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ECLI:EU:C:2020:953

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

24 November 2020 (*)

(Reference for a preliminary ruling – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 6(2) – Concept of ‘executing judicial authority’ – Article 27(2) – Rule of speciality – Article 27(3)(g) and 27(4) – Derogation – Prosecution for an ‘offence other’ than that for which surrendered – Consent of the executing judicial authority – Consent of the Public Prosecutor’s Office of the executing Member State)

In Case C-510/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Brussel (Court of Appeal, Brussels, Belgium), made by decision of 26 June 2019, received at the Court on 4 July 2019, in criminal proceedings against

AZ,

intervening parties:

Openbaar Ministerie,

YU,

ZV,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras, E. Regan and N. Piçarra, Presidents of Chambers, E. Juhász, C. Toader, M. Safjan, D. Šváby, S. Rodin, F. Biltgen, K. Jürimäe (Rapporteur), C. Lycourgos and P.G. Xuereb, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- AZ, by F. Thiebaut and M. Souidi, advocaten,
- the Openbaar Ministerie, by J. Van Gaever,
- the German Government, by J. Möller, M. Hellmann, E. Lanckenau and A. Berg, acting as Agents,
- the Spanish Government, by L. Aguilera Ruiz, acting as Agent,
- the Hungarian Government, by M.Z. Fehér, G. Koós and M.M. Tátrai, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,
- the European Commission, by S. Grünheid and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 June 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(2) and Articles 14, 19 and 27 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) ('Framework Decision 2002/584').

2 The request has been made in the course of criminal proceedings initiated in Belgium against AZ, a Belgian national, accused of forgery of documents, use of forged documents and fraud and surrendered by the Netherlands authorities pursuant to European arrest warrants.

Legal context

European Union law

3 Recitals 5, 7 and 8 of Framework Decision 2002/584 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 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. 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.

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.'

4 Article 1 of that framework decision, entitled 'Definition of the European arrest warrant and obligation to execute it', provides as follows:

'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.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].'

5 Articles 3, 4 and 4a of Framework Decision 2002/584 list the grounds for mandatory and optional non-execution of the European arrest warrant. Article 5 of that framework decision sets out guarantees to be given by the issuing Member State in particular cases.

6 Pursuant to Article 6 of Framework Decision 2002/584, under the heading 'Determination of the competent judicial authorities':

'1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the [EAW] by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.'

7 Article 14 of that framework decision, entitled 'Hearing of the requested person', provides as follows:

'Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.'

8 Article 15 of that framework decision, headed 'Surrender decision', provides as follows in paragraph 1 thereof:

‘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.’

9 Article 19 of that framework decision, entitled ‘Hearing the person pending the decision’, provides as follows:

‘1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

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

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

10 Under Article 27 of Framework Decision 2002/584, entitled ‘Possible prosecution for other offences’:

‘1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

...

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

...’

National law

Belgian law

11 Article 37 of the wet betreffende het Europees aanhoudingsbevel (Law on the European arrest warrant), of 19 December 2003 (*Belgisch Staatsblad* of 22 December 2003, p. 60075), provides as follows:

‘1. A person who has been surrendered on the basis of a European arrest warrant issued by a Belgian judicial authority may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

2. Paragraph 1 shall not apply in the following cases:

...

Where, other than in the cases provided for in the first subparagraph, the investigating judge, public prosecutor or court wishes to prosecute or sentence the person surrendered, or otherwise deprive him or her of his or her liberty, as the case may be, for an offence committed prior to surrender other than that on account of which he or she was surrendered, a request for consent shall be submitted to the executing judicial authority, together with the information mentioned in Article 2(4) and, if necessary, a translation.’

