following grounds:

A. The arrest warrant system established by the EU-Trots TCA is still in place, as neither the Parliament of the Republic of Trots has adopted the bill authorising the withdrawal from the Council of Europe (and the European Convention on Human Rights), nor the European Union has formally terminated (or even discussed the termination) of Part Four of the EU-Trots TCA. Thus, for the time being, the existing rules apply. With this in mind, there are no grounds to believe that the right of Pastor Deformis to have a fair trial would be in danger in the foreseeable future.

B. Since all criminal offences that Pastor Deformis is accused of, had been allegedly committed solely on the territory of the Republic of Trots, the law of the Federal Republic of Gléck precludes prosecution of these crimes in front of Gléck courts. Consequently, the refusal to execute the EAW, would result in impunity of Pastor Deformis.

C. In order to assess whether the detention facilities in which Pastor Deformis would be potentially held after her surrender to the Republic of Trots, the executing authority may not rely solely on the generally available information. In the light of the case-law of the CJEU, it should apply, *mutatis mutandis*, the two-stage test established in the case *Aranyosi and Căldăraru* even though it had been developed in relation to the EAW FD, not the EU-Trots TCA. The decision in *Aranyosi and Căldăraru* should be read together with Article 604(c) EU-Trots TCA, which provides that: 'if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person, the executing judicial authority may require, as appropriate, additional guarantees as to the treatment of the requested person after the person's surrender before it decides whether to execute the arrest warrant.'

20. The defence team of Pastor Deformis submitted that the appeal should be dismissed on the following grounds:

A. The mere risk of withdrawal of the Republic of Trots from the Council of Europe and the European Convention on Human Rights is a sufficient ground for refusal to execute the arrest warrant. Provisions of the Part Four of the EU-Trots TCA which deal with the arrest warrant, despite their similarities to the EAW FD, provide for an extradition mechanism which is neither based on mutual recognition, nor on mutual trust. Therefore, the principles established in relation to the EAW FD should not be automatically applicable *mutatis mutandis* to arrest warrants issued under the EU-Trots TCA. In the light of available evidence, the risk of rule of law backsliding is considerable and it is very probable that Pastor Deformis would be deprived of the right to fair trial.

B. CPT reports indicate that the detention conditions in the Republic of Trots do not meet the ECHR standards, or, for that matter, the standards outlined in the Recommendation of the European Commission for the Member States on detention conditions.

C. Relevant provisions of the EU-Trots TCA should be interpreted in the light of the Charter of Fundamental Rights, including Article 7 of the Charter which provides for the right to family life and the rights of children.

D. Bearing in mind that the EU-Trots TCA entered into force in 2022, and so far, has generated very little case law of the CJEU, the interpretation of relevant provisions of the EU-Trots TCA is far from being *acte clair*. Thus, the Federal Court of Appeal of Gléck should consider sending a reference for preliminary ruling as per Article 267 TFEU.

21. During the hearing at the Federal Court of Appeal of Gléck, the defence team of Pastor Deformis requested the interpretation of proceedings into the Trotsy language as well as into the sign language. According to the defence team, the Municipal Court erred in law by concluding that neither the lack of proficiency in Gléck nor the disability merited

involvement of interpreters. The request for interpretation was entertained by the Federal Court of Appeal of Gléck.

22. Directive 2010/64 on the right to interpretation and translation in criminal proceedings provides in Article 2(8) that 'interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.' While the majority of provisions contained in Directive 2010/64 have been transposed into the CPC of the Federal Republic of Gléck, Articles 2(5) and 2(8) were not reflected in the domestic law. According to the European Commission, the Federal Republic of Gléck has failed to transpose fully the Directive in question and therefore it opened infringement proceedings under Article 258 TFEU. In the reasoned opinion published on 31 January 2025, the European Commission gave the Federal Republic of Gléck, 2 months to adopt necessary changes to CPC. Since they did not materialise, the European Commission submitted on 15 April 2025 the infringement action to the CJEU. The case is pending.

23. The interpretation into Trotsy language as well as into the sign language has been provided during proceedings at the Federal Court of Appeal of Gléck. However, the defence team of Pastor Deformis has challenged the quality of the interpretation by relying directly on Articles 2(5) and 2(8).

24. The Federal Court of Appeal of Gléck decided to suspend the proceedings in both cases and to send the references for a preliminary ruling to the CJEU.

