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JUDGMENT OF THE COURT (First Chamber)

17 March 2021 (*)

(Reference for a preliminary ruling – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Scope – Article 8(1)(c) – Concept of ‘enforceable judgment’ – Offence giving rise to a conviction by a court of a third State – Kingdom of Norway – Judgment recognised and enforced by the issuing State by virtue of a bilateral agreement – Article 4(7)(b) – Grounds for optional non-execution of the European arrest warrant – Extra-territorial offence)

In Case C-488/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 24 June 2019, received at the Court on 26 June 2019, in the proceedings relating to the execution of the European arrest warrant issued against

JR,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Minister for Justice and Equality, by M. Browne, acting as Agent,
- JR, by K. Kelly, Barrister-at-Law, M. Forde, Senior Counsel, and T. Hughes, Solicitor,
- Ireland, by M. Browne, G. Hodge, A. Joyce and J. Quaney, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 17 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the applicability 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'), and the interpretation of Article 4(1) and (7)(b) thereof.

2 The request has been brought in proceedings concerning the execution, in Ireland, of a European arrest warrant issued against JR for him to serve, in Lithuania, a custodial sentence imposed on him by a Norwegian court for drug trafficking. That judgment has been recognised by the Republic of Lithuania by virtue of the bilateral Agreement on the recognition and enforcement of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty concluded between the Kingdom of Norway and the Republic of Lithuania on 5 April 2011 ('the Bilateral Agreement of 5 April 2011').

Legal context

EU law

Agreement on the European Economic Area

3 The Kingdom of Norway is a party to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3).

Agreement concerning the implementation, application and development of the Schengen acquis of 18 May 1999

4 It is apparent from Article 2 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* of 18 May 1999 (OJ 1999 L 176, p. 36) that the Republic of Iceland and the Kingdom of Norway are to implement and apply the Schengen *acquis* and the acts of the European Union referred to in that agreement.

Agreement on the surrender procedure between the Member States of the European Union and Iceland and Norway

5 The Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ 2006 L 292, p. 2), which was approved, on behalf of the European Union, by Article 1 of Council Decision 2014/835/EU of 27 November 2014 on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ 2014 L 343, p. 1), entered into force on 1 November 2019.

6 The preamble to that agreement states, inter alia, that the contracting parties express their mutual confidence in the structure and functioning of their legal systems and in the ability of all contracting parties to guarantee a fair trial.

Framework Decision 2002/584

7 Recitals 5 to 8 of Framework Decision 2002/584 are worded as follows:

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

(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 ...

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

8 Article 1 of that 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 of the Treaty on European Union.’

9 Under Article 2 of the framework decision, concerning the scope thereof:

‘1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

...

– illicit trafficking in narcotic drugs and psychotropic substances,

...

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.'

10 According to Article 4 of the framework decision, entitled 'Grounds for optional non-execution of the European arrest warrant':

'The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; ...

...

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

...

7. where the European arrest warrant relates to offences which:

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.'

11 Article 4a of Framework Decision 2002/584 governs the execution of European arrest warrants issued for the purpose of executing a custodial sentence or a detention order if the person concerned did not appear in person at the trial resulting in the decision.

12 Under Article 5 of that framework decision, the execution of a European arrest warrant may be subject to one of the conditions referred to in that article.

13 Article 8 of the framework decision, concerning the content and form of the European arrest warrant, provides in paragraph 1:

‘The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

...

(c) 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;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) 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;

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

...’

14 Article 15 of that framework decision is worded 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 31 of Framework Decision 2002/584, entitled ‘Relation to other legal instruments’, provides:

‘1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

...

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or

facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

...’

Framework Decision 2008/909/JHA

16 Article 3(1) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27) provides:

‘The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.’

17 Under Article 17(1) of that framework decision:

‘The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.’

Framework Decision 2008/947/JHA

18 Recital 8 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ 2008 L 337, p. 102) states:

‘The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person’s being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.’

