



## Reports of Cases

### ORDER OF THE COURT (Fourth Chamber)

25 September 2015\*

(Reference for a preliminary ruling — Urgent preliminary-ruling procedure — Article 99 of the Rules of Procedure of the Court of Justice — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 2(4) and Article 4.1 — Conditions of execution — National criminal law making the execution of a European arrest warrant subject to, in addition to double criminality, the condition that the criminal act is punishable by a custodial sentence or a detention order for a maximum period of at least 12 months under the law of the executing Member State)

In Case C-463/15 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, the Netherlands), made by decision of 2 September 2015, received at the Court of Justice on the same day, in the proceedings

**Openbaar Ministerie**

v

**A.**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe, J. Malenovský, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

\* Language of the case: Dutch.

## Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(4) and Article 4.1 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) (hereinafter ‘Framework Decision 2002/584’).
- 2 The request has been made in the context of the execution, in the Netherlands, of a European arrest warrant issued by the Procureur des Konings bij de Rechtbank van eerste aanleg te Brussel (Public Prosecutor at the Court of First Instance, Brussels) against A.

### Legal context

#### *EU Law*

- 3 Recitals 5, 6, 7 and 10 in the preamble to Framework Decision 2002/584 state:
  - ‘(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.
  - (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation.
  - (7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 [EU] and Article 5 [EC]. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- ...
  - (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) [EU], determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.’
- 4 Article 1 of Framework Decision 2002/584 provides:
  - ‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [EU].'

- 5 Article 2 of Framework Decision 2002/584, headed 'Scope of the European arrest warrant', is worded as follows:

'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:

...

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.'

- 6 Point 1 of Article 4 of Framework Decision 2002/584, headed 'Grounds for optional non-execution of the European arrest warrant', provides:

'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; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;

...'

#### *Netherlands law*

- 7 Article 7(1) of the Overleveringswet (Law on the surrender of sentenced persons) provides:

'1. Surrender shall be allowed only for purposes of:

- (a) a criminal investigation undertaken by authorities of the issuing Member State, where the issuing judicial authority suspects that the requested person has committed:

- 1° an act specified as punishable in the law of the issuing Member State and also included on the list in Annex 1 to the present Law, for which the law of the issuing Member State imposes a maximum custodial sentence of at least three years; or

2° another act which is punishable under the laws of both the issuing Member State and the Netherlands by a maximum custodial sentence of at least twelve months;

(b) the serving of a custodial sentence of four or more months by the requested person in the territory of the issuing Member State for an act referred to in points 1° or 2°.'

### **The dispute in the main proceedings and the question submitted for a preliminary ruling**

- 8 The Public Prosecutor at the Rechtbank Amsterdam submitted a request to that court for execution of a European arrest warrant issued on 6 November 2014 by the Belgian Public Prosecutor at the Court of First Instance, Brussels, seeking the arrest and surrender of A., who is currently detained in the Netherlands pursuant to a final custodial sentence imposed by courts in the Netherlands, with a view to the execution of a separate custodial sentence of 5 years imposed on A. in Belgium.
- 9 The European arrest warrant cites a ruling made on 7 October 2014 by the 43<sup>rd</sup> Criminal Chamber of the Rechtbank van eerste aanleg van Brussel (Court of First Instance, Brussels).
- 10 The description of the facts in respect of which A. was sentenced, contained in the European arrest warrant at issue, may be summarised as follows. On 2 March 2013, in Brussels, A. broke a glass, went to sit astride his wife and with one hand began to throttle her, while with the other hand he hit her with the broken glass on her head, neck and left arm. A medical examination carried out on A.'s wife recorded three injuries caused by a sharp and pointed object. Prior to that, A. had struck his wife during the period from 28 February 2013 to 2 March 2013.
- 11 The referring court takes the view that the acts which under Belgian law constitute the criminal offences of 'intentional assault and battery of a spouse causing incapacity for work' and 'intentional assault and battery of a spouse' are, under Netherlands law, subject in both cases to a custodial sentence of a maximum period of at least twelve months. By contrast, the third act of which A. is accused, namely the carrying of a prohibited weapon, is punishable only by a third-category fine under Netherlands law.
- 12 The referring court has doubts as to whether it is possible to execute the European arrest warrant at issue in respect of this third act, in view of Article 7(1) of the Overleveringswet, which, according to its interpretation, requires that the acts alleged against the requested person must be subject to criminal sanctions in both Member States concerned and that the maximum custodial sentence applicable to such acts must be at least twelve months in both Member States. However, the question arises as to whether a refusal based on such an interpretation is in accordance with Article 2(4) and Article 4.1 of Framework Decision 2002/584.
- 13 In those circumstances, the Rechtbank Amsterdam decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do Article 2(4) and Article 4.1 of Framework Decision 2002/584/JHA permit the executing Member State to transpose those provisions into its national law in such a manner as to require that the act should be punishable under its law and that, under its law, a custodial sentence of a maximum period of at least twelve months is laid down for that act?'

