ECLI:EU:C:2018:27

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

23 January 2018 (*)

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Surrender procedures between Member States — Grounds for mandatory non-execution — Article 3(3) — Minors — Requirement to verify the minimum age at which a minor may be regarded as criminally responsible or assessment, in each individual case, of the additional conditions laid down by the law of the executing Member State in order specifically to prosecute or convict a minor)

In Case C-367/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Brussel (Appeal Court, Brussels, Belgium), made by decision of 23 June 2016, received at the Court on 5 July 2016, in proceedings relating to the execution of a European arrest warrant issued against

Dawid Piotrowski,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano (Rapporteur), Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, J. Malenovský, E. Levits, C.G. Fernlund and C. Vajda, Presidents of Chambers, J.-C. Bonichot, A. Arabadjiev, C. Toader, S. Rodin, F. Biltgen and K. Jürimäe, Judges,

Advocate General: Y. Bot,

Registrar: M.-A. Gaudissart, Deputy Registrar,

having regard to the written procedure and further to the hearing on 13 June 2017,

after considering the observations submitted on behalf of:

– the Belgian Government, by C. Pochet, L. Van den Broeck, C. Van Lul and N. Cloosen, acting as Agents,

– Ireland, by A. Joyce and J. Quaney, acting as Agents, and by J. Fitzgerald, Barrister-at-Law,

– the French Government, by D. Colas and R. Coesme, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Ventrella, avvocato dello Stato,

– the Polish Government, by B. Majczyna and J. Sawicka, acting as Agents,

– the Romanian Government, by R. Mangu, M. Chicu and E. Gane, 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 6 September 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(3) 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 proceedings in Belgium for the execution of a European arrest warrant issued on 17 July 2014 by the Sąd Okręgowy w Białymstoku (Regional Court, Bialystok, Poland) against Mr Dawid Piotrowski.

Legal context

EU law

3 Recitals 5 to 7 of Framework Decision 2002/584 state 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.

(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 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.’

4 Article 3 of Framework Decision 2002/584 is worded as follows:

‘The judicial authority of the Member State of execution (hereinafter “executing judicial authority”) shall refuse to execute the European arrest warrant in the following cases:

…

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.’

5 Article 15 of Framework Decision 2002/584 states 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.’

6 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ 2016 L 132, p. 1) (‘Directive 2016/800’) states in recital 8 thereof as follows:

‘Where children are suspects or accused persons in criminal proceedings or are subject to European arrest warrant proceedings pursuant to … Framework Decision 2002/584/JHA (requested persons), Member States should ensure that the child’s best interests are always a primary consideration, in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union (the Charter).’

7 Article 1 of that directive provides as follows:

‘This Directive lays down common minimum rules concerning certain rights of children who are:

(a) suspects or accused persons in criminal proceedings; or

(b) subject to European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA …’

8 Article 3(1) of Directive 2016/800 defines a ‘child’ as a person below the age of 18.

9 Article 17 of Directive 2016/800, headed ‘European arrest warrant proceedings’, provides as follows:

‘Member States shall ensure that the rights referred to in Articles 4, 5, 6 and 8, Articles 10 to 15 and Article 18 apply *mutatis mutandis*, in respect of children who are requested persons, upon their arrest pursuant to European arrest warrant proceedings in the executing Member State.’

Belgian law

10 Article 4(3) 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, ‘the Law on the European arrest warrant’) states that ‘the execution of a European arrest warrant shall be refused if the person to whom the European arrest warrant relates cannot yet, in view of his age, be held criminally responsible under Belgian law for the acts on which the European arrest warrant is based’.

11 Article 36 of the wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade (Law on youth protection, treatment of minors responsible for an act defined as an offence and compensation for damage caused by such acts) of 8 April 1965 (Belgisch Staatsblad of 15 April 1965, p. 4014), in the version applicable to the dispute in the main proceedings (‘the Law on youth protection’), is worded as follows:

‘The jeugdrechtbank (the Juvenile Court) shall have jurisdiction:

…

4° in respect of public prosecutions relating to persons subject to prosecution for acts defined as an offence committed before reaching 18 years of age.

