ECLI:EU:C:2018:589

JUDGMENT OF THE COURT (First Chamber)

25 July 2018 (*)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant –Framework Decision 2002/584/JHA — Article 1(3) — Surrender procedures between Member States — Conditions for execution — Grounds for non-execution — Charter of Fundamental Rights of the European Union — Article 4 — Prohibition of inhuman or degrading treatment — Detention conditions in the issuing Member State — Scope of the assessment undertaken by the executing judicial authorities — Existence of a legal remedy in the issuing Member State — Assurance given by the authorities of that Member State)

In Case C-220/18 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court, Bremen, Germany), made by decision of 27 March 2018, received at the Court on the same date, in the proceedings relating to the execution of a European arrest warrant issued against

ML

intervener:

Generalstaatsanwaltschaft Bremen,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot, A. Arabadjiev, S. Rodin and E. Regan (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 14 June 2018,

after considering the observations submitted on behalf of:

– ML, by A. Jung, Rechtsanwalt,

– the Generalstaatsanwaltschaft Bremen, by M. Glasbrenner, Oberstaatsanwalt,

– the German Government, by T. Henze and M. Hellmann, acting as Agents,

– the Belgian Government, by C. Van Lul, C. Pochet and A. Honhon, acting as Agents,

– the Danish Government, by M. Søndahl Wolff, acting as Agent,

– Ireland, by G. Mullan, Barrister-at-Law,

– the Spanish Government, by Sampol Pucurull, acting as Agent,

– the Hungarian Government, by M.Z. Fehér, G. Tornyai and M.M. Tátrai, acting as Agents,

– the Netherlands Government, by J. Langer, acting as Agent,

– the Romanian Government, by E. Gane and C.-M. Florescu, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 4 July 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and of Article 1(3), Article 5 and Article 6(1) 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 Germany of a European arrest warrant issued on 31 October 2017 by the Nyíregyházi Járásbíróság (District Court, Nyíregyházi, Hungary) against ML for the purpose of executing a custodial sentence in Hungary.

Legal context

European Union law

The Charter

3 Article 4 of the Charter, entitled ‘Prohibition of torture and inhuman or degrading treatment or punishment’, provides:

‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’

4 The Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) state that 'the right in Article 4 [of the Charter] is the right guaranteed by Article 3 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ("the ECHR")], which has the same wording … By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article'.

5 Article 47 of the Charter, entitled 'Right to an effective remedy and to a fair trial', provides:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

…'

6 Article 51 of the Charter, entitled 'Field of application', provides in paragraph 1:

'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. …'

7 Article 52 of the Charter, entitled 'Scope and interpretation of rights and principles', provides in paragraph 3:

'In so far as this Charter contains rights which correspond to rights guaranteed by the [ECHR], the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.'

The Framework Decision

8 Recitals 5 to 7 of the Framework Decision are worded as follows:

(5) … 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. …

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

(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.'

9 Article 1 of the Framework Decision, entitled 'Definition of the European arrest warrant and obligation to execute it', provides:

‘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 [EU].’

10 Articles 3, 4 and 4a of the Framework Decision set out the grounds for mandatory and optional non-execution of the European arrest warrant. In particular, under point 6 of Article 4 of the Framework Decision, the executing judicial authority may refuse to execute the European arrest warrant ‘if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law’.

11 Under Article 5 of the Framework Decision, entitled ‘Guarantees to be given by the issuing Member State in particular cases’:

‘The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

…

(2) if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

(3) where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.’

12 Article 6 of the Framework Decision, entitled ‘Determination of the competent judicial authorities’, provides in paragraph 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.’

13 Article 7 of the Framework Decision, entitled ‘Recourse to the central authority’, provides in paragraph 1:

‘Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.’

14 Article 15 of the Framework Decision, ‘Surrender decision’, reads as follows:

‘1. 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.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.’

15 Article 17 of the Framework Decision, entitled ‘Time limits and procedures for the decision to execute the European arrest warrant’, provides:

‘1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

…

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.’

German law

16 The Framework Decision was transposed into the German legal order by Paragraphs 78 to 83K of the Gesetz über die internationale Rechtshilfe in Strafsachen (Law on international mutual legal assistance in criminal matters) of 23 December 1982, as amended by the Europäisches Haftbefehlsgesetz (Law on the European Arrest Warrant) of 20 July 2006 (BGBl. 2006 I, p. 1721) (‘IRG’).

17 Under Paragraph 29(1) of the IRG, the Oberlandesgericht (Higher Regional Court, Germany) is to give a ruling, at the request of the Public Prosecutor's Office, on the legality of the extradition where the individual sought has not consented to extradition. The decision is to be made by order, in accordance with Paragraph 32 of the IRG.

18 Paragraph 73 of the IRG provides:

'In the absence of a request to that effect, mutual legal assistance and the transmission of information shall be unlawful if contrary to the essential principles of the German legal system. In the event of a request under Parts VIII, IX and X, mutual legal assistance shall be unlawful if contrary to the principles stated in Article 6 [TEU].'

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

19 On 2 August 2017, the Nyíregyházi Járásbíróság (District Court, Nyíregyházi, Hungary) issued a European arrest warrant against ML, a Hungarian national, so that he could be prosecuted and tried for offences of bodily harm, damage, fraud and burglary, committed in Nyíregyháza (Hungary) between February and July 2016.

