



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

11 March 2020*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 5(3) — Surrender of the person concerned made subject to a guarantee that that person will be returned to the executing Member State in order to serve there a custodial sentence or a measure involving deprivation of liberty imposed on that person in the issuing Member State — Time of return — Framework Decision 2008/909/JHA — Article 3(3) — Scope — Article 8 — Adaptation of the sentence imposed in the issuing Member State — Article 25 — Enforcement of a sentence under Article 5(3) of Framework Decision 2002/584/JHA)

In Case C–314/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 1 May 2018, received at the Court on 8 May 2018, in the proceedings relating to the execution of the European arrest warrant issued against

SF,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fourth Chamber, D. Šváby, K. Jürimäe and N. Piçarra (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 March 2019,

after considering the observations submitted on behalf of:

- SF, by T.E. Korff and T.O.M. Dieben, advocaten,
- the Openbaar Ministerie, by K. van der Schaft, L. Lunshof and N. Bakkenes, acting as Agents,
- the Netherlands Government, by M. Bulterman, C.S. Schillemans and A.M. de Ree, acting as Agents,
- Ireland, by G. Hodge and A. Joyce, acting as Agents, and by L. Dempsey, BL,
- the Italian Government, by G. Palmieri, acting as Agent, and by S. Faraci, avvocato dello Stato,

* Language of the case: Dutch.

- the Austrian Government, by J. Schmoll, acting as Agent,
 - the Polish Government, by B. Majczyna, acting as Agent,
 - the United Kingdom Government, by S. Brandon, acting as Agent, and by D. Blundell, Barrister,
 - the European Commission, by R. Troosters and S. Grünheid, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 16 May 2019,
gives the following

Judgment

- 1 The present request for a preliminary ruling concerns the interpretation of Article 1(3) and Article 5(3) 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 well as that of Articles 1(a) and (b), 3(3) and (4), 8(2) and 25 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or detention orders for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24), (hereinafter respectively ‘Framework Decision 2002/584’ and ‘Framework Decision 2008/909’).
- 2 The request has been submitted in the context of proceedings relating to the execution, in the Netherlands, of a European arrest warrant issued by a judge at the Crown Court in Canterbury (United Kingdom) for the purposes of criminal proceedings against SF, a Netherlands national.

Legal context

EU law

Framework Decision 2002/584

- 3 Recitals 5 and 6 of 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 until 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.’

4 Article 1 of that Framework Decision provides:

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

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

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.’

5 Articles 3, 4 and 4a of Framework Decision 2002/584 set out the grounds for mandatory or optional non-execution of a European arrest warrant.

6 Article 5 of that Framework Decision, entitled ‘Guarantees to be given by the issuing Member State in particular cases’, provides:

‘The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

...

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.’

Framework Decision 2008/909

7 Article 1 of Framework Decision 2008/909 provides:

‘For the purposes of this Framework Decision:

(a) “judgment” shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;

(b) “sentence” shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;

(c) “issuing State” shall mean the Member State in which a judgment is delivered;

(d) “executing State” shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement.’

8 Article 3 of Framework Decision 2008/909 is worded as follows:

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

2. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.
3. This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confiscation orders in another Member State shall be based on the instruments applicable between the Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties [OJ 2005 L 76, p. 16] and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders [OJ 2006 L 328, p. 59].
4. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.’
- 9 Article 8 of Framework Decision 2008/909, entitled ‘Recognition of the judgment and enforcement of the sentence’, provides:
- ‘1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.
2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.
- ...
4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.’
- 10 Article 25 of that Framework Decision, entitled ‘Enforcement of sentences following a European arrest warrant’, provides:
- ‘Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, *mutatis mutandis*, to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.’

Netherlands law

- 11 Article 6(1) of the Overleveringswet (Law on surrender) (Stb. 2004, No 195; ‘the OLW’), which transposed Framework Decision 2002/584 into Netherlands law, provides:

‘The surrender of a Netherlands national may be allowed provided that the request is made for the purposes of a criminal investigation against that person and provided that the executing judicial authority considers that it is guaranteed that if he is given a definitive custodial sentence in the issuing Member State for the offences in respect of which the surrender may be authorised, he will be able to serve that sentence in the Netherlands.’