…’

12 Article 57bis of that law provides as follows:

‘1. If a person who is brought before the jeugdrechtbank (Juvenile Court) because of an act defined as an offence was 16 years old or older at the time of the act, and the jeugdrechtbank (Juvenile Court) does not consider a care, protection or education measure to be appropriate, that court may decline to hear the matter, stating reasons for its decision, and refer it to the public prosecution service with a view to prosecution, either, if the person concerned is suspected of having committed an offence or a crime triable on indictment, before a special chamber within the jeugdrechtbank (Juvenile Court), which applies ordinary criminal law and ordinary criminal procedure, depending on the offence committed, or, if the person concerned is suspected of having committed a crime not triable on indictment, before an Assize Court composed in accordance with the second paragraph of Article 119 of the Judicial Code, depending on the offence committed. The jeugdrechtbank (Juvenile Court) may, however, decline to hear the case only if one of the following conditions is met:

– the person concerned has already been the subject of one or more of the measures referred to in Article 37(2), Article 37(2bis) or Article 37(2ter) or of an offer of restorative justice as referred to in Article 37bis to 37quinquies;

– at issue is an act as referred to in Articles 373, 375, 393 to 397, 400, 401, 417ter, 417quater, and 471 to 475 of the Criminal Code or an attempt to commit an act as referred to in Articles 393 to 397 of the Criminal Code.

The reasons stated must relate to the individual characteristics of the person concerned and of his family and associates, and to his level of maturity.

The present provision may be applied even if the person concerned has already reached the age of 18 at the time of sentencing. In that case, he shall be treated as a minor for the purposes of the present chapter.

2. Without prejudice to Article 36bis, the jeugdrechtbank (Juvenile Court) may decline to hear the case pursuant to this article only after it has carried out social and medico/psychological enquiries, as provided for in Article 50(2).

The purpose of medico/psychological enquiries is to evaluate the situation by reference to the personal characteristics of the person concerned and of his family and associates and his level of maturity. The nature, frequency and seriousness of the acts with which the person is charged shall be taken into account in so far as they are relevant to the evaluation of his personal characteristics. The King shall determine the detailed rules pursuant to which the medico-psychological investigation is to be conducted.

However,

1° the jeugdrechtbank (Juvenile Court) may hand over the case, without being in possession of the report on the medico-psychological investigation, if it establishes that the person concerned has withdrawn from the investigation or refuses to submit to it;

2° the jeugdrechtbank (Juvenile Court) may hand over the case, without being required to set in motion a social investigation and without having to request a medico-psychological investigation, if a measure has previously been taken pursuant to a judgment in respect of a person who has not yet turned 18 and who has committed one or more of the acts referred to in Articles 323, 373 to 378, 392 to 394, 401 and 468 to 476 of the Criminal Code after reaching the age of 16, and that person is again being prosecuted because, after the first conviction, he has again committed one or more of

the aforementioned acts. The documents relating to the previous proceedings shall be added to those of the new proceedings;

3° the jeugdrechtbank (Juvenile Court) shall give a ruling under the same conditions on the claim for the handing over of a case relating to a person who has not yet turned 18 and has committed an act defined as a serious crime carrying a custodial sentence in excess of 20 years after that person has reached the age of 16 and is prosecuted only after reaching the age of 18.

…'

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

13 Mr Piotrowski is a Polish national who was born on 11 August 1993 in Lapy (Poland).

14 On 17 July 2014, the Sąd Okręgowy w Białymstoku (Regional Court, Bialystok) issued a European arrest warrant against Mr Piotrowski with a view to his surrender to the Polish authorities for the execution of the sentences imposed by two judgments of that court. The first judgment, handed down on 15 September 2011, imposed a six-month custodial sentence on Mr Piotrowski for the theft of a bicycle. The second judgment, handed down on 10 September 2012, imposed a custodial sentence of two years and six months for giving false information in connection with a serious attack.

15 By order of 6 June 2016, the onderzoeksrechter van de Nederlandstalige rechtbank van eerste aanleg te Brussel (investigating judge of the Dutch-language Court of First Instance of Brussels, Belgium) ordered that Mr Piotrowski be detained with a view to his surrender to the issuing Member State, the Republic of Poland, for the purpose of the execution of the judgment of 10 September 2012.

16 On the other hand, in that order the investigating judge took the view that, in the light of Article 4(3) of the Law on the European arrest warrant, the warrant issued by the Sąd Okręgowy w Białymstoku (Regional Court, Bialystok) could not be executed in so far as the judgment of 15 September 2011 was concerned because Mr Piotrowski was 17 when he committed the offence with which he had been charged and, in those circumstances, the conditions laid down in Belgian law for the prosecution of a minor who had reached the age of 16 when the offence was committed were not satisfied.