20 On 16 August 2017, the Hungarian Ministry of Justice forwarded the European arrest warrant to the Generalstaatsanwaltschaft Bremen (Public Prosecutor's Office, Bremen, Germany).

21 By judgment of 14 September 2017, the Nyíregyházi Járásbíróság (District Court, Nyíregyházi) sentenced ML in absentia to a custodial sentence of one year and eight months.

22 By letter of 20 September 2017, the Hungarian Ministry of Justice informed the Bremen Public Prosecutor's Office, in response to a request sent by the latter, that, if ML were surrendered, he would initially be detained, for the duration of the surrender procedure, in Budapest prison (Hungary) and thereafter in Szombathely regional prison (Hungary). The Ministry also gave an assurance that ML would not be subjected to any inhuman or degrading treatment within the meaning of Article 4 of the Charter as a result of the proposed detention in Hungary. The Ministry added that that assurance could equally well be given in the event of ML being transferred to another prison.

23 On 31 October 2017, the Nyíregyházi Járásbíróság (District Court, Nyíregyházi) issued a further European arrest warrant in respect of ML, this time for the purpose of executing the custodial sentence imposed by that court on 14 September 2017.

24 On 23 November 2017, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court, Bremen, Germany) ordered that ML be detained pending extradition for the purpose of executing the European arrest warrant issued on 2 August 2017. Since then, ML has been held in the prison of Bremen-Oslebshausen (Germany).

25 On 12 December 2017, the Amtsgericht Bremen (District Court, Bremen, Germany) made an order on the basis of the European arrest warrant issued on 31 October 2017 placing ML in detention whilst awaiting his possible surrender to the Hungarian authorities. ML did not consent to his surrender.

26 By order of 19 December 2017, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court, Bremen) held that ML should continue to be detained pending extradition pursuant to that arrest warrant. However, in order to assess the legality of the surrender from the point of

view of detention conditions in Hungarian prisons, that court considered it necessary to obtain additional information.

27 In its order of 9 January 2018, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court, Bremen) explained that, on the basis of the information available to it, ML's detention in Szombathely prison did not present any difficulties. However, as the Hungarian Ministry of Justice had mentioned in its letter of 20 September 2017 that ML might be transferred to other detention centres, the court deemed it necessary to send the Ministry a request for information comprising a list of 78 questions concerning the conditions in which persons are detained in Budapest prison as well as in other detention centres to which ML might be transferred.

28 On 10 January 2018, the Bremen Public Prosecutor's Office sent that request to the Hungarian Ministry of Justice.

29 On 12 January 2018, in response to that request, the Ministry stated that the national legislature, by Law No CX adopted on 25 October 2016 amending, inter alia, Paragraph 144/B, subparagraph 1, of Law No CCXL of 2013 on the execution of sentences and penalties, certain coercive measures and detention for minor offences ('the 2016 Law'), introduced (i) a legal remedy enabling persons in detention to challenge the legality of the conditions of their detention and (ii) a new form of detention known as 'reintegration'. 'Reintegration' entails the possibility of prisoners who have not yet fully served their custodial sentence having their prison sentence commuted to house arrest. The Hungarian Ministry of Justice added that since 2015 1 000 new prison places had been creation, which had helped to reduce prison overcrowding.

30 By email of 1 February 2018 to the Bremen Public Prosecutor's Office, an official of the Hungarian Ministry of Justice stated that, circumstances permitting, ML would be detained in Budapest for a period of one to three weeks while certain unspecified measures relating to execution of the surrender procedure were taken in his regard.

31 By order of 12 February 2018, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court, Bremen) asked the Hungarian authorities to provide it, by 28 February 2018, with information about the conditions in which persons are held, first, in Budapest prison and, secondly, in the other prisons to which ML might be transferred. It also wished to know on what basis it would be able to verify the conditions in which persons detained there are held.

32 On 15 February 2018, the Bremen Public Prosecutor's Office sent that request to the Hungarian Ministry of Justice.

33 On 27 March 2018, the Hungarian Ministry of Justice, in conjunction with the directorate-general for the enforcement of sentences, gave a further assurance that, wherever ML was incarcerated, he would not be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter during his detention in Hungary.

34 In its order for reference, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court, Bremen) finds that ML does not have an interest that merits protection which would justify him serving his sentence in Germany. As ML does not have a command of the German language and as his partner does not have a job or any entitlement to social security benefits in Germany, he cannot increase his chances of social reintegration by serving his sentence in Germany. ML should therefore, in principle, be surrendered to Hungary.

35 However, before taking a final decision in that regard, the referring court considers that it must ascertain whether the information provided by the Hungarian authorities in response to its requests for information is sufficient to rule out, when Paragraph 73 of the IRG is applied and in view of the interpretation of Article 1(3), Article 5 and Article 6(1) of the Framework Decision and of Article 4 of the Charter, the existence of a real risk of inhuman or degrading treatment.

36 To that end, the referring court raises the question, in the first place, of the extent of the assessment that it is required to undertake, in view of the fact that there is now a legal remedy in Hungary enabling prisoners to challenge the conditions of their detention in the light of the fundamental rights. More specifically, it wonders whether that remedy makes it possible to rule out all real risk of inhuman or degrading treatment when there is — as is clear, inter alia, from the judgment of the ECtHR of 10 March 2015, *Varga and Othersv.Hungary* (CE:ECHR:2015:0310JUD001409712, §§ 79 to 92) — evidence of systemic or generalised deficiencies as regards detention conditions in Hungary. In that regard, the referring court is uncertain about the effect of the fact that the European Court of Human Rights recently held, in its judgment of 14 November 2017, *Domján v. Hungary* (CE:ECHR:2017:1114DEC000543317, § 22), that nothing proved that the remedy concerned was not going to offer realistic prospects of improving unsuitable conditions of detention in order to ensure compliance with the requirements arising under Article 3 ECHR.

