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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

10 April 2025 (\*)

( Reference for a preliminary ruling – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant – Article 4(4) and (6) – Grounds for optional non-execution – Condition that the acts fall within the jurisdiction of the executing Member State under its own criminal law – Conviction which is not final – European arrest warrant issued for the purposes of criminal prosecution )

In Case C481/23 [Sangas], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Nacional (National High Court, Spain), made by decision of 24 July 2023, received at the Court on 26 July 2023, in the proceedings relating to the execution of the European arrest warrant issued against

**JMTB,**

interveners:

**Ministerio Fiscal,**

**Abogado del Estado,**

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, D. Gratsias, E. Regan (Rapporteur), J. Passer and B. Smulders, Judges,

Advocate General: J. Richard de la Tour,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 13 November 2024,

after considering the observations submitted on behalf of:

– the Ministerio Fiscal, by R. de Miguel Morante, acting as Agent,

- the Spanish Government, by L. Aguilera Ruiz, A. Gavela Llopis and P. Pérez Zapico, acting as Agents,
  - the Lithuanian Government, by K. Dieninis and V. Kazlauskaitė-Švenčionienė, acting as Agents,
  - the Austrian Government, by A. Posch, J. Schmoll and C. Leeb, acting as Agents,
  - the European Commission, by J. Baquero Cruz, H. Leupold and J. Vondung, acting as Agents,
- having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 4(4) and (6) 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, and corrigendum in OJ 2006 L 279, p. 30), 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 relating to the execution of the European arrest warrant issued against JMTB.

### **Legal context**

#### ***European Union law***

3 Article 1 of Framework Decision 2002/584, 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.

...'

4 Article 3 of that framework decision sets out grounds for mandatory nonexecution of the European arrest warrant.

5 Article 4 of the framework decision, headed 'Grounds for optional non-execution of the European arrest warrant', 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;

...'

6 Article 4a of Framework Decision 2002/584 lays down other circumstances in which the executing judicial authority may refuse to execute a European arrest warrant, whereas Article 5 of that decision concerns the guarantees to be given by the issuing Member State in particular cases.

#### **Romanian law**

7 Article 99(2)(c) and (g) and (3) of Legea nr. 302/2004 privind cooperarea judiciară internațională în materie penală (Law No 302/2004 on international judicial cooperation in criminal matters) of 28 June 2004 (*Monitorul Oficial al României*, Part I, No 594 of 1 July 2004), as republished (*Monitorul Oficial al României*, Part I, No 411 of 27 May 2019), provides:

'(2) The Romanian executing judicial authority may refuse to execute the European arrest warrant in the following cases:

...

(c) where the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is a Romanian citizen or resident, has lawfully and continuously resided in Romania for a period of at least five years and expresses his or her opposition to the execution of the sentence or detention order in the issuing Member State;

...

(g) where, under Romanian law, criminal liability for the offence which led to the issuance of the European arrest warrant or the execution of the sentence imposed is statute-barred, if the acts fell within the jurisdiction of the Romanian authorities;

...

(3) In cases where only paragraph 2(c) applies, the Romanian executing judicial authority shall, before issuing the decision referred to in Article 109, request from the issuing judicial authority a certified copy of the sentence and any other necessary information, and shall inform the issuing judicial authority of the reason for requesting those documents. The foreign criminal sentence shall be recognised incidentally by the court before which the European arrest warrant is pending. If the Romanian executing judicial authority recognises the foreign criminal conviction, the warrant for execution of the sentence shall be issued on the date of adoption of the decision referred to in Article 109.'

#### **The main proceedings and the questions referred for a preliminary ruling**

8 By judgment of 21 February 2022, clarified by order of 3 March 2022 ('the judgment of 21 February 2022'), the Audiencia Nacional (National High Court, Spain) convicted JMTB ('the accused'), a Spanish national residing in Romania, as co-perpetrator of three tax offences and one money laundering offence. First, as regards each of those three tax offences, the accused was sentenced to two years' imprisonment and a fine of EUR 23 million for the 2011 financial year, a fine of EUR 135 million for the 2012 financial year and a fine of EUR 140 million for the 2013 financial year, in addition to ancillary penalties. Secondly, as regards the offence of money laundering, he was sentenced to six years' imprisonment and a fine of EUR 54 million.

