Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

25 January 2017 [1]

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 23 — Time limit for surrender of the requested person — Possibility of agreeing on a new surrender date on a number of occasions — Resistance of the requested person to his surrender — Force majeure)

In Case C-640/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decision of 24 November 2015, received at the Court on 2 December 2015, in proceedings relating to the execution of a European arrest warrant in respect of

Tomas Vilkas,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: M. Bobek,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 20 July 2016,

after considering the observations submitted on behalf of:

— Mr Vilkas, by M. Kelly QC, M. Lynam, Barrister-at-Law, B. Coveney, J. Wood and T. Horan, Solicitors,

— Ireland, by E. Creedon, D. Curley and E. Pearson, acting as Agents, S. Stack, Senior Counsel, and J. Benson, Barrister-at-Law,

— the French Government, by D. Colas and F.-X. Bréchot, acting as Agents,

— the Lithuanian Government, by D. Kriaučiūnas, R. Krasuckaitė and J. Nasutavičienė, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Polish Government, by B. Majczyna, acting as Agent,

1 — Language of the case: English.

— the United Kingdom Government, by S. Brandon, acting as Agent, and J. Holmes, Barrister,

— the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 October 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 23 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('the Framework Decision').

2 The request has been made in connection with the execution in Ireland of European arrest warrants issued by a Lithuanian court in respect of Tomas Vilkas.

Legal context

EU law

The Convention on simplified extradition procedure

3 Article 11(3) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union, signed on 10 March 1995 (OJ 1995 C 78, p. 2; 'the Convention on simplified extradition procedure'), provides:

'Should surrender of the person within the deadline laid down … be prevented by circumstances beyond its control, the authority concerned … shall so inform the other authority. The two authorities shall agree on a new surrender date. In that event, surrender will take place within 20 days of the new date thus agreed. If the person in question is still being held after expiry of this period, he shall be released.'

The Framework Decision

4 Recitals 5 and 7 of the Framework Decision are worded as follows:

'(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

…

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 [EU] and Article 5 [EC]. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.'

5 Article 1 of the Framework Decision, headed 'Definition of the European arrest warrant and obligation to execute it', provides in paragraphs 1 and 2:

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.'

6 Article 12 of the Framework Decision, headed 'Keeping the person in detention', provides:

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

7 Article 15(1) of the Framework Decision states:

'The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.'

8 Article 23 of the Framework Decision, headed 'Time limits for surrender of the person', provides:

'1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.'

Irish law

9 Section 16(1) and (2) of the European Arrest Warrant Act, 2003, in the version applicable to the dispute in the main proceedings, governs the making by the High Court (Ireland) of orders directing that persons in respect of whom a European arrest warrant has been issued be surrendered.

10 Section 16(3A) of the Act provides that a person to whom such an order applies is, in principle, to be surrendered to the issuing Member State not later than 10 days after the order takes effect.

11 Section 16(4) and (5) of the Act is worded as follows:

'(4) Where the High Court makes an order under subsection (1) or (2), it shall, unless it orders postponement of surrender under section 18—

...

(b) order that that person be detained in a prison … for a period not exceeding 25 days pending the carrying out of the terms of the order, and

(c) direct that the person be again brought before the High Court—

(i) if he or she is not surrendered before the expiration of the time for surrender under subsection (3A), as soon as practicable after that expiration, or

(ii) if it appears to the Central Authority in the State that, because of circumstances beyond the control of the State or the issuing state concerned, that person will not be surrendered on the expiration referred to in subparagraph (i), before that expiration.

(5) Where a person is brought before the High Court pursuant to subsection (4)(c), the High Court shall—

(a) if satisfied that, because of circumstances beyond the control of the State or the issuing state concerned, the person was not surrendered within the time for surrender under subsection (3A) or, as the case may be, will not be so surrendered—

(i) with the agreement of the issuing judicial authority, fix a new date for the surrender of the person, and

(ii) order that the person be detained in a prison … for a period not exceeding 10 days after the date fixed under subparagraph (i), pending the surrender,

and

(b) in any other case, order that the person be discharged.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Mr Vilkas was the subject of two European arrest warrants, issued by a Lithuanian court.

