

# **WRITTEN PLEADINGS FOR THE RESPONDENTS**

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>
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**Index of cases abbreviations - CJEU case-law  
and AGs' opinions:**

- <b>Judgement in Case 270/80 Polydor Limited and RSO Records Inc. v Harlequin Records Shops Limited and Simons Records Limited</b>	- <b>Case 270/80, Polydor</b>
- <b>Judgement in Case 8/81 Ursula Becker v Finanzamt Münster-Innenstadt</b>	- <b>Case 8/81, Becker</b>
- <b>Judgment in Case 14/83 Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen</b>	- <b>Case 14/83, von Colson</b>
- <b>Judgment in Case 12/86 Meryem Demirel v Stadt Schwäbisch Gmünd</b>	- <b>Case 12/86, Demirel</b>
- <b>Judgment in Case 106/89 Marleasing SA v La Comercial Internacional de Alimentacion SA</b>	- <b>Case 106/89, Marleasing</b>
- <b>Judgement in Joined Cases C-6/90 and C-9/90 Andrea Francovich and Danila Bonifaci and others v Italian Republic</b>	- <b>Joined Cases C-6/90 and C-9/90, Francovich and Bonifaci</b>
- <b>Judgement in Case C-292/97 Kjell Karlsson and Others</b>	- <b>Case C-292/97, Karlsson</b>
- <b>Judgment in Case C-105/03 Criminal proceedings against Maria Pupino (Grand Chamber)</b>	- <b>Case C-105/03, Pupino</b>
- <b>Judgment in Case C-409/06 Winner Wetten GmbH v Mayor of Bergheim (Grand Chamber)</b>	- <b>Case C-409/06 Winner Wetten</b>
- <b>Judgement in Case C-399/11 Criminal proceedings against Stefano Melloni (Grand Chamber)</b>	- <b>Case C-399/11, Melloni</b>
- <b>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)</b>	- <b>Opinion 2/13, EU accession to the ECHR</b>
- <b>Judgement in Case C-554/14 Criminal proceedings against Atanas Ognyanov (Grand Chamber)</b>	- <b>Case C-554/14, Ognyanov</b>
- <b>Judgment in Joined Cases C-404/15 and C-659/15 PPU Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen (Grand Chamber)</b>	- <b>Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru</b>

- <b>Opinion of AG Bot in Joined Cases C-404/15 and C-659/15 PPU Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen</b>	- <b>Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru</b>
- <b>Judgment in Case C-579/15 Poplawski I</b>	- <b>Case C-579/15, Poplawski I</b>
- <b>Judgment in Case C-573/17 Poplawski II (Grand Chamber)</b>	- <b>Case C-573/17, Poplawski II</b>
- <b>Opinion of AG Campos Sánchez-Bordona in Case C-573/17 Poplawski II</b>	- <b>Opinion of AG Campos Sánchez-Bordona in Case C-573/17, Poplawski II</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-327/18 PPU RO (First Chamber)</b>	- <b>Case C-327/18, RO</b>
- <b>Judgment in Case C-128/18 Dorobantu (Grand Chamber)</b>	- <b>Case C-128/18, Dorobantu</b>
- <b>Judgement in Case 564/19 IS (Grand Chamber)</b>	- <b>Case C-564/19, IS</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 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-242/22 PPU TL (First Chamber)</b>	- <b>Case C-242/22, TL</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 Sejdivic v. Italy (Application no. 56581/00) (Grand Chamber)</b>	- <b>Sejdivic 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. First question essentially concerns the determination of the consequences that flow from the direct application of provision of the EU law in absence of the implementation of that provision in a subsequent act of national law transposing the provisions of the EU law into national order.
2. There seem to be several rules in EU law to bear in mind. Having regard to the rule of primacy of the EU law<sup>1</sup>, the principle of direct effect<sup>2</sup> or principle of indemnification<sup>3</sup>, one should consequently take into consideration the principle of pro-EU interpretation of national law, which means that national law must be interpreted in conformity with EU law, as far as possible to ensure the full effectiveness of EU law<sup>4</sup>.
3. Initially, the obligation to interpret in light of the EU law was shaped in relation to directives<sup>5</sup>. It means that Member States' obligation arising from a directive is to achieve a result and ensure the fulfilment of obligation<sup>6</sup>. Finally – *a national court called upon to interpret a directive is required to do so, as far as possible, in light of the wording and purpose of it in order to achieve the result (Marleasing, C-106/89)*.
4. An important milestone in the development of the principle mentioned hereinbefore was the judgement of CJEU *Pupino* (C-105/03), in which CJEU confirmed the duty of conforming interpretation in relation to framework decisions issued under (former) III pillar of EU<sup>7</sup>.
5. Following the *Pupino* case, the Court reaffirmed that, in order to ensure the *effet utile*<sup>8</sup> of a framework decision, an individual must be granted the right to refer to such decisions before national courts in order to obtain a compatible interpretation<sup>9</sup>.
6. Therefore, in order to achieve the result sought by the Framework Decision, the referring court, when applying national law, is obliged to interpret that law as far as possible in the light of the wording and objectives of that Framework Decision<sup>10</sup>. As a conclusion, that means that EAW FD *must be interpreted in such a way that fundamental rights, including in particular the right to a fair trial as set out in Article 6 of the Convention and interpreted by the European Court of Human Rights, are respected*<sup>11</sup>. Because of that EAW FD cannot have the effect of modifying the obligation to respect human rights<sup>12</sup>.