17 On 7 June 2016, the procureur des Konings (Public Prosecutor, Belgium) appealed against that order, in so far as it refused in part to execute the European arrest warrant at issue, before the hof van beroep te Brussel (Appeal Court, Brussels, Belgium).

18 In that regard, the procureur des Konings (Public Prosecutor) argued that, under the Law on youth protection, while the age of criminal responsibility is 18, a minor over the age of 16 may nonetheless be held criminally responsible if he commits road traffic offences or if the jeugdrechtbank (Juvenile Court) declines to hear the case against him in the cases specified and under the conditions laid down in that law. In that context, in order to apply the ground for refusing execution set out in Article 4(3) of the Law on the European arrest warrant, it is sufficient to carry out an assessment *in abstracto* of the criterion of the age from which the minor concerned may be regarded as criminally responsible. There is therefore no need to carry out an assessment *in concreto* of the additional conditions to be met under Belgian law in order for criminal proceedings to be instituted in respect of such a minor.

19 Following that appeal, the case relating to the execution of the European arrest warrant at issue was separated into two parts.

20 On 21 June 2016, analysing that part of the arrest warrant relating to the judgment of 10 September 2012, the raadkamer van de Nederlandstalige rechtbank van eerste aanleg te Brussel (the pre-trial chamber of the Dutch-language Court of First Instance of Brussels, Belgium) gave a favourable decision on the request for surrender of Mr Piotrowski to the Republic of Poland for the execution of that judgment.

21 On the other hand, in the appeal proceedings relating to the execution of the judgment of 15 September 2011, the hof van bereop te Brussel (Court of Appeal, Brussels) took the view, shared by the procurer des Konings (Public Prosecutor), that, under Belgian law, outside cases involving the commission of road traffic offences, a minor over the age of 16 may be held criminally responsible only if the jeugdrechtbank (Juvenile Court) declines to hear the matter and refers the case to the public prosecution service with a view to prosecution, either before a special chamber within that court or before an Assize Court, depending on the offence committed.

22 Under Article 57bis(1) of the Law on youth protection, the jeugdrechtbank (Juvenile Court) may, however, decline to hear the matter only if one of the following conditions is met: if the person concerned has already been the subject of one or more care, protection or education measures or of an offer of restorative justice, mediation or settlement, or if the case involves the commission or the attempted commission of one of the serious offences referred to in certain expressly identified articles of the Criminal Code. Moreover, that provision states that the grounds adopted in the decision by the court declining to hear the matter must relate to the individual characteristics of the person concerned and of his family and associates, and to his level of maturity. In accordance with Article 57bis(2) of that law, that court may, in principle, decline to hear the case only after it has carried out social and medico/psychological enquiries in respect of the person concerned.

23 Against that legislative background, the hof van bereop te Brussel (Court of Appeal, Brussels) observes that the case-law of the Hof van Cassatie (Court of Cassation, Belgium) is not unequivocal as regards the interpretation of Article 4(3) of the Law on the European arrest warrant.

24 As regards the application of the ground for refusal under that provision, by judgment of 6 February 2013, the second chamber, French-speaking division, of the Hof van cassatie (Court of Cassation) held, in essence, that since the procedure for declining jurisdiction is not applicable to a person who is being prosecuted by the authorities of a State other than the Kingdom of Belgium, the surrender of a minor under a European arrest warrant calls for an assessment *in concreto* of the conditions to be met in order to prosecute and convict such a person in Belgium, as Member State of execution. On the other hand, by judgment of 11 June 2013, the Hof van Cassatie (Court of Cassation), in plenary session, held, in essence, that the principle of mutual recognition means that the courts of the executing Member State may not make the surrender of a minor who is the subject of a European arrest warrant subject to a specific decision to decline jurisdiction and those courts must, for the purposes of any such surrender, simply carry out an assessment *in abstracto* of the criterion of the age at which such a minor may be regarded as criminally responsible.

25 In the light of that uncertainty in the case-law and the fact that the ground for refusal laid down in Article 4(3) of the Law on the European arrest warrant transposes the ground for mandatory non-execution provided for in Article 3(3) of Framework Decision 2002/584, the hof van bereop te Brussel (Court of Appeal, Brussels) considers it necessary to seek clarification from the Court of Justice regarding the scope of that provision of EU law, in order to ensure that Belgian law is interpreted in a manner consistent with the wording and purpose of EU law.