13 By two orders of 9 July 2015, the High Court decided that Mr Vilkas was to be surrendered to the Lithuanian authorities not later than 10 days after the orders took effect, that is to say, not later than 3 August 2015.

14 On 31 July 2015 the Irish authorities attempted to surrender Mr Vilkas to the Lithuanian authorities by using a commercial flight. Resistance put up by Mr Vilkas caused that first surrender attempt to fail, as the aircraft pilot refused to have him on board the flight.

15 The High Court then ordered that Mr Vilkas be surrendered to the Lithuanian authorities not later than 10 days after 6 August 2015. On 13 August 2015 a fresh surrender attempt failed on account of Mr Vilkas's behaviour.

16 The Minister for Justice and Equality (Ireland) consequently applied to the High Court for authorisation for a third attempt at surrendering Mr Vilkas to the Lithuanian authorities, this time by sea and over land. The High Court held, however, on 14 August 2015 that it lacked jurisdiction to hear this application and ordered Mr Vilkas's release.

17 The Minister for Justice and Equality brought an appeal against that judgment before the referring court.

18 In those circumstances, the Court of Appeal (Ireland) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does Article 23 of the Framework Decision contemplate or and allow for the agreement of a new surrender date on more than one occasion?

2. If so, does it do so in any, or all, of the following situations: i.e., where the surrender of the requested person within the period laid down in [Article 23(2)] has already been prevented by circumstances beyond the control of any of the Member States, leading to the agreement of a new surrender date, and such circumstances:

(i) are found to be ongoing; or

(ii) having ceased, are found to be reoccurring; or

(iii) having ceased, different such circumstances have arisen which have prevented, or are likely to prevent, surrender of the requested person within the required period referable to the said new surrender date?'

Consideration of the questions referred

19 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 23 of the Framework Decision must be interpreted as precluding, in a situation such as that at issue in the main proceedings, the executing and issuing judicial authorities from agreeing on a new surrender date under Article 23(3) of the Framework Decision where the repeated resistance of the requested person has prevented his surrender within 10 days of a first new surrender date agreed on pursuant to that provision.

20 Article 15(1) of the Framework Decision provides, generally, that the executing judicial authority is to decide whether the requested person is to be surrendered 'within the time limits and under the conditions defined in this Framework Decision'.

21 So far as concerns, in particular, the final phase of the surrender procedure, Article 23(1) of the Framework Decision provides that the requested person is to be surrendered as soon as possible on a date agreed between the authorities concerned.

22 This principle is given concrete expression in Article 23(2) of the Framework Decision, which states that the requested person is to be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

23 The EU legislature nevertheless authorised certain exceptions to that rule by providing, first, that the authorities concerned are to agree on a new surrender date in certain situations defined in Article 23(3) and (4) of the Framework Decision and, secondly, that the surrender of the requested person is then to take place within 10 days of the new date thus agreed.

24 More specifically, the first sentence of Article 23(3) of the Framework Decision states that the executing and issuing judicial authorities are to agree on a new surrender date if the surrender of the requested person within the period laid down in Article 23(2) is prevented by circumstances beyond the control of any of the Member States ['force majeure' in the French version of the Framework Decision].

25 It is thus apparent that Article 23(3) of the Framework Decision does not expressly limit the number of new surrender dates that may be agreed on between the authorities concerned where the surrender of the requested person within the period laid down is prevented by circumstances beyond one of the Member States' control.

26 That said, the referring court observes that the first sentence of Article 23(3) of the Framework Decision refers explicitly only to a situation where the surrender of the requested person is prevented, by circumstances beyond one of the Member States' control, 'within the period laid down in [Article 23(2) of the Framework Decision]', that is to say, 'no later than 10 days after the final decision on the execution of the European arrest warrant'.

27 Therefore, the referring court questions whether the rule set out in the first sentence of Article 23(3) of the Framework Decision is applicable to situations where circumstances beyond one of the Member States' control arising on a date after the expiry of that period have prevented the requested person from being surrendered within 10 days of a first new surrender date agreed on pursuant to that provision.

28 In that regard, it must be stated, first, that a literal interpretation of Article 23(3) of the Framework Decision does not necessarily preclude such applicability.