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<sup>1</sup> Case C-573/17, Poplawski II, para. 53, pg. 278 of Bundle.

<sup>2</sup> Case C-406/06, Winner Wetten, para. 55, mentioned on pg. 279 of Bundle.

<sup>3</sup> Case C-6/90, Francovich para. 33, mentioned on pg. 278 of Bundle.

<sup>4</sup> Case C-554/14, Ognyanov, para. 59, mentioned on pg. 278 of Bundle.

<sup>5</sup> Case C-14/83, Von Colson, para. 26, pg. 164 of Bundle.

<sup>6</sup> Case C-106/89, Marleasing, para. 8, pg. 177 of Bundle.

<sup>7</sup> Case C-105/03, Pupino, para. 34, pg. 192 of Bundle.

<sup>8</sup> *Effet utile* – according to the principle of effectiveness of EU law.

<sup>9</sup> Case C-105/03, Pupino, para 38, pg. 193 of Bundle.

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

<sup>11</sup> Case C-105/03, Pupino, pkt 59, pg. 195 of Bundle.

<sup>12</sup> Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, para. 83, pg. 239 of Bundle.

7. Firstly, a confirmation of the obligation previously indicated must be constituted. In light of the foregoing, Member States should respect fundamental rights and fundamental legal principles as Article 4 of Charter is binding upon the Member States and consequently their courts. This right is absolute, which was also confirmed by Article 3 ECHR<sup>13</sup>. Having regard to aforementioned, Article 52(3) of the Charter states that, in so far as that Charter contains rights which correspond to rights guaranteed by the ECHR<sup>14</sup>, the meaning and scope of those rights must be the same as those laid down by the ECHR<sup>15</sup>.
8. According to the Court's established case law, particularly in *Aranyosi* (C-404/15) and *LM* (C-216/18), executing judicial authority may refuse surrender only when two cumulative conditions are met. First, there must be objective, reliable, and properly updated evidence of systemic or generalised deficiencies in the issuing Member State's judicial system. Second, there must be a real and individualised risk that the person concerned — in this case Mx Boles — would be affected by those deficiencies, for example by being denied access to a fair trial. This two-step test strikes a balance between protecting fundamental rights and preserving mutual trust in the European system of judicial cooperation.
9. Secondly, if the authority, being aware, possesses data indicating a real danger arising from the violation of Article 4 of the Charter<sup>16</sup>, it is obliged to further assess that danger<sup>17</sup>. After conducting an appropriate analysis of the situation (the *Căldăraru* test), taking into account the necessity of assessing the individual characteristics<sup>18</sup> of the person subject to surrender, the authority shall issue the EAW – however, its execution must not lead to inhuman or degrading treatment<sup>19</sup>.
10. Thirdly, the authority executing the EAW pursuant to Article 1(3) of the EAW FD, in accordance to CJEU established case law<sup>20</sup>, may refuse to surrender the person to issuing state on the grounds that such surrender would entail a risk of violating Article 47 of the Charter – the right to an independent court<sup>21</sup>.
11. Considering that, in the present case, the state of Fortis remains engaged in judicial reforms which nature has been found to be incompatible with Article 19 TEU (in light of Article 2 TEU)<sup>22</sup>, and which have been the subject of prior proceedings before CJEU that concluded with a finding of violation, it must be recognized that the competent authority has sufficient grounds to determine that there is a risk of irregularities regarding the independence of the courts<sup>23</sup>, which may affect the proper functioning of the state's courts in conducting proceedings against the prosecuted person<sup>24</sup>.
12. Taking the foregoing into account, the answer to Question No. 1 should be formulated as follows: In the absence of direct transposition of the norm set forth in Article 1(3) of the

<sup>13</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 84-87, pg. 239-240 of Bundle.

<sup>14</sup> Case C-242/22, TL, para 39, pg. 412 of Bundle.

<sup>15</sup> *vide*: *Muršić v. Croatia* (7334/13), mentioned on pg. 305 of Bundle.