Netherlands law

– *The Overleveringswet*

12 Article 14 of the wet tot implementatie van het kaderbesluit van de Raad van de Europese Unie betreffende het Europees aanhoudingsbevel en de procedures van overlevering tussen de lidstaten van de Europese Unie (Law implementing the Framework Decision of the Council of the European Union on the European arrest warrant and the surrender procedures between Member States), of 29 April 2004 (Stb. 2004, Nr 195), in the version applicable to the case in the main proceedings (‘the Overleveringswet’), provides as follows:

‘1. Surrender shall be allowed only on the general condition that the requested person will not be prosecuted, punished or otherwise have his or her personal freedom curtailed for offences committed prior to his or her surrender for which he or she was not surrendered, unless:

...

(f) the prior consent of the officier van justitie (public prosecutor) was requested and obtained.

...

3. At the request of the issuing judicial authority, and on the basis of a European arrest warrant which has been submitted and accompanied by a translation, the public prosecutor shall give the consent referred to in paragraph 1(f), ... for offences for which surrender would have been granted under this Law ...’

– *The Law on the organisation of the courts*

13 In accordance with Article 127 of the wet op de rechterlijke organisatie (Law on the organisation of the courts), the Minister for Justice and Security may issue general and specific instructions relating to the exercise of the functions and powers of the Public Prosecutor’s Office.

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

14 By order of 26 September 2017, the investigating judge at the rechtbank van eerste aanleg te Leuven (Court of First Instance, Leuven, Belgium) issued, at the request of the public prosecutor at that court, a European arrest warrant against AZ, a Belgian national, seeking his surrender for the purposes of conducting a criminal prosecution in respect of offences of forgery of documents, use of forged documents and fraud, committed in Belgium between 5 and 13 May 2017 ('the initial European arrest warrant').

15 AZ was arrested for those acts in the Netherlands. Pursuant to the initial European arrest warrant, he was surrendered, on 13 December 2017, to the Belgian authorities by decision of the rechtbank Amsterdam (District Court, Amsterdam, Netherlands).

16 On 26 January 2018, the investigating judge at the rechtbank van eerste aanleg te Leuven (Court of First Instance, Leuven) issued an additional European arrest warrant against AZ ('the additional European arrest warrant') seeking his surrender for forgery of documents, use of forged documents and fraud other than the acts referred to in the initial European arrest warrant and which were the subject of recommendations by the public prosecutor at that court of 26 October 2017, 24 November 2017, 19 January 2018 and 25 January 2018.

17 By letter of 13 February 2018, sent to the investigating judge at the rechtbank van eerste aanleg te Leuven (Court of First Instance, Leuven), the officier van justitie (public prosecutor) in the arrondissementsparket Amsterdam (Public Prosecutor's Office for the Amsterdam District, Netherlands), in accordance with Article 14 of the Overleveringswet, gave his consent for prosecution of the offences referred to in the additional European arrest warrant.

18 It is apparent from the file before the Court that AZ was prosecuted for the facts referred to in the initial and additional European arrest warrants. The correctionele rechtbank te Leuven (Criminal court, Leuven, Belgium) convicted AZ in respect of those acts, inter alia, to a principal prison sentence of 3 years.

19 AZ brought an appeal against the judgment of that court before the hof van beroep te Brussel (Court of Appeal, Brussels, Belgium). Before that court, AZ has raised the issue whether Article 14 of the Overleveringswet is consistent with Article 6(2), Article 14, Article 19(2) and Article 27 of Framework Decision 2002/584. In that context, that court asks, in particular, whether the Public Prosecutor for the Amsterdam District is, in the present case, an 'executing judicial authority' within the meaning of Article 6(2) of that framework decision, which can give the consent provided for in Article 27(3)(g) and 27(4) of the Framework Decision.

20 In those circumstances, the hof van beroep te Brussel (Court of Appeal, Brussels) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Does the term "judicial authority" as referred to in Article 6(2) of ... Framework Decision [2002/584] constitute an autonomous concept of EU law?

(b) If the answer to [Question 1(a)] is in the affirmative: which criteria are to be applied for the purpose of determining whether an authority of the executing Member State is such a judicial authority and whether a European arrest warrant executed by that authority therefore constitutes such a judicial decision?