37 Should the legal remedy in question not avert the risk of a prisoner being subjected to inhuman or degrading treatment as a result of the conditions of his detention, the referring court enquires, in the second place, about the extent, in view of the information and assurances obtained from the Hungarian authorities, of any obligation it may have to review the arrangements for and conditions of detention in all the prisons in which ML might be held.

38 In that regard, the referring court is uncertain, first of all, whether the assessment of detention conditions must concern all the prisons in which ML might be held, including those used on a transitional or temporary basis, or whether the review may be limited to those in which, according to the information provided by the issuing Member State, ML is likely to be incarcerated for most of the time. Although the referring court is able to rule out all risk of inhuman or degrading treatment at Szombathely prison, the Hungarian authorities have not provided enough information for such a finding to be made with regard to Budapest prison or the other detention centres to which they may, having left themselves that option, subsequently decide to transfer ML. That court also raises the question of the extent of the assessment to be made in this regard and the criteria to be used. In particular, it is uncertain whether it must take into account the case-law of the European Court of Human Rights, as stated in its judgment of 20 October 2016, *Muršić v. Croatia* (CE:ECHR:2016:1020JUD000733413).

39 Moreover, in the event of the executing judicial authorities being required to assess all the prisons in which ML might be detained, the referring court raises the question, first, of whether it may be satisfied with the general statements made by the Hungarian authorities that ML will not be exposed to a risk of inhuman or degrading treatment, or whether it may make ML's surrender subject to the sole condition that he will not be exposed to such treatment. Should that not be the case, the referring court asks, first, what significance it should attach to the fact that the Hungarian authorities have stated that ML's 'transitional' detention will not exceed three weeks, given that the statement is expressed subject to the reservation 'circumstances permitting'. Secondly, it wishes to ascertain whether it may take into account information when it is not possible to determine whether that information has been provided by the issuing judicial authority within the meaning of Article 6(1) of the Framework Decision or by a central authority within the meaning of Article 7(1) of that decision, acting in response to a request by the issuing judicial authority.

40 In those circumstances, the Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) What significance does it have, for the purpose of the interpretation of [Article 1(3), Article 5 and Article 6(1) of the Framework Decision, in conjunction with Article 4 of the Charter] if legal remedies exist for detainees in the issuing Member State in respect of the conditions of their detention?

(a) If, taking account of the aforementioned provisions, the executing judicial authority is in possession of evidence of systemic or general deficiencies affecting certain groups of persons or certain prisons in the issuing Member State, is a real risk of inhuman or degrading treatment of the person whose surrender is sought in the event of his surrender, which would render the surrender inadmissible, to be ruled out merely by reason of the fact that such legal remedies have been introduced, without the need for further assessment of the conditions of detention?

(b) Is it of significance in this regard that the European Court of Human Rights has held in respect of such legal remedies that there is no evidence that they do not offer detainees realistic perspectives of improving unsuitable conditions of detention?

(2) If Question 1 is answered to the effect that the existence of such legal remedies for detainees, without further assessment of the specific conditions of detention in the issuing Member State by the executing judicial authority, does not of itself exclude a real risk of inhuman or degrading treatment of the person whose surrender is sought:

(a) Are the aforementioned provisions to be interpreted as meaning that the assessment by the executing judicial authority of the conditions of detention in the issuing Member State extends to all prisons or other detention facilities in which the person whose surrender is sought may be incarcerated? Does this also apply to simply temporary or transitional detention in certain prisons? Or can the assessment be limited to the prison in which, according to information from the authorities of the issuing Member State, the person whose surrender is sought is likely to be incarcerated for most of the time?

(b) For this purpose, is it necessary to conduct a comprehensive assessment of the conditions of detention concerned that determines both the personal space available to each prisoner and other conditions of detention? Are the conditions of detention thus determined to be assessed on the basis of the case-law of the European Court of Human Rights established in its judgment of 20 October 2016, *Muršić v. Croatia* (CE:ECHR:2016:1020JUD000733413)?

(3) If Question 2 is also answered to the effect that the assessment required by the executing judicial authority must extend to all prisons [to which the person concerned might be transferred]:

(a) Can the assessment by the executing judicial authority of the conditions of detention in each individual prison envisaged be rendered superfluous by a general assurance given by the issuing Member State that the person whose surrender is sought will not be exposed to any risk of inhuman or degrading treatment?

(b) Or, in lieu of an assessment of the conditions of detention of each individual prison envisaged, can the decision by the executing judicial authority on the admissibility of the surrender be made contingent upon the person whose surrender is sought not being exposed to any such treatment?

(4) If Question 3 is also answered to the effect that the provision of assurances and the imposition of conditions cannot render the assessment by the executing judicial authority of the conditions of detention in each individual prison [to which the person concerned might be transferred] superfluous:

(a) Must the duty of assessment by the executing judicial authority extend to the conditions of detention in all prisons envisaged, even in the case where the judicial authority of the issuing Member State advises that the period of detention in them of the person whose surrender is sought will not exceed three weeks, circumstances permitting?