<sup>16</sup> Case C-399/11, *Melloni*, para. 53, mentioned on pg. 240 of Bundle.

<sup>17</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 88, pg. 240 of Bundle.

<sup>18</sup> According to Commission Recommendation (EU) 2023/681 para. 22, pg. 132 of Bundle; Mx Theo Von Boles is a part of LGBTQ+ community and a foreign national, which equals the necessity of setting key standards in aforementioned areas.

<sup>19</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 88, pg. 240 of Bundle.

<sup>20</sup> Case C-216/18, *LM*, para. 47, pg. 294 of Bundle.

<sup>21</sup> Case C-216/18, *LM*, para. 59-60, pg. 295 of Bundle.

<sup>22</sup> *Moot Case*, para. 10, pg. 5 of Bundle.

<sup>23</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 89, pg. 240 of Bundle.

<sup>24</sup> Case C-216/18, *LM*, para. 74-75, pg. 297 of Bundle.



Framework Decision (which provisions do not have direct effect), the authority of the Member State is obliged to apply the transposed provisions of national law to the greatest possible extent in light of the entirety of the EAW FD provisions. Moreover, in the event of “exceptional circumstances” that give rise to an actual violation of the fundamental rights of the person concerned, the authority may refuse extradition on the grounds of human rights violations and limit the principle of mutual recognition and trust between Member States<sup>25</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)?**

13. Firstly, it must be noted that the principle of mutual trust is not absolute<sup>26</sup>. It arises from the fact that the principle mentioned therein could be rebutted in ‘exceptional circumstances’<sup>27</sup> in order to guarantee fundamental rights protection<sup>28</sup>.
14. Secondly, according to the right to a fair trial in criminal matters it has the same meaning and scope in both ECHR (Article 6) and the Charter (Articles 47 and 48). It must be pointed out that ECHR constitutes the minimum standard, but the Charter can offer a higher level of protection (but never lower)<sup>29</sup>. Having regard to that fact, the Commission Recommendation 2023/681<sup>30</sup> promotes the right to a fair trial<sup>31</sup> and recalls the established rules, which set that ‘minimum standards’. Moreover, principles mentioned therein should be considered in light of, and without prejudice to the more detailed guarantees of the case law of ECtHR<sup>32</sup>.
15. Thirdly, according to the principle of mutual trust and especially mutual recognition, it always must be verified whether the aforementioned principle is not applied automatically and mechanically. One should exclude that the application of the principle would result in a violation of fundamental rights<sup>33</sup>. As a conclusion, mutual trust does not mean ‘blind’ trust<sup>34</sup>.
16. Executing authority always have to ensure that the issuing authority meet the requirements inherent in effective judicial protection, especially independence<sup>35</sup>, so that entire procedure provided by EAW FD will be carried out under judicial supervision<sup>36</sup>.
17. Moreover, in a situation such as the one described in the present question, any conduct on the part of the issuing judicial authority which indicates a lack of loyal cooperation may be

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<sup>25</sup> Opinion 2/13, EU accession to the ECHR, para. 191., mentioned on pg. 218 of Bundle.

<sup>26</sup> Opinion of AG Szpunar in Case C-202/24, Alchaster, para. 38, pg. 425 of Bundle.

<sup>27</sup> Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, para. 82, pg. 239 of Bundle.

<sup>28</sup> Opinion 2/13, EU accession to the ECHR, paras. 168-192., mentioned on pg. 218 of Bundle.

<sup>29</sup> Commission Recommendation (EU) 2023/681, pg. 132-133 of Bundle.

<sup>30</sup> Commission Recommendation (EU) 2023/681, pg. 132 of Bundle.

<sup>31</sup> Commission Recommendation (EU) 2023/681, pg. 133 (para. 33) of Bundle.

<sup>32</sup> Commission Recommendation (EU) 2023/681, pg. 133 (para. 31) of Bundle.

<sup>33</sup> Bivolaru and Moldovan v. France (40324/16 and 21623/17) and further cases mentioned there, including Michaud v. France (12323/11); mentioned on pg. 140 of Bundle.

<sup>34</sup> Opinion of AG Szpunar in Case C-202/24, Alchaster, para. 38, pg. 425 of Bundle.

<sup>35</sup> Case C-573/17, Poplawski II, para. 96, pg. 283 of Bundle.

<sup>36</sup> Case C-216/18, LM, para. 56, pg. 295 of Bundle.

regarded by the executing authority as a relevant factor in the assessment of the degree and nature of the potential breach of the fundamental right enshrined in Article 47 of the Charter<sup>37</sup>. Additionally, when the issuing authority has provided information, but the executing authority has not excluded the existence of a real risk of breach of the fundamental right to a fair trial, the executing authority must refrain from executing the warrant<sup>38</sup>.

