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European Arrest Warrant and the Charter: Case Study



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Refreshing Main Concepts

The European Arrest Warrant (EAW)

Cross-border judicial surrender procedure based on the principle of mutual recognition & founded on mutual trust.

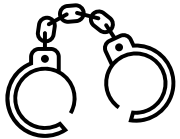
EAW Framework Decision (EAW FD)

Regulates how the EAW should be applied by the issuing and the executing judicial authorities.

It includes several provisions stressing the obligation to ensure the respect of the Charter.

Case C-699/21: *E.D.L. Case*

Facts



E.D.L, who is based in Italy, is suspected of having committed, in 2014 and on Croatian territory, the offence of possession of narcotics for the purpose of distribution and sale.

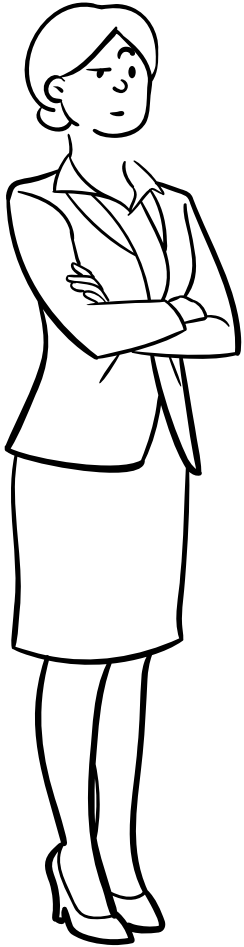


The Court of Appeal of Milano (executing judicial authority) receives the EAW request against E.D.L. by the Municipal Court of Zadar (issuing judicial authority).



E.D.L has a psychotic disorder requiring treatment with medication and psychotherapy to avoid probable episodes of psychiatric decompensation. Imprisonment could imply a significant risk of suicide.

Case C-699/21: *E.D.L. Case*



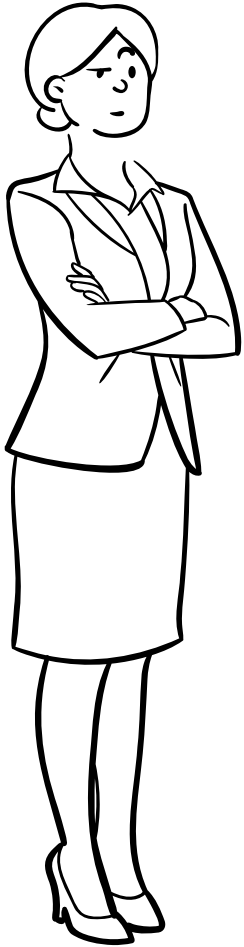
Question

Need to interpret Article 1(3) EAW FD in the light of Article 4 of the Charter when there is a “the situation of a **serious threat to the health of the requested person** which would result from surrender due to chronic illnesses of a potentially indefinite duration”.

The executing judicial authority stresses that that case-law does not cover the present case, only when there is a risk of violation of fundamental rights of the requested person linked to systemic and generalised deficiencies in the issuing Member State, or situations concerning certain groups of people or entire detention centres.



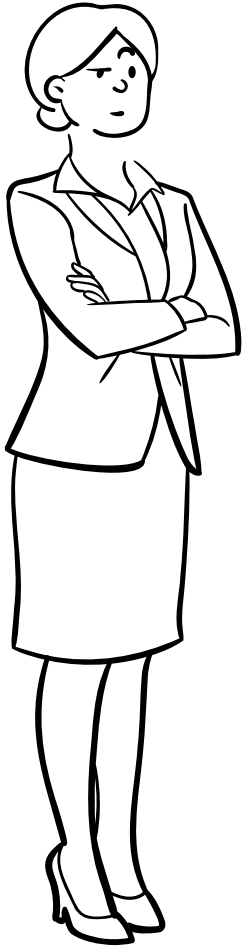
Case C-699/21: *E.D.L. Case*



Question

(i) The executing judicial authority must request information to the issuing judicial authority [allowing] the existence of such a risk to be ruled out, (ii) and must refuse to surrender the person in question if it does not obtain assurances to that effect within a reasonable period of time?

Case C-699/21: *E.D.L. Case*



Findings

- (i) The executing judicial authority must request that the issuing judicial authority provide information [allowing] the existence of such a risk to be ruled out (...)?

Mutual trust: Member States implementing EU law are required to presume that fundamental rights have been observed by the other Member States. However, exceptionally, they may not check whether that other Member State observed the fundamental rights.

The EAW FD does not allow the refusal to execute the EAW solely on the ground exposed in this case. In light with the general rule, there is a presumption that the care and treatment provided in the issuing Member States will be adequate.

However, Article 23(4) EAW FD allows the temporary postponement of the EAW. For example, if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health.

Case C-699/21: *E.D.L. Case*



Findings

- (i) The executing judicial authority must request that the issuing judicial authority provide information [allowing] the existence of such a risk to be ruled out (...)?

Article 23(4) EAW FD captures the need to respect Article 4 of the Charter (prohibition of inhuman and degrading treatment) due to its absolute nature. This right is closely linked to respect for human dignity recognised by Article 1 of the Charter.

The treatment must, nevertheless, reach a minimum level of severity exceeding the unavoidable level of suffering inherent in detention. For instance, the requested person would face a real risk, in the circumstances of the case, of suffering a serious, rapid and irreversible decline in his or her state of health or a significant reduction in life expectancy, even if it is not an imminent risk of dying.

