



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 17 September 2020¹

Case C-488/19

Minister for Justice and Equality
v
JR
(Conviction by an EEA third State)

(Request for a preliminary ruling
from the High Court (Ireland))

(Request for a preliminary ruling – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant – Scope – Conviction by the court of a third State – Recognition of that conviction in the issuing Member State – Execution in the issuing Member State – Mutual recognition – Mutual confidence – Article 4(7)(b) – Refusal to execute a European arrest warrant – Offences committed outside the territory of the issuing Member State)

I. Introduction

1. The judicial authorities of the Member States may issue European arrest warrants to execute prison sentences on the basis of Framework Decision 2002/584/JHA.² But does this also apply to the execution of a judgment which was handed down in a third State and recognised in the requesting Member State by virtue of an international agreement?
2. The conviction in a third State also raises a question as to a ground for refusal to execute the arrest warrant which the Court has not yet addressed. Specifically, according to Article 4(7)(b) of Framework Decision 2002/584, the requested State may refuse to execute the European arrest warrant where the offence was committed outside the requesting Member State and the law of the requested Member State does not allow prosecution for the same offences when committed outside its territory. In the present case, although the offence was committed in a third State, preparatory acts were carried out in the requesting Member State. It therefore needs to be clarified what this means for the application of the aforementioned ground for refusal.

¹ Original language: German.

² Council Framework Decision 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).

II. Legal framework

A. *International law*

1. *Agreement between Lithuania and Norway on the recognition and execution of decisions in criminal matters*

3. The Agreement between the Republic of Lithuania and the Kingdom of Norway on the recognition and execution of decisions in criminal matters through which custodial sentences or measures involving deprivation of liberty are imposed was signed on 5 April 2011. The agreement provides for the recognition of judgments of the issuing State (Article 7) and contains grounds for non-recognition by the executing State (Article 8).

2. *Agreement between the European Union, Iceland and Norway on the surrender procedure*

4. The Agreement between the European Union, the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway³ has been in force since 1 November 2019.⁴

5. The following is stated in the preamble to that agreement:

‘...’

expressing their mutual confidence in the structure and functioning of their legal systems and in the ability of all Contracting Parties to guarantee a fair trial,

...’

6. Article 1(3) of that agreement provides:

‘This Agreement shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in the European Convention on Human Rights [(‘the ECHR’)], or, in case of execution by the judicial authority of a Member State, of the principles referred to in Article 6 of the Treaty on European Union.’

7. Otherwise, the provisions of the Agreement on the surrender procedure largely correspond to those of Framework Decision 2002/584.

B. *EU law*

8. According to recital 6 of Framework Decision 2002/584:

‘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.’

3 (OJ 2006 L 292, p. 2; ‘the Agreement on the surrender procedure’), approved on behalf of the European Union by Article 1 of Council Decision 2014/835/EU of 27 November 2014 on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ 2014 L 343, p. 1).

4 Notice concerning the entry into force of the Surrender Agreement between the European Union, Iceland and Norway (OJ 2019 L 230, p. 1).

9. Article 1 of Framework Decision 2002/584 defines the European arrest warrant and requires its execution:

‘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.’

10. Article 2 of Framework Decision 2002/584 determines the scope of the European arrest warrant:

‘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:

– ...

– illicit trafficking in narcotic drugs and psychotropic substances,

– ...

3. ...

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.’

11. In certain cases, Article 4 of Framework Decision 2002/584 allows the execution of a European arrest warrant to be refused:

‘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; ...

...

7. where the European arrest warrant relates to offences which:

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

- (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.’

12. Article 8 of Framework Decision 2002/584 prescribes the content of the European arrest warrant:

‘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;

...’

C. Irish law

13. Ireland implemented Framework Decision 2002/584 through its European Arrest Warrant Act 2003. Section 5 thereof clarifies when criminality is to be assumed in Ireland:

‘For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under the law of the [Irish] State, where the act or omission that constitutes the offence so specified would, if committed in the [Irish] State on the date on which the European arrest warrant is issued, constitute an offence under the law of the [Irish] State.’