- 12 Article 28(2) of the OLW provides:

‘If the Rechtbank [District Court] finds ... that the surrender cannot be authorised ..., it must refuse that surrender in its decision.’

- 13 Article 2:2(1) of the Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties (Law on the mutual recognition and enforcement of custodial and suspended sentences, Stb. 2012, No 333; ‘the WETS’), which transposed Framework Decision 2008/909 into Netherlands law, is worded as follows:

‘The Minister shall be competent to recognise a judicial decision forwarded by one of the issuing Member States, for the purposes of its execution in the Netherlands.’

- 14 Article 2:11 of that law provides:

‘1. The Minister shall forward the judicial decision and the certificate to the Advocate General attached to the Prosecutor’s Office at the Court of Appeal, unless he considers at the outset that there are grounds for refusing to recognise the judicial decision.

2. The Advocate General shall immediately present the judicial decision to the specialised chamber of the Gerechtshof Arnhem-Leeuwarden [Court of Appeal, Arnhem-Leeuwarden, Netherlands].

3. The specialised chamber of the Gerechtshof [Court of Appeal] shall decide:

...

c. how the custodial sentence passed is to be adapted in accordance with paragraphs 4, 5 or 6.

4. If the term of the custodial sentence passed is higher than the maximum term of the penalty that may be imposed under Netherlands law for the offence concerned, the term of the custodial sentence shall be reduced to that maximum term.

5. Where the convicted person is surrendered in return for a guarantee that he will be returned within the meaning of Article 6(1) of the [OLW], paragraph 4 shall not apply, but it must then be determined whether the custodial sentence imposed corresponds to the sentence that would be imposed in the Netherlands for the offence concerned. Where appropriate, the sentence shall be adapted accordingly, having regard to the opinions issued in the issuing Member State concerning the gravity of the offence committed.

...’

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

15 On 3 March 2017, a judge at Canterbury Crown Court issued a European arrest warrant against SF, a Netherlands national, seeking surrender of the latter for the purposes of criminal proceedings relating to two offences, namely conspiracy to import 4 kg of heroin and 14 kg of cocaine into the United Kingdom.

16 On 30 March 2017, the officier van justitie (Public Prosecutor, Netherlands) requested the issuing judicial authority to supply the guarantee referred to in Article 5(3) of Framework Decision 2002/584 and in Article 6(1) of the OLW.

17 By letter of 20 April 2017, the Home Office (United Kingdom) answered as follows:

‘...

The [United Kingdom] undertakes that, should SF receive a custodial sentence in the [United Kingdom], he will, in accordance with section 153C of the Extradition Act 2003, be returned to the Netherlands as soon as is reasonably practicable after the sentencing process in the [United Kingdom] has been completed and any other proceedings in respect of the offence for which extradition was sought are concluded.

Full details of any sentence imposed on SF will be provided when he is returned to the Netherlands. It is considered that a transfer under [Framework Decision 2002/584] does not allow the Netherlands to alter the duration of any sentence imposed by a [United Kingdom] court.’

18 After being requested to clarify the procedures covered by the expression ‘any other proceedings’ within the meaning of section 153C of the Extradition Act 2003, the United Kingdom Home Office replied as follows in an email of 19 February 2018:

‘I can advise that the “other proceedings” process may include:

- (a) Consideration of confiscation;
- (b) The procedure for setting any period of imprisonment which will fall to be served in default of payment of any financial penalty;
- (c) The exhaustion of any available avenues of appeal; and
- (d) The expiry of any period for payment of a confiscation order or financial penalty.’

19 The referring court notes at the outset that, according to SF, that guarantee to return SF does not satisfy the conditions imposed by both Framework Decision 2002/584 and Framework Decision 2008/909 and that, consequently, the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands) should refuse to surrender him to the competent authority in the United Kingdom. The referring court is uncertain, in that context, as to whether certain aspects of that guarantee are compatible with Framework Decisions 2002/584 and 2008/909.