(b) Does this also apply if the executing judicial authority is unable to ascertain whether that information was provided by the issuing judicial authority or whether it originates from a central authority in the issuing Member State acting in response to a request by the issuing judicial authority for support?'

The urgent preliminary ruling procedure

41 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.

42 In support of its request, that court has stated that the person concerned has been deprived of his liberty since 23 November 2017 in connection with the execution of a European arrest warrant issued by the Hungarian authorities. The referring court also considers that, if it were required to assess detention conditions in the transit prisons or other facilities to which the person concerned might subsequently be transferred, it would — unless it was in a position to rule out all risk of inhuman or degrading treatment — be bound to conclude that the requested surrender is unlawful. Consequently, it would also be obliged to release that person from the custody ordered for the purposes of extradition.

43 In that regard, it should be stated, in the first place, that the present reference for a preliminary ruling concerns the interpretation of the Framework Decision, which falls within the fields covered by Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice. Consequently, the reference can be dealt with under the urgent preliminary ruling procedure.

44 In the second place, as regards the criterion relating to urgency, it is necessary, in accordance with the settled case-law of the Court, to take into account the fact that the person concerned is currently deprived of his liberty and that the question whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings. In addition, the situation of the person concerned must be assessed as it stands at the time when consideration is given to the request that the reference be dealt with under the urgent procedure (judgment of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraph 58 and the case-law cited).

45 In the present case, it is not in dispute that, at that time, the person concerned was in custody and thus deprived of his liberty. Moreover, it is apparent from the explanation provided by the referring court that that person's continued detention depends on the outcome of the case in the main proceedings. Indeed, the detention measure against him was ordered in the context of the execution of a European arrest warrant issued in relation to him. Consequently, the decision of that court on his possible surrender to the Hungarian authorities will depend on the answers that the Court of Justice gives to the questions referred for a preliminary ruling in this case.

46 In those circumstances, on 17 April 2018 the First Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

47 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 1(3), Article 5 and Article 6(1) of the Framework Decision must be interpreted as meaning that, when the executing judicial authority has information showing there to be systemic or generalised deficiencies in the detention conditions in the prisons of the issuing Member State, that authority may rule out the existence of a real risk that the person in respect of whom a European arrest warrant has been issued for the purpose of executing a custodial sentence will be subjected to inhuman and degrading treatment, within the meaning of Article 4 of the Charter, merely because that person has, in the issuing Member State, a legal remedy enabling him to challenge the conditions of his detention and, if that is not the case, whether that authority is then required to assess the conditions of detention in all the prisons in which the person concerned could potentially be detained, including on a temporary or transitional basis, or only the conditions of detention in the prison in which, according to the information available to that authority, he is likely to be detained for most of the time. That court also asks whether the abovementioned provisions must be interpreted as meaning that the executing judicial authority must assess all the conditions of detention and whether, in the context of that assessment, that authority may take into account information provided by authorities of the issuing Member State other than the executing judicial authority, such as, in particular, an assurance that the person concerned will not be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

Preliminary observations

48 In order to answer the questions referred, it should be recalled that EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the EU law that implements them will be respected (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 35 and the case-law cited).

49 Both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 36 and the case-law cited).

50 Thus, when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but also, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights

guaranteed by the European Union (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 37 and the case-law cited).

51 It is apparent from recital 6 of the Framework Decision that the European arrest warrant provided for in that framework decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 38).

52 As is apparent in particular from Article 1(1) and (2) of the Framework Decision, read in the light of recitals 5 and 7 thereof, the purpose of that decision is to replace the multilateral system of extradition based on the European Convention on Extradition of 13 December 1957 with a system of surrender 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 (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 39 and the case-law cited).

53 The Framework Decision thus 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 attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 40 and the case-law cited).

54 In the field governed by the Framework Decision, the principle of mutual recognition, which, as is apparent in particular from recital 6 of that framework decision, constitutes the 'cornerstone' of judicial cooperation in criminal matters, is applied in Article 1(2) thereof which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision. Executing judicial authorities may therefore, in principle, refuse to execute such a warrant only on the grounds for non-execution exhaustively listed by the framework decision and execution of the warrant may be made subject only to one of the conditions exhaustively laid down in Article 5. Accordingly, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 41 and the case-law cited).

55 Thus, the Framework Decision explicitly states the grounds for mandatory non-execution (Article 3) and optional non-execution (Articles 4 and 4a) of a European arrest warrant, as well as the guarantees to be given by the issuing Member State in particular cases (Article 5) (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 42 and the case-law cited).

56 Nonetheless, the Court has recognised that limitations may be placed on the principles of mutual recognition and mutual trust between Member States 'in exceptional circumstances' (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 43 and the case-law cited).

57 In that context, the Court has acknowledged that, subject to certain conditions, the executing judicial authority has the power to bring the surrender procedure established by the Framework Decision to an end where surrender may result in the requested person being subjected to inhuman

or degrading treatment within the meaning of Article 4 of the Charter (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 44 and the case-law cited).

58 For that purpose, the Court has relied, first, on Article 1(3) of the Framework Decision, which provides that that decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Articles 2 and 6 TEU and, second, on the absolute nature of the fundamental right guaranteed by Article 4 of the Charter (judgment of today's date, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 45 and the case-law cited).