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

‘(1) Should Article 3(3) of Framework Decision [2002/584] be interpreted as meaning that surrender can be granted only in respect of persons who are regarded as having attained the age of majority under the law of the executing Member State, or does that provision allow the executing Member State also to grant the surrender of minors who, on the basis of national rules, can be held criminally responsible from a certain age (assessing, if necessary, whether there has been compliance with various conditions)?

(2) On the hypothesis that the surrender of minors is not prohibited by Article 3(3) of Framework Decision [2002/584], should that provision then be interpreted:

(a) as meaning that the existence of a (theoretical) possibility of being able to punish minors from a certain age in accordance with national law suffices as a criterion for granting the surrender (in other words, by carrying out an assessment *in abstracto* on the basis of the criterion of the age from which someone can be regarded as criminally responsible, without taking into account any possible further conditions)? Or

(b) as meaning that neither the principle of mutual recognition, as referred to in Article 1(2) of Framework Decision [2002/584], nor the text of Article 3(3) of [that] Framework Decision, precludes the executing Member State from carrying out an assessment *in concreto* on a case-by-case basis, where it may be required that, so far as concerns the person whose surrender is sought, the same conditions for criminal responsibility must be met as those that apply to the nationals of the executing Member State, having regard to their age at the time of the acts, having regard to the nature of the alleged offence and possibly even having regard to the preceding judicial interventions in the issuing Member State which led to a measure of an educational nature, even if those conditions did not exist in the issuing Member State?

(3) If the executing Member State may carry out an assessment *in concreto*, is then, in order to avoid impunity, no distinction to be made between a surrender for the purposes of a criminal prosecution and a surrender for the purposes of the enforcement of a sentence?’

Consideration of the questions referred

The first question

27 By its first question, the referring court seeks to ascertain, in essence, whether Article 3(3) of Framework Decision 2002/584 is to be interpreted as meaning that the executing judicial authority must refuse to surrender any person who is the subject of a European arrest warrant and is regarded as a minor under the law of the executing Member State, or only those minors who, under that law, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based.

28 It should be noted in that regard that Article 3(3) of Framework Decision 2002/584 requires the executing judicial authority to refuse to execute a European arrest warrant if the person who is the subject of the warrant may not, owing to his age, be held ‘criminally responsible for the acts on which the arrest warrant is based under the law of the executing State’.

29 It is therefore apparent from the wording of Article 3(3) of Framework Decision 2002/584 that the ground for non-execution laid down in that provision does not cover minors in general but

refers only to those who have not reached the age required, under the law of the executing Member State, to be regarded as criminally responsible for the acts on which the warrant issued against them is based.

30 The EU legislature therefore intended to exclude from surrender not all minors but only those persons who, on account of their age, cannot be the subject of any criminal prosecution or conviction in the executing Member State in respect of the acts in question, giving that Member State, in the absence of harmonisation in this field, the discretion to determine the minimum age from which a person satisfies the requirements to be regarded as criminally responsible for such acts.

31 It follows, as the Advocate General observed in point 32 of his Opinion, that Article 3(3) of Framework Decision 2002/584 must be interpreted, having regard to its wording, as not permitting, in principle, the executing judicial authorities to refuse to surrender minors who are the subject of a European arrest warrant and have reached the minimum age from which they may be regarded as criminally responsible under the law of the executing Member State for the acts on which the warrant issued against them is based.

32 As the Advocate General also observed, in point 29 of his Opinion, the *travaux préparatoires* for that provision lend support for that interpretation.

33 Following the Commission proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 final) (OJ 2001 C 332E, p. 305), the European Parliament, in its report of 14 November 2001 containing the draft legislative resolution indicating the amendments to that proposal (A5-0397/2001), suggested introducing in Article 30a an optional ground for refusing to execute a European arrest warrant in respect of a person who was considered not to have reached 'the age of criminal responsibility' under the law of the executing Member State.

34 It is thus apparent that, by means of such an amendment, on the basis of which the ground for mandatory non-execution provided for in Article 3(3) of that decision was ultimately included, the European Parliament intended to introduce a specific exception to the implementation of the European arrest warrant system to make it possible to exclude the surrender, not of all minors in general, but only of those persons who, on account of their age, cannot be made the subject of any criminal proceedings or a conviction under the law of the executing Member State for the acts on which the warrant issued against them is based.