18. Finally, according to Article 1(3) EAW FD, the executing authority must make sure that the fundamental rights enshrined in Article 6 TEU are respected. Executing authority must not ‘assume’ that the issuing State fully respects individuals’ rights. Without that affirmation, the authority is not entitled to surrender a person [*vide: Căldăraru*], moreover the objectives of the issuance may not be outweighed by considerations relating to the effectiveness of judicial cooperation in criminal matters, nor by the principles of mutual trust and mutual recognition<sup>39</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?**

19. Firstly, it should be noticed that Directive 2010/64 as a source of law based on Article 288 TFEU is binding upon Member States only. Due to that fact, its provisions are not applicable to the Republic of Trots and the surrender procedure established under the EU-Trots TCA<sup>40</sup>.
20. Although, to ensure the respect of the Respondent’s rights, a broader perspective should be taken, bearing in mind the principle of effectiveness of human rights and the system as a whole<sup>41</sup> – as human rights are designed to be “practical and effective”, and not “theoretical or illusory”<sup>42</sup>.
21. According to the Recitals of Directive 2010/64, the Directive sets out only minimum rules. Simultaneously the level of protection should never fall below the standards provided by the ECHR<sup>43</sup> or the Charter<sup>44</sup>. Thus, the universal standards are provided by the aforementioned systems and their legal provisions. Being supranational, and according to the fact that the Republic of Trots still persists as a member of Council of Europe, relevant provisions should apply to Pastor Deformis’ case.
22. Simultaneously, Article 524(2)<sup>45</sup> of the EU-Trots TCA reiterates the notwithstanding obligation to respect fundamental human rights and legal principles, especially the ones included in the ECHR and the Charter<sup>46</sup>. Concluding, at the present time, regarding Pastor’s

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<sup>37</sup> Joined Cases C-562/21 and C-563/21, X and Y, para. 85, pg. 401 of Bundle.

<sup>38</sup> Case C-216/18, LM, para. 78, pg. 297 of Bundle.

<sup>39</sup> Case C-128/18, Dorobantu, para. 85, pg. 330 of Bundle.

<sup>40</sup> Opinion of AG Bot in Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, para. 9 *in fine*, pg. 208 of Bundle.

<sup>41</sup> Case 270/80, Polydor, para. 18-19, pg. 158 of Bundle.

<sup>42</sup> See: example of establishing that principle: Sejdic v. Italy (56581/00) para. 94 and further cases mentioned there.

<sup>43</sup> See: example of the Convention standards regarding art. 6 and the rights of the defendant - *vide: Sejdic v. Italy* (56581/00), mentioned on pg. 372 of Bundle.

<sup>44</sup> Directive 2010/64, Recitals (32), pg. 107 of Bundle.

<sup>45</sup> Further: see the answer to question 4.

<sup>46</sup> Case C-202/24, Alchaster, para. 49, pg. 446 of Bundle.

situation - the surrender procedure established by the EU-Trots TCA, both ECHR and the Charter's provisions apply.

23. Notwithstanding the literal wording of rights established by Directive 2010/64, which do not apply here, the Respondents' rights are protected by both these international human rights acts. Thus, the standards regarding her situation should never fall below those established by the Court or by the ECtHR<sup>47</sup>. It must also be borne in mind that those rights correspond to one another<sup>48</sup>.
24. Furthermore, her right to interpretation, arising from her disability - being deaf - and not being fluent in Gléck, stems directly from Article 609(2) of the EU-Trots TCA. It forms a part of a general principle, which is a right to a fair trial<sup>49</sup>. Said Article therefore must be construed in light of the Charter and the ECHR, especially bearing in mind the broad meaning of effectiveness of the system<sup>50</sup>.
25. In accordance with Article 52(3) of the Charter, when certain provisions are mentioned in the Charter and correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are the same as those laid down in the ECHR<sup>51</sup>. Here the rights in question concern both sufficient quality of interpretation<sup>52</sup> and a right to challenge decisions regarding interpretation. Consequently, the relevant provisions are included in the general meaning of, respectively: Article 47(1) of the Charter and Article 13, 6(1) of the ECHR, and Article 48 of the Charter and 6(2), 6(3) of the ECHR<sup>53</sup>. Hence, the right established generally in aforementioned Article 609(2) requires further clarifications stemming from, and interpretation in light of, the relevant ECHR and Charter provisions<sup>54</sup>.
26. Concluding, even in a situation such as this, when provisions of a directive do not apply, bearing in mind the principle of effectiveness of human rights, one shall derive the rights in question from other binding international acts and instruments to ensure their preservation. It should be further underlined that Pastor Deformis is deaf and does not understand the language of the Gléck<sup>55</sup>, which makes accurate interpretation essential to safeguard her right to effective participation in the proceedings. Any failure to provide such interpretation would violate her rights under Article 609(2) TCA, Articles 47 and 48 of the Charter, and Article 6 ECHR, as it would prevent her from understanding the charges and defending herself effectively, rendering the surrender unlawful.