20 First, as regards the passage in the letter from the United Kingdom Home Office of 20 April 2017, according to which ‘the [United Kingdom] undertakes that, should SF receive a custodial sentence in the [United Kingdom], he will, in accordance with section 153C of the Extradition Act 2003, be returned to the Netherlands as soon as is reasonably practicable after the sentencing process in the [United Kingdom] has been completed and any other proceedings in respect of the offence for which extradition was sought are concluded,’ the referring court considers that this raises the question as to

the time at which the issuing Member State must implement the guarantee to return the person requested to the executing Member State in order that that person may there serve the custodial sentence or detention that has been imposed.

- 21 In this respect, the referring court invokes the judgment of 25 January 2017, *van Vemde* (C-582/15, EU:C:2017:37) to support its view that such an obligation to return the person to the executing Member State cannot exist before a decision imposing a custodial sentence or detention order has become final.
- 22 However, that court is unsure whether the Member State which issues a European arrest warrant for the purposes of criminal proceedings, as the Member State in which the judgment will subsequently be delivered, can, under the guarantee provided for in Article 5(3) of Framework Decision 2002/584, make the return of the person concerned to the executing Member State subject to the condition, not only that the decision imposing a custodial sentence or detention order has become final, but also that any other proceedings relating to the offence in respect of which surrender was requested, such as confiscation proceedings, have been definitively closed.
- 23 According to the referring court, it can be argued that the objective of facilitating the social rehabilitation of the sentenced person, pursued both by Article 5(3) of Framework Decision 2002/584 and by Framework Decision 2008/909, requires that the person concerned should be returned to the executing Member State as soon as a custodial sentence or a detention order has become final, without awaiting the outcome of other proceedings relating to the offence in respect of which surrender was requested.
- 24 According to that court, it can also be argued that the return of the person concerned to the executing Member State, as soon as the custodial sentence or detention order has become final, may undermine the objective of seeking, pursuant to Article 67(1) and (3) TFEU, to ensure a high level of protection within an area of freedom, security and justice by measures to combat crime. The referring court observes in this regard that, if the Member State which issues a European arrest warrant for the purposes of criminal proceedings, as the Member State in which the judgment will subsequently be delivered, were to conduct confiscation proceedings in the absence of the person concerned, that Member State might be confronted with practical and evidential problems attributable to that absence, which might compel it to waive such proceedings.
- 25 Second, as regards the passage in the United Kingdom Home Office's letter of 20 April 2017 stating that 'a transfer under [Framework Decision 2002/584] does not allow the Netherlands to alter the duration of any sentence imposed by a [United Kingdom] court', the referring court considers that this raises the question as to whether the executing Member State, once it has surrendered the person concerned on the basis of the guarantee set out in Article 5(3) of Framework Decision 2002/584, can, on the basis of Article 25 of Framework Decision 2008/909, adapt the custodial sentence or detention imposed on that person in the issuing Member State beyond what is allowed under Article 8(2) of Framework Decision 2008/909.
- 26 The referring court adds, in this regard, that it is apparent from the parliamentary proceedings which preceded the adoption of the WETS that, according to the Netherlands legislature, Article 25 of Framework Decision 2008/909 provides for the possibility to maintain the policy adopted in respect of Netherlands nationals prior to the implementation of that Framework Decision, by virtue of which foreign criminal sentences were converted into a sentence normally applicable in the Netherlands for a similar offence, that policy being currently enshrined in Article 2:11(5) of that law. According to the referring court, the objective is to achieve equal treatment between a Netherlands national who must be surrendered and who could also have been tried in the Netherlands, and a Netherlands national who is tried in the Netherlands. The referring court is unsure whether Article 25 of Framework Decision 2008/909 can be interpreted as having that meaning.