29 As the Advocate General has observed in point 25 of his Opinion, where the surrender of the requested person within 10 days of a first new surrender date agreed on pursuant to Article 23(3) of the Framework Decision is prevented by circumstances beyond one of the Member States' control, the condition that the surrender of that person within 10 days after the final decision on the execution of the European arrest warrant has been prevented must, by definition, have been fulfilled in order for that first new surrender date to have been set.

30 Secondly, according to the Court's settled case-law, for the purpose of interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 19 December 2013, *Koushkaki* , C-84/12, EU:C:2013:862, paragraph 34, and of 16 November 2016, *Hemming and Others* , C-316/15, EU:C:2016:879, paragraph 27).

31 In this connection, it should be recalled that the Framework Decision seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union of becoming an area of freedom, security and justice, on the

basis of the high level of confidence which should exist between the Member States (judgments of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 28, and of 5 April 2016, *Aranyosi and Căldăraru* , C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 76).

32 In that context, Article 23 of the Framework Decision is designed in particular, like Articles 15 and 17 thereof, to accelerate judicial cooperation by imposing time limits for adopting decisions relating to a European arrest warrant which the Member States are obliged to comply with (see, to that effect, judgments of 30 May 2013, *F* , C-168/13 PPU, EU:C:2013:358, paragraph 58, and of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraphs 29 and 33).

33 To hold that the executing judicial authority cannot be granted a new period for surrendering the requested person where, in practice, his surrender within 10 days of a first new surrender date agreed on pursuant to Article 23(3) of the Framework Decision is prevented by circumstances beyond one of the Member States' control would be tantamount to making that authority subject to an obligation that is impossible to fulfil and would not contribute in the slightest to the objective pursued of accelerating judicial cooperation.

34 Furthermore, account should also be taken of Article 23(5) of the Framework Decision when interpreting Article 23(3).

35 Article 23(5) of the Framework Decision provides that, upon expiry of the time limits referred to in Article 23(2) to (4), if the requested person is still being held in custody he is to be released.

36 It follows that, if Article 23(3) of the Framework Decision were to be interpreted as meaning that the rule set out in its first sentence is not applicable where the surrender of the requested person within 10 days of a first new surrender date agreed on pursuant to that provision is prevented by circumstances beyond one of the Member States' control, that person would, in such a situation, necessarily have to be released if he were still being held in custody, irrespective of the circumstances of the case, because the time limit referred to in that provision would have expired.

37 Therefore, that interpretation would be such as to limit appreciably the effectiveness of the procedures provided for by the Framework Decision and, accordingly, to prevent full achievement of the objective pursued by it, which consists in facilitating judicial cooperation by the establishment of a more effective system for the surrender of persons convicted or suspected of having infringed criminal law.

38 Moreover, that interpretation could lead to the release of the requested person in situations where the extension of the duration of his detention does not result from a lack of diligence of the executing authority and the total duration of his detention is not excessive in the light, in particular, of any contribution on his part to the delay in the procedure, of the sentence potentially faced by him and of the existence, as the case may be, of a risk of absconding (see, to that effect, judgment of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 59).

39 Accordingly, Article 23(3) of the Framework Decision is to be interpreted as requiring the authorities concerned also to agree on a new surrender date under that provision where the surrender of the requested person within 10 days of a first new surrender date agreed on pursuant to that provision is prevented by circumstances beyond one of the Member States' control.

40 That conclusion is not called into question by the obligation to interpret Article 23(3) of the Framework Decision in conformity with Article 6 of the Charter of Fundamental Rights of the European Union, which provides that everyone has the right to liberty and security of person (see, to that effect, judgment of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 54).

41 It is true that the interpretation of Article 23(3) of the Framework Decision set out in paragraph 39 of the present judgment means that the executing judicial authority is not necessarily required to release the requested person if he is still being held in custody where his surrender within 10 days of a first new surrender date agreed on pursuant to that provision is prevented by circumstances beyond one of the Member States' control.

42 Nevertheless, as the Advocate General has noted in point 37 of his Opinion, that interpretation does not require the requested person to be held in custody, since Article 12 of the Framework Decision states that it is for the executing judicial authority to take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State, and that the person may be released provisionally at any time in conformity with that law, provided that the competent authority takes all the measures it deems necessary to prevent the person absconding.

