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Provisional text

JUDGMENT OF THE COURT (First Chamber)

6 December 2018 (*)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and the surrender procedures between Member States — European arrest warrant issued for the purposes of enforcing a custodial sentence — Substance and form — Article 8(1)(f) — Failure to refer to an additional sentence — Validity — Consequences — Effect on detention)

In Case C-551/18 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hof van Cassatie (Court of Cassation, Belgium), made by decision of 29 August 2018, received at the Court on 29 August 2018, in the proceedings relating to the execution of a European arrest warrant issued against

IK,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President of the Court, acting as President of the First Chamber, J.-C. Bonichot, E. Regan (Rapporteur), C.G. Fernlund and S. Rodin, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the referring court's request of 29 August 2018, received at the Court on 29 August 2018, that the reference for a preliminary ruling be dealt with under the urgent procedure, pursuant to Article 107 of the Rules of Procedure of the Court,

having regard to the written procedure and further to the hearing on 22 October 2018,

after considering the observations submitted on behalf of:

– IK, by P. Bekaert, advocaat,

- the Belgian Government, by C. Van Lul, C. Pochet and J.-C. Halleux, acting as Agents, and by J. Maggio, expert,
- Ireland, by G. Hodge, acting as Agent, and by G. Mullan, Barrister-at-Law,
- the Netherlands Government, by J.M. Hoogveld and J. Langer, acting as Agents,
- the Polish Government, by J. Sawicka, acting as Agent,
- the European Commission, by R. Troosters, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 8 November 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8(1)(f) 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 connection with the execution, in Belgium, of the European arrest warrant issued on 27 August 2014 by a Belgian court against IK with a view to the enforcement, in that Member State, of a custodial sentence and an additional sentence of release conditional to placement at the disposal of the strafuitvoeringsrechtbank (Court for the enforcement of custodial sentences, Belgium).

Legal context

European Union law

The Charter

3 The first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') provides:

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

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.'

4 Article 48(2) of the Charter provides:

'Respect for the rights of the defence of anyone who has been charged shall be guaranteed.'

Framework Decision 2002/584

5 Recitals 5 to 7 of Framework Decision 2002/584 state:

‘(5) ... The introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. ...

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

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition[, signed at Paris on 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 [TEU] and Article 5 [EC]. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.’

6 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 [TEU].’

7 Article 2(1) of the framework decision provides:

‘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.’

8 Articles 3, 4 and 4a of the framework decision list the grounds for mandatory and optional non-execution of the European arrest warrant.

9 In particular, Article 4(4) and (6) of Framework Decision 2002/584 provides:

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

...

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

...

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law.’

10 Under Article 8(1) of that framework decision, entitled ‘Content and form of the European arrest warrant’:

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

- (a) the identity and nationality of the requested person;
- (b) the name, address, telephone and fax numbers and email address of the issuing judicial authority;
- (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;
- (g) if possible, other consequences of the offence.’

11 Under Article 15 of the framework decision, entitled ‘Surrender decision’:

‘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.’

12 Under the heading ‘Possible prosecution for other offences’, Article 27 of the framework decision reads as follows:

‘1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial

sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

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

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

...

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

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.'

13 In particular, box (c) of the model form of the European arrest warrant contained in the Annex to Framework Decision 2002/584, entitled 'Indications on the length of the sentence', requires the issuing judicial authority to state the 'length of the custodial sentence or detention order imposed'.

Belgian law

14 Under Article 95/2 of the wet betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten (Law on the external legal status of persons sentenced to a custodial sentence and the rights granted to the victim in the framework of the modalities for the serving of sentences) of 17 May 2006 (*Moniteur belge* of 15 June 2006, p. 30455), as amended by the wet betreffende de terbeschikkingstelling van de strafuitvoeringsrechtbank (Law on release conditional to placement at the disposal of the court for the enforcement of custodial sentences) of 6 April 2007 (*Moniteur belge* of 13 July 2007, p. 38299):

'§ 1 Release conditional to placement at the disposal of the court for the enforcement of custodial sentences pronounced against the person convicted ... shall commence on the expiry of the main sentence.

§ 2. The court for the enforcement of custodial sentences shall decide, before the expiry of the main sentence pursuant to Part 2, either in favour of deprivation of liberty or in favour of conditional release under supervision of the convicted person released.

...

§ 3. The person subject to conditional release shall be deprived of his liberty if there is a risk of him committing serious offences that undermine the physical or psychological integrity of third

parties which, in the context of release under supervision, cannot be offset through the imposition of special conditions.’