In the case of Mx Theo Von Boles the questions to the CJEU are as follows:

1. In the absence of direct transposition of Article 1(3) EAW FD to national law, can the executing judicial authority refuse to surrender on human rights grounds if they are not envisaged in the mandatory or the optional grounds for surrender listed in national law?
2. If the answer to question 1 is in the affirmative, in case of persistent breaches of Article 19 TEU and Article 47 of the Charter of Fundamental Rights by the issuing Member State, can the executing judicial authority apply the *Aranyosi and Căldăraru* test without engaging with the authorities that issued the European Arrest Warrant, particularly if it is beyond a reasonable doubt that they were appointed in the breach of rule of law standards and the issuing judicial authority is known for either refusing to furnish the explanations as per the *Aranyosi and Căldăraru* test or for providing information that is not reliable and does not reflect the state of affairs (for instance, in relation to detention conditions)?

In the case of Pastor Deformis, the questions to the CJEU are as follows:

1. Do Articles 2(5) and 2(8) of Directive 2010/64 apply to the surrender procedure established under the EU-Trots TCA, especially bearing in mind that the EU-Trots TCA is an association agreement?
2. If the answer to question 1 is in the affirmative, do Articles 2(5) and 2(8) of Directive 2010/64 lay down directly effective rights that can be relied on by individuals in national courts?

3. Would the threat of withdrawal from the Council of Europe and the European Convention of Human Rights, and possible termination of Part Four of the EU-Trots TCA, serve as sufficient grounds to assume the imminent lowering of the rule of law standards, justifying the non-execution of arrest warrants issued under the EU-Trots TCA?
4. Should Part Four of the EU-Trots TCA, in particular Article 524(2) thereof, be read in the light of the Charter of Fundamental Rights and thus preclude the surrender of a mother of small child, whose father may be surrendered pursuant to the EAW FD to another Member State of the European Union?
5. Would the decision to surrender Pastor Deformis be compatible with the principle of proportionality as per Article 597 EU-Trots TCA?

NOTE FROM THE CEEMC ORGANISERS:

1. For the purposes of the *written pleadings*, each team must prepare one set of pleadings for the applicant[s] and a separate set of pleadings for the respondent[s]. All of the questions above must be dealt with in each set of written pleadings.

2. For the purposes of the *oral rounds*, each team will act, in separate moots, on behalf of both the applicant[s] and the respondent[s]. *Not all* of the questions above will be mooted on Day 1, so only those 8 teams which are selected to moot on Day 2 will moot all of the above questions during the oral stages.

3. The questions which will be dealt with on each day of the CEEMC 2025 are as follows:

Day 1	**Mx Theo Von Boles:** Question 1 **Pastor Deformis:** Questions 1 and 2
Day 2 (apart from final)	**Mx Theo Von Boles:** Question 2 **Pastor Deformis:** Questions 3, 4 and 5
Final (on day 2)	At lunch-time on Day 2 (when announcing the finalists), the judges will announce which questions they wish to be mooted in the final. This may include any/all of the questions mooted on Day 1 or 2.

Annex 1
(Fictional) Trade and Cooperation between the European Union and the Republic of Trots
(extract)

PREAMBLE

1. REAFFIRMING their commitment to democratic principles, to the rule of law, to human rights, to countering proliferation of weapons of mass destruction and to the fight against climate change, which constitute essential elements of this and supplementing agreements,

2. RECOGNISING the importance of global cooperation to address issues of shared interest,

3. RECOGNISING the importance of transparency in international trade and investment to the benefit of all stakeholders,

4. SEEKING to establish clear and mutually advantageous rules governing trade and investment between the Parties,

5. CONSIDERING that in order to guarantee the efficient management and correct interpretation and application of this Agreement and any supplementing agreement, as well as compliance with the obligations under those agreements, it is essential to establish provisions ensuring overall governance, in particular dispute settlement and enforcement rules that fully respect the autonomy of the respective legal orders of the Union and of the Republic of Trots, as well as the Republic of Trot's status as a country outside the European Union,

6. BUILDING upon their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994, and other multilateral and bilateral instruments of cooperation,

7. RECOGNISING the Parties' respective autonomy and rights to regulate within their territories in order to achieve legitimate public policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection and the promotion and protection of cultural diversity, while striving to improve their respective high levels of protection,

8. BELIEVING in the benefits of a predictable commercial environment that fosters trade and investment between the Parties and prevents the distortion of trade and unfair competitive advantages, in a manner conducive to sustainable development in its economic, social and environmental dimensions,