43 In that context, where the authorities concerned agree on a second new surrender date pursuant to Article 23(3) of the Framework Decision, the executing judicial authority will be able to decide to hold the requested person in custody, in accordance with Article 6 of the Charter of Fundamental Rights, only in so far as the surrender procedure has been carried out in a sufficiently diligent manner and in so far as, consequently, the duration of the custody is not excessive. In order to ensure that that is indeed the case, that authority will be required to carry out a concrete review of the situation at issue, taking account of all of the relevant factors (see, to that effect, judgment of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraphs 58 and 59).

44 Accordingly, it must be determined whether the executing and issuing judicial authorities have to agree on a second new surrender date under Article 23(3) of the Framework Decision in a situation such as that at issue in the main proceedings, where the repeated resistance of the requested person has prevented his surrender within 10 days of a first new surrender date agreed on pursuant to that provision.

45 In this connection, it is to be noted that there is a certain divergence between the various language versions of Article 23(3) of the Framework Decision as regards the conditions for applying the rule set out in the first sentence of that provision.

46 Whilst the Greek, French, Italian, Portuguese, Romanian and Finnish versions of that provision make the application of the rule conditional on it not being possible to carry out the surrender by reason of a case of *force majeure* in one of the Member States concerned, other language versions of the same provision, such as the Spanish, Czech, Danish, German, Greek, English, Dutch, Polish, Slovak and Swedish versions, refer instead to it not being possible to carry out the surrender on account of circumstances beyond the control of the Member States concerned.

47 The need for a uniform interpretation of a provision of EU law makes it impossible for the text of a provision to be considered, in case of doubt, in isolation but requires, on the contrary, that it should be interpreted on the basis of both the actual intention of the legislature and the objective pursued by the latter, in the light, in particular, of the versions drawn up in all languages (see, to that effect, judgments of 20 November 2001, *Jany and Others* , C-268/99, EU:C:2001:616, paragraph 47, and of 19 September 2013, *van Buggenhout and van de Mierop* , C-251/12, EU:C:2013:566, paragraphs 26 and 27).

48 In this context, it should be pointed out that the wording used in Article 23(3) of the Framework Decision has its origin in Article 11(3) of the Convention on simplified extradition procedure.

49 Whilst the English and Swedish versions of Article 11(3) of the Convention referred to circumstances beyond the control of the Member States concerned, the Spanish, Danish, German, Greek, French, Italian, Dutch, Portuguese and Finnish versions of that provision referred to the occurrence of a case of *force majeure*.

50 Also, it is apparent from the explanatory report relating to the Convention, in its various language versions, that the expression used in Article 11(3) had to be interpreted strictly, as referring to a situation which could not have been foreseen and could not have been prevented. That explanation tends to indicate that the contracting parties to the Convention ultimately had the intention of referring to the concept of *force majeure* as usually understood, a fact which is confirmed by the list of examples that are set out in the explanatory report.

51 Furthermore, in its various language versions, the explanatory memorandum to the Commission's proposal (COM(2001) 522 final) that led to the adoption of the Framework Decision refers to the Convention on simplified extradition procedure and reproduces the explanations, referred to in the preceding paragraph of the present judgment, that are set out in the explanatory report. The Spanish, Danish, German, English, Dutch, and Swedish versions of the explanatory memorandum even refer explicitly to the concept of *force majeure* in order to specify the scope of the concept of circumstances beyond the control of the Member States concerned.

52 These various factors contribute to demonstrating that the use in various language versions of that latter concept does not indicate that the EU legislature intended to make the rule set out in the first sentence of Article 23(3) of the Framework Decision applicable to situations other than those where the surrender of the requested person proves impossible by reason of a case of *force majeure* in one or other of the Member States.

53 It is apparent from settled case-law, established in various spheres of EU law, that the concept of *force majeure* must be understood as referring to abnormal and unforeseeable circumstances which were outside the control of the party by whom it is pleaded and the consequences of which could not have been avoided in spite of the exercise of all due care (see, to that effect, judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône* , C-314/06, EU:C:2007:817, paragraph 23; of 18 March 2010, *SGS Belgium and Others* , C-218/09, EU:C:2010:152, paragraph 44; and of 18 July 2013, *Eurofit* , C-99/12, EU:C:2013:487, paragraph 31).

