

# **WRITTEN PLEADINGS FOR THE APPLICANT**

Faculty of Law and Administration, Adam Mickiewicz University,  
Poznań, Poland

***Chief Public Prosecutor of the Federal Republic of Gléck (applicant)***

**v.**

***Mx Theo Von Boles and Mrs Yania Deformis (respondents)***

Reference for a Preliminary Ruling to the European Court of Justice



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### **List of abbreviations:**

• <b>European Union</b>	<b>EU</b>
• <b>Treaty on European Union</b>	<b>TEU</b>
• <b>Treaty on the Functioning of the European Union</b>	<b>TFEU</b>
• <b>Charter of Fundamental Rights of the European Union</b>	<b>the Charter</b>
• <b>Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision (2002/584/JHA)</b>	<b>EAW FD</b>
• <b>European Arrest Warrant</b>	<b>EAW</b>
• <b>CEEMC Moot Case, 2025 edition</b>	<b>Moot Case</b>
• <b>European Convention on Human Rights</b>	<b>ECHR/ the Convention</b>
• <b>European Court of Human Rights</b>	<b>ECtHR</b>
• <b>Criminal Procedure Code</b>	<b>CPC</b>
• <b>Court of Justice of the European Union</b>	<b>CJEU/ the Court</b>
• <b>European Commission</b>	<b>the Commission</b>
• <b>Advocate General</b>	<b>AG</b>
• <b>Page(s)</b>	<b>pg(s).</b>
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**Index of cases abbreviations – CJEU case-law  
and AGs' opinions:**

- Judgment in Case 106/77 Amministrazione delle Finanze dello Stato v Simmenthal SpA	- Case 106/77, Simmenthal
- Judgement in Case 270/80 Polydor Limited and RSO Records Inc. v Harlequin Records Shops Limited and Simons Records Limited	- Case 270/80, Polydor
- Judgment in Case 12/86 Meryem Demirel v Stadt Schwäbisch Gmünd	- Case 12/86, Demirel
- Judgment in Case 80/86 Criminal proceedings against Kolpinghuis Nijmegen BV	- Case 80/86, Nijmegen
- Judgement in Case C-83/91 Wienand Meilicke	- Case C-83/91, Meilicke
- Judgment in Case C-105/03 Criminal proceedings against Maria Pupino (Grand Chamber)	- Case C-105/03, Pupino
- Judgement in Case C-399/11 Criminal proceedings against Stefano Melloni (Grand Chamber)	- Case C-399/11, Melloni
- Opinion of the Court 2/13 on Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms — Compatibility of the draft agreement with the EU and FEU Treaties (Full Court)	- Opinion 2/13, EU accession to the ECHR
- Judgment in Case C-216/14 Criminal proceedings against Gavril Covaci (First Chamber)	- Case C-216/14, Covaci
- Judgement in Case C-554/14 Criminal proceedings against Atanas Ognyanov (Grand Chamber)	- Case C-554/14, Ognyanov
- Judgment in Joined Cases C-404/15 and C-659/15 PPU Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen (Grand Chamber)	- Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru
- Opinion of AG Bot in Joined Cases C-404/15 and C-659/15 PPU Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen	- Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru
- Judgment in Case C-579/15 Poplawski I	- Case C-579/15, Poplawski I
- Judgment in Case C-573/17 Poplawski II (Grand Chamber)	- Case C-573/17, Poplawski II
- Opinion of AG Campos Sánchez-Bordona in Case C-573/17 Poplawski II	- Opinion of AG Campos Sánchez-Bordona in Case C-573/17, Poplawski II

- <b>Judgement in Case C-378/17 Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission (Grand Chamber)</b>	- <b>Case C-378/17, Minister for Justice and Equality, Commissioner of An Garda Síochána</b>
- <b>Judgement in Case C-571/17 Execution of a European arrest warrant issued against Samet Ardic</b>	- <b>Case C-571/17, Samet Ardic</b>
- <b>Judgment in Case C-216/18 PPU LM (Grand Chamber)</b>	- <b>Case C-216/18, LM</b>
- <b>Judgment in Case C-220/18 PPU ML (First Chamber)</b>	- <b>Case C-220/18, ML</b>
- <b>Judgment in Case C-128/18 Dorobantu (Grand Chamber)</b>	- <b>Case C-128/18, Dorobantu</b>
- <b>Judgment in Case C-387/19 RTS infra BVBA and Aannemingsbedrijf Norré-Behaegel v Vlaams Gewest</b>	- <b>Case C-387/19, RTS infra BVBA</b>
- <b>Judgment in Joined Cases C-354/20 PPU and C-412/20 PPU L and P (Grand Chamber)</b>	- <b>Joined Cases C-354/20 and C-412/20, L and P</b>
- <b>Judgement in Joined Cases C-562/21 PPU and C-563/21 PPU X and Y v Openbaar Ministerie</b>	- <b>Joined Cases C-562/21 and C-563/21, X and Y</b>
- <b>Judgement in Joined Cases C-428/21 PPU and C-429/21 PPU Execution of European arrest warrants issued against HM and TZ</b>	- <b>Joined Cases C-428/21 and C-429/21, HM and TZ</b>
- <b>Judgement in Case C-261/22 GN (Ground for refusal based on the best interests of the child) (Grand Chamber)</b>	- <b>Case C-261/22, GN</b>
- <b>Judgment in Case C-202/24 Alchaster (Grand Chamber)</b>	- <b>Case C-202/24, Alchaster</b>
- <b>Opinion of AG Szpunar in Case C-202/24 Alchaster</b>	- <b>Opinion of AG Szpunar in Case C-202/24, Alchaster</b>