59 Accordingly, where the judicial authority of the executing Member State is in possession of information showing there to be a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, measured against the standard of protection of fundamental rights guaranteed by EU law and, in particular, by Article 4 of the Charter, that judicial authority is bound to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual concerned by a European arrest warrant. The consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 88).

60 To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated concerning the detention conditions within the prisons of the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the European Court of Human Rights, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89).

61 Nonetheless, a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing Member State cannot lead, in itself, to the refusal to execute a European arrest warrant. The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people or certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subjected to inhuman or degrading treatment in the event that he is surrendered to the authorities of that Member State (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 91 and 93).

62 Thus, in order to ensure observance of Article 4 of the Charter in the particular circumstances of a person who is the subject of a European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is then bound to determine, specifically and precisely, whether, in the particular circumstances of the case, there are substantial grounds for believing that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 4, because of the conditions for his detention envisaged in the issuing Member State (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 92 and 94).

63 To that end, that authority must, pursuant to Article 15(2) of the Framework Decision, request of the judicial authority of the issuing Member State that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State. That request may also relate to the existence, in the issuing Member State, of any national or international procedures and mechanisms for monitoring detention conditions, linked, for example, to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 95 and 96).

64 The issuing judicial authority is obliged to provide that information to the executing judicial authority (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 97).

65 If, in the light of the information provided pursuant to Article 15(2) of the Framework Decision, and of any other information that may be available to the executing judicial authority, that authority finds that there exists, for the individual in respect of whom the European arrest warrant has been issued, a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, the execution of that warrant must be postponed but it cannot be abandoned (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 98).

66 By contrast, in the event that the information received by the executing judicial authority from the issuing judicial authority leads it to rule out the existence of a real risk that the individual concerned will be subject to inhuman and degrading treatment in the issuing Member State, the executing judicial authority must adopt, within the time limits prescribed by the Framework Decision, its decision on the execution of the European arrest warrant, without prejudice to the opportunity of the individual concerned, after surrender, to have recourse, within the legal system of the issuing Member State, to legal remedies that may enable him to challenge, if need be, the lawfulness of the conditions of his detention in a prison of that Member State (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 103).

67 In the present case, the referring court considers that it is in possession of information which shows that there are systemic or generalised deficiencies in detention conditions in Hungary. According to that court, it follows from the judgment of the ECtHR of 10 March 2015, *Varga and Others v. Hungary* (CE:ECHR:2015:0310JUD001409712, §§ 79 to 92), that, as Hungary is experiencing prison overcrowding, there is a risk that the persons who are held there will be subjected to inhuman or degrading treatment. That court considers that, at the date on which the order for reference was made, there continued to be such overcrowding, since, according to the Hungarian authorities, 1 000 prison places had been created, whilst 5 500 extra places were needed. The referring court also states that it is difficult to gauge the extent to which the possibility, introduced by the 2016 Law, of commuting imprisonment into house arrest has actually had an impact in reducing prison overcrowding in Hungary.

68 In its written observations and at the hearing, Hungary has disputed the existence of such deficiencies affecting the conditions of detention in its territory. It submits that the referring court wrongly attaches overmuch importance to the judgment of the ECtHR of 10 March 2015, *Varga and Others v. Hungary* (CE:ECHR:2015:0310JUD001409712), and fails to take account of matters subsequent to the delivery of that judgment. In particular, the referring court has not taken into account the improvements made to prison life, the legislative amendments made to give effect to that judgment or more recent decisions of the European Court of Human Rights.

69 In that regard, the point should be made, however, that, in the present reference for a preliminary ruling, the Court is not asked about the existence of systemic or generalised deficiencies in detention conditions in Hungary.

70 In fact, by its questions, which are based on the premiss that such deficiencies do exist, the referring court in essence seeks to ascertain whether, having regard to the case-law referred to in paragraphs 61 to 66 of this judgment, the various pieces of information that have been provided to it by the issuing Member State allow it to rule out the existence of a real risk that the individual concerned will be subjected in the issuing Member State to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

71 The Court must therefore reply to those questions on the basis of the premiss adopted by the referring court on its sole responsibility, whose accuracy that court must verify by taking account of properly updated information, as stated in paragraph 60 of this judgment, having regard, in particular, to the fact that the provisions of the 2016 Law have been in force since 1 January 2017, as those provisions may, if applied, call that premiss into question.

The existence of a legal remedy in the issuing Member State concerning the legality of detention conditions in the light of the fundamental rights

72 It is not disputed that, by the 2016 Law, Hungary introduced, with effect from 1 January 2017, a remedy enabling prisoners to challenge, in court proceedings, the legality of the conditions of their detention in the light of the fundamental rights.

73 As all the interested persons who have participated in the present proceedings have submitted, although a remedy of that kind can constitute an effective judicial remedy for the purposes of Article 47 of the Charter, it cannot, on its own, suffice to rule out a real risk that the individual concerned will be subject in the issuing Member State to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

74 Such subsequent judicial review of detention conditions in the issuing Member State is an important development, which may act as an incentive to the authorities of that State to improve detention conditions and which may therefore be taken into account by the executing judicial authorities when, for the purpose of deciding on whether a person who is the subject of a European arrest warrant should be surrendered, they make an overall assessment of the conditions in which it is intended that a person will be held. However, such review is not, as such, capable of averting the risk that that person will, following his surrender, be subjected to treatment that is incompatible with Article 4 of the Charter on account of the conditions of his detention.