(c) If the answer to [Question 1(a)] is in the affirmative: is the [Netherlands Public Prosecution Service], more specifically the [Public Prosecutor for the Amsterdam District], covered by the concept of judicial authority, as referred to in Article 6(2) of ... Framework Decision [2002/584], and does the European arrest warrant executed by that authority thus constitute a judicial decision?

(d) If the answer to [Question 1(c)] is in the affirmative: is it permissible for the initial surrender to be assessed by a judicial authority, more specifically, the [internationale rechtshulpkamer (Chamber for international cooperation in legal matters) of the rechtbank Amsterdam (Amsterdam District Court)], in accordance with Article 15 of ... Framework Decision [2002/584], whereby, inter alia, the defendant's right to be heard and right of access to the courts are respected, whereas the supplementary surrender in accordance with Article 27 of ... Framework Decision [2002/584] is assigned to a different authority, namely the [Public Prosecutor for the Amsterdam District], whereby the defendant is not guaranteed the right to be heard or to have access to the courts, with the result that there is a manifest lack of coherence within ... Framework Decision [2002/584] without any reasonable justification?

(e) If the answer to [Questions 1(c) and 1(d)] is in the affirmative: should Articles 14, 19 and 27 of ... Framework Decision [2002/584] be interpreted as meaning that a public prosecution service acting as the executing judicial authority should first of all respect the defendant's right to be heard and right of access to the courts, before consent can be given for the prosecution, conviction or detention of a person with a view to the execution of a custodial sentence or measure for a criminal offence committed before his or her surrender under a European arrest warrant, the latter offence not being the criminal offence for which his or her surrender was requested?

(2) Is the [Public Prosecutor for the Amsterdam District] who acts under Article 14 of the [Overleveringswet] the executing judicial authority within the meaning of Article 6(2) of ... Framework Decision [2002/584] which surrendered the requested person and which can grant consent within the meaning of Article 27(3)(g) and 27(4) of the Framework Decision?

Admissibility of the request for a preliminary ruling

21 The German Government calls into question the admissibility of the request for a preliminary ruling on the ground, in essence, that the questions referred bear no relation to the actual facts of the dispute in the main proceedings and, in any event, the referring court has not stated why the answers to those questions are relevant for the purposes of resolving that dispute.

22 In the view of that government, the questions referred for a preliminary ruling concern the surrender and consent procedure in the Netherlands, in connection with which the Netherlands authorities have adopted a definitive decision. The requested person has already been surrendered to the Belgian authorities pursuant to that decision. In that context, it is not open to the judicial authorities of the issuing Member State to review that decision, adopted in the Member State of execution, and that decision can be challenged only before the courts of the latter Member State.

23 Moreover, authorising the re-examination, by a court of the issuing Member State, of the validity of the consent given by an authority of the Member State of execution would be contrary to the principle of mutual trust between Member States.

24 Lastly, it is contended that the review of a procedure for execution of a European arrest warrant which has already been completed in an issuing Member State is also contrary to the objective of Framework Decision 2002/584. That objective is to replace the traditional system of cooperation between sovereign States, which involves the intervention and assessment of the

executive, by a simplified and effective system for surrender between judicial authorities of persons who have been convicted or are suspected for the purposes of enforcing judgments or conducting prosecutions, the system of surrender being based on the principle of mutual recognition. Even in the context of traditional extradition procedures, the national procedure culminating in the decision to extradite the accused would not be subject to judicial review in the requesting Member State.

25 In accordance with the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 26 and the case-law cited).

26 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 27 and the case-law cited).

27 Specifically, as is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it. Thus, the preliminary ruling procedure is based on the premiss, inter alia, that a case is pending before the national courts, in which they are called upon to give a decision which is capable of taking account of the preliminary ruling (see, to that effect, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraphs 45 and 46 and the case-law cited).

28 It should be recalled in the present case that, as is apparent in particular from Article 1(1) and (2) of Framework Decision 2002/584 and from recitals 5 and 7 thereof, the purpose of that decision is to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, the system of surrender being based on the principle of mutual recognition (see, to that effect, judgments of 17 July 2008, *Kozłowski*, C-66/08, EU:C:2008:437, paragraph 31, and of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 46).