9. RECOGNISING the need for an ambitious, wide-ranging and balanced economic partnership to be underpinned by a level playing field for open and fair competition and sustainable development, through effective and robust frameworks for subsidies and competition and a commitment to uphold their respective high levels of protection in the areas of labour and social standards, environment, the fight against climate change, and taxation,

10. RECOGNISING the need to ensure an open and secure market for businesses, including small and medium-sized enterprises, and their goods and services through addressing unjustified barriers to trade and investment,

11. NOTING the importance of facilitating new opportunities for businesses and consumers through digital trade, and addressing unjustified barriers to data flows and trade enabled by electronic means, whilst respecting the Parties' personal data protection rules,

12. DESIRING that this Agreement contribute to consumer welfare through policies ensuring a high level of consumer protection and economic well-being, as well as encouraging cooperation between relevant authorities,

13. CONSIDERING the importance of cross-border connectivity by air, by road and by sea, for passengers and for goods, and the need to ensure high standards in the provision of transportation services between the Parties,

14. RECOGNISING the benefits of trade and investment in energy and raw materials and the importance of supporting the delivery of cost efficient, clean and secure energy supplies to the Union and the Republic of Trots,

15. NOTING the interest of the Parties in establishing a framework to facilitate technical cooperation and to develop new trading arrangements for interconnectors which deliver robust and efficient outcomes for all timeframes,

16. NOTING that cooperation and trade between the Parties in these areas should be based on fair competition in energy markets and non-discriminatory access to networks,

17. RECOGNISING the benefits of sustainable energy, renewable energy, in particular offshore generation in the North Sea, and energy efficiency,

18. DESIRING to promote the peaceful use of the waters adjacent to their coasts and the optimum and equitable utilisation of the marine living resources in those waters including the continued sustainable management of shared stocks,

19. NOTING that the Republic of Trots withdrew from the European Union and that with effect from 1 January 2021, the Republic of Trots is an independent coastal State with corresponding rights and obligations under international law,

20. AFFIRMING that the sovereign rights of the coastal States exercised by the Parties for the purpose of exploring, exploiting, conserving and managing the living resources in their waters should be conducted pursuant to and in accordance with the principles of international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 (United Nations Convention on the Law of the Sea),

21. RECOGNISING the importance of the coordination of social security rights enjoyed by persons moving between the Parties to work, to stay or to reside, as well as the rights enjoyed by their family members and survivors,

22. CONSIDERING that cooperation in areas of shared interest, such as science, research and innovation, nuclear research and space, in the form of the participation of the Republic of Trots in the corresponding Union programmes under fair and appropriate conditions will benefit both Parties,

23. CONSIDERING that cooperation between the Republic of Trots and the Union relating to the prevention, investigation, detection or prosecution of criminal offences and to the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, will enable the security of the Republic of Trots and the Union to be strengthened,

24. DESIRING that an agreement is concluded between the Republic of Trots and the Union to provide a legal base for such cooperation,

25. ACKNOWLEDGING that the Parties may supplement this Agreement with other agreements forming an integral part of their overall bilateral relations as governed by this Agreement and that the Agreement on Security Procedures for Exchanging and Protecting Classified Information is concluded as such a supplementing agreement and enables the

exchange of classified information between the Parties under this Agreement or any other supplementing agreement,

HAVE AGREED AS FOLLOWS:

PART ONE

General Provisions

Article 2

Private rights

1. Nothing in this Agreement or any supplementing agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement or any supplementing agreement to be directly invoked in the domestic legal systems of the Parties.

[...]

PART FOUR

Law Enforcement and Judicial Cooperation in Criminal Matters

Article 524

1. The cooperation provided for in this Part is based on the Parties' and Member States' long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically.

2. Nothing in this Part modifies the obligation to respect fundamental rights and legal principles as reflected, in particular, in the European Convention on Human Rights and, in the case of the Union and its Member States, in the Charter of Fundamental Rights of the European Union.

[...]

Article 596

Objective

The objective of this Title is to ensure that the extradition system between the Member States, on the one side, and the Republic of Trots, on the other side, is based on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of this Title.

Article 597

Principle of proportionality

Cooperation through the arrest warrant shall be necessary and proportionate, taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that would be imposed and the possibility of a State taking measures less coercive than the surrender of the requested person particularly with a view to avoiding unnecessarily long periods of pre-trial detention.