14. Ireland implemented Article 4(7)(b) of Framework Decision 2002/584 through section 44 of the European Arrest Warrant Act 2003:

‘A person shall not be surrendered under this Act if the offence specified in the European arrest warrant issued in respect of him or her was committed or is alleged to have been committed in a place other than the issuing State and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State.’

15. The Irish Misuse of Drugs Act, 1977,⁵ contains section 15(1):

‘Any person who has in his possession, whether lawfully or not, a controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations under section 5 of this Act, shall be guilty of an offence.’

III. Facts and request for a preliminary ruling

16. JR is a Lithuanian national. In January 2014, he agreed with a third party in Lithuania to traffic drugs to Norway in return for payment of EUR 570. He transported the drugs from Lithuania by crossing a number of international borders and eventually entered Norway from Sweden. On 19 January 2014, he was discovered in Norway about five kilometres from the border with about 4.6 kg of methamphetamine.

⁵ As amended.

17. On 28 November 2014, the Heggen og Frøland tingrett (Heggen and Frøland District Court, Norway) convicted JR ('the convicted person') to four years and six months in prison for the offence of 'unlawful delivery of a very large quantity of narcotic substances' under Article 162 of the Criminal Code of Norway. The convicted person's appeal was dismissed.

18. The Jurbarko rajono apylinkės teismas (District Court of the Region of Jurbarkas, Lithuania) recognised the Norwegian judgment on 18 June 2015 on the basis of the Agreement between Norway and Lithuania on the recognition and execution of decisions in criminal matters so that it could be executed according to Lithuanian law. The convicted person's appeal against that decision was dismissed.

19. The Kingdom of Norway transferred the convicted person to Lithuania on 7 April 2016.

20. On 15 November 2016, the Kaišiadorių rajono apylinkės teismas (District Court of the Region of Kaišiadorys, Lithuania) ordered the convicted person to be released from prison on parole. However, on 5 February 2018, the Marijampolės apylinkės teismo Jurbarko rūmai (District Court of Marijampole, Chamber of Jurbarkas, Lithuania) ordered the convicted person to serve the remaining part of his sentence of 1 year, 7 months and 24 days owing to a breach of parole conditions.

21. Since the convicted person had meanwhile fled abroad, the Lithuanian authorities issued, on 24 May 2018, a European arrest warrant for the execution of a custodial sentence for a single offence of unlawfully storing, transporting, forwarding, selling or otherwise distributing a very large quantity of a narcotic or psychotropic substance.

22. On 21 January 2019, the convicted person was arrested in Ireland. He initially served an Irish prison sentence there until October 2019 for another offence.

23. The High Court (Ireland) is to rule on the execution of the European arrest warrant and therefore referred the following questions to the Court of Justice on 26 June 2019:

- (1) Does Framework Decision 2002/584 apply to the situation where the requested person was convicted and sentenced in a third State but, by virtue of a bilateral treaty between that third State and the issuing State, the judgment in the third State was recognised in the issuing State and enforced according to the laws of the issuing State?
- (2) If so, in circumstances where the executing Member State has applied in its national legislation the optional grounds for non-execution of the European arrest warrant set out in Article 4(1) and Article 4(7)(b) of Framework Decision 2002/584, how is the executing judicial authority to make its determination as regards an offence stated to be committed in the third State, but where the surrounding circumstances of that offence display preparatory acts that took place in the issuing State?

24. The Court refused the High Court's request that these questions be answered in an urgent preliminary ruling procedure, owing to a lack of urgency.

25. The convicted person, Ireland and the European Commission submitted written observations on the questions.

IV. Legal assessment

A. *The scope of Framework Decision 2002/584 (Question 1)*

26. By its first question, the referring court would like to find out whether a European arrest warrant can be issued in order to execute a prison sentence which was handed down by the court of a third State and recognised by the issuing Member State.