9 The offences for which the accused was convicted consisted, in essence, in the creation of several companies in Spain, to which the accused appointed fictitious agents to act as purported directors, with a

view to evading the payment of value added tax (VAT) in Spain on the sale of hydrocarbons for the financial years 2011 to 2013, for a total amount of more than EUR 100 million.

10 Following the announcement that the accused had lodged an appeal on a point of law against the judgment of 21 February 2022, he was refused permission to travel to Romania. However, after the accused was found at the Croatian border heading towards Romania, the referring court adopted a decision relating to him on 6 April 2022, accompanied by a European arrest warrant and an international arrest warrant to find, arrest and detain him ('the decision of 6 April 2022').

11 In a communication dated 4 April 2023, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania) sent a copy of the judgment refusing execution of that European arrest warrant.

12 It is apparent from that judgment that it is true that none of the grounds for mandatory nonexecution laid down in Article 3 of Framework Decision 2002/584 were applicable to the European arrest warrant issued against the accused. However, as regards the grounds for optional non-execution provided for in Article 4 of that framework decision, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) found, first, that the accused had provided documentary evidence of continuous and lawful residence in the territory of Romania for a period of at least five years and, secondly, that he had declared that he did not wish to be surrendered to the Spanish judicial authorities, which amounts to a refusal to execute the sentence in the issuing Member State, with the result that a ground for refusing to surrender the person concerned exists.

13 Furthermore, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) held that the offences for which the accused had been convicted at first instance by the judicial authority issuing the European arrest warrant were defined by Spanish legislation as the offences of tax evasion and money laundering, which were punishable by imprisonment of 3 to 10 years, with the result that, if the acts had been committed within the jurisdiction of the Romanian judicial authorities, the limitation period for criminal liability for similar offences would have been 10 years from the date of the last act or omission.

14 Having held that the three offences of tax evasion in respect of which the accused had been convicted had been committed during the financial years 2011 to 2013, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) inferred from this that the limitation period had begun to run on 31 December 2013 at the latest. The Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) also took the view that, since the commission of the three offences, there had been no reason to interrupt the limitation period for criminal liability and found that that period had expired.

15 In the light of that judgment, the referring court observes that, in order to refuse the surrender of the accused, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) found that there were two grounds for optional non-execution of the European arrest warrant at issue in the main proceedings relating to the fact that, first, criminal proceedings were statute-barred under Romanian law and, secondly, the accused was residing in Romania.

16 As regards the fact that criminal proceedings were statute-barred under Romanian law, the referring court notes that the decision refusing to surrender the accused was adopted in accordance with the rules on the statute-barring of offences in Romanian law, whereas all the acts at issue in the main proceedings were committed in Spain and constituted tax evasion offences affecting the economic interests of the Kingdom of Spain, which means that, in any event, the Romanian judicial authorities would not have the jurisdiction to try those offences and cannot, as a result, rely on Article 4(4) of Framework Decision 2002/584.

17 As regards the residence of the accused in Romania, the referring court observes that Article 4(6) of Framework Decision 2002/584 allows the surrender of the requested person to be refused only if three cumulative conditions are satisfied, namely, (i) the European arrest warrant must have been issued for the

purposes of execution of a custodial sentence or detention order; (ii) the person concerned must be staying in or be a resident or national of the executing Member State; and (iii) the executing State must undertake to execute that sentence or detention order in accordance with its domestic law. In the present case, the first of those conditions is not met, since the accused has only been convicted at first instance and his conviction is the subject of a pending appeal on a point of law. Furthermore, even if the accused were considered to be residing in Romania, the refusal to surrender is not accompanied by an undertaking by the Romanian authorities to execute any sentence that may be finally imposed on the person concerned in Romania.