19 Article 1(1) of that framework decision provides:

‘This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction. With a view to achieving these objectives, this Framework Decision lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided for in this Framework Decision.’

Irish law

European Arrest Warrant Act 2003

20 The European Arrest Warrant Act 2003, in its version applicable to the dispute in the main proceedings, provides in section 5 thereof, which implements Framework Decision 2002/584:

‘For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under [Irish law], where the act or omission that constitutes the offence so specified would, if committed in [Ireland] on the date on which the European arrest warrant is issued, constitute an offence under [Irish law].’

21 Section 10(d) of that act provides:

‘Where a judicial authority in an issuing state issues a European arrest warrant in respect of a person -

...

(d) on whom a sentence of imprisonment or detention has been imposed in that state in respect of an offence to which the European arrest warrant relates,

that person shall, subject to and in accordance with the provisions of this Act, be arrested and surrendered to the issuing state.’

22 Under section 44 of the 2003 act:

‘A person shall not be surrendered under this Act if the offence specified in the European arrest warrant issued in respect of him or her was committed or is alleged to have been committed in a place other than the issuing state and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than [Ireland], constitute an offence under [Irish law].’

Misuse of Drugs Act, 1977

23 Under section 15(1) of the Irish Misuse of Drugs Act, 1977, as amended:

‘Any person who has in his possession, whether lawfully or not, a controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations under section 5 of this Act, shall be guilty of an offence.’

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

24 JR is a Lithuanian national. In January 2014, he was arrested in Norway in possession of a significant quantity of narcotic substances which he had undertaken to supply from Lithuania in return for money. By judgment of 28 November 2014, he was sentenced by a Norwegian court – namely, the Heggen og Frøland tingrett (Heggen and Frøland District Court, Norway) – to a term of imprisonment of four years and six months for the offence of ‘unlawful delivery of a very large quantity of narcotic substances’, punishable under the Norwegian Criminal Code. That judgment became final.

25 By judgment of 18 June 2015, the Jurbarko rajono apylinkės teismas (District Court, Jurbarkas, Lithuania) recognised, by virtue of the Bilateral Agreement of 5 April 2011, the Norwegian judgment of 28 November 2014 so that the sentence could be executed in Lithuania.

26 On 7 April 2016, the Norwegian authorities surrendered JR to the Lithuanian authorities.

27 In November 2016, the competent authorities released JR on parole, accompanied by ‘intensive supervision’ measures. JR having evaded the conditions imposed on him, the Marijampolės apylinkės teismo Jurbarko rūmai (District Court, Marijampolė, Chamber of Jurbarkas, Lithuania) ordered, by decision of 5 February 2018, that the remainder of the sentence of imprisonment – namely one year, seven months and 24 days – be executed.

28 JR absconded and went to Ireland. On 24 May 2018, the Lithuanian authorities issued a European arrest warrant with a view to his surrender.

29 In January 2019, JR was arrested in Ireland and sentenced to a term of imprisonment for offences committed in that Member State in connection with possession of narcotic drugs. According to the referring court, namely the High Court (Ireland), that sentence was to expire on 21 October 2019.

30 At the same time, the procedure for the execution of the European arrest warrant was implemented. Before the referring court, JR disputes his surrender to the Lithuanian authorities on the ground that, first, only the Kingdom of Norway could request his extradition and, second, because of the extra-territorial nature of the offence at issue, that is to say that it was committed in a State other than the issuing State, namely Lithuania, Ireland must refuse to execute the warrant.

31 The High Court is of the opinion that Framework Decision 2002/584 must be applied in the present case. While the sentence in question was imposed in a third State, it was nonetheless recognised and executed in a Member State. Article 1 of that framework decision thus allows the latter State to issue a European arrest warrant in order to execute the remaining sentence.

32 However, that court considers that, as regards the ground for non-execution relied on by JR, it must examine the conditions laid down in Article 4(1) and (7)(b) of Framework Decision 2002/584.