- 27 In those circumstances, the Rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Must Articles 1(3) and 5(3) of Framework Decision [2002/584] and Articles 1(a) and (b), 3(3) and (4) and 25 of Framework Decision [2008/909] be interpreted as meaning that the issuing Member State, in its capacity as issuing State, in a case in which the executing Member State has made the surrender of one of its own nationals for the purpose of prosecution subject to the guarantee set out in Article 5(3) of Framework Decision [2002/584], providing that the person concerned, after being heard, is to be returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State, is in fact required — after the conviction involving a custodial sentence or detention order has become legally enforceable — to return the person concerned only once “any other proceedings in respect of the offence for which extradition was sought” — such as confiscation proceedings — “are concluded”?
 - (2) Must Article 25 of Framework Decision [2008/909] be interpreted as meaning that a Member State, when it has surrendered one of its own nationals on the basis of the guarantee referred to in Article 5(3) of Framework Decision [2002/584], may, in its capacity as the executing State for the recognition and execution of the judgment delivered against that person — in derogation from Article 8(2) of Framework Decision [2008/909] — consider whether the custodial sentence imposed on that person corresponds to the sentence which it would itself have imposed for the offence concerned and, if necessary, may adapt that imposed custodial sentence accordingly?

Admissibility of the request for a preliminary ruling

- 28 The Netherlands Government submits that the request for a preliminary ruling is inadmissible.
- 29 First, that government argues that the questions referred bear no relation to the subject matter of the dispute. According to the Netherlands Government, in the main proceedings, the referring court is required to assess whether the guarantee provided by the issuing judicial authority complies with Article 5(3) of Framework Decision 2002/584. That provision, however, does not set out any requirement concerning either the moment of return of the person concerned to the executing Member State, or the enforcement, following that return, of the custodial sentence or detention order imposed on him in the issuing Member State. Thus, the subject matter of those questions is not amenable to review in proceedings relating to the execution of the European arrest warrant and, with regard to the second question, comes within the scope of Framework Decision 2008/909.
- 30 The Netherlands Government considers, secondly, that the questions referred are hypothetical. According to that government, at the time when the referring court will decide whether to surrender to the issuing Member State the person in respect of whom a European arrest warrant has been issued for the purposes of a criminal prosecution, it is not certain that that person will be convicted, and thus that he will be returned to the executing Member State. Thus, the relevance of other proceedings connected with the offence on the basis of which the European arrest warrant has been issued, as well as the adaptation of any custodial sentence or detention order that may be imposed, is not certain.
- 31 In this regard, it must be borne in mind that, according to the Court’s settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a

ruling (judgments of 25 July 2018, *AY (Arrest warrant — witness)*, C-268/17, EU:C:2018:602, paragraph 24, and of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26 and the case-law cited).

- 32 It follows that questions on the interpretation of EU law referred by a national court in the legislative and factual context which that court is responsible for defining, and the accuracy of which is not a matter for the Court of Justice to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 25 July 2018, *AY (Arrest warrant — witness)*, C-268/17, EU:C:2018:602, paragraph 25, and of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 16 and the case-law cited).
- 33 In the present case, the referring court provided the Court with the factual and legal material necessary to enable it to give a useful answer to the questions submitted to it and set out the reasons why it considered that the interpretation of the provisions cited in the questions referred is necessary for the purpose of adjudicating on the case pending before it. Furthermore, as the Advocate General observed in point 30 of his Opinion, the Court's answers to the questions referred as to the scope, first, of Article 5(3) of Framework Decision 2002/584 and, second, of Article 25 of Framework Decision 2008/909 can have a direct effect on the action to be taken by the referring court with regard to the European arrest warrant at issue in the main proceedings, with the result that the view cannot be taken that the questions referred bear no relation to the subject matter of the main proceedings. In addition, as the Advocate General noted in point 31 of his Opinion, while it is, at this stage of the proceedings, impossible to know, in view of, *inter alia*, the presumption of innocence, whether or not SF will be found guilty of the offences with which he is charged and, still less whether a custodial sentence or a detention order, if any, will be imposed on him, the fact remains that that hypothetical nature is inherent in the normal course taken by criminal proceedings and, *inter alia*, in any guarantee provided under Article 5(3) of Framework Decision 2002/584. Consequently, the argument of the Netherlands Government, alleging that the questions submitted are hypothetical, by reason of the fact that the outcome of the criminal proceedings is uncertain, is not relevant.
- 34 It follows from the foregoing that the request for a preliminary ruling is admissible.