27. Article 1(1) of Framework Decision 2002/584 defines the European arrest warrant as 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.

28. In the present case, the issuing Member State wishes to execute a custodial sentence. However, the sentence was not handed down by the Member State itself, but by a third State instead and the issuing State then recognised it. It therefore needs to be clarified whether the judgment by the third State and the recognition in the issuing State can be a suitable subject matter for a European arrest warrant.

29. In principle, custodial sentences handed down by third States cannot be executed by means of the European arrest warrant (see 1). Different rules apply if the issuing Member State recognises the custodial sentence (see 2). The executing Member State then verifies whether the European arrest warrant is valid (see 3).

1. The principle of mutual recognition does not apply to third States ...

30. Framework Decision 2002/584 applies only to Member States and not to third States.⁶ As such, the custodial sentence handed down by a third State therefore cannot, in principle, be executed by means of the European arrest warrant.

31. According to Article 8(1)(c) of Framework Decision 2002/584, the requesting State may only issue a European arrest warrant if there is an enforceable judicial decision.⁷ Such enforceable judicial decisions are issued by Member State authorities.⁸

32. The principle of mutual recognition applies between Member States, that principle being based on the principle of mutual confidence and put into concrete form by the European arrest warrant according to Article 1(2) and recital 6 of Framework Decision 2002/584.⁹

33. In concrete terms, the principle of mutual confidence requires each Member State, other than in exceptional circumstances, to assume that all other Member States comply with EU law and particularly with the fundamental rights recognised by EU law.¹⁰

⁶ Judgment of 2 April 2020, *Ruska Federacija* (C-897/19 PPU, EU:C:2020:262, paragraph 42).

⁷ Judgments of 1 June 2016, *Bob-Dogi* (C-241/15, EU:C:2016:385, paragraphs 43 and 44 and 49 to 57), and of 10 November 2016, *Özçelik* (C-453/16 PPU, EU:C:2016:860, paragraph 27).

⁸ Judgment of 10 November 2016, *Özçelik* (C-453/16 PPU, EU:C:2016:860, paragraphs 32 and 33).

⁹ Judgments of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraphs 43 and 44), and of 27 May 2019, *PF (Prosecutor General of Lithuania)* (C-509/18, EU:C:2019:457, paragraphs 22 and 23).

¹⁰ Judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the judicial system)* (C-216/18 PPU, EU:C:2018:586, paragraph 36); of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 43); of 27 May 2019, *PF (Prosecutor General of Lithuania)* (C-509/18, EU:C:2019:457, paragraph 22); and of 15 October 2019, *Dorobantu* (C-128/18, EU:C:2019:857, paragraph 46).

34. However, those principles cannot immediately be transferred to third States. Without such mutual confidence, it cannot be presumed that the third State has protected the fundamental rights of the requested person. According to Article 1(3) of Framework Decision 2002/584, however, fundamental rights are to be observed. The fact that a third State has signed international treaties which, in principle, require that fundamental rights have been observed, does not necessarily offset this.¹¹

35. The Norwegian judgment therefore could not, per se, form the basis of the European arrest warrant.

2. ... but instead only within the European Union ...

36. However, in the present case, the Republic of Lithuania has recognised the conviction and the sentence by the Norwegian court.

37. Provided no international agreement between the European Union and a third State is applicable, the rules on extradition in the relationship between these two States fall within the jurisdiction of the Member State. However, Member States are required to exercise their jurisdiction over extraditions in accordance with EU law.¹²

38. Since the agreement between the European Union, Iceland and Norway was not yet in force at the time of extradition from Norway to Lithuania, the Republic of Lithuania could fully apply its agreement with the Kingdom of Norway.