29 The effectiveness and proper functioning of the simplified system for the surrender of persons convicted or suspected of having infringed criminal law are based on compliance with certain requirements laid down by that framework decision (see, to that effect, judgment of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors' Offices, Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 46). Those requirements include that relating to the judicial nature of the issuing and executing authorities called upon to cooperate in connection with a surrender procedure based on that framework decision.

30 The referring court's questions specifically concern the interpretation of the concept of 'executing judicial authority' within the meaning of Article 6(2) and Article 27(3)(g) and 27(4) of Framework Decision 2002/584.

31 In this connection, Article 27(2) of the Framework Decision lays down the rule of speciality, according to which a person who has been surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered. Under Article 27(3)(g) of that framework-decision, that rule does not, however, apply where the executing judicial authority has given its consent in accordance with paragraph 4 of that article.

32 It is apparent from the terms of Article 27(3)(g) and 27(4) of that framework decision that the consent concerned, which is a pre-requisite in order to prosecute, sentence or deprive of liberty the person surrendered to the issuing Member State pursuant to a European arrest warrant in respect of offences other than that referred to in that warrant, must be given by an authority of the executing Member State that has the status of an 'executing judicial authority' within the meaning of Article 6(2) of Framework Decision 2002/584.

33 In its request for a preliminary ruling, the referring court explains that the case in the main proceedings is part of criminal proceedings conducted in Belgium against AZ following his surrender by the rechtbank Amsterdam (Amsterdam District Court) pursuant to the initial European arrest warrant. AZ was prosecuted and sentenced in Belgium to a prison sentence for acts defined as forgery of documents, use of forged documents and fraud, referred to in that European arrest warrant as supplemented by the additional European arrest warrant. The referring court adds that the consent provided for in Article 27(3)(g) and 27(4) of Framework Decision 2002/584 to prosecute the acts referred to in the additional European arrest warrant was given by the Public Prosecutor for the Amsterdam District in accordance with Article 14 of the Overleveringswet.

34 Before the referring court, AZ has raised the issue whether the Public Prosecutor for the Amsterdam District meets the definition of 'executing judicial authority' within the meaning of Article 6(2) of Framework Decision 2002/584 and whether that public prosecutor could therefore, in the present case, give the consent provided for in Article 27(3)(g) and 27(4) of that framework decision.

35 In those circumstances, it must be held that the interpretation sought by the referring court of the concept of 'executing judicial authority', within the meaning of the provisions of Framework Directive 2002/584 referred to in the preceding paragraph, appears to be necessary to enable that court to determine whether the consent provided for in Article 27(3)(g) and 27(4) of that framework decision was given by such an authority, in respect of the acts referred to for the purposes of prosecution in the additional European arrest warrant and, accordingly, to rule on AZ's conviction which followed from that prosecution in Belgium.

36 The issue whether, in the present case, that consent was given in accordance with the provisions of the framework decision and whether, by virtue of the principles of mutual trust and recognition, the referring court is required to recognise its effects in its legal order, concerns the substance of the present case and is not therefore such as to cast doubt on the admissibility of the present request for a preliminary ruling.

37 It follows that the request for a preliminary ruling is admissible.

Consideration of the questions referred

Question 1(a) and (b)

38 By Question 1(a) and (b), the referring court asks, in essence, whether the concept of ‘executing judicial authority’ within the meaning of Article 6(2) of Framework Decision 2002/584 constitutes an autonomous concept of EU law and, if so, what criteria must be applied for the purposes of determining the meaning of that concept.

39 Under Article 6(1) and (2) of Framework Decision 2002/584, the Member States are to determine the competent judicial authorities by virtue of their national law for the purposes of issuing or executing a European arrest warrant. Those provisions essentially provide that not only the decision on the issue of a European arrest warrant, but also that on the execution of such a warrant must be taken by a ‘judicial authority’.