75 Therefore, even if the issuing Member State provides for legal remedies that make it possible to review the legality of detention conditions from the perspective of the fundamental rights, the executing judicial authorities are still bound to undertake an individual assessment of the situation of each person concerned, in order to satisfy themselves that their decision on the surrender of that person will not expose him, on account of those conditions, to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter.

76 That interpretation is not in any way inconsistent with what was held by the European Court of Human Rights in its judgment of 14 November 2017, *Domján v. Hungary* (CE:ECHR:2017:1114DEC000543317). In that judgment the European Court of Human Rights, first, merely found that, since the remedies introduced by the 2016 Law guaranteed in principle genuine redress for ECHR infringements originating in prison overcrowding and other unsuitable

conditions of detention in Hungary, the application brought before it in that case had to be dismissed as inadmissible as long as those domestic avenues of redress had not been exhausted. Secondly, it made clear that it reserved the right to re-examine the effectiveness of those remedies in the light of their application in practice.

The extent of the assessment of conditions of detention in the issuing Member State

The prisons to be assessed

77 In accordance with the case-law referred to in paragraphs 61 to 66 of this judgment, the executing judicial authorities responsible for deciding on the surrender of a person who is the subject of a European arrest warrant must determine, specifically and precisely, whether, in the circumstances of a particular case, there is a real risk that that person will be subjected in the issuing Member State to inhuman or degrading treatment.

78 It follows that the assessment which those authorities are required to make cannot, in view of the fact that it must be specific and precise, concern the general conditions of detention in all the prisons in the issuing Member State in which the individual concerned might be detained.

79 The Court observes in that regard that the option available to the executing judicial authorities under Article 15(2) of the Framework Decision to request that the necessary supplementary information be furnished as a matter of urgency when they find the information provided by the issuing Member State to be insufficient to allow them to decide on surrender is a last resort, to which recourse may be had only in exceptional cases in which the executing judicial authority considers that it does not have all the formal elements necessary to adopt a decision on surrender as a matter of urgency (see, to that effect, judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraphs 60 and 61).

80 That provision thus cannot be used by the executing judicial authorities to request, as a matter of course, that the issuing Member State provide general information concerning detention conditions in the prisons in which a person who is the subject of a European arrest warrant might be detained.

81 Moreover, such a request would in most cases entail requesting information about all the prisons located in the issuing Member State, since a person who is the subject of a European arrest warrant can, as a general rule, be detained in any prison in the territory of that State. It is generally not possible at the stage of executing a European arrest warrant to identify all the prisons in which such a person will actually be detained, as a transfer from one prison to another may be warranted because of unforeseen circumstances that may even be unrelated to the individual concerned.

82 Those considerations are borne out by the objective of the Framework Decision, which, as has already been made clear in paragraph 53 of this judgment, is to facilitate and accelerate surrenders through the introduction of a simplified and more effective system for the surrender between judicial authorities of persons convicted or suspected of having infringed criminal law.

83 That objective underlies, inter alia, the treatment of the time limits for adopting decisions relating to a European arrest warrant with which Member States are required to comply and the importance of which is stated in a number of provisions of the Framework Decision, including Article 17 (see, to that effect, judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraphs 55 and 56).

84 An obligation on the part of the executing judicial authorities to assess the conditions of detention in all the prisons in which the individual concerned might be detained in the issuing Member State is clearly excessive. Moreover it is impossible to fulfil such an obligation within the periods prescribed in Article 17 of the Framework Decision. Such an assessment could in fact substantially delay that individual's surrender and, accordingly, render the operation of the European arrest warrant system wholly ineffective.

85 That would result in a risk of impunity for the requested person, especially when, as in the case in the main proceedings, which concerns the execution of a European arrest warrant issued for the purpose of executing a custodial sentence, the executing judicial authority has found that the conditions for applying the ground of optional non-execution set out in Article 4(6) of the Framework Decision — which permits the issuing Member State to undertake to execute that sentence in accordance with its domestic law, with a view, inter alia, to increasing the chances of the individual concerned of reintegrating into society (see, inter alia, judgment of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 32) — were not met.

86 Such impunity would be incompatible with the objective pursued both by the Framework Decision (see, to that effect, judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 23) and by Article 3(2) TEU, in the context of which the Framework Decision must be seen and under which the European Union offers its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls and the prevention and combating of crime (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 36 and 37).

87 Consequently, in view of the mutual trust that must exist between Member States, on which the European arrest warrant system is based, and taking account, in particular, of the time limits set by Article 17 of the Framework Decision for the adoption of a final decision on the execution of a European arrest warrant by the executing judicial authorities, those authorities are solely required to assess the conditions of detention in the prisons in which, according to the information available to them, it is actually intended that the person concerned will be detained, including on a temporary or transitional basis. The compatibility with the fundamental rights of the conditions of detention in the other prisons in which that person may possibly be held at a later stage is, in accordance with the case-law referred to in paragraph 66 of this judgment, a matter that falls exclusively within the jurisdiction of the courts of the issuing Member State.

88 In the present case, even if this information has not been provided by the issuing judicial authority, it is common ground among all the interested persons that have participated in the present proceedings that the person concerned, if he is surrendered to the Hungarian authorities, will initially be held in Budapest prison for a period of one to three weeks, before being transferred to Szombathely prison, but it was not inconceivable that he might subsequently be transferred to another place of detention.

89 In those circumstances, the executing judicial authority must review the conditions of detention of the person concerned in those two prisons alone.