54 However, it is also settled case-law that, since the concept of *force majeure* does not have the same scope in the various spheres of application of EU law, its meaning must be determined by reference to the legal context in which it is to operate (judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône* , C-314/06, EU:C:2007:817, paragraph 25; of 18 March 2010, *SGS Belgium and Others* , C-218/09, EU:C:2010:152, paragraph 45; and of 18 July 2013, *Eurofit* , C-99/12, EU:C:2013:487, paragraph 32).

55 Therefore, so far as concerns the concept of *force majeure* as provided for in Article 23(3) of the Framework Decision, it is necessary to take account of the general scheme and the purpose of the Framework Decision in order to interpret and apply the constituent elements of *force majeure*, as derived from the Court's case-law (see, by analogy, judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône* , C-314/06, EU:C:2007:817, paragraph 26).

56 In that regard, it is to be recalled that Article 23(3) of the Framework Decision constitutes an exception to the rule laid down in Article 23(2). Accordingly, the concept of *force majeure* as provided for in Article 23(3) must be interpreted strictly (see, by analogy, judgments of 14 June 2012, *CIVAD* , C-533/10, EU:C:2012:347, paragraphs 24 and 25, and of 18 July 2013, *Eurofit* , C-99/12, EU:C:2013:487, paragraph 37).

57 Furthermore, it is apparent from the wording of Article 23(3) of the Framework Decision that the occurrence of a case of *force majeure* can justify extending the period for surrendering the requested person only in so far as that case of *force majeure* means that his surrender within the period laid down is 'prevented'. The mere fact that his surrender is simply made more difficult cannot therefore justify application of the rule set out in the first sentence of that provision.

58 In that context, it is admittedly evident that the resistance put up by a requested person to his surrender may properly be regarded as an abnormal circumstance outside the control of the authorities concerned.

59 On the other hand, the fact that certain requested persons put up resistance to their surrender cannot, in principle, be classified as an unforeseeable circumstance.

60 A fortiori, in a situation such as that at issue in the main proceedings, where the requested person has already resisted a first surrender attempt, the fact that he also resists a second surrender attempt cannot normally be regarded as unforeseeable. The same is, moreover, true, as the Advocate General has noted in point 71 of his Opinion, of the refusal of the pilot of an aircraft to let on board a passenger behaving violently.

61 As regards the condition that a circumstance can be covered by *force majeure* only if its consequences could not have been avoided in spite of the exercise of all due care, it should be pointed out that the authorities concerned have means enabling them more often than not to overcome resistance put up by a requested person.

62 Thus, it cannot be ruled out that, in order to cope with resistance put up by a requested person, those authorities have recourse to certain coercive measures, under the conditions laid down by their national law and in compliance with that person's fundamental rights.

63 It is also possible, generally speaking, to envisage recourse to means of transport whose use cannot be effectively prevented by the requested person's resistance. It is indeed apparent from the order for reference that such a solution was finally proposed by the authorities concerned in the main proceedings.

64 That said, it cannot be entirely ruled out that, on account of exceptional circumstances, it is objectively apparent that the resistance put up by the requested person to his surrender could not be foreseen by the authorities concerned and that the consequences of the resistance for the surrender could not be avoided in spite of the exercise of all due care by those authorities. In that case, the rule set out in the first sentence of Article 23(3) of the Framework Decision would apply.

65 It is thus for the referring court to ascertain whether the existence of such circumstances has been established in the main proceedings.

66 In addition, since it is possible for the referring court to conclude that the repeated resistance of the requested person in the main proceedings cannot be classified as a case of *force majeure* as provided for in Article 23(3) of the Framework Decision, it should be determined whether that conclusion means that the executing and issuing authorities are no longer required to agree on a new surrender date, on account of the expiry of the time limits prescribed in Article 23 of the Framework Decision.

67 Whilst Article 15(1) of the Framework Decision clearly provides that the executing judicial authority is to decide within the time limits defined in the Framework Decision whether the person is to be surrendered, the wording of that provision is not sufficient to determine whether a European arrest warrant must still be executed once those time limits have expired and, in particular, whether the executing judicial authority is required to carry out the surrender once the time limits prescribed in Article 23 of the Framework Decision have expired and whether it must, for that purpose, agree on a new surrender date with the issuing judicial authority (see, by analogy, judgment of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 34).