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

15 By *inter partes* judgment of the hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium) of 1 February 2013, IK, a Belgian national, was sentenced to a primary custodial sentence of three years for the sexual assault of a minor under 16 years old without violence or threat (‘the primary sentence’). In the same judgment, and for that same offence, he was also subject to an additional sentence of release conditional to placement at the disposal of the strafuitvoeringsrechtbank (Court for the enforcement of custodial sentences) for a 10-year period (‘the additional sentence’). In accordance with Belgian law, that sentence takes effect after the expiry of the main sentence and, for the purposes of its enforcement, the strafuitvoeringsrechtbank (Court for the enforcement of custodial sentences) is to decide, before the expiry of the main sentence, either in favour of deprivation of liberty or in favour of release conditional to placement of the person convicted at the disposal of that court.

16 Since IK had left Belgium, on 27 August 2014, the Belgian issuing judicial authority issued a European arrest warrant against him for enforcement of the sentence. The European arrest warrant indicated the main sentence, the nature and legal classification of the offences and the relevant legal provisions, and set out an outline of the facts. No mention was made of the additional sentence imposed on IK.

17 Following IK’s arrest in the Netherlands, by decision of 8 March 2016, the rechtbank Amsterdam, internationale rechtshulpkamer (District Court (Chamber for International Cooperation in Legal Matters), Amsterdam, Netherlands) ordered that IK be surrendered to the Kingdom of Belgium for the purposes of serving the custodial sentence in Belgium for the offence in respect of which his surrender had been requested.

18 IK was then surrendered to the Belgian authorities and deprived of liberty. Deprivation of liberty was based on the main sentence, the end of which had been set for 12 August 2018, as well as the additional sentence, namely his conditional release for a 10-year period.

19 On 21 June and 19 July 2018, the strafuitvoeringsrechtbank Antwerpen (Court for the enforcement of custodial sentences, Antwerp, Belgium) sentenced IK to conditional release at its disposal. In those proceedings, IK claimed that it was not lawful for the surrender by Dutch authorities to be based on the additional sentence and that the court could not order deprivation of liberty pursuant to that sentence given that the European arrest warrant issued by the Belgian authorities did not mention it.

20 In those circumstances, on 2 July 2018, the Belgian issuing judicial authority sent the Dutch authorities a request for additional authorisation in respect of the additional sentence pursuant to Article 27 of Framework Decision 2002/584. Having taken the view that their authorisation could be granted only for the sentencing or prosecution of an offence other than the one for which surrender was authorised, which did not apply to the present case, the Dutch authorities did not accede to that request.

21 In a judgment of 31 July 2018, the strafuitvoeringsrechtbank Antwerpen (Court for the enforcement of custodial sentences, Antwerp) rejected IK’s line of argument and decided to maintain deprivation of liberty. On 3 August 2018, IK brought an appeal on a point of law against that judgment before the referring court, the Hof van Cassatie (Court of Cassation, Belgium).

22 According to that court, under Article 2(1) of Framework Decision 2002/584, a European arrest warrant may be issued for the purpose of executing a custodial sentence where a sentence has been passed or a detention order has been made of at least four months.

23 The referring court notes that, in accordance with Article 8(1) of that framework decision, the European arrest warrant must be drafted in accordance with the form contained in the annex thereto and must contain, *inter alia*, the following information, namely evidence of an enforceable judgment, the nature and legal classification of the offence, a description of the circumstances in which the offence was committed and the penalty imposed.

24 In accordance with Article 1(3) of the framework decision, that information must allow the executing judicial authority to ascertain whether the formal and substantive conditions for surrender pursuant to a European arrest warrant have been satisfied and whether there are, where relevant, reasons to take into account a ground for refusal, such as respect for the fundamental rights and general principles enshrined in Article 6 TEU.

25 In addition, Article 27(2) of Framework Decision 2002/584 provides that, except in the cases referred to in paragraphs 1 and 3 of that article, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

26 In those circumstances, the Hof van Cassatie (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 8(1)(f) of [Framework Decision 2002/584] be interpreted as meaning that it is sufficient that, in a European arrest warrant, the issuing judicial authority mentions only the presently enforceable custodial sentence imposed and thus not an additional sentence imposed for the same offence by the same judicial decision, such as conditional release, which will give rise to actual deprivation of liberty only after the execution of the main custodial sentence and only after an express decision to that effect is taken by the [strafuitvoeringsrechtbank (Court for the enforcement of custodial sentences)]?’