Consideration of the questions referred

Preliminary observations

- 35 In order to answer the questions referred, it should first of all 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 (judgments 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 of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, paragraph 45).
- 36 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 (judgments 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 of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, paragraph 46).

- 37 As a preliminary matter, it should be noted that the purpose of Framework Decision 2002/584, as is apparent in particular from its Article 1(1) and (2), read in the light of recital 5 thereof, is to replace the multilateral system of extradition based on the European Convention on Extradition, signed in Paris on 13 December 1957, with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, the system of surrender being based on the principle of mutual recognition (see, to that effect, judgments 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 of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 26 and the case-law cited).
- 38 In that context, Framework Decision 2002/584 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 (judgments 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 of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 27 and the case-law cited).
- 39 In the field governed by Framework Decision 2002/584, the principle of mutual recognition, which, as is apparent, in particular, from recital 6 of that framework decision, constitutes the ‘cornerstone’ of judicial cooperation in criminal matters, is put into practice in Article 1(2) of that framework decision, which lays down the rule that Member States are to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision. 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. Similarly, execution of the arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of that framework decision. 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 (see, to that effect, judgments 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, of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 28, and of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, paragraph 48).
- 40 Framework Decision 2002/584 thus explicitly sets out the grounds for mandatory non-execution (Article 3) and optional non-execution (Articles 4 and 4a) of a European arrest warrant, as well as the guarantees to be given by the issuing Member State in particular cases (Article 5). Although the system established by Framework Decision 2002/584 is based on the principle of mutual recognition, that recognition does not mean that there is an absolute obligation to execute the arrest warrant that has been issued (see, to that effect, judgments of 21 October 2010, *B.*, C-306/09, EU:C:2010:626, paragraph 50, and of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraphs 29 and 30 and the case-law cited).
- 41 Framework Decision 2002/584 allows, in specific situations, the competent authorities of Member States to decide that a sentence imposed in the issuing Member State must be enforced in the territory of the executing Member State. That is the case, in particular, under Articles 4(6) and 5(3) of that framework decision (see, to that effect, judgments of 21 October 2010, *B.*, C-306/09, EU:C:2010:626, paragraphs 51 and 52, and of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 30 and the case-law cited). That latter provision states, as a guarantee to be given by the issuing Member State in particular cases, inter alia such as that at issue in the main proceedings, that

the person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order to be imposed on him in the issuing Member State.

42 It is in the light of those considerations that it is necessary to answer the referred questions.

The first question

43 By its first question the referring court asks, in essence, whether Article 5(3) of Framework Decision 2002/584, read in combination with Article 1(3) thereof, as well as with Articles 1(a), 3(3) and (4) and 25 of Framework Decision 2008/909, must be interpreted as meaning that, when the executing Member State makes the return of a person who, being a national or resident of that Member State, is the subject of a European arrest warrant for the purposes of criminal prosecution, subject to the condition that that person, after being heard, will be returned to that Member State in order to serve there the custodial sentence or detention order to be imposed on him in the issuing Member State, the latter is under an obligation to return that person only from the moment at which not only the sentencing of the person concerned has there become final, but also any other procedural step coming within the scope of the criminal proceedings relating to the offence underlying the European arrest warrant, has been definitively closed.

44 It must be noted that Article 5(3) of Framework Decision 2002/584 does not specify the time at which the person who is the subject of a European arrest warrant, the enforcement of which is subject to the provision of a guarantee within the meaning of that provision, must be returned to the executing Member State in order to serve there the custodial sentence or detention order which might be imposed on him in the issuing Member State.

45 The wording of that provision merely provides in this regard that the return of the person concerned to the executing Member State to serve there the custodial sentence or detention order which might be passed against him in the issuing Member State is to take place after the person concerned, being a national or resident of the executing Member State, has been heard in the issuing Member State.

46 It is therefore appropriate, in accordance with settled case-law, to interpret Article 5(3) of Framework Decision 2002/584 by taking into account its context and the objectives pursued by that framework decision.