40 As regards the ‘issuing judicial authority’ referred to in Article 6(1) of that framework decision, the Court has held that, although, in accordance with the principle of procedural autonomy, the Member States may designate, in their national law, the ‘judicial authority’ with competence to issue a European arrest warrant, the meaning and scope of that term cannot be left to the assessment of each Member State. That term requires, throughout the European Union, an autonomous and uniform interpretation, which must take into account the wording of Article 6(1) of that framework decision, its legislative scheme and its objective (judgments of 27 May 2019, *OG and PI (Public Prosecutor’s Offices in Lübeck and Zwickau)* C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraphs 48 and 49, and of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors’ Offices, Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 51).

41 For the same reasons, the concept of ‘executing judicial authority’ referred to in Article 6(2) of Framework Decision 2002/584 constitutes an autonomous concept of EU law.

42 So far as concerns the criteria which must be applied to determine the meaning of that concept, in the first place, the Court has previously held that the words ‘judicial authority’ in Article 6(1) of Framework Decision 2002/584 are not limited to designating only the judges or courts of a Member State, but must be construed as designating, more broadly, the authorities participating in the administration of criminal justice in that Member State, as distinct from, inter alia, ministries or police services which are part of the executive (judgments of 27 May 2019, *OG and PI (Public Prosecutor’s Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 50, and of 27 May 2019, *PF (Prosecutor General of Lithuania)*, C-509/18, EU:C:2019:457, paragraph 29 and the case-law cited).

43 Public Prosecutors’ Offices participate in the administration of criminal justice in the Member State concerned (see, to that effect, inter alia, judgments of 27 May 2019, *OG and PI (Public Prosecutor’s Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 63, and of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors’ Offices, Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 53).

44 In the second place, the Court has stated that the ‘issuing judicial authority’ referred to in Article 6(1) of Framework Decision 2002/584 must be capable of exercising its responsibilities objectively, taking into account all incriminatory and exculpatory evidence, without being exposed to the risk that its decision-making power be subject to external directions or instructions, in particular from the executive, such that it is beyond doubt that the decision to issue a European arrest warrant lies with that authority and not, ultimately, with the executive. Accordingly, the

issuing judicial authority must be in a position to give assurances to the executing judicial authority that, as regards the guarantees provided by the legal order of the issuing Member State, it acts independently in the execution of those of its responsibilities which are inherent in the issuing of a European arrest warrant. That independence requires that there are statutory rules and an institutional framework capable of guaranteeing that the issuing judicial authority is not exposed, when adopting a decision to issue such an arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive (judgments of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraphs 73 and 74, and of 27 May 2019, *PF (Prosecutor General of Lithuania)*, C-509/18, EU:C:2019:457, paragraphs 51 and 52).

45 In addition, where the law of the issuing Member State confers the competence to issue a European arrest warrant on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, the decision to issue such an arrest warrant and, inter alia, the proportionality of such a decision must be capable of being the subject, in the Member State, of court proceedings which meet in full the requirements inherent in effective judicial protection (judgments of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 75, and of 27 May 2019, *PF (Prosecutor General of Lithuania)*, C-509/18, EU:C:2019:457, paragraph 53).

46 In that regard, the Court has stated that the existence of a judicial remedy against the decision taken by an authority other than a court to issue a European arrest warrant is not a condition for classification of that authority as an issuing judicial authority within the meaning of Article 6(1) of Framework Decision 2002/584. That requirement does not fall within the scope of the statutory rules and institutional framework of that authority, but concerns the procedure for issuing such a warrant, which must satisfy the requirement of effective judicial protection (see, to that effect, judgments of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors' Offices, Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraphs 48 and 63, and of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraphs 30 and 53).

47 The status and the nature of the judicial authorities referred to in Article 6(1) and 6(2) of Framework Decision 2002/584 respectively are identical, although those judicial authorities exercise separate functions connected with, first, issuing a European arrest warrant and, secondly, executing such a warrant.