The assessment of the conditions of detention

90 In the absence of minimum standards under EU law regarding detention conditions, it should be recalled that, as has already been held in the judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 90), Article 3 of the ECHR imposes on

the authorities of the State in whose territory a person is being detained a positive obligation to satisfy themselves that a prisoner is detained in conditions which guarantee respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (ECtHR, 25 April 2017, *Rezmiveș and Others v. Romania*, CE:ECHR:2017:0425JUD006146712, § 72).

91 In that regard, if it is to fall within the scope of Article 3 of the ECHR, ill-treatment must attain a minimum level of severity, which depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (ECtHR, 20 October 2017, *Muršić v. Croatia,* CE:ECHR:2016:1020JUD000733413, §§ 97 and 122).

92 In view of the importance attaching to the space factor in the overall assessment of conditions of detention, a strong presumption of a violation of Article 3 of the ECHR arises when the personal space available to a detainee is below 3 m² in multi-occupancy accommodation (ECtHR, 20 October 2017, *Muršić v. Croatia,* CE:ECHR:2016:1020JUD000733413, § 124).

93 The strong presumption of a violation of Article 3 of the ECHR will normally be capable of being rebutted only if (i) the reductions in the required minimum personal space of 3 m^2 are short, occasional and minor, (ii) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities, and (iii) the general conditions of detention at the facility are appropriate and there are no other aggravating aspects of the conditions of the individual concerned's detention (ECtHR, 20 October 2017, *Muršić v. Croatia,* CE:ECHR:2016:1020JUD000733413, § 138).

94 In the present case, the referring court itself is of the opinion that the information available to it concerning detention conditions at Szombathely prison, in which it is accepted that the person concerned should serve the majority of the custodial sentence imposed on him in Hungary, rules out the existence of a real risk of that person being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter: that has, moreover, not been disputed by any of the interested parties who have participated in these proceedings.

95 Accordingly, the executing judicial authority must determine whether the person concerned will, on the other hand, be exposed to such a risk in Budapest prison.

96 It is not decisive in that regard that detention in that facility is intended to last only for the duration of the surrender procedure and therefore, according to the information provided by the authorities of the issuing Member State, should not in principle exceed three weeks.

97 It is true that the case-law of the European Court of Human Rights indicates that the length of a detention period may, as has already been stated in paragraphs 91 and 93 of this judgment, be a relevant factor in assessing the gravity of suffering or humiliation caused to a detainee by the inadequate conditions of his detention (ECtHR, 20 October 2017, *Muršić v. Croatia,* CE:ECHR:2016:1020JUD000733413, § 131).

98 However, the relative brevity of a detention period does not automatically mean that the treatment at issue falls outside the scope of Article 3 of the ECHR when other factors are sufficient to mean that it is caught by that provision.

99 The European Court of Human Rights has also held, that, when the detainee has space below 3 m², a period of detention of a few days may be treated as a short period. However, a period of around 20 days such as that envisaged in the case in the main proceedings by the authorities of the issuing Member State, which, moreover, may quite possibly be extended in the event of (undefined) 'circumstances preventing [that period coming to an end]', cannot be regarded as a short period (see, to that effect, ECtHR, 20 October 2017, *Muršić v. Croatia,* CE:ECHR:2016:1020JUD000733413, §§ 146, 152 and 154).

100 Accordingly, the fact that detention in such conditions is temporary or transitional does not, on its own, rule out all real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter.

101 In those circumstances, if the executing judicial authority considers that the information available to it is insufficient to allow it to adopt a surrender decision, it may, as has already been stated in paragraph 63 of this judgment, request, in accordance with Article 15(2) of the Framework Decision, that the issuing judicial authority provide it with the supplementary information it deems necessary in order to obtain further details on the actual and precise conditions of detention of the person concerned in the prison in question.

102 In the present case, it appears from the material submitted to the Court that the Hungarian authorities have not answered the 78 questions that the Bremen Public Prosecutor's Office sent to them, in accordance with the referring court's order of 9 January 2018, on 10 January 2018 to enquire about detention conditions in Budapest prison and in any other facility in which the person concerned might, depending on the circumstances, be held.

103 A number of those questions, taken individually, are relevant for the assessment of the actual and precise conditions of the person concerned's detention in the light of the factors referred to in paragraph 93 of this judgment. However, as the Advocate General has also in essence observed in point 76 of his Opinion, those questions — because of their number, their scope (every prison in which the person concerned might be held) and their content (aspects of detention that are of no obvious relevance for the purposes of that assessment, such as, for example, opportunities for religious worship, whether it is possible to smoke, the arrangements for the washing of clothing and whether there are bars or slatted shutters on cell windows) — make it, in practice, impossible for the authorities of the issuing Member State to provide a useful answer, given, in particular, the short time limits laid down in Article 17 of the Framework Decision for the execution of a European arrest warrant.

104 A request of that nature, which results in the operation of the European arrest warrant being brought to a standstill, is not compatible with the duty of sincere cooperation, laid down in the first subparagraph of Article 4(3) TEU, which must inform the dialogue between the executing and issuing judicial authorities when, inter alia, information is provided pursuant to Article 15(2) and (3) of the Framework Decision.

105 At the hearing the Bremen Public Prosecutor's Office thus stated that it has never received an answer to this type of request for information, which the referring court is said to send as a matter of course to the authorities of three issuing Member States, including Hungary. It thus explained that, in the absence of a decision of the referring court approving the surrender, no European arrest warrant issued by a court of one of those three Member States is now being executed by that office.