**Index of cases abbreviations – ECtHR rulings:**

- <b>Judgement in Case of Sejdic v. Italy (Application no. 56581/00) (Grand Chamber)</b>	- <b>Sejdic v. Italy (56581/00)</b>
- <b>Judgement in Case of Bivolaru and Moldovan v. France (Applications nos. 40324/16 and 21623/17)</b>	- <b>Bivolaru and Moldovan v. France (40324/16 and 21623/17)</b>
- <b>Judgement in Case of Muršić v. Croatia (Application no. 7334/13) (Grand Chamber)</b>	- <b>Muršić v. Croatia (7334/13)</b>

### **Index of legal documents:**

- Consolidated Version of the Treaty on European Union,  
hereinafter referred to as **TEU**
- Consolidated Version of the Treaty on the Functioning of the European Union,  
hereinafter referred to as **TFEU**
- Charter of Fundamental Rights of the European Union,  
hereinafter referred to as **the Charter**
- Convention for the Protection of Human Rights and Fundamental Freedoms,  
hereinafter referred to as **ECHR** or **the Convention**
- Council Framework Decision of 13 June 2002 on the European arrest warrant and the  
surrender procedures between Member States - Statements made by certain Member States on  
the adoption of the Framework Decision (2002/584/JHA),  
hereinafter referred to as **EAW FD** or **Framework Decision 2002/584**
- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on  
the right to interpretation and translation in criminal proceedings,  
hereinafter referred to as **Directive 2010/64**
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the  
right of citizens of the Union and their family members to move and reside freely within the  
territory of the Member States,  
hereinafter referred to as **Directive 2004/38**
- Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of  
suspects and accused persons subject to pre-trial detention and on material detention  
conditions,  
hereinafter referred to as **Commission Recommendation 2023/681**

### **Including fictional legal documents:**

- ❖ Trade and Cooperation between the European Union and the Republic of Trots,  
hereinafter referred to as **EU-Trots TCA**
- ❖ Withdrawal Agreement between the European Union and the Republic of Trots,  
hereinafter referred to as **EU-Trots WA**
- ❖ Criminal Procedure Code of Federal Republic of Gléck,  
hereinafter referred to as **CPC of Gléck**

## I: Questions regarding Mx Theo von Boles

**Q1: 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?**

1. Firstly, it should be noted that EU law establishes the principle of primacy of the EU law<sup>1</sup>. The principle therefore establishes the pre-eminence of the EU law over the laws of Member States<sup>2</sup>. That means that Member State's bodies shall give full effect to the various EU provisions, and the law of Member States may not undermine mentioned therein effect<sup>3</sup>.
2. Secondly, the principle of primacy of the EU law should be interpreted in light of the principle of direct effect, having regard to their fundamental meaning<sup>4</sup>. Moreover *the principle of primacy of EU law cannot have the effect of undermining the essential distinction between provisions of EU law which have direct effect and those which do not and, consequently, of creating a single set of rules for the application of all of the provisions of EU law by the national courts*<sup>5</sup>.
3. Thirdly, as clarified by the Court in *Pupino* (C-105/03, paras. 43–47), the duty of conforming interpretation has its limits, especially regarding criminal law. National courts must not interpret domestic provisions *contra legem*, or in a way that undermines the principle of legal certainty. In the present case, it remains unclear whether Article 466 CPC of Gléck can be interpreted in light of Article 1(3) EAW FD without overstepping those limits.
4. Having regard to the foregoing and the significance of the judgement *Pupino* (C-105/03) as an *acte éclairé*<sup>6</sup> – Framework Decision 2002/584 does not have direct effect<sup>7</sup>. That is because the aforementioned decision was adopted on the basis of the former third pillar of the EU<sup>8</sup>. It means that the framework decision is binding upon Member States as to the result to be achieved [*vide*: article 34(2)(b) EU<sup>9</sup>]. It means that – as the CJEU mentioned – interpretation of national law should be done as far as possible in light of the wording and purpose of that decision<sup>10</sup>.
5. The main purpose mentioned in Framework Decision 2002/584 is to combat impunity<sup>11</sup>. Execution of the EAW will only be proportionate if its conditions are compatible with the necessity of ensuring that requested person does not evade the course of justice<sup>12</sup>. Such impunity would be in conflict with the mentioned purpose<sup>13</sup> and with Article 3(2) TEU<sup>14</sup>.

<sup>1</sup> Case 106/77, *Simmenthal*, para. 13, pg. 152 of Bundle.

<sup>2</sup> Case C-573/17, *Poplawski II*, para. 53, pg. 278 of Bundle.

<sup>3</sup> Case C-378/17, *Minister for Justice and Equality, Commissioner of An Garda Síochána*, para. 39, mentioned on pg. 278 of Bundle.

