



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

10 November 2016*

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 8(1)(c) — Concept of ‘arrest warrant’ — Autonomous concept of EU law — National arrest warrant issued by a police service and confirmed by a public prosecutor for the purpose of criminal proceedings)

In Case C-453/16 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 16 August 2016, received at the Court on the same date, in the proceedings relating to the execution of a European arrest warrant issued against

Halil Ibrahim Özçelik,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, C. Vajda, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 October 2016,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M. Bulterman, H. Stergiou and B. Koopman, acting as Agents,
- the German Government, by T. Henze, M. Hellmann, J. Möller and R. Riegel, acting as Agents,
- the Hungarian Government, by M.M. Tátrai and by G. Koós and M.Z. Fehér, acting as Agents,
- the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 October 2016,

gives the following

* Language of the case: Dutch.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (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; ‘the Framework Decision’).
- 2 The request has been made in connection with the execution in the Netherlands of a European arrest warrant issued by the Veszprémi Járásbíróság (District Court, Veszprém, Hungary) against Mr Halil Ibrahim Özçelik.

Legal context

EU law

- 3 Recitals 5, 6, 8 and 10 of the Framework Decision 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.

...

 - (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.

...

 - (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) of the Treaty on European Union, 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 the 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.

...'

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

6 Article 6 of the Framework Decision, entitled 'Determination of the competent judicial authorities', provides:

'1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.'

7 Article 8 of the Framework Decision concerns the content and form of the European arrest warrant. According to paragraph 1(c) thereof:

'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;

...'

Netherlands law

8 The Overleveringswet (Law on surrender) transposes the Framework Decision into Netherlands law. Article 1 of that law is worded as follows:

'For the purposes of the present law:

...

(b) "European arrest warrant" means the written decision of a judicial authority of a Member State of the European Union with a view to the arrest or surrender of a person by the judicial authority of another Member State;

...

(i) "issuing judicial authority" means the judicial authority of a Member State of the European Union, competent under domestic law to issue a European arrest warrant;

...'

9 Article 5 of the Law on surrender states:

‘Surrender shall be effected exclusively to the issuing judicial authorities of other Member States of the European Union in accordance with the provisions of the present law or those adopted pursuant to it.’

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

- 10 On 21 June 2016 the Veszprémi Járásbíróság (District Court, Veszprém) issued a European arrest warrant against Mr Halil Ibrahim Özçelik, a Turkish national, in connection with criminal proceedings instituted against him in respect of two offences committed in Hungary, both of which are criminal offences in that Member State.
- 11 The request for execution of that European arrest warrant came before the rechtbank Amsterdam (District Court, Amsterdam, Netherlands). That court notes that, in section (b) of the form contained in the Annex to the Framework Decision, which must be completed with the details of the arrest warrant or judicial decision of equivalent effect, reference is made to ‘Arrest warrant No 19060/93/2014.bü. of the Police Department of Ajka, confirmed by decision of 14 June 2016 of the Public Prosecutor’s Office of Ajka’.
- 12 By a request for information of 8 July 2016, the referring court questioned the Hungarian authorities about the role of the public prosecutor’s office and, in particular, on its independence from the executive, as well as on the implications of the confirmation by the public prosecutor’s office of an arrest warrant issued by a police service.
- 13 On 14 July 2016 the Hungarian authorities provided a response to that request, from which it is apparent, inter alia, that the public prosecutor’s office is independent from the executive and that it is tasked with ensuring, during the whole of the investigation stage, that the police comply with the law and that the suspect can exercise his rights. Those authorities also stated that, as part of that task, the public prosecutor’s office can amend or revoke a decision taken by the police acting as an investigating authority if it comes to the conclusion that that decision is contrary to the law or to the object of the investigation. Moreover, those authorities indicated that the member of the public prosecutor’s office who confirmed a national arrest warrant issued by the police may act as a representative of the public prosecutor’s office during the relevant criminal proceedings.
- 14 In the light of that information, the referring court expresses its doubts as to whether a national arrest warrant, issued by a police service and subsequently confirmed by a decision of a public prosecutor’s office, may be classified as a ‘judicial decision’, within the meaning of Article 8(1)(c) of the Framework Decision.
- 15 In those circumstances, the rechtbank Amsterdam (District Court, Amsterdam) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is the expression “judicial decision”, within the meaning of Article 8(1)(c) of [the] Framework Decision ..., a term of EU law which must be given an autonomous and uniform interpretation?
- (2) If so, what is the meaning of that term?
- (3) Does the confirmation, as in the present case, by a member of the Public Prosecutor’s Office of a national arrest warrant previously issued by the police constitute such a “judicial decision”?’

The urgent procedure

- 16 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice.
- 17 In support of that request, it cites inter alia the fact that Mr Özçelik is currently deprived of his liberty, pending his actual surrender to the Hungarian authorities.
- 18 It should be observed, in the first place, that the present reference for a preliminary ruling concerns the interpretation of the Framework Decision, which comes within the sectors covered by Title V of Part Three of the FEU Treaty on the area of freedom, security and justice. It may therefore be dealt with under the urgent preliminary ruling procedure.
- 19 In the second place, according to the case-law of the Court, it is appropriate to take into account the fact that the person concerned in the main proceedings 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 (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 24). According to the explanations provided by the referring court, the detention measure against Mr Özçelik was ordered in the context of the execution of the European arrest warrant issued against him.
- 20 In those circumstances, on 31 August 2016, 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 preliminary ruling procedure.