**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. Having established that the Directive 2010/64, or any other directive, is not applicable to the surrender procedure under the EU-Trots TCA, there is no point examining whether aforementioned Articles lay down directly effective rights under the EU law that could be

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<sup>47</sup> Directive 2010/64, Recitals (33), pg. 107 of Bundle. One must bear in mind that those rights correspond to each other.

<sup>48</sup> Directive 2010/64, Recitals (33), pg. 107 of Bundle.

<sup>49</sup> Case C-242/22, TL, para 82 *in fine*, pg. 418 of Bundle.

<sup>50</sup> Opinion of AG Szpunar in Case C-202/24, Alchaster, para. 35, pg. 424 of Bundle.

<sup>51</sup> Explanation on Article 52 of the Charter, pg. 83 of Bundle.

<sup>52</sup> Case C-564/19, IS; para. 114, pg. 371 of Bundle; Inadequate (insufficient) interpretation may also entail an infringement of the rights of the defence.

<sup>53</sup> Case C-242/22, TL, para. 39, pg. 412 of Bundle; and Case C-564/19, IS, para. 101, pg. 370 of Bundle.

<sup>54</sup> Case C-242/22, TL, para. 40-42, pg. 413 of Bundle.

<sup>55</sup> Moot Case, para. 5, pg. 5 of Bundle.

relied on by the Respondent in national courts.

28. However, under the EU law (which *in genere* do not apply to the procedure under EU-Trots TCA), said provisions could be found as having direct effect (similarly to other provisions of said Directive which have already been established as having such effect<sup>56</sup>), being worded in a clear, precise and unconditional manner. This reinforces the importance of those rights as minimum standards of protection which are also reflected in Article 609(2) TCA, the Charter, and the ECHR<sup>57</sup>.
29. Thus, the broader perspective should be taken – to emphasise not the literal wording of the provisions in question, but their essence. Consequently it needs to be highlighted how important it is for the Respondent to be able to rely on the international human rights standards<sup>58</sup> regarding the right to sufficient interpretation and simultaneously – how dangerous it is for her to be deprived of such ability because of the Trots’ approximate withdrawal from the ECHR and its further, unavoidable consequences.

**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?**

30. Firstly, it ought to be pointed out, that the withdrawal from the Council of Europe is not a mere “threat” and consequently the termination of Part Four of the EU-Trots TCA is not only “possible”, but considered *fait accompli*<sup>59</sup>. The Trots’ government already has prepared a draft of a bill, which, if adopted, gives constitutionally required permission to withdraw from the ECHR. Simultaneously, the Party that opts for the withdrawal has a large majority in the Parliament, hence it is much more than highly probable that said withdrawal will happen in the nearest future.
31. As mentioned, in such circumstances, the termination of Part Four of the EU-Trots TCA is not only “possible” but simply will happen in accordance with Article 692(2) of said agreement. Therein it is explicitly stated that “this Part [Four] shall cease to be in force as of the date that such denunciation [of the ECHR or Protocols thereto] becomes effective”<sup>60</sup>. Having established that, it remains without a doubt that the Trots’ withdrawal from the ECHR will simply equal the termination of Part Four of the EU-Trots TCA as well.
32. Furthermore, as the Republic of Trots ceased to be a Member State of the EU in 2021<sup>61</sup>, the principles of mutual trust and mutual recognition are no longer applicable<sup>62</sup> to the country’s relation with the EU. Having established that, the Respondent has no grounds to presume the issuing party provides, or will provide, sufficient human rights standards if she was to be surrendered, and all of the available evidence advocate for quite the opposite facts<sup>63</sup>.

<sup>56</sup> Case C-242/22, TL, para. 48, pg. 413-414 of Bundle.

<sup>57</sup> Case 8/81, Becker, mentioned on pg. 174 of Bundle.

<sup>58</sup> Further explained in the previous question.

<sup>59</sup> Moot Case, para. 13, pg. 6 of Bundle.

<sup>60</sup> EU-Trots TCA art. 692(2), pg. 20 of Bundle.

<sup>61</sup> EU-Trots TCA, Recitals (19), pg. 12 of Bundle.

<sup>62</sup> Case C-327/18, RO, para. 45, pg. 338 of Bundle.