<sup>4</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 106, pg. 217 of Bundle.

<sup>5</sup> Case C-573/17, *Poplawski II*, para. 60, pg. 279 of Bundle.

<sup>6</sup> *acte éclairé* – one of the basic rules in EU law which states that if CJEU has already given a previous ruling on interpretation of provision of EU law, this also applies in subsequent cases and the ruling herein is binding.

<sup>7</sup> Case C-579/15, *Poplawski I*, para. 26, pg. 248 of Bundle; Case C-573/17, *Poplawski II*: as Article 1(3) EAW FD does not have direct effect and cannot be used as a stand-alone legal basis for refusal where no corresponding national transposition exists. Consequently, the executing authority must attempt a conforming interpretation but cannot disapply national law outright.

<sup>8</sup> Case C-554/14, *Ognyanov*, para. 56, mentioned on pg. 278 of Bundle.

<sup>9</sup> Consolidated Version of the Treaty on European Union (TEU) - 2006 version, Article 34(2)(b), pg. 33 of Bundle.

<sup>10</sup> Case C-105/03, *Pupino*, para. 43, pg. 193 of Bundle.

<sup>11</sup> Joined Cases C-354/20 and C-412/20, *L and P*, para. 64, pg. 387 of Bundle.

<sup>12</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 170, pg. 222 of Bundle.

<sup>13</sup> Case C-579/15, *Poplawski I*, para. 23, pg. 248 of Bundle.

<sup>14</sup> Case C-220/18, *ML*, para. 87, pg. 312 of Bundle.

6. With this in mind, it should be acknowledged that refusal to surrender a person subject to EAW FD is only possible on the basis of mandatory and optional grounds set out in Articles 4, 4a and 5 EAW FD<sup>15</sup> and by laying down the principle stated in Article 1(3) of EAW FD legislature did not intend to allow authorities to refuse to surrender the requested person in each case<sup>16</sup>. Aforesaid confirms the fact that legislature in recital 10 of EAW FD states that the implementation of EAW mechanism may be suspended only in event of serious and persistent breach of principles stated in Article 2 TEU (in accordance with the procedure provided for in Article 7 TEU) by one of Member States. Hence, this is the only situation in which the judicial authority would be able to automatically refuse to execute any EAW<sup>17</sup>.
7. The mechanism described hereinbefore is of a political and institutional nature, designed to protect the Union's foundational values, and cannot be equated with judicial refusal under Article 1(3). The EAW Framework Decision was adopted in a spirit of mutual trust and loyalty among Member States, and its functioning presupposes confidence in the legal systems of all EU countries. By contrast, Article 1(3) EAW FD serves as a narrow judicial safeguard, to be applied only in exceptional circumstances where there is concrete, specific and individualised evidence of a real risk to the requested person's fundamental rights.
8. Thus, as CJEU stated, there are 'exceptional situations' in which the refusal to surrender a person is justified under the provisions of Article 1(3) [*vide: Aranyosi and Căldăraru* (C-404/15)]. As clarified in said judgement, the threshold for refusal on such grounds is high and must not undermine the systemic operation of the EAW regime. Reliance on Article 1(3) must therefore remain strictly limited and cannot become a tool for bypassing or substituting the formal Article 7 procedure. Accepting otherwise would destabilise the balance between trust and control that underpins EU criminal cooperation.
9. Nevertheless, using Article 1(3) as 'a ground' for refusal should follow strict rules. First of all, although EAW FD is in compliance with art. 6 TEU, EAW FD is based on the principle of mutual trust between Member States. Mentioned principle precludes Member State from checking whether another Member State complied with the fundamental rights (confirmed by EU law)<sup>18</sup>. As expressed in the Opinion 2/13 – it would disrupt the essential 'underlying balance of EU.' Hereinafter according to cases X and Y EAW FD *read in light of provision of the Charter; cannot be interpreted in such a way as to call into question the effectiveness of the system of judicial cooperation between Member States*.<sup>19</sup>. According to that, even if there is a risk of a violation of human rights, the mere existence of data indicating systemic or general irregularities or which may affect certain group of people does not necessarily mean that specific person would be subjected to inhuman treatment in a particular case<sup>20</sup>.
10. As a final remark, in absence of direct transposition of Article 1(3) EAW FD to national law, the executing judicial authority can refuse to surrender on human rights grounds<sup>21</sup>. However in this specific case (Mx Von Boles) there are none of 'exceptional situations' in which the

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<sup>15</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 81, pg 215 of Bundle.

<sup>16</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 92, pg 216 of Bundle.

<sup>17</sup> Joined Cases C-354/20 and C-412/20, *L and P*, para. 57-58, pg. 386 of Bundle.

<sup>18</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 109, pg. 217 of Bundle.

<sup>19</sup> Cases C-562/21 and C-563/21, *X and Y*, para. 47, pg. 385 of Bundle, and further cases cited there, including: Joined Cases C-428/21 and C-429/21, *HM and TZ*, para. 43., mentioned on pg. 396 of Bundle.

<sup>20</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 93, pg. 240 of Bundle.