Article 598

Definitions

For the purposes of this Title, the following definitions apply:

(a) "arrest warrant" means a judicial decision issued by a State with a view to the arrest and surrender by another State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order;

(b) "judicial authority" means an authority that is, under domestic law, a judge, a court or a public prosecutor. A public prosecutor is considered a judicial authority only to the extent that domestic law so provides;

(c) "executing judicial authority" means the judicial authority of the executing State which is competent to execute the arrest warrant by virtue of the domestic law of that State;

(d) "issuing judicial authority" means the judicial authority of the issuing State which is competent to issue an arrest warrant by virtue of the domestic law of that State.

Article 599

Scope

1. An arrest warrant may be issued for acts punishable by the law of the issuing State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences or detention orders of at least four months.

2. Without prejudice to paragraphs 3 and 4, surrender is subject to the condition that the acts for which the arrest warrant has been issued constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

3. Subject to Article 600, points (b) to (h) of Article 601(1), and Articles 602, 603 and 604, a State shall not refuse to execute an arrest warrant issued in relation to the following behaviour where such behaviour is punishable by deprivation of liberty or a detention order of a maximum period of at least 12 months:

(a) the behaviour of any person who contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977, or in relation to illicit trafficking in narcotic drugs and psychotropic substances, or murder, grievous bodily injury, kidnapping, illegal restraint, hostage-taking or rape, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution must be intentional and made with the knowledge that the participation will contribute to the achievement of the group's criminal activities; or

(b) terrorism as defined in Annex 45.

4. The Republic of Trots and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that, on the basis of reciprocity, the condition of double criminality referred to in paragraph 2 will not be applied, provided that the offence on which the warrant is based is:

(a) one of the offences listed in paragraph 5, as defined by the law of the issuing State; and

(b) punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years.

5. The offences referred to in paragraph 4 are:

— participation in a criminal organisation;

— terrorism as defined in Annex 45;

— trafficking in human beings;

— sexual exploitation of children and child pornography;

— illicit trafficking in narcotic drugs and psychotropic substances;

— illicit trafficking in weapons, munitions and explosives;

— corruption, including bribery;

— fraud, including that affecting the financial interests of the Republic of Trots, a Member State or the Union;

— laundering of the proceeds of crime;

— counterfeiting currency;

— computer-related crime;

— environmental crime, including illicit trafficking in endangered animal species and endangered plant species and varieties;

— facilitation of unauthorised entry and residence;

— murder;

— grievous bodily injury;

— illicit trade in human organs and tissue;

— kidnapping, illegal restraint and hostage-taking;

— racism and xenophobia;

— organised or armed robbery;

— illicit trafficking in cultural goods, including antiques and works of art;

— swindling;

— racketeering and extortion;

— counterfeiting and piracy of products;

— forgery of administrative documents and trafficking therein;

— forgery of means of payment;

— illicit trafficking in hormonal substances and other growth promoters;

— illicit trafficking in nuclear or radioactive materials;

— trafficking in stolen vehicles;

— rape;

— arson;

— crimes within the jurisdiction of the International Criminal Court;

— unlawful seizure of aircraft, ships or spacecraft; and

— sabotage.

Article 600

Grounds for mandatory non-execution of the arrest warrant

The execution of the arrest warrant shall be refused:

(a) if the offence on which the arrest warrant is based is covered by an amnesty in the executing State, where that State had jurisdiction to prosecute the offence under its own criminal law;

(b) if the executing judicial authority is informed that the requested person has been finally judged by a State in respect of the same acts, provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the sentencing State; or

(c) if the person who is the subject of the arrest warrant may not, owing to the person's age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 601

Other grounds for non-execution of the arrest warrant

1. The execution of the arrest warrant may be refused:

(a) if, in one of the cases referred to in Article 599(2), the act on which the arrest warrant is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, the execution of the arrest warrant shall not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the issuing State;

(b) if the person who is the subject of the arrest warrant is being prosecuted in the executing State for the same act as that on which the arrest warrant is based;

(c) if the judicial authorities of the executing State have decided either not to prosecute for the offence on which the arrest warrant is based or to halt proceedings, or if a final judgment which prevents further proceedings has been passed upon the requested person in a State in respect of the same acts;

(d) if the criminal prosecution or punishment of the requested person is statute-barred under the law of the executing State and the acts fall within the jurisdiction of that State under its own criminal law;