33 In the referring court’s view, in accordance with Article 4(1) of Framework Decision 2002/584, where the issuing State has not indicated that the offence in question falls within the scope of Article 2(2) thereof, it is necessary to demonstrate double criminality. In that respect, it is appropriate to consider whether a person transporting the amount of narcotic drugs delivered by JR would be committing an offence under Irish law. Moreover, under Article 4(7)(b) of that framework decision, it would be necessary to ascertain, first, whether the offence at issue, which was committed in a third State, must be considered to be an ‘extra-territorial’ offence and, if so, second, whether Irish law allows prosecution for such offences when committed outside its territory.

34 As regards, in particular, extra-territoriality, the referring court questions the relevance of the circumstance that JR carried out preparatory acts in the State issuing the European arrest warrant. If those acts were to be taken into account for the purposes of applying Framework Decision 2002/584, the offence would not be extra-territorial and, therefore, the ground for optional non-execution laid down in Article 4(7)(b) of that framework decision would not be applicable.

35 In those circumstances, the High Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does Framework Decision [2002/584] apply to the situation where the requested person was convicted and sentenced in a third State but, by virtue of a bilateral treaty between that third State

and the issuing State, the judgment in the third State was recognised in the issuing State and enforced according to the laws of the issuing State?

(2) If so, in circumstances where the executing Member State has applied in its national legislation the optional grounds for non-execution of the European arrest warrant set out in Article 4(1) and Article 4(7)(b) of Framework Decision [2002/584], how is the executing judicial authority to make its determination as regards an offence stated to be committed in the third State, but where the surrounding circumstances of that offence display preparatory acts that took place in the issuing State?

Procedure before the Court

36 The referring court requested that the present case be dealt with under the urgent preliminary ruling procedure pursuant to Article 107 of the Rules of Procedure of the Court of Justice. On 10 July 2019, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, the Court decided that there was no need to grant that request.

37 In the alternative, the referring court requested that the expedited procedure provided for in Article 105(1) of the Rules of Procedure be applied. That request was dismissed by decision of the President of the Court of 12 August 2019.

38 That decision was substantiated by the finding that the grounds of the referring court's requests did not enable the Court to ascertain whether the case needed to be expedited, which was communicated to that court.

39 The referring court merely noted, in support of its requests to apply the urgent preliminary ruling procedure and, in the alternative, the expedited procedure, 'that the answers to the questions raised herein ... "[are] decisive as to the assessment of the respondent's legal status", and in particular it will impact on whether the respondent will be surrendered to Lithuania or released from custody at the point when a domestic sentence of imprisonment against him expires: in or around 21 October 2019'.

40 However, that court provided no indication as to the reasons why it considers that the Court's answers might be decisive for JR's possible release and the circumstances in which such a release might take place. Furthermore, it is not apparent from the order for reference whether, on the basis of the European arrest warrant at issue, JR remains or was to remain effectively in custody after 21 October 2019 or whether, for instance, less restrictive measures may be or were envisaged.

Consideration of the questions referred

The first question

41 By its first question, the referring court asks, in essence, whether Article 1(1) and Article 8(1) (c) of Framework Decision 2002/584 must be interpreted as meaning that a European arrest warrant may be issued on the basis of a judicial decision of the issuing Member State ordering the execution, in that Member State, of a sentence imposed by a court of a third State where, pursuant to a bilateral agreement between those States, the judgment in question has been recognised by a decision of a court of the issuing Member State.

42 As a preliminary point, it should be recalled that, under Article 8(1)(c) of Framework Decision 2002/584, the European arrest warrant must contain 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.

43 It follows from that wording that the European arrest warrant must be based on a national judicial decision, thus implying that what is meant is a judicial decision that is separate from the decision issuing the European arrest warrant (see, to that effect, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraphs 44 and 49). Such a decision, whether a judgment or other judicial decision, must necessarily come from a court or other judicial authority of a Member State (see, to that effect, judgment of 10 November 2016, *Özçelik*, C-453/16 PPU, EU:C:2016:860, paragraphs 32 and 33).