<sup>21</sup> Case C-128/18, *Dorobantu*, para. 54, pg. 325 of Bundle.



refusal to surrender a person could be justified under provisions of Article 1(3). Although the requested person, Mx Von Boles, is a member of the Adhucian minority<sup>22</sup> and concerns have been raised regarding judicial independence in Fortis, these circumstances do not meet the high threshold established by the Court in *Aranyosi and Căldăraru*. There is no conclusive evidence of a real and individualised risk that Mx Von Boles would face inhuman or degrading treatment or a flagrant denial of justice. The reports relied on by the executing authority were general in nature and lacked specific detail applicable to this individual case<sup>23</sup>. Moreover such decision would be in breach of the principle of the high level of trust between States<sup>24</sup>. In the end, using Article 1(3) EAW FD as a ground in the mentioned case creates a real risk of impunity<sup>25</sup>, which cannot be regarded as compatible with the Framework Decision 2002/584<sup>26</sup>, even though there is a Member State (Opir)<sup>27</sup> which already (as a matter of principle) refuses to surrender requested persons to the Kingdom of Fortis<sup>28</sup>.

**Q2: 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)?**

11. First of all, EAW FD is known as the ‘cornerstone’ of judicial cooperation<sup>29</sup>, especially in light of Article 82 TFEU which provides that judicial cooperation in criminal matters in the EU should be based on the principles of mutual recognition and trust<sup>30</sup>. EAW FD forms the basis of dialogue<sup>31</sup>. Thus cooperation between Member States should enable the enforcement of the sentence in the executing Member State in situation referred to in Article 4(6) of EAW FD, which is a concrete expression of mentioned mutual trust<sup>32</sup> – founded on the high level of confidence<sup>33</sup>. All aforementioned sets out the ‘essential rule’ on which judicial cooperation must be based<sup>34</sup>.
12. Secondly, it must be noticed that persistent breaches of Article 19 TEU and 47 of the Charter preclude the executing judicial authority from applying the automatic refusal of execution<sup>35</sup> based on an EAW issued by a Member State – without any concrete assessment of the actual risk of an impact on the substance of the fundamental right to a fair trial to which the person concerned is exposed. The exception arises only when it is confronted with a decision of the European Council establishing, under the conditions laid down in Article 7(2) TEU, a serious

<sup>22</sup> Moot Case, para. 1 pg. 4 of Bundle.

<sup>23</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 93, pg. 240 of Bundle.

<sup>24</sup> Case C-399/11, *Melloni*, para. 37, mentioned on pg. 239 of Bundle.

<sup>25</sup> Moot Case, para. 17A, pg. 7 of Bundle.

<sup>26</sup> Case C-579/15, *Poplawski I*, para. 23, pg. 248 of Bundle.

<sup>27</sup> Moot Case, para. 12, pg. 6 of Bundle.

<sup>28</sup> Case C-573/17, *Poplawski II*, para. 79, pg. 281 of Bundle.

<sup>29</sup> Framework Decision 2002/584, pg. 89 of Bundle.

<sup>30</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 14, pg. 208 of Bundle.

<sup>31</sup> Joined Cases C-562/21 and C-563/21, *X and Y*, para. 48, pg. 396 of Bundle.

<sup>32</sup> Opinion of AG Campos Sánchez-Bordona in Case C-573/17, *Poplawski II*, para. 100, pg. 264 of Bundle.

<sup>33</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 76, pg. 239 of Bundle.

<sup>34</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 99, pg. 216 of Bundle.

<sup>35</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, paras. 102-103, pg. 217 of Bundle.

and persistent breach by the issuing Member State of the principles laid down in Article 2 TEU, such as the rule of law<sup>36</sup>.

13. However in every other situation the executing authority has to apply the two-stage procedure (*vide: Aranyosi and Căldăraru*, C-404/15, par. 104). Firstly, judicial authority must evaluate – on the basis of material that is objective, reliable, specific and properly updated concerning the operation of the system of justice in the issuing Member State – whether there is a real risk connected with a lack of independence of courts<sup>37</sup>. Assessment should be carried out by analogy (*vide: Aranyosi and Căldăraru*, C-404/15, par. 88), but having regard to the standard guaranteed in Article 47 of the Charter<sup>38</sup>. Secondly, the authority should verify concretely and precisely the extent to which irregularities are likely to have an impact on the courts of Member State which have jurisdiction to prosecute the person accused, in light of that person’s personal situation as well as the nature of offence for which is being prosecuted and factual context in which EAW was issued<sup>39</sup>.
14. In the present case, the executing judicial authority did not establish any concrete or specific information indicating that Mx Von Boles would face such a real risk. The issuing Member State, Fortis, remains bound by the Charter, and general allegations concerning systemic deficiencies — even if supported by third-party reports — do not dispense with the duty to engage in mutual dialogue. The absence of individualised evidence undermines the justification for refusing surrender.
15. Procedure above excludes the possibility of applying the *Căldăraru* test without engaging authorities as it requires the provision of information by the issuing Member State pursuant to Article 15(2) of EAW FD<sup>40</sup>. It is relevant to prove that there are serious and verified grounds for considering that, in the event of a transfer to the country, the person concerned would be exposed to that risk<sup>41</sup>.
16. Furthermore, all above shall be applied with bearing in mind the necessity of dialogue between countries. Due to that dialogue authorities that issued EAW may submit information essential to exclude the existence of the risk of breach of Article 47 of the Charter (according to specific case and person)<sup>42</sup>. Moreover the executing authority cannot rely on just a statement that infringement is issued, there must always be carried out the second stage of procedure<sup>43</sup> – so containing dialogue.
17. Although, as CJEU stated<sup>44</sup>: *with a view to effective judicial cooperation in criminal matters, the issuing and executing judicial authorities must make full use of the instruments provided for, in particular in Article 8(1) and Article 15 of Framework Decision 2002/584, in order to foster mutual trust on the basis of that cooperation.*<sup>45</sup> – the mentioned judgement constitutes