(e) if the executing judicial authority is informed that the requested person has been finally judged by a third country in respect of the same acts provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the sentencing country;

(f) if the arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order and the requested person is staying in, or is a national or a resident of the executing State and that State undertakes to execute the sentence or detention order in accordance with its domestic law; if consent of the requested person to the transfer of the sentence or detention order to the executing State is required, the executing State may refuse to execute the arrest warrant only after the requested person consents to the transfer of the sentence or detention order;

(g) if the arrest warrant relates to offences which:

(i) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such; or

(ii) have been committed outside the territory of the issuing State, and the law of the executing State does not allow prosecution for the same offences if committed outside its territory;

(h) if there are reasons to believe on the basis of objective elements that the arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of the person's sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of those reasons;

(i) if the arrest warrant has been issued for the purpose of executing a custodial sentence or a detention order and the requested person did not appear in person at the trial resulting in the decision, unless the arrest warrant states that the person, in accordance with further procedural requirements defined in the domestic law of the issuing State:

(i) in due time:

(A) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that the person was aware of the date and place of the scheduled trial;

and

(B) was informed that a decision may be handed down if that person did not appear for the trial;

or

(ii) being aware of the date and place of the scheduled trial, had given a mandate to a lawyer, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that lawyer at the trial;

or

(iii) after being served with the decision and being expressly informed about the right to a retrial or appeal in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

(A) expressly stated that the person did not contest the decision;

or

(B) did not request a retrial or appeal within the applicable time frame;

or

(iv) was not personally served with the decision but:

(A) will be personally served with it without delay after the surrender and will be expressly informed of the right to a retrial or appeal in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

and

(B) will be informed of the time frame within which the person has to request such a retrial or appeal, as mentioned in the relevant arrest warrant.

2. Where the arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions in point (i) (iv) of paragraph 1 and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, that person may, when being informed about the content of the arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person concerned. The request of the person concerned shall neither delay the surrender procedure nor delay the decision to execute the arrest warrant. The provision of the judgment to the person concerned shall be for information purposes only; it shall not be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. Where a person is surrendered under the conditions in point (i) (iv) of paragraph 1 and that person has requested a retrial or appeal, until those proceedings are finalised the detention of that person awaiting such retrial or appeal shall be reviewed in accordance with the domestic law of the issuing State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

Article 604

Guarantees to be given by the issuing State in particular cases

The execution of the arrest warrant by the executing judicial authority may be subject to the following guarantees:

(a) if the offence on which the arrest warrant is based is punishable by a custodial life sentence or a lifetime detention order in the issuing State, the executing State may make the execution of the arrest warrant subject to the condition that the issuing State gives a guarantee deemed sufficient by the executing State that the issuing State will review the penalty or measure imposed, on request or at the latest after 20 years, or will encourage the application of measures of clemency for which the person is entitled to apply under the law or practice of the issuing State, aiming at the non-execution of such penalty or measure;

(b) if a person who is the subject of an arrest warrant for the purposes of prosecution is a national or resident of the executing State, the surrender of that person may be subject to the condition that the person, after being heard, is returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing State; if the consent of the requested person to the transfer of the sentence or detention order to the executing State is required, the guarantee that the person be returned to the executing State to serve the person's sentence is subject to the condition that the requested person, after being heard, consents to be returned to the executing State;

(c) if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person, the executing judicial authority may require, as appropriate, additional guarantees as to the treatment of the requested person after the person's surrender before it decides whether to execute the arrest warrant.

[...]

Article 609

Rights of a requested person

1. If a requested person is arrested for the purpose of the execution of an arrest warrant, the executing judicial authority, in accordance with its domestic law, shall inform that person of the arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing State.

2. A requested person who is arrested for the purpose of the execution of an arrest warrant and who does not speak or understand the language of the arrest warrant proceedings shall have the right to be assisted by an interpreter and to be provided with a written translation in the native language of the requested person or in any other language which that person speaks or understands.

3. A requested person shall have the right to be assisted by a lawyer in accordance with the domestic law of the executing State upon arrest.

4. The requested person shall be informed of the person's right to appoint a lawyer in the issuing State for the purpose of assisting the lawyer in the executing State in the arrest warrant proceedings.

5. A requested person who is arrested shall have the right to have the consular authorities of that person's State of nationality, or if that person is stateless, the consular authorities of the State where that person usually resides, informed of the arrest without undue delay and to communicate with those authorities, if that person so wishes.