Case C-699/21: *E.D.L. Case*

Findings

- (i) The executing judicial authority must request that the issuing judicial authority provide information [allowing] the existence of such a risk to be ruled out (...)?

To ensure the effective cooperation in criminal matters, the executing judicial authority must **request to the issuing judicial authority all the information necessary to rule out the risk of inhuman and degrading treatment.**

If after evaluating the safeguards provided, **the executing judicial authority can rule out the existence of the risk within a reasonable period of time, the EAW must be executed.**



Case C-699/21: *E.D.L. Case*



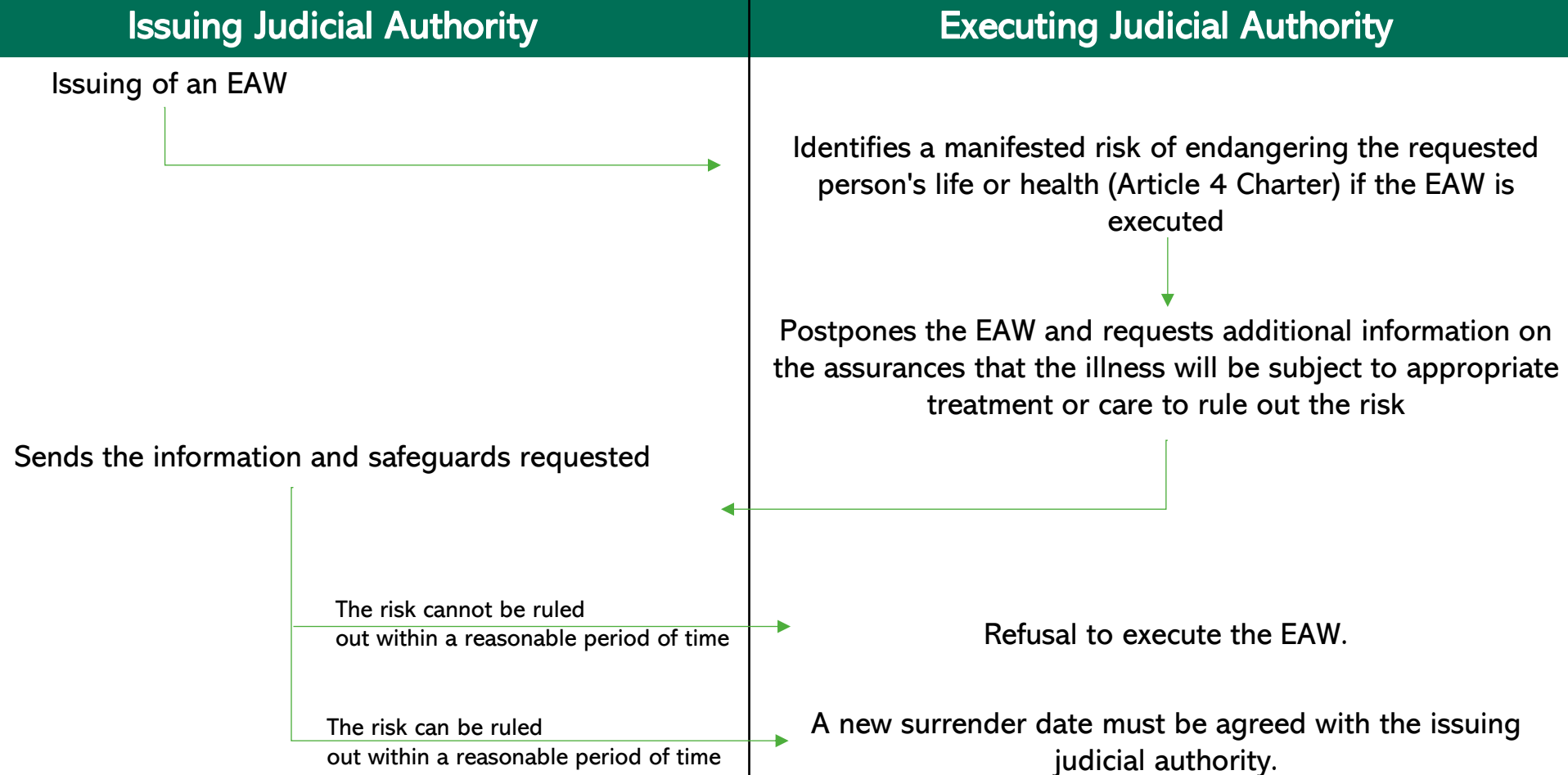
Findings

- (ii) (...) and must refuse to surrender the person in question if it does not obtain assurances to that effect within a reasonable period of time?

If the executing judicial authority comes to the conclusion that the risk cannot be ruled out within a reasonable period of time, the executing judicial authority cannot, in accordance with Article 1(3) EAW FD, give effect to the EAW.



Case C-699/21: *E.D.L. Case*



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Shift in the case law: One-step method instead of the two-step test (Aranyosi Case)?

The legal avenue available depends on the **fundamental rights concerned** and the **origin of those risks**:

- a) The **lack of judicial independence** (right to a fair trial) or **inadequate detention conditions** (prohibition of torture and inhuman or degrading treatment or punishment), where the **risk to the rights derives** “from general circumstances which are ideally impossible” in a Member State (**widespread deficiencies**).
- b) The **health risk** (prohibition of torture and inhuman or degrading treatment or punishment) of the requested person **does not derive from widespread deficiencies**.

»»» 2-step test

»»» 1-step test



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