35 Lastly, the interpretation of Article 3(3) of Framework Decision 2002/584 in paragraph 31 above is also borne out by the legislative context of the framework decision.

36 Indeed, it should be noted in that regard that, in order in particular to promote respect for the fundamental rights of minors guaranteed by the Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, Directive 2016/800 lays down, as is apparent from Article 1(b) thereof, common minimum rules concerning, inter alia, the protection of the procedural rights of children, that is persons under 18 years of age, who are subject to European arrest warrant proceedings pursuant to Framework Decision 2002/584. In particular, Article 17 of that directive provides that various rights enjoyed by children who are suspects or accused persons in national criminal proceedings must apply *mutatis mutandis* in respect of children who are the subject of such an arrest warrant upon their arrest in the executing Member State.

37 Those provisions of Directive 2016/800 confirm that EU law, in particular Framework Decision 2002/584, does not, in principle, prohibit the executing judicial authorities from surrendering minors who have reached the age of criminal responsibility in the executing Member State. Nevertheless, that directive requires such authorities to satisfy themselves, when implementing the framework decision, that such minors have the benefit of certain specific procedural rights guaranteed in national criminal proceedings, in order to ensure that, as stated in recital 8 of that directive, the best interests of a child who is the subject of a European arrest warrant are always a primary consideration, in accordance with Article 24(2) of the Charter.

38 In the light of all the foregoing considerations, the answer to the first question is that Article 3(3) of Framework Decision 2002/584 is to be interpreted as meaning that the executing judicial authority must refuse to surrender only those minors who are the subject of a European arrest warrant and who, under the law of the executing Member State, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based.

The second question

39 By its second question, the referring court seeks to ascertain, in essence, whether Article 3(3) of Framework Decision 2002/584 is to be interpreted as meaning that, in order to decide whether a minor who is the subject of a European arrest warrant is to be surrendered, the executing judicial authority must simply verify whether the person concerned has reached the minimum age required to be regarded as criminally responsible in the executing Member State for the acts on which such a warrant is based, or as meaning that that authority may also determine whether the additional conditions relating to an assessment based on the circumstances of the individual, to which the prosecution and conviction of a minor are specifically subject under the law of that Member State, are met in the circumstances of the present case.

40 In that regard, the Court has consistently held that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, judgments of 11 January 2017, *Grundza*, C-289/15, EU:C:2017:4, paragraph 32, and of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 30).

41 As regards the wording of Article 3(3) of Framework Decision 2002/584, it is formulated in such a way that the executing judicial authority must refuse to execute the European arrest warrant if the person concerned ‘may not, owing to his age, be held criminally responsible’ under the law of the executing Member State ‘for the acts on which the arrest warrant is based’.

42 It is therefore clear from the terms of that provision that, in order to refuse to surrender a minor who is the subject of a European arrest warrant, the executing judicial authority must simply satisfy itself that that person has not reached the minimum age at which he may be prosecuted and convicted under the law of the executing Member State for the same acts as those on which the European arrest warrant is based.

43 Therefore, it is not possible under Article 3(3) of Framework Decision 2002/584 for the executing judicial authority also to consider, when deciding whether to surrender the person concerned, the additional conditions relating to an assessment based on the circumstances of the individual to which the law of its Member State specifically makes the prosecution and conviction of a minor subject, such as those laid down in the present case in Article 57bis(1) and (2) of the Law

on youth protection. It is for the issuing judicial authority to apply the specific rules governing criminal-law penalties for offences committed by minors in its Member State.

44 In those circumstances, in the absence of any express reference to that effect, the wording of Article 3(3) of Framework Decision 2002/584 does not support an interpretation to the effect that the executing judicial authority must refuse to surrender a minor who is the subject of a European arrest warrant on the basis of an assessment of that person's specific circumstances and of the acts on which the warrant issued against that person is based, in the light of the additional conditions relating to an assessment based on the circumstances of the individual to which the criminal responsibility of a minor for such acts is specifically subject in the executing Member State.

45 That conclusion is supported, as observed by the Advocate General in point 55 of his Opinion, by the context and overall scheme of that provision, as well as by the objectives pursued by Framework Decision 2002/584.