(2) If Question 1 is answered in the affirmative, must Article 8(1)(f) of [Framework Decision 2002/584] be interpreted as meaning that the surrender by the Member State of the issuing judicial authority on the basis of a European arrest warrant that refers only to the presently enforceable custodial sentence imposed and thus not to the additional sentence of conditional release imposed, which has been imposed for the same offence by the same judicial decision, has the result that actual deprivation of liberty in execution of that additional sentence may be effected in the Member State of the issuing judicial authority?’

(3) If Question 1 is answered in the negative, must Article 8(1)(f) of [Framework Decision 2002/584] be interpreted as meaning that the issuing judicial authority’s failure to mention, in a European arrest warrant, the additional sentence of conditional release which was imposed has the result that the conditional release imposed, of which the executing judicial authority can be assumed not to have any knowledge, cannot give rise to actual deprivation of liberty in the issuing Member State?’

The urgent procedure

27 The referring court requested that this reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107(1) of the Rules of Procedure of the Court.

28 In support of its request, that court stated that IK is currently deprived of his liberty in Belgium in respect of his conditional release, following the execution of the European arrest warrant issued on 27 August 2014. According to the referring court, the answer to the questions referred will be decisive for IK's custody status and the continuation thereof.

29 It must be stated, first, that the present reference for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which falls within the fields covered by Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice. Consequently, this reference can be dealt with under the urgent preliminary ruling procedure.

30 In the second place, as regards the criterion relating to urgency, it is necessary, in accordance with the Court's settled case-law, to take into account the fact that the person concerned is currently deprived of his liberty and that the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings. In addition, the situation of that person must be assessed as it stands at the time when consideration is given to the request that the reference be dealt with under the urgent procedure (judgment of 19 September 2018, *RO*, C-327/18 PPU, EU:C:2018:733, paragraph 30 and the case-law cited).

31 In the present case, it is common ground that, on that date, IK was deprived of his liberty in Belgium. Moreover, it is apparent from the explanation provided by the referring court that that person's continued detention depends on the outcome of the case in the main proceedings, since the detention measure against him was ordered in the context of the execution of the European arrest warrant issued in relation to him and IK's continuing to be held in custody pursuant to the additional penalty will depend on the answers that the Court gives to the questions referred for a preliminary ruling in this case.

32 In those circumstances, on 10 September 2018, the First Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

33 By its three questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 8(1)(f) of Framework Decision 2002/584 must be interpreted as meaning that failure to indicate, in the European arrest warrant pursuant to which the person concerned has been surrendered, an additional sentence of conditional release which was imposed on that person for the same offence in the same judicial decision as that relating to the main custodial sentence precludes the enforcement of that additional sentence, on the expiry of the main sentence after an express decision to that effect is taken by the national court with jurisdiction for the enforcement of sentences, from resulting in deprivation of liberty.

34 As a preliminary matter, it should be recalled that EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the EU law that implements them will

be respected (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 35 and the case-law cited).

35 Both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 36 and the case-law cited).

36 It is apparent from recital 6 of Framework Decision 2002/584 that the European arrest warrant provided for in that framework decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition.

37 As is apparent in particular from Article 1(1) and (2) of the framework decision, read in the light of recitals 5 and 7 thereof, the purpose of that decision is to replace the multilateral system of extradition, signed in Paris on 13 December 1957, based on the European Convention on Extradition 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 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 39 and the case-law cited).

38 Framework Decision 2002/584 thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 40 and the case-law cited).

39 Thus, in accordance with Article 1(1) of that framework decision, the aim of the mechanism of the European arrest warrant is to enable the arrest and surrender of a requested person, in the light of the objective pursued by the framework decision, so that the crime committed does not go unpunished and that that person is prosecuted or serves the custodial sentence ordered against him.

40 In that regard, the principle of mutual recognition, which, as is apparent in particular from recital 6 of Framework Decision 2002/584, constitutes the ‘cornerstone’ of EU judicial cooperation in criminal matters, is applied in Article 1(2) thereof which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 41 and the case-law cited).

41 Executing judicial authorities may therefore, in principle, refuse to execute such a warrant only on the grounds for non-execution exhaustively listed by Framework Decision 2002/584 and execution of the warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 thereof. Accordingly, while execution of the European arrest warrant constitutes the

rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 41 and the case-law cited).

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

43 The Court has also held that those provisions are based on the premiss that the European arrest warrant concerned will satisfy the requirements as to the lawfulness laid down in Article 8(1) of the framework decision and that failure to comply with one of those requirements as to lawfulness, which must be observed if the European arrest warrant is to be valid, must, in principle, result in the executing judicial authority refusing to give effect to that warrant (see, to that effect, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraphs 63 and 64).