<sup>63</sup> The Republic of Trots has repeatedly been found in violation of the ECHR, and its imminent withdrawal from the Council of Europe reinforces the risk of institutional collapse in fundamental rights protection. Given Pastor Deformis’s disability and vulnerability, there is a concrete risk of inhuman or degrading treatment, justifying non-execution of the arrest warrant under this established standard.

33. Moreover, despite the similarities to the EAW FD, the extradition mechanism under EU-Trots TCA should be read independently and the principles established in relation to the former procedure should not be automatically applicable to the Respondent's situation.
34. It needs to be pointed out that after Trots' withdrawal from the EU, they began pursuing large-scale deregulations. Consequently, the ECtHR found them, multiple times, to be in breach of the Convention regarding rights of prisoners. The CPT reported that inmates in prisons all around Trots were subjected to inhumane treatment and conditions were not satisfactory, in particular for disabled persons<sup>64</sup>, and the Respondent is indeed a person with disability.
35. Having mentioned that, it ought to be emphasised that at the present times, when the ECHR subsists in force regarding the Republic of Trots, the country already persists to be in breach of its provisions. The Respondent fears the circumstances that will undoubtedly arise when the Convention ceases to be applicable and when international bodies will not be able to protect her inherent rights. There will be no international mechanism nor body capable of ruling in her favour, nor changing her situation, thus the lowering of the rule of law standards is, in fact, imminent<sup>65</sup>.
36. The Respondent further reasons, contrary to the factual state in *RO* judgement<sup>66</sup>, that in the present case Trots' withdrawal from the EU is inextricably linked to being a State-Party to the ECHR. The risk of Pastor Deformis suffering inhuman or degrading treatment is highly realistic, as there will be no international provision protecting her from such treatment. Neither Article 4 of the Charter, nor corresponding Article 3 of the ECHR will be applicable. The evidence for that is indisputable<sup>67</sup>.
37. Thus, the threat of absence of any objective, international mechanisms, protecting the Respondent's rights justifies non-execution of the arrest warrant issued against her, as the consequence of execution of such a warrant must not be that the individual suffers inhuman or degrading treatment<sup>68</sup>. Pastor Deformis should definitely not be surrendered.

**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?**

38. The EU-Trots TCA is an association agreement on the grounds of Article 217 TFEU, recognising the respective autonomy of its Parties. Simultaneously it is said to be a part of the European Union's *acquis*<sup>69</sup>. While it accentuates the independence of the Republic of Trots as a state, it also resorts to Trots' obligations under international law<sup>70</sup>.

<sup>64</sup> Moot Case, para. 13, pg. 6 of Bundle.

<sup>65</sup> For: Commission Recommendation 2023/681; Even though said recommendation is no longer applicable *per se* to the Republic of Trots, according to Preamble(31), its provisions should be considered 'in light of and without prejudice to, the more detailed guidance provided in the Council of Europe standards [...]'. Thus, withdrawing and ceasing to apply said 'more detailed' standards must, indeed, in itself suffice as imminent lowering of human rights standards even if the recommendation does not include the procedure under EU-Trots TCA.

<sup>66</sup> Case C-327/18, RO, para. 52, pg. 339 of Bundle.

<sup>67</sup> Case C-327/18, RO, para. 61 *in fine.*, pg. 340 of Bundle.

<sup>68</sup> Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, para. 88 *in fine.*, pg. 240 of Bundle.

<sup>69</sup> Case 12/86, Demirel, Summary para. 1, pg. 166 of Bundle.

<sup>70</sup> EU-Trots TCA, Recitals (7) and (19), pg. 11-12 of Bundle.