Article 610

Keeping the person in detention

When a person is arrested on the basis of an arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing State. The person may be released provisionally at any time in accordance with the domestic law of the executing State, provided that the competent authority of that State takes all the measures it deems necessary to prevent the person from absconding.

Article 612

Hearing of the requested person

Where the arrested person does not consent to surrender as referred to in Article 611, that person shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing State.

Article 613

Surrender decision

1. The executing judicial authority shall decide whether the person is to be surrendered within the time limits and in accordance with the conditions defined in this Title, in particular the principle of proportionality as set out in Article 597.

2. If the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Article 597, Articles 600 to 602, Article 604 and Article 606, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits provided for in Article 615.

3. The issuing judicial authority may forward any additional useful information to the executing judicial authority at any time.

Article 615

Time limits and procedures for the decision to execute the arrest warrant

1. An arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to surrender, the final decision on the execution of the arrest warrant shall be taken within ten days after the consent was given.

3. In other cases, the final decision on the execution of the arrest warrant shall be taken within 60 days after the arrest of the requested person.

4. Where in specific cases the arrest warrant cannot be executed within the time limits laid down in paragraph 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority of that fact, giving the reasons for the delay. In such cases, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the arrest warrant, it shall ensure that the material conditions necessary for the effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute an arrest warrant.

Article 617

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority. To that end, the requested person shall be assisted by a lawyer designated in accordance with the law of the issuing State.

2. The requested person shall be heard in accordance with the law of the executing State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its State to take part in the hearing of the requested person in order to ensure the proper application of this Article.

[...]

Article 692

Termination of Part Four of the Agreement

1. Without prejudice to Article 779, each Party may at any moment terminate this Part by written notification through diplomatic channels. In that event, this Part shall cease to be in force on the first day of the ninth month following the date of notification.

2. However, if this Part is terminated on account of the Republic of Trots or a Member State having denounced the European Convention on Human Rights or Protocols 1, 6 or 13 thereto, this Part shall cease to be in force as of the date that such denunciation becomes effective or, if the notification of its termination is made after that date, on the fifteenth day following such notification.

3. If either Party gives notice of termination under this Article, the Specialised Committee on Law Enforcement and Judicial Cooperation shall meet to decide what measures are needed to ensure that any cooperation initiated under this Part is concluded in an appropriate manner. In any event, with regard to all personal data obtained through cooperation under this Part before it ceases to be in force, the Parties shall ensure that the level of protection under which the personal data were transferred is maintained after the termination takes effect.

Article 693

Suspension of Part Four of the Agreement

1. In the event of serious and systemic deficiencies within one Party as regards the protection of fundamental rights or the principle of the rule of law, the other Party may suspend this Part or Titles thereof, by written notification through diplomatic channels. Such notification shall specify the serious and systemic deficiencies on which the suspension is based.

[...]

6. If one Party notifies the suspension of one or several Titles of this Part pursuant to paragraph 1 or 2, the other Party may suspend all of the remaining Titles, by written notification through diplomatic channels, with three months' notice.

[...]

9. The suspended Titles shall be reinstated on the first day of the month following the day on which the Party having notified the suspension pursuant to paragraph 1 or 2 has given written notification to the other Party, through diplomatic channels, of its intention to reinstate the suspended Titles. The Party having notified the suspension pursuant to paragraph 1 or 2 shall do so immediately after the serious and systemic deficiencies on the part of the other Party on which the suspension was based have ceased to exist.

Annex 2
(Fictional) Criminal Procedure Code of Federal Republic of Gléck
(extract)

Article 466
Grounds for non-execution of the European arrest warrant

A. The executing judicial authority shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in Gléck, where it had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of Gléck.

B. The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 465, the act on which the European arrest warrant is based does not constitute an offence under the law of Gléck; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the Gléck does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;

2. where the person who is the subject of the European arrest warrant is being prosecuted in Gléck for the same act as that on which the European arrest warrant is based;

3. where the judicial authorities of Gléck have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of Gléck and the acts fall within the jurisdiction of Gléck under criminal law;

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a

resident of Gléck and that Gléck undertakes to execute the sentence or detention order in accordance with its domestic law;

7. where the European arrest warrant relates to offences which:

(a) are regarded by the law of Gléck as having been committed in whole or in part in the territory of Gléck or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of Gléck does not allow prosecution for the same offences when committed outside its territory.