106 Nevertheless, it is not disputed that, in response to the request of 10 January 2018, the Hungarian authorities gave the Bremen Public Prosecutor's Office — in their letters of

20 September 2017 and 27 March 2018 — an assurance that the person concerned, irrespective of the facility he is detained in, will not be subject to any inhuman or degrading treatment within the meaning of Article 4 of the Charter, as a result of his detention in Hungary.

107 Consideration must therefore be given to whether and, if so, to what extent such an assurance may be taken into account by the executing judicial authority in taking its decision on the surrender of the person concerned.

The taking into account of assurances given by the authorities of the issuing Member State

108 It should be recalled that Article 15(2) of the Framework Decision explicitly enables the executing judicial authority, if it finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, to request that the necessary supplementary information be furnished as a matter of urgency. In addition, under Article 15(3) of the Framework Decision, the issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

109 Moreover, in accordance with the principle of sincere cooperation set out in the first subparagraph of Article 4(3) TEU, the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 42).

110 In accordance with those provisions, the executing judicial authority and the issuing judicial authority may, respectively, request information or give assurances concerning the actual and precise conditions in which the person concerned will be detained in the issuing Member State.

111 The assurance provided by the competent authorities of the issuing Member State that the person concerned, irrespective of the prison he is detained in in the issuing Member State, will not suffer inhuman or degrading treatment on account of the actual and precise conditions of his detention is a factor which the executing judicial authority cannot disregard. As the Advocate General has noted in point 64 of his Opinion, a failure to give effect to such an assurance, in so far as it may bind the entity that has given it, may be relied on as against that entity before the courts of the issuing Member State.

112 When that assurance has been given, or at least endorsed, by the issuing judicial authority, if need be after requesting the assistance of the central authority, or one of the central authorities, of the issuing Member State, as referred to in Article 7 of the Framework Decision, the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the Member States and on which the European arrest warrant system is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of Article 4 of the Charter.

113 In the present instance, the assurance given by the Hungarian Ministry of Justice on 20 September 2017, and repeated on 27 March 2018, that the person concerned will not be subjected to any inhuman or degrading treatment on account of the conditions of his detention in Hungary was, however, neither provided nor endorsed by the issuing judicial authority, as the Hungarian Government explicitly confirmed at the hearing.

114 As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority.

115 In that regard, the Court observes that the assurance given by the Hungarian Ministry of Justice appears to be borne out by the information in the possession of the Bremen Public Prosecutor's Office. In response to questions put by the Court, that office explained at the hearing that that information, which has been gleaned, in particular, from the experience gained in the course of surrender procedures carried out before delivery of the judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198), gives grounds for considering that detention conditions within Budapest prison, through which every person who is the subject of a European arrest warrant transits, are not in breach of Article 4 of the Charter.

116 That being so, it appears that the person concerned may be surrendered to the Hungarian authorities without any breach of Article 4 of the Charter, a matter which must, however, be verified by the referring court.

117 Having regard to all the foregoing considerations, the answer to the questions referred is that Article 1(3), Article 5 and Article 6(1) of the Framework Decision must be interpreted as meaning that when the executing judicial authority has information showing there to be systemic or generalised deficiencies in the conditions of detention in the prisons of the issuing Member State, the accuracy of which must be verified by the referring court in the light of all the available updated data:

– the executing judicial authority cannot rule out the existence of a real risk that the person in respect of whom a European arrest warrant has been issued for the purpose of executing a custodial sentence will be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, merely because that person has, in the issuing Member State, a legal remedy permitting him to challenge the conditions of his detention, although the existence of such a remedy may be taken into account by the executing judicial authority for the purpose of deciding on the surrender of the person concerned;

– the executing judicial authority is required to assess only the conditions of detention in the prisons in which, according to the information available to it, it is likely that that person will be detained, including on a temporary or transitional basis;

– the executing judicial authority must assess, to that end, solely the actual and precise conditions of detention of the person concerned that are relevant for determining whether that person will be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter;

– the executing judicial authority may take into account information provided by authorities of the issuing Member State other than the issuing judicial authority, such as, in particular, an assurance that the individual concerned will not be subject to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

Costs

118 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 (First Chamber) hereby rules:

Article 1(3), Article 5 and Article 6(1) 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 when the executing judicial authority has information showing there to be systemic or generalised deficiencies in the conditions of detention in the prisons of the issuing Member State, the accuracy of which must be verified by the referring court in the light of all the available updated data:

– **the executing judicial authority cannot rule out a real risk that the person in respect of whom a European arrest warrant has been issued for the purpose of executing a custodial sentence will be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, merely because that person has, in the issuing Member State, a legal remedy permitting him to challenge the conditions of his detention, although the existence of such a remedy may be taken into account by the executing judicial authority for the purpose of deciding on the surrender of the person concerned;**

– **the executing judicial authority is required to assess only the conditions of detention in the prisons in which, according to the information available to it, it is likely that that person will be detained, including on a temporary or transitional basis;**

– **the executing judicial authority must assess, to that end, solely the actual and precise conditions of detention of the person concerned that are relevant for determining whether that person will be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights;**

– **the executing judicial authority may take into account information provided by authorities of the issuing Member State other than the issuing judicial authority, such as, in particular, an assurance that the individual concerned will not be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights.**

[Signatures]

* Language of the case: German.