39. Article 524(2) of the EU-Trots TCA explicitly refers to the obligation to respect fundamental rights and legal principles, which are reflected in particular in the ECHR and the Charter, including their case-law.
40. Therefore, to enable full effectiveness of the rights of individuals, the EU Trots TCA's provisions should be read in the light of the Charter of Fundamental Rights. In accordance with the CJEU case-law, *the obligation to comply with the Charter, recalled in Article 524(2)<sup>71</sup>, is binding on the Member States when they decide on the surrender of a person<sup>72</sup>* - in this case surrender to Trots.
41. Furthermore, the independence of the Republic of Trots resulting in the fact that the Charter is not applicable to it in general, is irrelevant to the pending case. It subsists without prejudice to the fact that the executing judicial authorities are required to ensure respect for the fundamental rights afforded by the Charter<sup>73</sup> to the person who is the subject of an arrest warrant issued on the basis of the TCA<sup>74</sup>, because in line with Article 51(1) of the Charter and the Court's case law, the Charter applies to Member States when they are implementing Union law<sup>75</sup> – including decisions under the EU-Trots TCA.
42. In this case, to the relevant scope, it falls upon the executing judicial authority to ensure that Pastor Deformis' rights will be provided to their full extent. Thus, the mere existence of a risk of a breach of those rights should be sufficient enough for the executing judicial authority to refrain from giving effect to such arrest warrant<sup>76</sup>.
43. The executing judicial authority cannot surrender Pastor Deformis under such circumstances. After examining the Respondent's situation, it ought to be pointed out that there are valid reasons for believing that her rights would be in breach if surrendered<sup>77</sup> to Trots, especially her rights derived from Article 7 of the Charter, which, according to Art. 52(3) thereof, is the same as rights interpreted from art. 8 of the ECHR<sup>78</sup>.
44. Article 24(2) of the Charter should also be taken into consideration, as it relates to the best interest of the child – the young Xela. Said article applies to decisions such as an arrest warrant, when it concerns a mother of a small child, because even though said decision is not addressed to the child, it has, or could potentially have, highly significant consequences for him<sup>79</sup>.
45. Determining the best interest of the child comes within the scope of an assessment that must take account of all the specific circumstances<sup>80</sup>. The surrender of Pastor Deformis would constitute a serious interference with her and her child's right to family life. According to the Charter and the ECHR, such interference must meet a strict test of proportionality and

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<sup>71</sup> The quote is literal, as the Article in question corresponds to the number and to the content of the relevant Article of the EU-Trots TCA.

<sup>72</sup> Case C-202/24, Alchaster, para. 49, pg. 446 of Bundle.

<sup>73</sup> In particular Article 7 on respect for family life and Article 24 on the best interests of the child. Article 524(2) of the TCA reinforces this obligation by explicitly requiring respect for these rights in the application of the surrender mechanism.

<sup>74</sup> Case C-202/24, Alchaster, para. 49, pg. 446 of Bundle.

<sup>75</sup> Explanation on Article 51 of the Charter, pg. 82 of Bundle.

<sup>76</sup> Case C-202/24, Alchaster, para. 50, pg. 446 of Bundle.

<sup>77</sup> Case C-202/24, Alchaster, para. 79, pg. 449 of Bundle.

<sup>78</sup> Explanation on Article 7 of the Charter, pgs. 72-73 of Bundle.

<sup>79</sup> Case C-261/22, GN, para. 41, mentioned on pg. 435 of Bundle.

<sup>80</sup> Case C-261/22, GN, para. 42, mentioned on pg. 435 of Bundle.



necessity. In the present case, given that her husband is also likely to be surrendered to another country, and no adequate arrangements for child care have been proposed, the separation of the child from both parents would result in a disproportionate burden on the child. The executing authority must therefore refuse surrender to safeguard the child's best interests<sup>81</sup> and enable him to maintain a relationship with his mother at least.

46. Even though in the pending case the cooperation between Gléck and Trots is based on long-standing respect for the protection of the fundamental rights and freedoms, that cooperation is not based on the mutual trust nor mutual recognition principle<sup>82</sup>. Therefore, contrary to the judgement in Case C-261/22, *GN*, the executing judicial authority has no grounds to presume that the conditions of detention of the mother of young children and of the care of those children in the issuing Member State are appropriate. Consequently, to ensure the protection of the rights of Pastor Deformis' child and herself, the executing judicial authority should preclude to surrender her to Trots.

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

47. The surrender must satisfy the test of proportionality under Article 597 TCA, which includes the assessment of suitability, necessity and fair balance<sup>83</sup>. Further, Article 597 of the EU-Trots TCA has to be interpreted in light of Article 524(2) therein. Thus, nothing in the agreement mentioned herein has the force to modify the obligation to respect fundamental rights of the requested person<sup>84</sup>.
48. Secondly, Article 4 of the Charter corresponds to Article 3 of the ECHR<sup>85</sup>. Therefore the scope and meaning of the aforementioned article is the same as the ECHR [by virtue of Article 52(3) of Charter]<sup>86</sup>. It means that ECHR sets the 'minimum standards' and Trots as a member of Council of Europe<sup>87</sup> have to meet all the requirements mentioned therein. Thus a proportionality test must be carried out regarding executing the AW.
49. It is necessary to weigh respect for the fundamental rights of the person surrendered, against protecting the rights and freedom of others<sup>88</sup>. In this particular case it must be pointed out that prohibition of inhuman and degrading treatment or punishment stated in Article 3 ECHR is absolute<sup>89</sup>. Thus, Article 3 ECHR enshrines one of the most fundamental values, which requires respect according to the recitals of EU-Trots TCA<sup>90</sup>. That is why, in any circumstances, including organised crime, the ECHR prohibits in absolute terms breaching Article mentioned herein<sup>91</sup>.
50. Thirdly, all aforementioned follows that the executing authority, which possesses the evidence of real risk of inhuman or degrading treatment of individuals should have regard to the

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<sup>81</sup> Case C-261/22, *GN*, para. 55, mentioned on pg. 435 of Bundle.