47 In the first place, it should be borne in mind in this regard that, as noted in paragraph 38 above, Framework Decision 2002/584 seeks to establish a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law. 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 (judgment of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraph 39).

48 However, the EU legislature has also attached, in Article 5(3) of Framework Decision 2002/584, particular weight to the possibility of increasing the chances of social reintegration of the national or resident of the executing Member State by allowing him to serve, in its territory, the custodial sentence or detention order which, after his surrender, under a European arrest warrant, would be imposed in the issuing Member State (see, to that effect, judgments of 6 October 2009, *Wolzenburg*, C-123/08, EU:C:2009:616, paragraph 62, and of 21 October 2010, *B.*, C-306/09, EU:C:2010:626, paragraph 52).

- 49 In the second place, it is necessary to take account of the provisions of Framework Decision 2008/909, Article 25 of which provides that those provisions are to apply, *mutatis mutandis*, to the extent that they are compatible with the provisions of Framework Decision 2002/584, to the enforcement of sentences, in particular when, under Article 5(3) of that framework decision, a Member State imposes, as a condition for the execution of a European arrest warrant, the return of the person concerned to that State in order to serve there the custodial sentence or detention order to be imposed on him in the issuing Member State.
- 50 In that regard, it is clear from Article 3(1) of Framework Decision 2008/909 that the latter seeks to establish the rules which make it possible for a Member State, with a view to facilitating the social rehabilitation of the sentenced person, to recognise a judgment and enforce the sentence pronounced by a court in another Member State.
- 51 Thus, the coordination provided for by the EU legislature between Framework Decision 2002/584 and Framework Decision 2008/909 must contribute to achieving the objective of facilitating the social rehabilitation of the person concerned. Moreover, such rehabilitation is in the interest not only of the convicted person but also of the European Union in general (see, to that effect, judgments of 23 November 2010, *Tsakouridis*, C-145/09, EU:C:2010:708, paragraph 50, and of 17 April 2018, *B and Vomero*, C-316/16 and C-424/16, EU:C:2018:256, paragraph 75).
- 52 Moreover, it should be noted that, according to the first sentence of Article 3(3) of Framework Decision 2008/909, the latter applies only to the recognition of judgments and the enforcement of sentences within the meaning of that framework decision (judgment of 25 January 2017, *van Vemde*, C-582/15, EU:C:2017:37, paragraph 23). Article 1(a) of Framework Decision 2008/909 defines a ‘judgment’ as a final decision of a court of the issuing State imposing a sentence on a natural person. The fact that that provision refers to the ‘final’ character of the judgment in question underlines the particular importance attached to the unchallengeable nature of that judgment, to the exclusion of decisions which are subject to appeal (see, to that effect, judgment of 25 January 2017, *van Vemde*, C-582/15, EU:C:2017:37, paragraphs 23, 24 and 27).
- 53 It follows that, where the executing judicial authority, acting under Article 5(3) of Framework Decision 2002/584, has imposed the condition, for the enforcement of the European arrest warrant, that the person who is subject to it and who is a national or resident of the executing Member State be returned to that latter State in order to serve there the custodial sentence or detention order to be imposed on him in the issuing Member State, that return by the latter may occur only after that decision has become final, within the meaning of the case-law cited in the preceding paragraph of the present judgment.
- 54 Moreover, the objective of facilitating the social rehabilitation of the person concerned, pursued both in Article 5(3) of that framework decision and by the provisions of Framework Decision 2008/909, applicable pursuant to Article 25 thereof, requires, when the guarantee provided under Article 5(3) of Framework Decision 2002/584 is implemented, that the return of the person concerned to the executing Member State should occur as soon as possible after that sentencing decision has become final.
- 55 This interpretation is supported by the second sentence of Article 3(3) of Framework Decision 2008/909, which provides that the fact that, in addition to the sentence, a fine or confiscation order has been imposed, which has not yet been paid, recovered or enforced, is not to prevent a judgment from the issuing Member State from being forwarded to the executing Member State, within the meaning of Article 1(c) and (d) of that framework decision.
- 56 However, in a situation in which it might transpire that the person on whom a custodial sentence of detention order has been imposed in the issuing Member State, while the decision which imposed that custodial sentence or detention order can no longer be appealed, is required to be present in that

Member State by reason of other procedural steps forming part of the criminal proceedings relating to the offence underlying the European arrest warrant, such as the determination of a penalty or an additional measure, the objective of facilitating the social rehabilitation of the person concerned, pursued by Article 5(3) of Framework Decision 2002/584, must be balanced against both the effectiveness of the criminal prosecution for the purpose of ensuring a complete and effective punishment of the offence underlying the European arrest warrant and the safeguarding of the procedural rights of the person concerned.