48 In the first place, as recalled in paragraph 28 above, Framework Decision 2002/584 aims to introduce a simplified system of surrender directly between judicial authorities designed to replace a traditional system of cooperation between sovereign States – which involves the intervention and assessment of the executive – in order to ensure the free circulation of court decisions in criminal matters, within an area of freedom, security and justice (judgments of 27 May 2019, *OG and PI (Public Prosecutor's Offices of Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 65; of 27 May 2019, *PF (Prosecutor General of Lithuania)*, C-509/18, EU:C:2019:457, paragraph 43, and of 9 October 2019, *NJ (Public Prosecutor's Office in Vienna)*, C-489/19 PPU, EU:C:2019:849, paragraph 32).

49 That framework decision is founded on the principle that decisions relating to European arrest warrants are attended by all the guarantees appropriate for decisions of such a kind, inter alia those resulting from the fundamental rights and fundamental legal principles referred to in Article 1(3) of the Framework Decision. This means that not only the decision on issuing a European arrest warrant, but also the decision on executing such a warrant, must be taken by a judicial authority that

meets the requirements inherent in effective judicial protection, including the guarantee of independence, so that the entire surrender procedure between Member States provided for by that framework decision is carried out under judicial supervision (judgments of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 37, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 56).

50 As is indeed apparent from recital 8 of Framework Decision 2002/584, decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested must take the decision on his or her surrender.

51 In the second place in this connection, the execution of a European arrest warrant is, just as the issue of such a warrant, capable of prejudicing the liberty of the person concerned in so far as that execution will lead to the arrest of the requested person with a view to his or her surrender to the issuing judicial authority for the purposes of conducting a criminal prosecution.

52 In the third place, as regards the procedure for issuing a European arrest warrant for the purposes of conducting such a prosecution, the European arrest warrant system guarantees a dual level of protection of procedural rights and fundamental rights which must be enjoyed by the requested person, which means, first, that a decision meeting the requirements inherent in effective judicial protection should be adopted, at least, at one of the two levels of that protection (see, to that effect, judgments of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 68, and of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors' Offices, Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 60) and, second, that 'the issuing judicial authority' referred to in Article 6(1) of Framework Decision 2002/584, namely the entity which, ultimately, takes the decision to issue the European arrest warrant, must be able to act objectively and independently in the exercise of those of its responsibilities which are inherent in the issuing of that European arrest warrant, even where that warrant is based on a national decision delivered by a judge or a court (see, to that effect, judgments of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraphs 71 to 74, and of 9 October 2019, *NJ (Public Prosecutor's Office in Vienna)*, C-489/19 PPU, EU:C:2019:849, paragraphs 37 and 38).

53 By contrast, the intervention of the executing judicial authority constitutes the sole level of protection provided for by Framework Decision 2002/584 for the purposes of guaranteeing that, at the stage of executing the European arrest warrant, that person has enjoyed all the guarantees appropriate to the adoption of judicial decisions, in particular those resulting from the fundamental rights and the fundamental legal principles referred to in Article 1(3) of that framework decision.

54 It follows from the considerations set out in paragraphs 47 to 53 of the present judgment that the concept of 'executing judicial authority' within the meaning of Article 6(2) of Framework Decision 2002/584 refers, like the concept of 'issuing judicial authority' within the meaning of Article 6(1) of that framework decision, to either a judge or a court, or a judicial authority, such as the public prosecution service of a Member State, which participates in the administration of justice of that Member State and which enjoys the necessary independence vis-à-vis the executive, in accordance with the case-law cited in paragraph 44 above. Where the law of the executing Member State confers the competence to execute a European arrest warrant on such an authority, that authority must nevertheless exercise its responsibility under a procedure which complies with the

requirements inherent in effective judicial protection, which means that the decision of that authority must be capable of being subject, in that Member State, to an effective judicial remedy.

55 It is for the Member States to ensure that their legal orders effectively safeguard the level of judicial protection required by Framework Decision 2002/584, as interpreted by the Court's case-law, by means of the procedural rules which they implement and which may vary from one system to another (see, by analogy, judgment of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors' Offices, Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 64).