<sup>82</sup> Case C-202/24, *Alchaster*, para. 71, pg. 448 of Bundle.

<sup>83</sup> Case C-292/98, *Karlsson*, mentioned on pg. 76 of Bundle.

<sup>84</sup> EU Trots-TCA, Article 524, pg. 13 of Bundle.

<sup>85</sup> Explanation on Article 52 of the Charter, pg. 82-84 of Bundle.

<sup>86</sup> Explanation on Article 4 of the Charter, pg. 71 of Bundle.

<sup>87</sup> *Moot Case*, para. 13, pg. 6 of Bundle.

<sup>88</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 5, pg. 207 of Bundle.

<sup>89</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 85, pg. 239 of Bundle.

<sup>90</sup> EU-Trots TCA, Recitals (1), pg. 11 of Bundle.

<sup>91</sup> Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, para. 87, pg. 240 of Bundle.

standards of protection of fundamental rights [especially Article 4 of Charter (Article 3 of ECHR) – *vide: Melloni C-399/11 para. 59 and Opinion 2/13 para. 192*]. Moreover, the consequences of the execution cannot be in breach of Article 3 ECHR<sup>92</sup>, especially when the judicial authority, as in following case, relies on objective, reliable, specific and properly updated information obtained from, *inter alia*, judgements of international courts<sup>93</sup> (ECtHR) or reports<sup>94</sup> (CPT). According to all aforementioned, the Federal Republic of Gléck has all the information to demonstrate that there is a real risk of a breach of fundamental rights<sup>95</sup> of the Respondent<sup>96</sup>.

51. Moreover, in Pastor Deformis' case the Federal Republic of Gléck (as a Member State), should also respect the provisions arising from Directive 2004/38<sup>97</sup>, which ought to be interpreted in light of Articles 7 (Article 8 ECHR). Thus, according to point 23 of recitals<sup>98</sup>, expulsion of family members on grounds of, *inter alia*, public security is a measure that can seriously harm those who became genuinely integrated into the host Member State (Xela).
52. Moreover, the scope for such measures as mentioned hereinbefore should be limited in accordance with the principle of proportionality. Thus, it means that Gléck should take into account Pastor Deformis' and Xela's degree of integration, length of residence life, age and family situation.
53. Regarding Xela, Gléck should enshrine the rights of the child, as the Article 24 of the Charter is based on the New York Convention on the Rights of Child signed on 20 November 1989<sup>99</sup>. As a matter of fact, the Convention on Rights of Child is the highest expression of respect for family life. That means, that principle of proportionality may not undermine the value of human dignity which is threatened in circumstances such as mentioned herein.
54. Fourthly, according to Article 597 of the EU-Trots TCA, while establishing the matter of proportionality, the State must also take into account the possibility of taking measures less coercive than the surrender of the requested person. It therefore needs to be emphasised that such a measure is possible on the grounds of Article 604(b). Pastor Deformis could enjoy a right derived from said Article, as she is a resident of the executing state<sup>100</sup>. Consequently it is possible to subject the execution of her AW to the guarantee that she is returned to the executing state after having been heard. That would, to a high extent, ensure the exercise of her rights while simultaneously providing her with a measure less coercive than the non-conditional and definitive execution of her warrant.
55. Due to all aforementioned arguments, it needs to be concluded that the decision to surrender the Respondent would not be compatible with the principle of proportionality and would cause a significant breach of such a principle.

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<sup>92</sup> Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, para. 88, pg. 240 of Bundle.

<sup>93</sup> Moot Case, para. 13, pg. 6 of Bundle.

<sup>94</sup> Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru para. 89, pg. 240 of Bundle.

<sup>95</sup> Opinion of AG Szpunar in Case C-202/24, Alchaster, para. 43, pgs. 425-426 of Bundle.

<sup>96</sup> Simultaneously, when it comes to principle of proportionality, the executing authority must also determine, specifically and precisely the impact of the deficiencies (mentioned herein) on detention of person subject to AW; compare: Opinion of AG Szpunar in Case C-202/24, Alchaster, para. 43, pgs. 425-426 of Bundle.

<sup>97</sup> According to Moot Case, para. 5, pg. 5 of Bundle, the Respondent benefits from the permanent right to reside in Gléck.

<sup>98</sup> EU-Trots TCA, Recitals (23), pg. 12 of Bundle.

<sup>99</sup> Explanation on Article 24 of the Charter, pg. 77 of Bundle.

<sup>100</sup> Moot Case, para. 5, pg. 5 of Bundle.