39. The question is therefore whether a European arrest warrant is conditional upon the fact that the custodial sentence to be executed was handed down in a Member State, or whether the issuing Member State can 'legalise' a custodial sentence of a third State by recognising the conviction.

40. Such a scenario does not appear to have been considered when Framework Decision 2002/584 was issued. Nonetheless, the European arrest warrant may be applicable in situations like the present one if the conditions of that framework decision have been met. This is because Framework Decision 2002/584 does not expressly rule this out.

41. The starting point is Article 8(1)(c) of Framework Decision 2002/584, which has already been mentioned. According to that article, the European arrest warrant has to be based on a further judicial decision of the requesting Member State.¹³ 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, is taken into consideration here.

42. In this respect, it is apparent from the request for a preliminary ruling that the Jurbarko rajono apylinkės teismas (District Court of the Region of Jurbarkas) recognised the Norwegian judgment of 28 November 2014 in its judgment of 18 June 2015 so that it could be executed according to Lithuanian law. After a temporary stay of execution, on 5 February 2018, the Marijampolės apylinkės teismo Jurbarko rūmai (District Court of Marijampole, Chamber of Jurbarkas) ordered the convicted person to serve the rest of his sentence. There is therefore an enforceable judicial decision.

¹¹ See judgments of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraphs 55 to 57), and of 2 April 2020, *Ruska Federacija* (C-897/19 PPU, EU:C:2020:262, paragraph 65).

¹² Judgments of 13 November 2018, *Raugevicius* (C-247/17, EU:C:2018:898, paragraph 45), and of 2 April 2020, *Ruska Federacija* (C-897/19 PPU, EU:C:2020:262, paragraph 48).

¹³ Point 31 of this Opinion.

43. It is not easy to see how one should assess whether a decision has the same effect under Articles 1 and 2 of Framework Decision 2002/584. However, the English and French versions of Article 8(1)(c), in particular, show that it must be checked whether the decision falls within the scope of Articles 1 and 2.¹⁴ This is consistent with the function of Article 8(1)(c). The evidence required according to Article 8 is merely supposed to show that the conditions for a European arrest warrant have been met.¹⁵ These are laid down, in particular, in Articles 1 and 2.

44. The scope of Articles 1 and 2 of Framework Decision 2002/584, in turn, is determined not by reference to a list of domestic judicial decisions, but instead on the basis of the purpose and subject matter of the decision.

45. Although Article 1(1) of Framework Decision 2002/584 defines the European arrest warrant as a judicial decision issued in a Member State, this does not mean the decision that is to be enforced by the European arrest warrant. As far as the latter decision is concerned, Article 1(1) merely states, for the purposes of the present case, that the purpose of the arrest warrant must be to execute a custodial sentence. Such a sentence does not have to have been handed down in a Member State, at least according to the wording of the provision. In this respect, the recognition of a judgment made by a third State serves the same function as a conviction because it requires the execution of that judgment in the recognising Member State.

46. According to Article 2(1) of Framework Decision 2002/584, a European arrest warrant may be issued where a prison sentence of at least four months has been passed. It is not prescribed here either that the conviction must have been issued in a Member State. Instead, the recognition of a conviction handed down by a third State falls within the scope of that provision if it relates to a sufficiently long custodial sentence.

47. As a result, Framework Decision 2002/584 is therefore applicable in a situation where the requested person was convicted and sentenced in a third State, but by virtue of an international agreement with that third State the judgment made by the third State is recognised by the issuing Member State and executed according to the laws of the issuing State.

3. ... and does not mean blind trust

48. Even if the framework decision is applicable, it is still necessary to clarify the extent to which recognition of a prison sentence in the Member State of the requesting judicial authority is binding on the executing judicial authority.