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<sup>36</sup> Case C-216/18, LM, para. 72, pg. 297 of Bundle.

<sup>37</sup> Case C-216/18, LM, para. 61, pg. 295 of Bundle.

<sup>38</sup> Case C-216/18, LM, para. 62, pg. 295 of Bundle.

<sup>39</sup> Case C-216/18, LM, paras. 74-77, pg. 297 of Bundle.

<sup>40</sup> Case C-216/18, LM, para. 76, pg. 297 of Bundle.

<sup>41</sup> Case C-216/18, LM, para. 75, pg. 297 of Bundle; In the *LM* case the Court confirmed that the existence of systemic or generalised deficiencies in the judiciary of the issuing Member State does not, in itself, justify the refusal to execute an EAW. Rather, the executing authority must carry out a specific and individualised assessment to determine whether the person concerned runs a real risk of a breach of the right to a fair trial under Article 47 of the Charter.

<sup>42</sup> Case C-216/18, LM, para. 77, pg. 297 of Bundle.

<sup>43</sup> Joined Cases C-354/20 and C-412/20, L and P, para. 60, pg. 386 of Bundle.

<sup>44</sup> Joined Cases C-562/21 and C-563/21, X and Y, para. 49, pg. 396 of Bundle.

<sup>45</sup> Case C-571/17, Samet Ardic, para. 91, mentioned on pg. 306 of Bundle.

a clear and binding duty to cooperate. The executing judicial authority must have the ability to request any information it deems necessary from the issuing judicial authority<sup>46</sup>.

18. Moreover, in such case as the one being considered<sup>47</sup> the issuing authority should have the possibility to furnish assurance that in light of guarantees provided by the legal order – it acts independently in the execution of those of its responsibilities which are inherent in issuing EAW.<sup>48</sup>
19. Finally, in order to ensure that the functioning of the EAW is not paralyzed, the obligation of loyal cooperation set out in Article 4(3) TEU should underpin the dialogue between the issuing judicial authorities and the executing judicial authorities. The principle of loyal cooperation entails, in particular, that Member States mutually respect one another and provide reciprocal support in the performance of their tasks under the Treaties<sup>49</sup>.
20. Allowing executing authorities to bypass the obligation of judicial dialogue based on assumptions about the futility of cooperation would set a dangerous precedent. It would undermine the principle of mutual trust, which is the cornerstone of judicial cooperation in the EU, and open the door to arbitrary refusals of surrender. Such a practice would further fragment the EAW system, replacing the rule-based mechanism of coordinated justice with a patchwork of discretionary judgments. Upholding the obligation to engage under Article 15(2) EAW FD is not merely a procedural formality — it is a structural necessity for the survival of the EAW regime.
21. Even in situations in which there is a valid presumption that a State may be violating the rights enshrined in Article 47 of the Charter<sup>50</sup>, that State should have the opportunity to provide appropriate explanations and in any event, a State, including circumstances such as those described above, may not bypass the procedure of the second part of the *Căldăraru* test<sup>51</sup>.

## II: Questions regarding Mrs Yania Deformis

**Q1: 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?**

22. Firstly, the EU-Trots TCA's character as an association agreement and a self-standing legal framework under Article 217 TFEU must be emphasised. It recognises its Parties' respective autonomy, highlighting the Republic of Trots' character as an independent state<sup>52</sup>. Simultaneously, since coming into force, it subsists as an integral part of the community legal system. Thus, within the framework of that system, the Court has jurisdiction to give preliminary rulings<sup>53</sup>. That reason alone is sufficient enough to deem the pending question admissible.

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<sup>46</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 168 pg. 222 of Bundle.

<sup>47</sup> Moot Case, p. 4-10 of Bundle.

<sup>48</sup> Joined Cases C-354/20 and C-412/20, *L and P*, para. 47, pg. 385 of Bundle.

<sup>49</sup> Joined Cases C-562/21 and C-563/21, *X and Y*, para. 48, pg. 396 of Bundle.

<sup>50</sup> Moot Case, para. 10, pg. 5 of Bundle.

<sup>51</sup> Joined Cases C-354/20 and C-412/20, *L and P*, para. 60, pg. 387 of Bundle.

<sup>52</sup> EU-Trots TCA, Recitals (7), (19), pg. 12 of Bundle.

<sup>53</sup> Case 12/86, *Demirel*, Summary para. 1, pg. 166 of Bundle.