- 57 It should also be borne in mind that, as is evident from Article 1(3) of Framework Decision 2002/584 and Article 3(4) of Framework Decision 2008/909, those framework decisions cannot have the effect of modifying the obligation to respect fundamental rights and principles guaranteed in the legal system of the European Union.
- 58 In accordance with settled case-law of the Court, the rules of secondary legislation of the European Union must be interpreted and applied in compliance with fundamental rights, an integral part of which is respect for the rights of the defence, flowing from the right to a fair trial, enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union and in Article 6 of the European Convention of Human Rights, signed in Rome on 4 November 1950 (judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 60).
- 59 Thus, under the balancing exercise mentioned in paragraph 56 above, it is a matter for the issuing judicial authority to assess whether concrete grounds relating to the safeguarding of the rights of defence of the person concerned or the proper administration of justice make his presence essential in the issuing Member State, after the sentencing decision has become final and until such time as a final decision has been taken on any other procedural steps coming within the scope of the criminal proceedings relating to the offence underlying the European arrest warrant.
- 60 By contrast, it is not open to the judicial authority of the issuing Member State, under the guarantee provided under Article 5(3) of Framework Decision 2002/584, read in the light of the objective of facilitating the social rehabilitation of the convicted person, systematically and automatically to postpone the return of the person concerned to the executing Member State until the time at which the other procedural steps coming within the scope of the criminal proceedings relating to the offence underlying the European arrest warrant have been definitively closed.
- 61 In that context, the issuing judicial authority must take into account, for the purposes of the balancing exercise that it is required to carry out, the possibility of applying cooperation and mutual assistance mechanisms provided for in the criminal field under EU law (see, by analogy, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:2016:630, paragraph 47). In this respect, it should be noted, inter alia, that, as is apparent from the third sentence of Article 3(3) of Framework Decision 2008/909, the recognition and enforcement of fines and confiscation orders in another Member State are to be carried out in accordance, in particular, with Framework Decision 2005/214 and Framework Decision 2006/783. Moreover, Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1), the objective of which is to facilitate and accelerate judicial cooperation between Member States on the basis of the principles of mutual trust and mutual recognition (judgment of 24 October 2019, *Gavanozov*, C-324/17, EU:C:2019:892, paragraph 35), provides, in Article 24, for the issuance of a European Investigation Order for the purpose of hearing a suspected or accused person by videoconference or other audiovisual transmission, with the issuing authority and the executing authority agreeing on the practical arrangements.
- 62 In the light of the foregoing considerations, the answer to the first question is that Article 5(3) of Framework Decision 2002/584, read in combination with Article 1(3) thereof, as well as with Article 1(a), Article 3(3) and (4) and Article 25 of Framework Decision 2008/909, must be interpreted as meaning that, when the executing Member State makes the return of a person who, being a national

or resident of that Member State, is the subject of a European arrest warrant for the purposes of criminal prosecution subject to the condition that that person, after being heard, is returned to that Member State in order to serve there the custodial sentence or detention order imposed on him in the issuing Member State, that Member State must return that person as soon as the sentencing decision has become final, unless concrete grounds relating to the rights of defence of the person concerned or to the proper administration of justice make his presence essential in the issuing Member State pending a definitive decision on any procedural step coming within the scope of the criminal proceedings relating to the offence underlying the European arrest warrant.