68 In this connection, it should be pointed out that it follows from settled case-law of the Court that the principle of mutual recognition, which is the 'cornerstone' of judicial cooperation, means, pursuant to Article 1(2) of the Framework Decision, that Member States are in principle obliged to give effect to a European arrest warrant (see, by analogy, judgment of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 36).

69 Therefore, in the light, first, of the central function of the obligation to execute the European arrest warrant in the system put in place by the Framework Decision and, secondly, of the absence of any explicit indication in the Framework Decision as to a limitation of the temporal validity of that obligation, the rule set out in Article 15(1) of the Framework Decision cannot be interpreted as meaning that, once the time limits prescribed in Article 23 of the Framework Decision have expired, the executing judicial authority is no longer able to agree on a new surrender date with the issuing judicial authority or that the executing Member State is no longer required to carry on with the procedure for execution of the European arrest warrant (see, by analogy, judgment of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 37).

70 Moreover, whilst the EU legislature expressly specified, in Article 23(5) of the Framework Decision, that expiry of the time limits referred to in Article 23(2) to (4) means that the requested person is to be released if he is still being held in custody, it did not confer any other effect on the expiry of those time limits and did not, in particular, provide that their expiry deprives the authorities concerned of the possibility of agreeing on a surrender date pursuant to Article 23(1) of the Framework Decision or that it releases the executing Member State from the obligation to give effect to a European arrest warrant (see, by analogy, judgment of 16 July 2015,*Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 38).

71 Furthermore, an interpretation of Articles 15(1) and 23 of the Framework Decision to the effect that the executing judicial authority should no longer surrender the requested person or agree, for that purpose, on a new surrender date with the issuing judicial authority after the time limits referred to in Article 23 of the Framework Decision have expired would run counter to the objective pursued by the Framework Decision of accelerating and simplifying judicial cooperation, since such an interpretation could, in particular, force the issuing Member State to issue a second European arrest warrant in order to enable a new surrender procedure to take place within the time limits laid down by the Framework Decision (see, by analogy, judgment of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 40).

72 It follows from the foregoing that the mere expiry of the time limits prescribed in Article 23 of the Framework Decision cannot relieve the executing Member State of its obligation to carry on with the procedure for executing a European arrest warrant and to surrender the requested person, and the authorities concerned must agree, for that purpose, on a new surrender date (see, by analogy, judgment of 16 July 2015, *Lanigan* , C-237/15 PPU, EU:C:2015:474, paragraph 42).

73 Nonetheless, in such a situation, it follows from Article 23(5) of the Framework Decision that, on account of the expiry of the time limits prescribed in Article 23, the requested person must be released if he is still being held in custody.

74 In the light of all the foregoing considerations, the answer to the questions referred is as follows:

— Article 23(3) of the Framework Decision must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the executing and issuing judicial authorities agree on a new surrender date under that provision where the surrender of the requested person within 10 days of a first new surrender date agreed on pursuant to that provision proves impossible on account of the repeated resistance of that person, in so far as, on account of exceptional circumstances, that

resistance could not have been foreseen by those authorities and the consequences of the resistance for the surrender could not have been avoided in spite of the exercise of all due care by those authorities, which is for the referring court to ascertain.

— Articles 15(1) and 23 of the Framework Decision must be interpreted as meaning that those authorities remain obliged to agree on a new surrender date if the time limits prescribed in Article 23 have expired.

Costs

75 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 23(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the executing and issuing judicial authorities agree on a new surrender date under that provision where the surrender of the requested person within 10 days of a first new surrender date agreed on pursuant to that provision proves impossible on account of the repeated resistance of that person, in so far as, on account of exceptional circumstances, that resistance could not have been foreseen by those authorities and the consequences of the resistance for the surrender could not have been avoided in spite of the exercise of all due care by those authorities, which is for the referring court to ascertain.

Articles 15(1) and 23 of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that those authorities remain obliged to agree on a new surrender date if the time limits prescribed in Article 23 have expired.

Bay Larsen Vilaras Malenovský

Safjan Šváby

Delivered in open court in Luxembourg on 25 January 2017.

A. Calot Escobar
Registrar

L. Bay Larsen
President of the Third Chamber