46 As regards the context and overall scheme of Article 3(3) of Framework Decision 2002/584, it should be noted that, as is apparent in particular from Article 1(1) and (2) and recitals 5 and 7 thereof, the purpose of the framework 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, 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 (judgments of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraph 35; of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 75; and of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 25).

47 Accordingly, in the area governed by Framework Decision 2002/584, the principle of mutual recognition, which constitutes, as is stated in particular in recital 6 thereof, the 'cornerstone' of judicial cooperation in criminal matters, is given effect in Article 1(2) of that decision, pursuant to which Member States are, in principle, obliged to give effect to a European arrest warrant (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 79 and the case-law cited).

48 It follows that executing judicial authorities may, in principle, refuse to execute such a warrant only in the cases of obligatory non-execution, laid down in Article 3 of Framework Decision 2002/584, or of optional non-execution, laid down in Articles 4 and 4a of that decision. Accordingly, while the execution of the European arrest warrant constitutes the rule, the refusal to execute such a warrant is intended to be an exception which must be interpreted strictly (see, to that effect, judgments of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 19, and of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraphs 50 and 51).

49 Admittedly, the Court has previously accepted that exceptions may be made to the principles of mutual recognition and mutual trust between Member States in exceptional circumstances. Moreover, as is apparent from Article 1(3) of Framework Decision 2002/584, that decision cannot have the effect of modifying the obligation to respect fundamental rights, as enshrined in, inter alia, the Charter (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 82 and 83), and, in the present case, in particular, in Article 24 of the Charter, concerning the rights of children, which Member States are required to observe when implementing the framework decision.

50 Nevertheless, in so far as proceedings relating to a European arrest warrant are concerned, observance of those rights falls primarily within the responsibility of the issuing Member State, which must be presumed to be complying with EU law, in particular the fundamental rights conferred by that law (see, to that effect, Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 191 and the case-law cited).

51 That being said, it should be noted, first, that, as an exception to the general rule that a European arrest warrant must be executed, the ground for mandatory non-execution provided for in Article 3(3) of Framework Decision 2002/584 cannot be interpreted as enabling the executing judicial authority to refuse to give effect to such a warrant on the basis of an analysis for which no express provision is made in that article or in any other rule of that framework decision, such as the rule which calls for a determination of whether the additional conditions relating to an assessment based on the circumstances of the individual, to which the prosecution and conviction of a minor are specifically subject under the law of the executing Member State, are met in the present case.

52 Second, such a determination may cover matters which are, as in the main proceedings, subjective, such as the individual characteristics of the minor concerned and of his family and associates, and his level of maturity, or objective, such as reoffending or whether youth protection measures have previously been adopted, which would in fact amount to a substantive re-examination of the analysis previously conducted in connection with the judicial decision adopted in the issuing Member State, which forms the basis of the European arrest warrant. As the Advocate General observed in point 56 of his Opinion, such a re-examination would infringe and render ineffective the principle of mutual recognition, which implies that there is mutual trust as to the fact that each Member State accepts the application of the criminal law in force in the other Member States, even though the implementation of its own national law might produce a different outcome, and does not therefore allow the executing judicial authority to substitute its own assessment of the criminal responsibility of the minor who is the subject of a European arrest warrant for that previously carried out in the issuing Member State in connection with the judicial decision on which the warrant is based.

53 Moreover, such a possibility would be incompatible with the objective of facilitating and accelerating judicial cooperation pursued by Framework Decision 2002/584 (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 76, and of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 31).

54 It is common ground that that framework decision established a simplified and more efficient system for the surrender of persons who have been convicted or are suspected of having infringed criminal law (see, to that effect, judgments of 28 June 2012, *West*, C-192/12 PPU, EU:C:2012:404, paragraph 53, and of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 40), which makes it possible to remove, as stated in recital 5 of the framework decision, the complexity and potential for delay inherent in the extradition procedures that existed before the adoption of that decision (judgment of 30 May 2013, *F*, C-168/13 PPU, EU:C:2013:358, paragraph 57).

55 That objective underlies, inter alia, the treatment of the time limits for adopting decisions relating to a European arrest warrant (judgment of 30 May 2013, *F*, C-168/13 PPU, EU:C:2013:358, paragraph 58), with which Member States are required to comply (judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 32 and the case-law cited) and the importance of which is stated in a number of provisions of Framework Decision 2002/584 (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 29 and the case-law cited).