44 As the Court has held, the framework decision applies only to Member States and not to third States (judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 42).

45 In the present case, it is apparent from the documents before the Court that, on 28 November 2014, a Norwegian court imposed on JR, a Lithuanian national, a custodial sentence of four years and six months, and that that judgment was recognised and became enforceable in Lithuania by decision of a Lithuanian court, adopted on 18 June 2015 pursuant to the Bilateral Agreement of 5 April 2011. In November 2016, the Lithuanian authorities released JR on parole. However, on account of the failure to comply with the conditions of that release, execution of the remainder of the sentence of imprisonment was ordered by decision of 5 February 2018. It was on the basis of that decision that the European arrest warrant at issue was issued.

46 As has just been pointed out in paragraphs 43 and 44 above, a judgment delivered by a court of a third State cannot constitute, as such, the basis of a European arrest warrant.

47 However, an act of a court of the issuing State recognising such a judgment and rendering it enforceable as well as subsequent decisions adopted by the judicial authorities of that State with a view to enforcing the judgment recognised ('acts of recognition and enforcement') are capable of satisfying the requirements of Article 1(1), Article 2(1) and Article 8(1)(c) of Framework Decision 2002/584.

48 In that regard, it should be noted, in the first place, that acts of recognition and enforcement constitute judicial decisions, for the purposes of those provisions, where they have been adopted by the judicial authorities of a Member State for the purpose of executing a custodial sentence (see, by analogy, judgment of 13 January 2021, *MM*, C-414/20 PPU, EU:C:2021:4, paragraphs 53 and 57).

49 In the second place, in so far as those acts allow a judgment to be enforced, in that same Member State, it is appropriate to treat them, as the case may be, as an 'enforceable judgment' or an 'enforceable decision'.

50 In the third and last place, it follows from the purpose and subject matter of those acts, namely the execution of a sentence, that they fall within the scope of Articles 1 and 2 of Framework Decision 2002/584, provided that the sentence in question is a custodial sentence of at least four months.

51 It should be noted, as is apparent from point 44 of the Advocate General's Opinion, that the scope of Articles 1 and 2 of Framework Decision 2002/584 is defined by reference to the purpose and subject matter of the judicial decision intended to serve as the basis for a European arrest warrant. In that regard, it is apparent from Article 1(1) of that framework decision that such an

arrest warrant is issued with a view to the surrender of a requested person for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. In addition, in accordance with Article 2(1) of that framework decision, with regard to the execution of a custodial sentence, the issuing of a European arrest warrant is subject to the condition that the sentence be of at least four months.

52 By contrast, those provisions do not require that the sentence to be executed stem from a judgment delivered by the courts of the issuing Member State or by those of another Member State. There is thus nothing in those provisions that could lead to the conclusion that Framework Decision 2002/584 is inapplicable in a situation where a custodial sentence has been imposed by a court of a third State and recognised by a decision of a court of the issuing Member State. Consequently, Articles 1 and 2 of Framework Decision 2002/584 do not preclude the issuing of a European arrest warrant for the purposes of executing a custodial sentence of at least four months on the basis of acts of recognition and enforcement.

53 Furthermore, it should be borne in mind that, in accordance with settled case-law, the rules of secondary EU law must be interpreted and applied in compliance with fundamental rights, an integral part of which is respect for the rights of the defence, flowing from the right to a fair trial, enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union ('the Charter') (judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 60).

54 As recalled by the Advocate General in point 49 of her Opinion, Framework Decision 2002/584 has to be interpreted in a way that ensures that the fundamental rights of the person concerned are protected without, however, calling into question the effectiveness of the system of judicial cooperation between the Member States of which the European arrest warrant, as provided for by the Union legislature, is one of the key elements (judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 63).