18 According to the referring court, such a refusal is not justified in the light of the case-law of the Court resulting from the judgment of 31 January 2023, *Puig Gordi and Others* (C158/21, EU:C:2023:57). As is apparent, in essence, from paragraphs 75 and 76 of that judgment, to accept that a Member State may add to the grounds for non-execution of a European arrest warrant set out in Articles 3, 4 and 4a of Framework Decision 2002/584 other grounds, based on national law, for not giving effect to that arrest warrant would impede the proper functioning of the simplified system for the surrender of persons established in that framework decision.

19 In those circumstances, the Audiencia Nacional (National High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Since Article 4(6) of the [Framework Decision 2002/584] provides that the grounds for optional non-execution of the European arrest warrant include cases in which that 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:

(a) Is it permissible to extend the application of that optional ground for refusal to surrender to cases in which a final decision has not yet been reached regarding the requested person?

(b) If that possibility were allowed, is it possible to refuse to surrender the requested person on the ground that that person is resident in the State in which enforcement is sought, without that State undertaking to execute the sentence or detention order in accordance with its domestic law?

(2) Since Article 4(4) of [Framework Decision 2002/584] provides that the grounds for optional non-execution of a European arrest warrant include cases 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, is it permissible to extend that ground for optional non-execution to cases in which the offence or penalty is regarded as statute-barred under the law of that Member State, even if the courts of that Member State do not have jurisdiction to determine the facts?’

## **Consideration of the questions referred**

### ***The first question***

20 By its first question, the referring court asks, in essence, whether Article 4(6) of Framework Decision 2002/584 must be interpreted as meaning that the judicial authority executing a European arrest warrant may refuse to execute that arrest warrant on the basis of that provision where that arrest warrant has not been issued for the purposes of execution of a custodial sentence or detention order, since the accused has not yet been convicted by final judgment, and the executing Member State has not undertaken to execute the custodial sentence or detention order imposed by a final judgment against that person in accordance with its domestic law.

21 In that regard, it must be noted that a European arrest warrant may, under Article 1(1) of Framework Decision 2002/584, apply to two situations. Thus, that arrest warrant may be issued, on the one hand, for the purposes of conducting a criminal prosecution or, on the other hand, for the purposes of executing a custodial sentence or detention order (judgment of 21 October 2010, *I.B.*, C306/09, EU:C:2010:626, paragraph 49).

22 Although the principle of mutual recognition underlies the scheme of Framework Decision 2002/584, that recognition does not, however, imply an absolute obligation to execute the arrest warrant issued, since that framework decision expressly sets out the grounds for mandatory (Article 3) and optional (Articles 4 and 4a) non-execution of a European arrest warrant, and the guarantees to be provided by the issuing Member State in particular cases (Article 5) (see, to that effect, judgments of 21 October 2010, *I.B.*, C306/09, EU:C:2010:626, paragraph 50, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C216/18 PPU, EU:C:2018:586, paragraph 42 and the case-law cited).

23 In particular, the system established by Framework Decision 2002/584, as evidenced inter alia by those articles, makes it possible for the Member States to allow the competent judicial authorities, in specific situations, to decide that a sentence must be executed in the territory of the executing Member State (judgments of 21 October 2010, *I.B.*, C306/09, EU:C:2010:626, paragraph 51, and of 13 December 2018, *Sut*, C514/17, EU:C:2018:1016, paragraph 30).

24 In that regard, Article 4(6) of Framework Decision 2002/584 provides that the executing judicial authority may refuse to execute a European arrest warrant if it 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.

25 Accordingly, it is apparent from the very wording of Article 4(6) of Framework Decision 2002/584 that, in order to fall within the scope of that provision, the requested person must be the subject of a European arrest warrant issued ‘for the purposes of execution of a custodial sentence or detention order’, namely the second of the situations referred to in paragraph 21 above. It is only in that situation that the last condition laid down in that provision may be satisfied.

26 In the present case, however, it is apparent from the request for a preliminary ruling that, even though, by the judgment of 21 February 2022, the accused was convicted at first instance on multiple counts as the perpetrator of three tax offences and one money laundering offence, he brought an appeal on a point of law against that judgment, with the result that the criminal proceedings relating to that conviction are still pending before the Spanish courts. It is apparent from the information available to the Court that, under Spanish law, it is not possible to enforce the judgment because an appeal has been lodged against it.