44 It cannot be ruled out from the outset that the imposition of an additional sentence which has not been indicated in a European arrest warrant may, in certain circumstances, amount to one of the grounds capable of justifying refusal to execute such a warrant.

45 It is in the light of those considerations that it must be determined whether, in circumstances such as those at issue in the main proceedings, failure to indicate an additional sentence in a European arrest warrant affected the exercise of the jurisdiction which the executing judicial authority derives from Articles 3 to 5 of Framework Decision 2002/584 or did not comply with the requirement as to lawfulness set out in Article 8(1)(f) of that decision.

46 In the first place, it is to be noted that, in the case in the main proceedings, the executing judicial authority was not prevented from applying the rules provided in Articles 3 to 5 of that framework decision.

47 In the second place, in circumstances such as those at issue in the main proceedings, it must be determined whether the failure to indicate an additional sentence in a European arrest warrant does not comply with the requirement as to lawfulness set out in Article 8(1)(f) of the framework decision.

48 That provision requires that ‘the penalty imposed’ be indicated ‘if there is a final judgment’.

49 Furthermore, 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 (judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 57). Box (c)(2) of that form refers to the ‘length of the custodial sentence or detention order imposed’.

50 The requirement as to lawfulness set out in Article 8(1)(f) of Framework Decision 2002/584 is intended to inform the executing judicial authorities of the length of the custodial sentence for which surrender of the requested person is sought on the basis of indications providing the minimum official information required to enable those authorities to give effect to the European arrest warrant swiftly by adopting their decision on the surrender as a matter of urgency (see, to that effect, judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraphs 58 and 59).

51 That requirement is intended to enable the executing judicial authority, as the Advocate General observed in point 66 of her Opinion, to satisfy itself that the European arrest warrant falls within the scope of that framework decision and, in particular, to ascertain whether it has been issued for the execution of a custodial sentence or detention order the length of which exceeds the threshold of four months set out in Article 2(1) of the framework decision.

52 In the present case, the main sentence of three years' imprisonment to which IK was sentenced exceeds that threshold. Accordingly, an indication of that sentence was sufficient for the purposes of ensuring that the European arrest warrant satisfied the requirement as to lawfulness referred to in Article 8(1)(f) of the framework decision.

53 In those circumstances, the executing judicial authority was required to surrender the person identified by the European arrest warrant so that the offence committed did not go unpunished and that the sentence imposed on that person was served.

54 Therefore, in circumstances such as those at issue in the main proceedings, the fact that the European arrest warrant did not indicate the additional sentence cannot affect the execution of that sentence in the issuing Member State following surrender.

55 That conclusion cannot be called into question, first, by the line of argument put by IK and the Netherlands Government that, in essence, the decision of the executing judicial authority amounts to the ground for deprivation of liberty in the issuing Member State, as a result of which a sentence cannot be served which has not been the subject of a decision of the executing judicial authority and for which surrender has not been granted.

56 The decision of the executing authority is not intended to grant, in the present case, enforcement of a custodial sentence in the issuing Member State. As the Advocate General observed in point 81 of her Opinion and has been set out in paragraph 39 above, that decision merely grants surrender of the person requested, in accordance with the provisions of Framework Decision 2002/584, so that the offence committed does not go unpunished. The basis for the enforcement of a custodial sentence lies in the enforceable judgment pronounced in the issuing Member State which must be indicted pursuant to Article 8(1)(c) of that framework decision.

57 Second, the Netherlands Government, whilst having specified at the hearing before the Court that it did not call into question the validity of the European arrest warrant at issue in the main proceedings, submits that the enforcement of a sentence of which the executing judicial authority has not been informed would, however, run counter to the principle of speciality. Such an interpretation cannot be upheld.

58 It should be observed, first, that Article 27 of Framework Decision 2002/584, entitled 'Possible prosecution for other offences', provides, in paragraph 2, that a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered. Second, Article 27(3)(g) provides for the possibility of requesting, to that effect, the consent of the executing judicial authority after the surrender. As the Netherlands Government has itself recognised in its written observations, that additional consent may concern only an offence other than that for which there was surrender and not a sentence for the same offence.

59 It follows that the rule of speciality, as referred to in Article 27 of Framework Decision 2002/584, and as the Advocate General stated in points 53 and 54 of her Opinion, concerns only offences other than those on which the surrender was based.

60 In that regard, it should be made clear that, as stated in the order for reference, in the present case, the additional sentence was not added after the surrender of the person in question. It was pronounced for the same offence and by the same judicial decision as that of the main sentence of three years' imprisonment.