56 As regards, in particular, the adoption of the decision on the execution of a European arrest warrant, Article 17(1) of Framework Decision 2002/584 provides that such a warrant is to be dealt with and executed as a matter of urgency. Article 17(2) and (3) prescribes precise time limits of 10 and 60 days respectively for taking the final decision on the execution of the warrant, depending on whether or not the requested person consents to his surrender. Only in specific cases in which the European arrest warrant cannot be executed within those time limits does Article 17(4) of the framework decision allow them to be extended by a further 30 days, the executing judicial authority being obliged immediately to inform the issuing judicial authority, giving the reasons for the delay. Outside such specific cases, only exceptional circumstances can allow a Member State, in accordance with Article 17(7) of the framework decision, not to observe those time limits, that Member State similarly having to inform Eurojust, giving the reasons for the delay.

57 In order to simplify and accelerate the surrender procedure in accordance within the time limits laid down by Article 17 of Framework Decision 2002/584, the annex to the decision provides a specific form which the issuing judicial authorities are required to complete, furnishing the specific information requested.

58 According to Article 8 of Framework Decision 2002/584, that information relates, inter alia, to the identity and nationality of the requested person, evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2 of the framework decision, the nature and legal classification of the offence, a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person, the penalty imposed or the prescribed scale of penalties for the offence under the law of the issuing Member State and, if possible, any other consequences of the offence.

59 It is thus clear that the purpose of that information is to provide the minimum official information required to enable the executing judicial authorities to give effect to the European arrest warrant swiftly by adopting their decision on the surrender as a matter of urgency. The form provided in the Annex to Framework Decision 2002/584 does not contain any specific information that would enable the executing judicial authorities to assess, where appropriate, the specific circumstances of the minor concerned by reference to objective or subjective conditions, such as those referred to in Article 57bis(1) and (2) of the Law on youth protection, to which the possibility of prosecuting or convicting a minor is specifically subject under the criminal law of their Member State.

60 It is true, as stated by the Italian and Romanian Governments in their written observations, that if the executing judicial authorities find that the information disclosed by the issuing Member State is insufficient to enable them to adopt a decision on surrender, the option is available to them under Article 15(2) of Framework Decision 2002/584 to request that the necessary supplementary information be furnished as a matter of urgency in order to obtain other evidence produced before the issuing judicial authority.

61 However, it should be noted that recourse may be had to that option only as a last resort in exceptional cases in which the executing judicial authority considers that it does not have the official evidence necessary to adopt a decision on surrender as a matter of urgency. Accordingly, the practice whereby a Member State assesses the specific circumstances of a minor who is the subject of a European arrest warrant issued by an authority in another Member State could oblige the executing judicial authority automatically to seek additional information from the issuing judicial authority in order to satisfy itself that the additional conditions relating to an assessment, based on the circumstances of the individual, for determining whether a minor may in fact be prosecuted or

convicted in the executing Member State have been met, which would deprive the objective of simplifying and ensuring a swift surrender procedure of any practical effect.

62 In the light of all the foregoing considerations, the answer to the second question is that Article 3(3) of Framework Decision 2002/584 is to be interpreted as meaning that, in order to decide whether a minor who is the subject of a European arrest warrant is to be surrendered, the executing judicial authority must simply verify whether the person concerned has reached the minimum age required to be regarded as criminally responsible in the executing Member State for the acts on which such a warrant is based, without having to consider any additional conditions, relating to an assessment based on the circumstances of the individual, to which the prosecution and conviction of a minor for such acts are specifically subject under the law of that Member State.

The third question

63 In view of the answer given to the second question, there is no need to answer the third question.

Costs

64 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. Article 3(3) of Council Framework Decision 2002/584/JHA **of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009,** is to be interpreted as meaning that the judicial authority of the executing Member State must refuse to surrender **only those minors who are the subject of a European arrest warrant and who, under the law of the executing Member State, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based.**

2. Article 3(3) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, is to be interpreted as meaning that, **in order to decide whether a minor who is the subject of a European arrest warrant is to be surrendered, the judicial authority of the executing Member State must simply verify whether the person concerned has reached the minimum age required to be regarded as criminally responsible in the executing Member State for the acts on which such a warrant is based, without having to consider any additional conditions, relating to an assessment based on the circumstances of the individual, to which the prosecution and conviction of a minor for such acts are specifically subject under the law of that Member State.**

[Signatures]

* Language of the case: Dutch.