27 Furthermore, it follows from those factors that the decision of the referring court on which the European arrest warrant at issue in the main proceedings is based is not the judgment of 21 February 2022, but the decision of 6 April 2022 to find, arrest and detain the accused. The latter decision was adopted by that court after the accused failed to comply with the preventive measures to which he was subject in the criminal proceedings brought against him. In particular, while the accused was on conditional release, with an explicit prohibition on leaving the Spanish territory and the obligation to appear at the hearings, he was found at the Croatian border heading towards Romania. The decision of 6 April 2022 and the European arrest warrant issued on the basis of that decision were therefore adopted in order to ensure the presence of the accused when those proceedings were resumed.

28 Consequently, as the Ministerio Fiscal (Public Prosecutor’s Office, Spain), the Spanish Government and the European Commission maintain, and as the referring court observes, in essence, in the request for

a preliminary ruling, the European arrest warrant at issue in the main proceedings was adopted, not ‘for the purposes of execution of a custodial sentence or detention order’, within the meaning of Article 4(6) of Framework Decision 2002/584, but for the purposes of the other situation envisaged in Article 1(1) of Framework Decision 2002/584 and recalled in paragraph 21 above, namely that of criminal prosecution.

29 It follows that the situation of the accused does not fall within the scope of Article 4(6) of Framework Decision 2002/584, with the result that a refusal to execute the European arrest warrant issued against him or her cannot be based on that provision.

30 In the light of all the foregoing, the answer to the first question is that Article 4(6) of Framework Decision 2002/584 must be interpreted as meaning that the judicial authority executing a European arrest warrant cannot refuse to execute that arrest warrant on the basis of that provision where that arrest warrant has not been issued for the purposes of execution of a custodial sentence or detention order.

### ***The second question***

31 By its second question, the referring court asks, in essence, whether Article 4(4) of Framework Decision 2002/584 must be interpreted as meaning that the judicial authority executing a European arrest warrant may refuse to execute that arrest warrant on the basis of that provision, even though the acts do not fall within the jurisdiction of the executing Member State under its own criminal law, on the ground that the criminal prosecution or punishment of the requested person would have been statute-barred if the law of that Member State had been applicable.

32 In that regard, it should be recalled that Article 4(4) of Framework Decision 2002/584 permits the executing judicial authority to refuse to execute a European arrest warrant where the criminal prosecution 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 State under its own criminal law.

33 It is thus apparent from the very wording of Article 4(4) of Framework Decision 2002/584 that the two conditions which it sets out apply cumulatively. It follows that the executing judicial authority cannot rely on the ground for optional non-execution of a European arrest warrant laid down in that provision where the acts which are the subject of the criminal prosecution or penalty do not fall within the jurisdiction of that Member State under its own criminal law, even if that action or penalty would have been statute-barred if the law of that Member State had been applicable.

34 In the light of all the foregoing, the answer to the second question is that Article 4(4) of Framework Decision 2002/584 must be interpreted as meaning that the judicial authority executing a European arrest warrant cannot refuse to execute that arrest warrant on the basis of that provision where the acts do not fall within the jurisdiction of the executing Member State under its own criminal law, even though the criminal prosecution or punishment of the requested person would have been statute-barred if the law of that Member State had been applicable.

### **Costs**

35 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 (Fifth Chamber) hereby rules:

1. **Article 4(6) 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 the judicial authority executing a European arrest warrant cannot refuse to execute that arrest warrant on the basis of that provision where that arrest warrant has not been issued for the purposes of execution of a custodial sentence or detention order.

2. Article 4(4) of Framework Decision 2002/584, as amended by Framework Decision 2009/299,

must be interpreted as meaning that the judicial authority executing a European arrest warrant cannot refuse to execute that arrest warrant on the basis of that provision where the acts do not fall within the jurisdiction of the executing Member State under its own criminal law, even though the criminal prosecution or punishment of the requested person would have been statute-barred if the law of that Member State had been applicable.

[Signatures]

\* Language of the case: Spanish.

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.