23. Having regard to Article 288 TFEU a directive as a source of secondary law is binding only upon the Member State to which it is addressed. According to Article 1(1) Directive 2010/64 in light of point 15 of its recitals – the rights provided in the aforementioned directive should apply to the execution of EAW<sup>54</sup> and the EAW only. With this in mind, EAW FD as well as Directive 2010/64/EU do not apply to proceedings issued by the third States<sup>55</sup>.
24. Consequently, the Directive does not formally extend to procedures under the EU-Trots TCA. The objectives of the Directive — ensuring effective communication and procedural fairness<sup>56</sup> — are fully achievable under the TCA without relying on EU secondary legislation<sup>57</sup>. Therefore, the application of Directive 2010/64 to this context is not only unnecessary, but legally unfounded.
25. Further, even if the aforementioned rights could be seen as expressing general procedural standards under EU law, the rights guaranteed under Articles 2(5) and 2(8) are already protected by Article 609(2) of the TCA, which reflects the shared commitment to fair trial standards between the Parties<sup>58</sup>.
26. Concluding, Pastor Deformis’ rights regarding interpretation arise from Article 609(2) of the EU-Trots TCA, not from Directive 2010/64 which applies only in proceedings between Member States<sup>59</sup>. Although even without applying the Directive, including its aforementioned Articles, the Respondent’s rights are protected on the grounds of binding legal instrument which is the EU-Trots TCA.

**Q2: 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?**

27. The answer to the first question is not in the affirmative, thus the answer to the second question can only be hypothetical<sup>60</sup>.
28. Even if Articles 2(5) and 2(8) of Directive 2010/64 were considered relevant to the surrender procedure under the EU-Trots TCA, these provisions do not fulfil the conditions required for direct effect established under the EU law. According to the Court’s settled case law a provision can have direct effect only if it is clear, precise, and unconditional<sup>61</sup>.
29. Firstly, one should notice that said provisions are not possible to be considered as clear. Both aforementioned Articles include general clauses which do not have their legal definitions and could be interpreted differently depending on circumstances. Thus, said provisions, not being clear, could not have the direct effect established by the EU law.

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<sup>54</sup> Directive 2010/64, pgs. 105,107 of Bundle.

<sup>55</sup> Opinion of AG Szpunar in Case C-202/24, Alchaster, para. 33, pg. 424.

<sup>56</sup> EU-Trots TCA recitals 23, pg. 12.

<sup>57</sup> Case 270/80, Polydor, para. 18-19, pg. 158 of Bundle.

<sup>58</sup> EU-Trots TCA recitals 23, pg. 12.

<sup>59</sup> Case C-216/14, Covaci, para. 36, pg. 203 of Bundle; read in light of Article 82(2) TFEU, it provides mutual trust only among Member States.

<sup>60</sup> Case C-83/91 Meilicke, para. 3 of Summary, pg. 179 of Bundle; there the Court stated that the decision to give a ruling on a hypothetical problem would be exceeding the limits of the function entrusted to it.

<sup>61</sup> Case 80/86, Nijmegen, para. 7, pg. 174 of Bundle.

30. Further, said Articles refer to rights to interpretation in a context that requires further national implementation<sup>62</sup> and discretion. For example, the Directive allows Member States to determine the practical arrangements for such rights, which by definition prevents these provisions from being fully precise and unconditional<sup>63</sup>. Thus, neither the second nor the third condition of the direct effect applies.

31. Therefore, even if these provisions were somehow applicable to the present case (which is impossible as the Republic of Trots is no longer a Member State<sup>64</sup>), they do not grant the individuals directly enforceable rights which could be relied on in national courts<sup>65</sup> as not one of the conditions of direct effect applies.

**Q3: 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?**

32. It is without a doubt that the legislative of the Republic of Trots is gradually preparing to withdraw from the Council of Europe and simultaneously from the ECHR, as the bill giving constitutional permission to do so is tabled, and has been for a few months now<sup>66</sup>.

33. However, the legislation process takes time and requires fulfilling a few orderly steps. As mentioned, the draft of the bill has not yet been adopted by the Parliament and even after such adoption – the process of withdrawal will need to be completed accordingly, as the bill only gives permission to do so and not accomplishes the process itself.

34. Therefore the Applicant argues that it is highly probable that Pastor Deformis' trial will have finished by the moment the withdrawal process is completed and thus her rights derived from the ECHR would not be in any way in danger and she could rely on them.

35. Simultaneously, even if the Respondent's trial and the moment of withdrawal from the Council of Europe overlap, the Republic of Trots is already making preparations to adopt its own internal Bill of Rights<sup>67</sup>, which will provide legal, national grounds for protecting Pastor's rights. Furthermore, according to Article 692(3) EU-Trots TCA, if a Party gives notice of termination under said Article, a Specialised Committee mentioned therein is obliged to meet to decide on all the measures needed to ensure that any cooperation initiated under this Part [Four] is concluded in an appropriate manner<sup>68</sup>. Having established all that, under no circumstances is it possible that Pastor's rights would not be protected by binding law and other appropriate measures.

36. Furthermore, the "threat" of withdrawal from the Council of Europe does not in itself serve as a sufficient ground to justify the non-execution of the arrest warrant issued against the Respondent.