49. To legitimise mutual recognition of the judgment by the other Member States, the rules on protection of procedural and fundamental rights have to be complied with.¹⁶ Framework Decision 2002/584 therefore has to be interpreted in a way that ensures that the fundamental rights of the person concerned are protected without, however, calling into question the effectiveness of the system of judicial cooperation between the Member States of which the European arrest warrant, as provided for by the Union legislature, is one of the key elements.¹⁷

¹⁴ 'Any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2' and 'toute autre décision judiciaire exécutoire ayant la même force entrant dans le champ d'application des articles 1^{er} et 2'.

¹⁵ Judgment of 23 January 2018, *Piotrowski* (C-367/16, EU:C:2018:27, paragraph 59).

¹⁶ For details, see judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the judicial system)* (C-216/18 PPU, EU:C:2018:586, paragraph 35 et seq.), and of 15 October 2019, *Dorobantu* (C-128/18, EU:C:2019:857, paragraph 46 et seq.).

¹⁷ Judgment of 10 August 2017, *Tupikas* (C-270/17 PPU, EU:C:2017:628, paragraph 63).

50. In this respect, the European arrest warrant system entails a dual level of protection of the requested person's procedural and fundamental rights. At the first level, judicial protection has to be afforded to the requested person when the enforceable judicial decision is issued. At the second level, judicial protection has to be guaranteed when the European arrest warrant is issued.¹⁸

51. For this purpose, previous judicial proceedings in which it is decided whether the requested person is guilty allows the executing judicial authority to assume that the decision to issue a European arrest warrant for execution of a sentence was made in national proceedings during which the convicted person had available to him or her all safeguards appropriate to the adoption of that type of decision, inter alia those derived from the fundamental rights and fundamental legal principles referred to in Article 1(3) of Framework Decision 2002/584.¹⁹

52. In the present case, the Republic of Lithuania recognised the Norwegian judgment by virtue of its agreement with the Kingdom of Norway and the convicted person was offered judicial protection against recognition by means of an appeal. Owing to the mutual confidence between Member States, it has to be assumed that the procedural and fundamental rights of the convicted person have been protected in those proceedings of the requesting Member State.

53. However, in exceptional circumstances, the principles of mutual recognition and mutual confidence between the Member States may be limited.²⁰

54. The starting point for identifying such exceptional circumstances is Article 1(3) of Framework Decision 2002/584 according to which the latter is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Articles 2 and 6 TEU.²¹

55. But not every conceivable breach of fundamental rights in the requesting Member State is necessarily to be regarded as an exceptional circumstance because it is in the nature of mutual confidence for it usually to be sufficient if the persons concerned are given legal protection in relation hereto in that State.²²

56. Only the risk of serious breaches of fundamental rights is to be regarded as exceptional. The Court assumed this initially when the requested person was at risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter').²³ The same quality would be ascribed to a real risk that the person in respect of whom a European arrest

18 Judgments of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 67), and of 27 May 2019, *PF (Prosecutor General of Lithuania)* (C-509/18, EU:C:2019:457, paragraph 45).

19 Judgment of 12 December 2019, *Openbaar Ministerie (Public Prosecutor in Brussels)* (C-627/19 PPU, EU:C:2019:1079, paragraph 36).

20 Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014 (EU:C:2014:2454, paragraph 191), and judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 82); of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the judicial system)* (C-216/18 PPU, EU:C:2018:586, paragraph 43); and of 15 October 2019, *Dorobantu* (C-128/18, EU:C:2019:857, paragraph 49).

21 Judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 83), and of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the judicial system)* (C-216/18 PPU, EU:C:2018:586, paragraph 45).

22 See judgments of 21 December 2011, *N.S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 80 to 85); of 10 December 2013, *Abdullahi* (C-394/12, EU:C:2013:813, paragraph 50 et seq.); of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587, paragraph 48); of 2 April 2019, *H. and R.* (C-582/17 and C-583/17, EU:C:2019:280, paragraph 40); and of 15 October 2019, *Dorobantu* (C-128/18, EU:C:2019:857, paragraph 47).