56 In the light of the foregoing considerations, the answer to Question 1(a) and (b) is that the concept of 'executing judicial authority' within the meaning of Article 6(2) of Framework Decision 2002/584 constitutes an autonomous concept of EU law which must be interpreted to the effect that it covers the authorities of a Member State which, without necessarily being judges or courts, participate in the administration of criminal justice in that Member State, acting independently in the exercise of the responsibilities inherent in the execution of a European arrest warrant and which exercise their responsibilities under a procedure which complies with the requirements inherent in effective judicial protection.

Question 1(c) and Question 2

57 By Question 1(c) and Question 2, which must be examined together, the referring court asks, in essence, whether Article 6(2) and Article 27(3)(g) and 27(4) of Framework Decision 2002/584 must be interpreted as meaning that the public prosecutor of a Member State constitutes an 'executing judicial authority' within the meaning of those provisions.

58 As is apparent from the answer given to Question 1(a) and (b), decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a 'judicial authority' of the Member State where the requested person has been arrested, satisfying the conditions listed in paragraph 54 above, has to take the decision on surrender.

59 The intervention of a judicial authority which satisfies those conditions is also required in respect of the consent provided for in Article 27(3)(g) and 27(4) of Framework Decision 2002/584.

60 Indeed, the decision to grant the consent provided for in Article 27(4) of Framework Decision 2002/584 is distinct from that relating to the execution of a European arrest warrant and leads, for the person concerned, to effects distinct from those of the latter decision.

61 It must first be noted in this respect that, under Article 27(4), that consent is given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of that framework decision. In addition, consent is refused on the same grounds of mandatory or optional non-execution as those provided for in respect of the European arrest warrant in Articles 3 and 4 of that framework decision.

62 Secondly, admittedly, as the Netherlands Government argues, when the executing judicial authority is requested to give its consent under Article 27(4) of Framework Decision 2002/584, the person concerned has already been surrendered to the issuing judicial authority pursuant to a European arrest warrant. However, the decision on that consent, like that on the execution of that European arrest warrant, is liable to prejudice the liberty of the person concerned, given that it concerns an offence other than that for which he or she was surrendered and it is liable to lead to a heavier sentence for that person.

63 By virtue of the rule of speciality set out in Article 27(2) of that framework decision, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered. It is only in the cases provided for in paragraph 3 of that article, inter alia where consent was given in accordance with Article 27(3)(g) and 27(4) of that framework decision, that the judicial authorities of the issuing Member State are authorised to prosecute or sentence that person for an offence other than that for which he or she was surrendered.

64 Accordingly, irrespective of whether or not the judicial authority giving the consent provided for in Article 27(4) of Framework Decision 2002/584 must be the same as that which executed the European arrest warrant at issue, that consent cannot in any event be given by an authority which may in exercising its decision-making power receive an instruction in a specific case from the executive and which consequently does not satisfy the necessary conditions to be characterised as an ‘executing judicial authority’ within the meaning of Article 6(2) of that framework decision.

65 In the present case, it is apparent from the observations of the Netherlands Government that, in respect of the procedure for surrender of a person pursuant to a European arrest warrant for the purposes of criminal prosecution, under Netherlands law it is for the Public Prosecutor for the Amsterdam District to request the rechtbank Amsterdam (Amsterdam District Court) to examine that European arrest warrant with a view to its execution. That government nevertheless pointed out that it is the District Court that ultimately takes the decision on the surrender. The Public Prosecutor for the Amsterdam District merely executes that decision.

66 It therefore appears that the judicial decision for surrender of a person pursuant to a European arrest warrant is, under Netherlands law, adopted by the rechtbank Amsterdam (Amsterdam District Court), whose status as a ‘judicial authority’ within the meaning of Framework Decision 2002/584 is in no way disputed.