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<sup>62</sup> Case C-573/17, Poplawski II, para. 64, pg. 279 of Bundle.

<sup>63</sup> Case C-387/19, RTS infra BVBA, para. 64, pg. 351 of Bundle.

<sup>64</sup> Moot Case, para. 4, pg. 4 of Bundle.

<sup>65</sup> Case 80/86, Nijmegen, para. 7, pg. 174 of Bundle.

<sup>66</sup> Moot Case, para. 13, pg. 6 of Bundle.

<sup>67</sup> Moot Case, para. 13, pg. 6 of Bundle.

<sup>68</sup> EU-Trots TCA, pg. 20 of Bundle.

37. The executing judicial authority should apply, *mutatis mutandis*, the two-stage test established in CJEU's jurisprudence [case of *Aranyosi*]<sup>69</sup>.
38. Firstly, the court must determine whether there is a real risk of systemic or generalised deficiencies in the protection of fundamental rights in the issuing state. However, it must be borne in mind that the risk of bad treatment by virtue of general conditions of detention cannot lead in itself to the refusal to execute an arrest warrant<sup>70</sup>.
39. Secondly, the executing judicial authority should request the necessary information, which would then be provided, and make a further, specific and precise assessment on the grounds of it – regarding real and individualised risk regarding breach of Pastor Deformis' rights. Such assessment has not been made regarding the Respondent's situation, thus there are no grounds for assuming that the Respondent's individual rights would be in any way in breach<sup>71</sup>.
40. Additionally, as human rights grounds are not mentioned in neither mandatory nor optional grounds for non-execution of a warrant<sup>72</sup>, such a situation is considered an exception and therefore must be interpreted strictly<sup>73</sup>. Present circumstances do not fall into the scope of such exception and therefore do not justify a potential use of it, especially bearing in mind that Gléck's judicial system under circumstances concerning Pastor Deformis forbids its authorities to trial her on their grounds<sup>74</sup>, so non-execution of the warrant would lead to her complete impunity.
41. Having established all of the aforementioned information, the Republic of Trots' withdrawal from the Council of Europe does not in any way constitute a ground for non-execution of an arrest warrant and consequently the Respondent should be surrendered to the Republic of Trots to undergo a trial.

**Q4: 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?**

42. The EU-Trots TCA does recognise the autonomy of its Parties, while also referring to Trots' obligations under international law<sup>75</sup>.
43. It is without a doubt, as stemming from CJEU case-law, that Article 524(2)<sup>76</sup> imposes an obligation to comply with the Charter and its provisions when it comes to deciding if a person should be surrendered under an AW<sup>77</sup>. Simultaneously it does not equal a preclusion to surrender the Respondent to the Republic of Trots.

<sup>69</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, paras. 88-98, pgs. 239-241 of Bundle.

<sup>70</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 91, pg. 240 of Bundle.

<sup>71</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 94, pg. 240 of Bundle.

<sup>72</sup> EU-Trots TCA, Articles 600 and 601, pg. 16 of Bundle.

<sup>73</sup> Case C-128/18, *Dorobantu*, para. 48, pg. 324 of Bundle.

<sup>74</sup> Moot Case, para. 19(B), pg. 8 of Bundle.

<sup>75</sup> EU-Trots TCA, Recitals (7) and (19), pg. 11-12 of Bundle.

<sup>76</sup> Article 524(2) of the EU-Trots TCA corresponds to the Article the Court referred to, even regarding its number, hence the quote is literal and applies to the pending case.

<sup>77</sup> Case C-202/24, *Alchaster*, para. 49, pg. 446 of Bundle.



44. The executing judicial authority, in situation such as the one in the relevant case, must assess the risk of Pastor Deformis or her child suffering a breach of their fundamental rights<sup>78</sup>. The assessment constitutes of a two-step test<sup>79</sup>, consisting of obtaining evidence of systemic or generalised deficiencies in the issuing state, and further, if such evidence exists, ascertaining specifically and precisely, whether there are substantial grounds for believing that the persons concerned will run a risk on account of those conditions<sup>80</sup>.
45. National authorities remain competent to implement social and family measures that preserve the child's interests. As such, the threshold under Articles 7 and 24 is not met under these circumstances. Consequently, there is no proof advocating for the fact that the Respondent's rights, or the rights of her child, would be in breach, if surrendered.
46. Furthermore, the provision from Article 24(3) of the Charter<sup>81</sup> does need to be taken into consideration explicitly, as it relates to the best interest of the child in the context of maintaining personal relationship and direct contact with both his parents. However, it does not necessarily preclude the surrender of Pastor Deformis as mother of Xela. The best interest of the boy must be taken into account on the grounds of the case's specific circumstances. Both his parents are subjects of two separate arrest warrants issued by two respective countries<sup>82</sup> and it needs to be taken into consideration, whether remaining a personal relationship with both of them on a regular basis does, in fact, lay in his best interest. Furthermore there is nothing to indicate that the competent authorities in Trots would be unable to ensure adequate care for the boy. In the absence of such concrete risk, there is no justification for refusing surrender on the basis of the child's rights.
47. Lastly, refusal to surrender a person is an exception to the general principle of cooperation established between EU-Trots TCA Parties<sup>83</sup>. Thus, it should be interpreted strictly<sup>84</sup>. Generally, even while reading Article 524(2) in the light of the Charter, said provision must be interpreted as precluding the executing judicial authority from refusing to surrender the person, unless the two-step test conducted by said authority demonstrates a real risk of that person's and that person's child's rights<sup>85</sup>. The burden of proof in the aforementioned CJEU's conclusion establishes that it lies within the obligation of Gléck's authorities to conduct the relevant test and provide with all the grounds justifying the use of the addressed exception. According to the Applicant in the pending case there are no grounds for the use of said exception and therefore there is no reason why the arrest warrant should not be executed and why Pastor Deformis should not be surrendered to the Republic of Trots.