23 Judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 84); of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the judicial system)* (C-216/18 PPU, EU:C:2018:586, paragraph 44); and of 15 October 2019, *Dorobantu* (C-128/18, EU:C:2019:857, paragraph 50).

warrant has been issued (for the purposes of conducting a criminal prosecution) would suffer a breach of his or her fundamental right to an independent tribunal if that person were surrendered to the issuing judicial authority, and therefore the essence of his or her fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter would be infringed.²⁴

57. If a Member State recognises and executes a sentence which a court of a third State has handed down, the risk of a serious breach of fundamental rights may relate, on the one hand, to the conviction in the third State – for example, the proceedings, the offence or the sentence – or, on the other hand, to the proceedings and the conditions of imprisonment in the requesting Member State.

58. In that respect, there may be cases in which such risks are obvious based on generally known information²⁵ or the person concerned is relying on the real risk of a serious breach of fundamental rights in the case of extradition.²⁶

59. In such cases, the executing judicial authority therefore has to check, following a specific and precise assessment of the individual case, whether there are substantial grounds to believe that the requested person is at risk of suffering a serious breach of his or her fundamental rights.²⁷ For that purpose, the executing judicial authority, like the referring court in the main proceedings, has to ask the issuing judicial authority, in particular according to Article 15(2) of Framework Decision 2002/584, for any supplementary information that it considers necessary for assessing whether there is such a risk.²⁸

60. In the present case, however, there has not been any evidence of a breach of fundamental rights so far, let alone a serious breach. In fact, it should be noted that the present case does not relate to the recognition of a judgment of any third State.

61. Although it is not enough that the Kingdom of Norway is a signatory of the ECHR,²⁹ that State concluded the Agreement on the surrender procedure with the European Union, which came into force on 1 November 2019. In the preamble to that agreement, the contracting parties expressed their mutual confidence in the structure and functioning of their legal systems and their ability to guarantee a fair trial.³⁰ As a result, the European Union has expressed confidence in the Kingdom of Norway which reaches to the mutual confidence between Member States. In the case of this third State, it is therefore to be presumed, subject to rebuttal, that fundamental rights have already been protected hitherto and will also be protected in the future.

24 Judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the judicial system)* (C-216/18 PPU, EU:C:2018:586, paragraph 59), and of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108, paragraph 43).

25 See judgments of 21 December 2011, *N.S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 87 et seq.); of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 88 and 89); of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraphs 57 to 59); of 15 October 2019, *Dorobantu* (C-128/18, EU:C:2019:857, paragraphs 51 to 53); and of 2 April 2020, *Ruska Federacija* (C-897/19 PPU, EU:C:2020:262, paragraph 65).

26 See judgment of 2 April 2020, *Ruska Federacija* (C-897/19 PPU, EU:C:2020:262, paragraph 64).

27 Judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 92 and 94); of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the judicial system)* (C-216/18 PPU, EU:C:2018:586, paragraph 73); and of 15 October 2019, *Dorobantu* (C-128/18, EU:C:2019:857, paragraph 55).

28 Judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the judicial system)* (C-216/18 PPU, EU:C:2018:586, paragraph 76), and of 19 September 2018, *RO* (C-327/18 PPU, EU:C:2018:733, paragraph 42).

29 See judgments of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraphs 55 to 57), and of 2 April 2020, *Ruska Federacija* (C-897/19 PPU, EU:C:2020:262, paragraph 65); but see judgment of 19 September 2018, *RO* (C-327/18 PPU, EU:C:2018:733, paragraph 52).

30 Judgment of 2 April 2020, *Ruska Federacija* (C-897/19 PPU, EU:C:2020:262, paragraph 73).

4. Conclusion in relation to the first question

62. Framework Decision 2002/584 is therefore applicable in a situation where the requested person was convicted and sentenced in Norway, but by virtue of an international agreement with the Kingdom of Norway the judgment is recognised in the issuing Member State and executed according to the laws of the issuing State.