The second question

- 63 By its second question, the referring court asks, in essence, whether Article 25 of Framework Decision 2008/909 must be interpreted as meaning that, when the execution of a European arrest warrant issued for the purposes of criminal proceedings is subject to the condition set out in Article 5(3) of Framework Decision 2002/584, the executing Member State, in order to enforce the custodial sentence or detention order imposed in the issuing Member State on the person concerned, can, by way of derogation from Article 8(2) of Framework Decision 2008/909, adapt the duration of that sentence to make it correspond to the sentence that would have been imposed for the offence in question in the executing Member State.
- 64 It should be recalled in this regard that Article 8(2) of Framework Decision 2008/909 permits the competent authority of the executing Member State to adapt the sentence imposed in the issuing Member State, where that sentence is incompatible with the law of the executing Member State. However, that authority can decide to adapt such a sentence only where it exceeds the maximum penalty provided for similar offences under its national law, and the adapted sentence must not be less than the maximum penalty provided for similar offences under the law of the executing Member State. In that context, Article 8(4) of Framework Decision 2008/909 states that the adapted sentence must not aggravate the sentence passed in the issuing Member State, particularly in terms of its duration.
- 65 Article 8 of Framework Decision 2008/909 therefore lays down strict conditions governing the adaptation, by the competent authority of the executing State, of the sentence imposed in the issuing State, those conditions being the sole exceptions to the obligation imposed on that authority, in principle, to recognise the judgment forwarded to it and to enforce the sentence, which is to correspond in its length and nature to the sentence imposed in the judgment delivered in the issuing State (see, to that effect, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 36).
- 66 It follows that the interpretation put forward by the Netherlands Government, to the effect that Article 25 of Framework Decision 2008/909 allows, in the case of a person who has been surrendered to the issuing Member State in return for a guarantee that he will be returned, an adaptation of the sentence by the executing Member State outside of the situations contemplated under Article 8 of that framework decision cannot be accepted, as otherwise that provision and, in particular, the principle of mutual recognition of judgments and enforcement of sentences enshrined in Article 8(1), would be rendered entirely ineffective.
- 67 Consequently, the executing Member State cannot, by reason of the mere fact that the issuing Member State issues, in the guarantee which it provides under Article 5(3) of Framework Decision 2002/584, a reservation with regard to the possibility for the first of those Member States to adapt the sentence that may be imposed in the second Member State, beyond the situations contemplated in Article 8 of Framework Decision 2008/909, refuse to surrender the person concerned.

68 In those circumstances, the answer to the second question is that Article 25 of Framework Decision 2008/909 must be interpreted as meaning that, when the execution of a European arrest warrant issued for the purposes of criminal proceedings is subject to the condition set out in Article 5(3) of Framework Decision 2002/584, the executing Member State can, in order to enforce a custodial sentence or a detention order imposed in the issuing Member State on the person concerned, adapt the duration of that sentence or detention only within the strict conditions set out in Article 8(2) of Framework Decision 2008/909.

Costs

69 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:

1. **Article 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, read in combination with Article 1(3) thereof, as well as with Article 1(a), Article 3(3) and (4) and Article 25 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, when the executing Member State makes the return of a person who, being a national or resident of that Member State, is the subject of a European arrest warrant for the purposes of criminal prosecution, subject to the condition that that person, after being heard, is returned to that Member State in order to serve there the custodial sentence or detention order imposed on him in the issuing Member State, that Member State must return that person as soon as the sentencing decision has become final, unless concrete grounds relating to the rights of defence of the person concerned or to the proper administration of justice make his presence essential in the issuing Member State pending a definitive decision on any procedural step coming within the scope of the criminal proceedings relating to the offence underlying the European arrest warrant.**
2. **Article 25 of Framework Decision 2008/909, as amended by Framework Decision 2009/299, must be interpreted as meaning that, when the execution of a European arrest warrant issued for the purposes of criminal proceedings is subject to the condition set out in Article 5(3) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, the executing Member State can, in order to enforce the execution of a custodial sentence or a detention order imposed in the issuing Member State on the person concerned, adapt the duration of that sentence or detention only within the strict conditions set out in Article 8(2) of Framework Decision 2008/909, as amended by Framework Decision 2009/299.**

[Signatures]