**Q5: Would the decision to surrender Pastor Deformis be compatible with the principle of proportionality as per Article 597 EU-Trots TCA?**

48. Article 597 EU-Trots TCA must be interpreted in light of Article 524(2) therein. It means that EU-Trots TCA is applicable without prejudice to Charter and ECHR<sup>86</sup>. Due to that fact, executing arrest warrant on grounds of EU-Trots TCA must be in compliance with Article 52

<sup>78</sup> Case C-261/22, GN, paras. 43-44., mentioned on pg. 435 of Bundle.

<sup>79</sup> *per analogiam*: Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, paras. 88-98, pgs. 239-241 of Bundle.

<sup>80</sup> Case C-261/22, GN, paras. 45-48., mentioned on pg. 435 of Bundle.

<sup>81</sup> Charter of Fundamental Rights of the European Union, Article 7, p. 65 of Bundle.

<sup>82</sup> Moot Case, paras. 3 and 7, pgs. 4-5 of Bundle.

<sup>83</sup> EU-Trots TCA, Recitals (23), pg. 12 of Bundle.

<sup>84</sup> Case C-128/18, Dorobantu, para. 48, pg. 324 of Bundle.

<sup>85</sup> Case C-261/22, GN, para. 57, mentioned on pg. 435 of Bundle.

<sup>86</sup> EU-Trots TCA, pgs. 11-21 of Bundle.

of the Charter. Aforementioned Article provides that any limitations to the exercise of fundamental right recognised therein must be provided by law and must respect the essence of rights and freedoms as well as the principles of necessity and proportionality<sup>87</sup>.

49. In accordance with Article 52(1) of the Charter, the proportionality of any measure affecting fundamental rights must be assessed on three levels: whether it pursues a legitimate aim, whether it is necessary to achieve that aim, and whether the interference with rights is proportionate in a strict sense. In this case, the legitimate aim of securing justice in serious criminal matters is especially evident.
50. Application of the principle of proportionality further necessitates *inter alia* weighing up the rights of the surrendered person against requirements of the protection of the rights and freedoms of others<sup>88</sup>. In spite of the fact that the right derived from Article 4 of the Charter is absolute and non-derogable, the principle of proportionality raises the question of the need to safeguard national security and public order<sup>89</sup>.
51. According to the pending case, bearing in mind the recitals of the EU-Trots TCA<sup>90</sup> and the fact that Pastor Deformis in accordance with Article 16 of Directive 2004/38 benefits from the permanent right to reside in the Federal Republic of Gléck<sup>91</sup> it should be noted that in light of point 22 of recitals of aforementioned directive, Gléck (as a Member State) has the right to place restrictions on the right of free movement and residence on grounds of public policy, public security or health<sup>92</sup>.
52. Moreover, Article 27(2) therein states that measures taken on the grounds of public security in this case shall comply with the principle of proportionality. Consequently, having regard to the weight of the offences committed by Pastor Deformis, their significant degree and social harm, there is imposed a duty on Federal Republic of Gléck to prevent impunity<sup>93</sup>.
53. Finally, the Federal Republic of Gléck by allowing Pastor Deformis to remain on the territory of Gléck would be in breach of Directive 2004/38, as a result – causing impunity for her actions. Such an outcome would be incompatible with both the principle of necessity and the principle of proportionality, particularly in the context of safeguarding victims and ensuring the public safety of the inhabitants of Gléck.
54. That is why the surrender of Pastor Deformis is not only compatible with the principle of proportionality, but constitutes a necessity on the grounds of such principle. Thus, surrender is the only effective and appropriate mean to ensure prosecution in the requesting state, as no evidence has been presented suggesting that a less intrusive measure would achieve the same result. Therefore, while the surrender may affect private or family life, it does not go beyond what is necessary in a democratic society.

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<sup>87</sup> Commission Recommendation 2023/681, para. 1, pg. 130 of Bundle.

<sup>88</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, para. 135, s.220 of Bundle.

<sup>89</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, para. 135, s.220 of Bundle.

<sup>90</sup> EU-Trots TCA, Recitals (7), (23), pg. 11-12 of Bundle and Case C-202/24, Alchaster, para. 40 pg. 445 of Bundle.

<sup>91</sup> Moot Case, para. 5, pg. 5 of Bundle.

<sup>92</sup> Directive 2004/38, Recitals (22), pg. 113 of Bundle.

<sup>93</sup> Joined Cases C-354/20 and C-412/20, L and P, para. 64, pg. 387 of Bundle.