61 Accordingly, since that additional sentence was imposed on IK for the offence on the basis of which the European arrest warrant was issued and executed, the matter of whether that sentence may be enforced with the effect of leading to deprivation of liberty, despite the fact that the executing judicial authority was not informed of the additional sentence, does not fall within the scope of the rule of speciality.

62 Third, contrary to what the European Commission has contended, it cannot be held that, in the light of the principle of mutual trust, because the additional sentence was not indicated in the European arrest warrant its enforcement may give rise to deprivation of liberty only on condition that the executing judicial authority is informed of the additional sentence in advance, on the basis of Article 15(3) of Framework Decision 2002/584, and that that judicial authority does not decide, in respect of that additional sentence, to invoke one of the grounds of refusal or subject the execution of the European arrest warrant to certain guarantees to be given by the issuing Member State under Articles 3 to 5 of that framework decision.

63 It is true that the Court has previously held with a view to effective judicial cooperation in criminal matters that the issuing and executing judicial authorities must make full use of the instruments provided for, in particular in Article 8(1) and Article 15 of the framework decision in order to foster mutual trust on the basis of that cooperation (see, to that effect, judgment of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraphs 90 and 91).

64 In the present case, as the Belgian Government recognised in the course of the hearing before the Court, the additional sentence should have been indicated in the European arrest warrant. However, the fact remains, first of all, that, as appears from paragraph 46 above, failure to indicate the additional sentence in the European arrest warrant did not affect the exercise of the jurisdiction which the executing judicial authority derives from Articles 3 to 5 of Framework Decision 2002/584.

65 Next, as the Advocate General stated in point 109 of her Opinion, it is clear from the file before the Court that IK, despite the fact that he was not unaware of his sentence or its length, did not state before the executing judicial authority that the additional sentence had been omitted from the European arrest warrant.

66 Lastly, as the Court has previously held, as regards proceedings relating to a European arrest warrant, observance of the rights of the person whose surrender is requested falls primarily within the responsibility of the issuing Member State, which must be presumed to be compliant with EU law, in particular the fundamental rights conferred by that law (judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 50).

67 Thus, the decision of the executing judicial authority is without prejudice to the person in question's opportunity, after surrender, to have recourse, within the legal system of the issuing Member State, to legal remedies that may enable him to challenge, where appropriate, the lawfulness of his detention in a prison of that Member State, inter alia, as is clear from the case in the main proceedings, on the basis of the European arrest warrant pursuant to which his surrender was granted. That person may, at that time, rely, inter alia, on respect for the rights to an effective remedy, to a fair trial and of the defence which he derives from Article 47 and Article 48(2) of the

Charter (see, to that effect, judgment of 19 September 2018, *RO*, C-327/18 PPU, EU:C:2018:733, paragraph 50).

68 Therefore, in circumstances such as those at issue in the main proceedings, Article 15(3) of Framework Decision 2002/584 cannot be interpreted as requiring the issuing judicial authority to inform the executing judicial authority, after that authority has acceded to the request for surrender, of the existence of an additional sentence so that executing judicial authority may adopt a decision regarding the possibility of enforcing that sentence in the issuing Member State.

69 As the Advocate General observed in point 116 of her Opinion, to subject the enforcement of the additional sentence to such a requirement, despite the fact that the executing judicial authority could not refuse to accede to the European arrest warrant, would be at odds with the objective of facilitating and accelerating the judicial cooperation sought by that framework decision (see, to that effect, judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 53 and the case-law cited).

70 In the light of all of the foregoing considerations, the answer to the questions referred is that Article 8(1)(f) of Framework Decision 2002/584 must be interpreted as meaning that failure to indicate, in the European arrest warrant pursuant to which the person concerned has been surrendered, an additional sentence of conditional release which was imposed on that person for the same offence in the same judicial decision as that relating to the main custodial sentence does not, on the facts of the case in the main proceedings, preclude the enforcement of that additional sentence, on the expiry of the main sentence after an express decision to that effect is taken by the national court with jurisdiction for the enforcement of sentences, from resulting in deprivation of liberty.

Costs

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

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

Article 8(1)(f) 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 failure to indicate, in the European arrest warrant pursuant to which the person concerned has been surrendered, an additional sentence of conditional release which was imposed on that person for the same offence in the same judicial decision as that relating to the main custodial sentence does not, on the facts of the case in the main proceedings, preclude the enforcement of that additional sentence, on the expiry of the main sentence after an express decision to that effect is taken by the national court with jurisdiction for the enforcement of sentences, from resulting in deprivation of liberty.

[Signatures]

* Language of the case: Dutch.