Consideration of the questions referred

- 21 By its questions, which it is appropriate to examine jointly, the referring court essentially asks whether Article 8(1)(c) of the Framework Decision must be interpreted as meaning that a confirmation, such as that at issue in the main proceedings, by the public prosecutor's office, of a national arrest warrant issued previously by a police service in connection with criminal proceedings constitutes a 'judicial decision', within the meaning of that provision.
- 22 Article 8(1)(c) of the Framework Decision provides that the European arrest warrant must contain information relating to 'evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2' of the Framework Decision. That information must be given in section (b) of the form contained in the Annex to the Framework Decision, headed 'Decision on which the warrant is based', section 1 of which is to be completed by indicating the 'arrest warrant or judicial decision having the same effect'.
- 23 It is important to bear in mind that the European arrest warrant system introduced by the Framework Decision is based on the principle of mutual recognition, which is itself founded on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter of Fundamental Rights of the European Union (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 75 to 77).
- 24 In that regard, the Court has held that both the principle of mutual trust between the Member States and the principle of mutual recognition 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 with regard to 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 (see, to that effect, Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraph 191).

- 25 In the area governed by the Framework Decision, the principle of mutual recognition, which constitutes, as is stated notably in recital 6 of the Framework Decision, the ‘cornerstone’ of judicial cooperation in criminal matters, is given effect in Article 1(2) of the Framework Decision, pursuant to which Member States are in principle obliged to give effect to a European arrest warrant (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 79 and the case-law cited).
- 26 It follows that the executing judicial authority may refuse to execute such a warrant only in the cases, exhaustively listed, of obligatory non-execution, laid down in Article 3 of the Framework Decision, or of optional non-execution, laid down in Articles 4 and 4a of the Framework Decision. Moreover, the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of the Framework Decision (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 80 and the case-law cited).
- 27 However, the term ‘arrest warrant’, contained in Article 8(1)(c) of the Framework Decision, refers only to the national arrest warrant, which is to be understood as referring to a judicial decision that is distinct from the European arrest warrant (see, to that effect, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraphs 46 and 58).
- 28 In the present case, the European arrest warrant at issue in the main proceedings has been issued by the Veszprémi Járásbíróság (District Court, Veszprém) and makes reference to a national arrest warrant issued by Hungarian police and confirmed by the public prosecutor’s office.
- 29 In such circumstances, it must be held that the decision by which the public prosecutor’s office confirmed the national arrest warrant issued by the police service concerned constitutes the basis of the European arrest warrant at issue in the main proceedings.
- 30 It is apparent, in that regard, from the information provided to the Court by the Hungarian Government that the confirmation, by the public prosecutor’s office, of the arrest warrant issued by those police is a legal act by which the public prosecutor’s office verifies and validates that arrest warrant. Owing to that confirmation, which appears in the European arrest warrant, the public prosecutor’s office is regarded as being responsible for the issue of the national arrest warrant. It follows that, under Article 8(1)(c) of the Framework Decision, the fact that that national arrest warrant has been issued by the police is of no relevance, in so far as the confirmation thereof by the public prosecutor’s office enables, as the Advocate General observed in point 35 of his Opinion, the public prosecutor’s office to be assimilated with the issuer of that arrest warrant.
- 31 Thus the question arises as to whether the decision of a public prosecutor’s office is covered by the term ‘judicial decision’, within the meaning of Article 8(1)(c) of the Framework Decision.
- 32 In that regard, the Court has held, in paragraphs 33 and 38 of the judgment of 10 November 2016, *Poltorak* (C-452/16 PPU), that in the context of the Framework Decision, and in particular, in the context of Article 6(1) thereof, the term ‘judicial authority’ must be interpreted as referring to the Member State authorities that administer criminal justice, but excludes police services.
- 33 Given the need to ensure consistency between the interpretations of the various provisions of the Framework Decision, the above interpretation appears, in principle, transposable to Article 8(1)(c) thereof. That provision must, therefore, be interpreted as meaning that the term ‘judicial decision’ covers decisions of the Member State authorities that administer criminal justice, but not the police services.

- 34 In the light of that finding, it is appropriate to note that, since the public prosecutor's office constitutes a Member State authority responsible for administering criminal justice (see, to that effect, judgment of 29 June 2016, *Kossowski*, C-486/14, EU:C:2016:483, paragraph 39), the decision of such an authority must be regarded as a judicial decision, within the meaning of Article 8(1)(c) of the Framework Decision.
- 35 Last, that interpretation is the correct one also in view of the objectives of the Framework Decision. It 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 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 76 and the case-law cited).
- 36 In that regard, it is apparent from the information provided to the Court by the Hungarian Government that the confirmation of the national arrest warrant by the public prosecutor's office provides the executing judicial authority with an assurance that the European arrest warrant is based on a decision that had undergone judicial approval. Such confirmation, therefore, justifies the high level of confidence between the Member States, mentioned in the previous paragraph.
- 37 It follows that a decision of a public prosecutor's office, such as that at issue in the main proceedings, is covered by the term 'judicial decision', within the meaning of Article 8(1)(c) of the Framework Decision.
- 38 Accordingly, in view of all the foregoing considerations, the answer to the questions asked is that Article 8(1)(c) of the Framework Decision must be interpreted as meaning that a confirmation, such as that at issue in the main proceedings, by the public prosecutor's office, of a national arrest warrant issued previously by a police service in connection with criminal proceedings constitutes a 'judicial decision', within the meaning of that provision.

Costs

- 39 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 (Fourth Chamber) hereby rules:

Article 8(1)(c) of the 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 confirmation, such as that at issue in the main proceedings, by the public prosecutor's office, of a national arrest warrant issued previously by a police service in connection with criminal proceedings constitutes a 'judicial decision', within the meaning of that provision.

[Signatures]