67 So far as concerns, on the other hand, the decision to grant the consent provided for in Article 27(4) of Framework Decision 2002/584, the Netherlands Government stated that that decision was taken exclusively by the Public Prosecutor for the Amsterdam District, given that the person concerned had already been surrendered to the issuing judicial authority in accordance with a decision taken by the rechtbank Amsterdam (Amsterdam District Court). However, it is apparent from the file before the Court that, under Article 127 of the Law on the organisation of the courts, that public prosecutor may be subject to instructions in specific cases from the Netherlands Ministry of Justice. Consequently, having regard to the considerations set out in paragraph 64 above, it cannot be held that the public prosecutor concerned satisfies the necessary conditions to be characterised as an ‘executing judicial authority’ within the meaning of Article 6(2) and Article 27(3)(g) and 27(4) of that framework decision.

68 That consideration cannot be called into question by the fact that, as the Netherlands Government submits in its observations, the consent given by the Public Prosecutor for the Amsterdam District may be the subject of an action brought by the person concerned before the voorzieningenrechter (the judge hearing applications for interim measures).

69 In view of the information provided for by that government, it does not appear that the existence of that remedy is such as, in itself, to shield the Public Prosecutor for the Amsterdam District against the risk that his or her decision on the consent referred to in Article 27(4) of Framework Decision 2002/584 will be subject to an instruction in a specific case from the Netherlands Ministry of Justice (see, by analogy, judgment of 27 May 2019, *OG and PI (Public*

Prosecutor's Office in Lübeck and Zwickau), C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 86).

70 Having regard to the foregoing considerations, the answer to Question 1(c) and Question 2 is that Article 6(2) and Article 27(3)(g) and 27(4) of Framework Decision 2002/584 must be interpreted as meaning that the public prosecutor of a Member State who, although he or she participates in the administration of justice, may receive in exercising his or her decision-making power an instruction in a specific case from the executive, does not constitute an 'executing judicial authority' within the meaning of those provisions.

Question 1(d) and (e)

71 In the light of the answers given to Question 1(a) to (c) and Question 2, there is no need to answer Question 1(d) and (e).

Temporal limitation of the present judgment

72 The Openbaar Ministerie (Public Prosecutor's Office, Belgium) requested the Court of Justice to limit the temporal effects of the present judgment should the Court hold that an authority such as the Public Prosecutor for the Amsterdam District is not covered by the concept of an 'executing judicial authority' within the meaning of Article 27(3)(g) and 27(4) of Framework Decision 2002/584. It submits, to that effect, that prior to the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), there was no reason to question the premiss that the intervention of such a public prosecutor was consistent with the provisions of that framework decision.

73 It should be recalled in this connection that, according to settled case-law, the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 267 TFEU, the Court gives to a rule of EU law clarifies and defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may and must be applied by the courts to legal relationships arising and established before the delivery of the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing before the courts having jurisdiction an action relating to the application of that rule are satisfied (judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 51 and the case-law cited).

74 It is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict the opportunity, open to any person concerned, of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed: those concerned must have acted in good faith and there must be a risk of serious difficulties (judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 52 and the case-law cited).

75 However, in the present case the Public Prosecutor's Office has raised no evidence capable of proving that the criteria for interpretation upheld by the Court in the present case entail a risk of serious difficulties with respect to procedures for the execution of European arrest warrants.

76 In those circumstances, the temporal effects of the present judgment should not be limited.

Costs

77 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Grand Chamber) hereby rules:

- 1. The concept of ‘executing judicial authority’ within the meaning of Article 6(2) 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, constitutes an autonomous concept of EU law which must be interpreted to the effect that it covers the authorities of a Member State which, without necessarily being judges or courts, participate in the administration of criminal justice in that Member State, acting independently in the exercise of the responsibilities inherent in the execution of a European arrest warrant and which exercise their responsibilities under a procedure which complies with the requirements inherent in effective judicial protection.**
- 2. Article 6(2) and Article 27(3)(g) and 27(4) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that the public prosecutor of a Member State who, although he or she participates in the administration of justice, may receive in exercising his or her decision-making power an instruction in a specific case from the executive, does not constitute an ‘executing judicial authority’ within the meaning of those provisions.**

[Signatures]

* Language of the case: Dutch.