55 Consequently, where the judicial authorities of a Member State issue a European arrest warrant in order to ensure in that Member State the execution of a custodial sentence imposed by a court of a third State whose decision has been recognised in that Member State, they are required to ensure compliance with the requirements inherent in the European arrest warrant system in relation to procedure and fundamental rights.

56 That system therefore entails a dual level of protection which must be enjoyed by the requested person, since, in addition to the judicial protection provided at the first level, at which a national decision is adopted, there is the protection that must be afforded at the second level, at which a European arrest warrant is issued, which may occur, depending on the circumstances, shortly after the adoption of the national judicial decision (see, to that effect, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 56).

57 That protection means that a decision meeting the requirements inherent in effective judicial protection must be adopted, at least, at one of the two levels of that protection (judgment of 12 December 2019, *Openbaar Ministerie (Public Prosecutor, Brussels)*, C-627/19 PPU, EU:C:2019:1079, paragraph 30).

58 In order to meet these requirements in a situation where the judicial authorities of a Member State recognise a judgment by which a court of a third State has imposed a custodial sentence and decide to issue a European arrest warrant following that recognition, the law of that Member State must make provision, at least at one of the two levels of protection, for judicial review to verify that, in the procedure leading to the adoption in the third State of the judgment subsequently

recognised in the issuing State, the fundamental rights of the sentenced person and, in particular, the obligations arising from Articles 47 and 48 of the Charter have been complied with.

59 Where there is doubt as to compliance with the obligations listed in the previous paragraph, it is for the executing judicial authority to request the issuing Member State, under Article 15(2) of Framework Decision 2002/584, to furnish the necessary information to allow it to decide on surrender.

60 Furthermore, it must be observed that the dispute in the main proceedings concerns a European arrest warrant issued on the basis of acts of recognition and enforcement of a judgment delivered by a court of the Kingdom of Norway, a third State which has a special relationship with the European Union, going beyond economic and commercial cooperation, since it is a party to the Agreement on the European Economic Area, participates in the Common European Asylum System, implements and applies the Schengen *acquis*, and has concluded with the European Union the Agreement on the surrender procedure between the Member States of the European Union and Iceland and Norway, which entered into force on 1 November 2019. In that last agreement, the parties expressed their mutual confidence in the structure and functioning of their legal systems and their ability to guarantee a fair trial.

61 In the light of all of the foregoing, the answer to the first question is that Article 1(1) and Article 8(1)(c) of Framework Decision 2002/584 must be interpreted as meaning that a European arrest warrant may be issued on the basis of a judicial decision of the issuing Member State ordering the execution, in that Member State, of a sentence imposed by a court of a third State where, pursuant to a bilateral agreement between those States, the judgment in question has been recognised by a decision of a court of the issuing Member State. However, the issuing of the European arrest warrant is subject to the condition, first, that a custodial sentence of at least four months has been imposed on the requested person and, second, that the procedure leading to the adoption in the third State of the judgment recognised subsequently in the issuing Member State has complied with fundamental rights and, in particular, the obligations arising under Articles 47 and 48 of the Charter.

The second question

62 By its second question, the referring court asks, in essence, whether Article 4(7)(b) of Framework Decision 2002/584 must be interpreted as meaning that, in the case of a European arrest warrant issued on the basis of a judicial decision of the issuing Member State allowing execution in that Member State of a sentence imposed by a court of a third State, where the offence concerned was committed in the territory of the latter State, the question whether the offence was committed ‘outside the territory of the issuing Member State’ must be resolved by taking into consideration the circumstance that preparatory acts took place in the issuing Member State.

63 First of all, it should be noted that the ground for optional non-execution laid down in Article 4(1) of Framework Decision 2002/584, also referred to by the referring court, cannot apply in the circumstances of the main proceedings. In the light of the description of the facts given by the referring court, the offence at issue in the main proceedings falls within the category of offences covered by the fifth indent of Article 2(2) of Framework Decision 2002/584, namely illicit trafficking in narcotic drugs and psychotropic substances. In addition, it appears that the acts committed by JR are punishable in Lithuania and Norway by a custodial sentence for a maximum period of at least three years. Therefore, in accordance with that provision, surrender of the requested person must take place without verification of the double criminality of the act.