### **The urgent procedure**

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

- 15 That court justified its request by pointing out in particular that A.'s incarceration pursuant to the sentence imposed by the Netherlands courts runs until 1 January 2016. As of 17 September 2015, however, the execution of that sentence is liable to be interrupted on condition that he is at the same time removed from Netherlands territory.
- 16 At the hearing held on 24 July 2015 before the referring court, the latter ordered that A. be detained from the moment at which his detention on other charges should end. The Public Prosecutor informed the hearing on 18 August 2015 that it would execute that order if no definitive decision had been taken with regard to the European arrest warrant at the moment when the execution of the sentence pronounced by the Netherlands courts comes to an end.
- 17 According to the referring court, which indicates that the period established under Article 17(3) and (4) of Framework Decision 2002/584 within which the decision to execute a European arrest warrant must be taken was to expire on 21 September 2015, a swift response from the Court of Justice on the procedural question would have a direct and determinant effect on the duration of A.'s incarceration in the Netherlands. Finally, A. himself has, according to the referring court, requested that he be handed over to the Belgian authorities as soon as possible.
- 18 In this respect, it must first be observed that the present reference for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which comes within the field covered by Part Three, Title V, of the Treaty on the Functioning of the European Union relating to the area of freedom, security and justice. It is therefore amenable to being dealt with under the urgent preliminary-ruling procedure.
- 19 Secondly A. is currently incarcerated but is likely to benefit from an interruption of his sentence as of 17 September 2015, subject to the condition that he is removed from the territory of the Netherlands. This removal will, in accordance with A.'s wishes, take the form of his surrender to the Belgian authorities on foot of the European arrest warrant. If a decision on the execution of this warrant is not taken before 1 January 2016, A. will in principle remain in custody until that decision has been taken.
- 20 In those circumstances, on 10 September 2015 the Fourth Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent procedure.

### **The question referred for a preliminary ruling**

- 21 Under Article 99 of its Rules of Procedure, where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 22 It is appropriate to apply that provision in the context of the present reference for a preliminary ruling.
- 23 By its question the referring court asks, in substance, whether Article 2(4) and Article 4.1 of Framework Decision 2002/584 must be interpreted as precluding a situation in which surrender pursuant to a European arrest warrant is subject, in the executing Member State, not only to the condition that the act for which the arrest warrant was issued constitutes an offence under the law of that Member State, but also to the condition that it is, under that same law, punishable by a custodial sentence of a maximum of at least twelve months.

- 24 In this regard, it should be noted that, under Article 4.1 of Framework Decision 2002/584, the executing judicial authority may refuse to execute the European arrest warrant if, in one of the cases referred to in Article 2(4) of that Framework Decision, the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State. Article 2(4) of Framework Decision 2002/584 states that this option covers offences other than those referred to in paragraph 2 of that article, whatever the constituent elements or however they are described.
- 25 That option to refuse execution is therefore limited to a situation in which a European arrest warrant relates to an act that is not included on the list in Article 2(2) of Framework Decision 2002/584 and does not constitute an offence under the law of the executing Member State.
- 26 As the carrying of a prohibited weapon, which is one of the acts at issue in the main proceedings, does, however, according to the referring court, constitute a punishable offence under Netherlands law, it must be held that the refusal to execute a European arrest warrant which concerns that act is not covered by the situations explicitly referred to in Article 2(4) and Article 4.1 of Framework Decision 2002/584.
- 27 Moreover, neither Article 2(4) and Article 4.1 of Framework Decision 2002/584 nor any other provisions thereof provide for the possibility of opposing the execution of a European arrest warrant concerning an act which, while constituting an offence in the executing Member State, is not there punishable by a custodial sentence of a maximum of at least twelve months.
- 28 This finding is corroborated by the general background of Framework Decision 2002/584 and by the objectives that it pursues.
- 29 As is clear from the first two paragraphs of Article 2, this Framework Decision focuses, with regard to offences in respect of which a European arrest warrant may be issued, on the level of punishment applicable in the issuing Member State (see, to that effect, the judgment in *Advocaten voor de Wereld*, C-303/05, EU:C:2007:261, paragraph 52). The reason for this is that criminal prosecutions or the execution of a custodial sentence or detention order for which such a warrant is issued are conducted in accordance with the rules of that Member State.
- 30 In contrast to the extradition regime which it removed and replaced by a system of surrender between judicial authorities, Framework Decision 2002/584 no longer takes account of the levels of punishments applicable in the executing Member States. This corresponds to the primary objective of this Framework Decision, referred to in recital 5 in its preamble, of ensuring free movement of judicial decisions in criminal matters, within an area of freedom, security and justice.
- 31 It follows from all of the foregoing considerations that Article 2(4) and Article 4.1 of Framework Decision 2002/584 must be interpreted as precluding a situation in which surrender pursuant to a European arrest warrant is subject, in the executing Member State, not only to the condition that the act for which the arrest warrant was issued constitutes an offence under the law of that Member State, but also to the condition that it is, under that same law, punishable by a custodial sentence of a maximum of at least twelve months.

### **Costs**

- 32 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.



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

**Article 2(4) and Article 4.1 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as precluding a situation in which surrender pursuant to a European arrest warrant is subject, in the executing Member State, not only to the condition that the act for which the arrest warrant was issued constitutes an offence under the law of that Member State, but also to the condition that it is, under that same law, punishable by a custodial sentence of a maximum of at least twelve months.**

[Signatures]