64 Furthermore, it is apparent from the order for reference that Ireland adopted a provision intended to transpose Article 4(7)(b) of Framework Decision 2002/584 into its national law, namely section 44 of the European Arrest Warrant Act 2003. Section 44 provides, in essence, that surrender is to be refused if, first, the act constituting the offence specified in the European arrest warrant was committed in a place other than the issuing Member State and, second, such an act does not constitute an offence under Irish law when committed in a place other than Ireland.

65 In that regard, it must be recalled that under Article 4(7)(b) of Framework Decision 2002/584 execution of a European arrest warrant may be refused if two cumulative conditions are satisfied, namely, first, the offence giving rise to the issuing of the European arrest warrant was committed outside the territory of the issuing Member State and, second, the law of the executing Member State would not allow prosecution for such an offence when committed outside the territory of that Member State.

66 As regards the first condition, which alone is the subject matter of the referring court's question, it should be noted that the concept of an 'offence committed outside the territory of the issuing Member State' contains no reference to either the law of the issuing Member State or that of the executing State. Consequently, it cannot be left to the discretion of the judicial authorities of each Member State on the basis of their national law. It follows from the need for uniform application of EU law that, since Article 4(7)(b) of Framework Decision 2002/584 makes no reference to the law of the Member States with regard to that concept, the latter must be given an autonomous and uniform interpretation throughout the European Union (see, to that effect, judgment of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraph 38).

67 In this respect, the context of that provision and the objective pursued by the legislation in question must be taken into account (see, to that effect, judgment of 24 May 2016, *Dworzecki*, C-108/16 PPU, EU:C:2016:346, paragraph 28).

68 As regards, in the first place, the objective of the ground for optional non-execution of a European arrest warrant laid down in Article 4(7)(b) of Framework Decision 2002/584, that provision is intended to ensure that the judicial authority of the executing State is not obliged to grant a European arrest warrant which was issued for the purpose of executing a sentence imposed for an offence prosecuted under an international criminal jurisdiction that is broader than that recognised by the law of that State.

69 It is clear that that objective is not undermined where, as is the case in the main proceedings, the judicial authority of the issuing Member State issues a European arrest warrant based on a decision of a court of that Member State which recognises and renders enforceable a judgment delivered by a court of another State, in so far as that court has, under its own territorial criminal jurisdiction, imposed a custodial sentence on the requested person.

70 With regard, in the second place, to the purpose of Framework Decision 2002/584, it should be noted that, as is apparent, in particular, from Article 1(1) and (2) as well as recitals 5 and 7 thereof, its purpose 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 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 31).

71 That 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 to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States (judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 32).

72 Thus, as is apparent from Article 3(2) TEU, within that area of freedom, security and justice, 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. In that context, Framework Decision 2002/584 seeks, inter alia, to prevent the risk of impunity of persons who have committed an offence (see, to that effect, judgments of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 23, and of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraph 86).

73 Attainment of those objectives would be jeopardised if the executing State could refuse to surrender the requested person in a situation where the courts of the issuing Member State have recognised and agreed to enforce the judgment delivered by a court of another State whereby a custodial sentence was imposed on that person for an offence committed in the territory of the latter State. Such a refusal would not only be liable to delay the execution of the sentence, but could also lead to the impunity of the requested person.

74 Furthermore, an interpretation of Article 4(7)(b) of Framework Decision 2002/584 that would make it possible to refuse to execute a European arrest warrant in the situation referred to in the previous paragraph of the present judgment could undermine the functioning of judicial cooperation instruments whose objective is to facilitate the rehabilitation of sentenced persons, such as Framework Decision 2008/909.

75 According to Article 3(1) thereof, the purpose of Framework Decision 2008/909 is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence imposed by a court of another Member State. In particular, it is apparent from Article 17(1) thereof that the enforcement of a sentence includes the adoption of decisions providing for the conditional release of the sentenced person.

76 Thus, if the interpretation of Article 4(7)(b) of Framework Decision 2002/584 set out in paragraphs 73 and 74 above were adopted, the conditional release of the sentenced person could enable that person to avoid execution of the remainder of the sentence in the State which has recognised and which executes the sentence by moving to another Member State which transposed into its national law the ground for optional non-execution laid down in that provision. The resulting risk of impunity is likely both to discourage Member States from requesting the recognition of judgments and to encourage the competent authorities of the State enforcing a recognised judgment to limit the use of conditional release instruments.

77 The same considerations apply *mutatis mutandis* to Framework Decision 2008/947, which lays down rules according to which a Member State, other than that in which the person has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed pursuant to a judgment, or alternative sanctions contained in that judgment, since, in accordance with Article 1(1), read in the light of recital 8 thereof, that framework decision aims at preventing recidivism, protecting both victims and the general public and facilitating the social rehabilitation of sentenced persons.

78 It follows from all of the foregoing that the question whether the offence giving rise to the sentence imposed in a third State and recognised by the courts of the Member State which issued a European arrest warrant in order to execute that sentence was committed ‘outside the territory of the issuing Member State’ must be resolved by taking into consideration the criminal jurisdiction of that third State – in this instance, the Kingdom of Norway – which allowed prosecution of that offence, and not that of the issuing Member State.

79 As regards the referring court’s doubts as to whether the circumstance that preparatory acts took place in the territory of the issuing Member State must be taken into account, it is sufficient to note that it follows from paragraph 78 above that that circumstance is irrelevant, since that Member State did not prosecute the offence itself, but recognised a judgment of a court of another State which that court had delivered under its territorial criminal jurisdiction.

80 Consequently, the answer to the second question is that Article 4(7)(b) of Framework Decision 2002/584 must be interpreted as meaning that, in the case of a European arrest warrant issued on the basis of a judicial decision of the issuing Member State allowing execution in that Member State of a sentence imposed by a court of a third State, where the offence concerned was committed in the territory of the latter State, the question whether that offence was committed ‘outside the territory of the issuing Member State’ must be resolved by taking into consideration the criminal jurisdiction of that third State – in this instance, the Kingdom of Norway – which allowed prosecution of that offence, and not that of the issuing Member State.

Costs

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

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

1. Article 1(1) and Article 8(1)(c) 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 a European arrest warrant may be issued on the basis of a judicial decision of the issuing Member State ordering the execution, in that Member State, of a sentence imposed by a court of a third State where, pursuant to a bilateral agreement between those States, the judgment in question has been recognised by a decision of a court of the issuing Member State. However, the issuing of the European arrest warrant is subject to the condition, first, that a custodial sentence of at least four months has been imposed on the requested person and, second, that the procedure leading to the adoption in the third State of the judgment recognised subsequently in the issuing Member State has complied with fundamental rights and, in particular, the obligations arising under Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.

2. Article 4(7)(b) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that, in the case of a European arrest warrant issued on the basis of a judicial decision of the issuing Member State allowing execution in that Member State of a sentence imposed by a court of a third State, where the offence concerned was committed in the territory of the latter State, the question whether that offence was committed ‘outside the territory of the issuing Member State’ must be resolved by taking into consideration the criminal jurisdiction of that third State – in this instance, the Kingdom

of Norway – which allowed prosecution of that offence, and not that of the issuing Member State.

Bonichot
Safjan

Bay Larsen

Toader
Jääskinen

Delivered in open court in Luxembourg on 17 March 2021.

A. Calot Escobar
Registrar

J.-C. Bonichot
President of the First
Chamber

* Language of the case: English.