63. However, the executing judicial authority will end the surrender procedure if it has substantial grounds to assume that execution of the Norwegian custodial sentence, which the Republic of Lithuania has recognised, would lead to a serious breach of fundamental rights.

B. The ability to refuse to execute the European arrest warrant (Question 2)

64. By its second question, the referring court asks whether an executing judicial authority can refuse to execute the European arrest warrant under Article 4(1) and Article 4(7)(b) of Framework Decision 2002/584 because the offence has been committed in a third State, if the offender carried out preparatory acts in the issuing State.

1. Article 4(1) of Framework Decision 2002/584

65. According to 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), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State.

66. It seems out of the question that extradition may be refused on that basis in the present case since the offence concerned, drug trafficking, is punishable under section 15 of the Irish Misuse of Drugs Act and, on the face of it, it does not fall within Article 2(4) of Framework Decision 2002/584 either. It is instead a catalogued offence pursuant to the fifth indent of Article 2(2), which does not presuppose any double criminality.

67. The Court does not therefore need to comment on Article 4(1) of Framework Decision 2002/584.

2. Article 4(7)(b) of Framework Decision 2002/584

68. The interpretation of Article 4(7)(b) of Framework Decision 2002/584 is, by contrast, relevant to the decision. According to that provision, the executing judicial authority may refuse to execute the European arrest warrant where the European arrest warrant relates to offences which have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

69. Refusal therefore depends on two cumulative conditions being met: first, the offence to which the European arrest warrant relates was committed outside the territory of the issuing Member State and, secondly, the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

70. The spirit and purpose of this exception is to enable the executing judicial authority, when executing the European arrest warrant, to take into consideration key decisions of the requested Member State on the scope of its own criminal jurisdiction. However, Article 4(7)(b) of Framework Decision 2002/584 does not accord this objective unlimited validity.

71. As far as the second condition mentioned above is concerned, only the Irish courts can clarify the scope of the relevant provisions of Irish criminal law. In that respect, refusal to execute lies in the hands of the requested judicial authority.

72. By contrast, Article 4(7)(b) of Framework Decision 2002/584, in relation to the concept of offences committed outside the territory of the issuing Member State, does not refer to the law of the requested Member State. It is therefore a concept of EU law which the Court has to interpret with respect to how it is to be understood where the offender has carried out preparatory acts in the issuing State.³¹

73. Contrary to Ireland's view, recognition by the issuing Member State is not relevant to this question because recognition does not change the place where the offence was committed. However, Article 4(7)(b) of Framework Decision 2002/584 does revolve around where the offence was 'committed'. The offence therefore has to have been extraterritorial in this specific case.

74. Here, the convicted person agreed with a third party in Lithuania to traffic drugs to Norway in return for payment of a sum of money. He transported the drugs from Lithuania by crossing a number of international borders and eventually entered Norway from Sweden. He was discovered there, about five kilometres from the border, with several kilograms of methamphetamine. He was convicted of the 'unlawful delivery of a very large quantity of narcotic substances'. It was not stated to the Court that acts in Lithuania formed the subject of the conviction.

75. The case in the main proceedings raises three questions in that respect, namely (i) whether invoking Article 4(7)(b) of Framework Decision 2002/584 is already ruled out if only some, but not all, acts constituting the offence were committed in the issuing State; (ii) the extent to which the concept of an offence includes preparatory acts; and (iii) whether it comes down to the scope of the conviction which is to be executed.

(a) Partial acts carried out domestically

76. As far as the required scope of the acts constituting the offence in the issuing State is concerned, Article 4(7)(b) of Framework Decision 2002/584 has to be read in conjunction with Article 4(7)(a).

77. Article 4(7)(a) refers to the fact the offence has been committed 'in whole or in part' in the executing State. The fact that partial acts were committed in the executing State is therefore sufficient for the latter to be able to refuse extradition under that provision.

78. By contrast, Article 4(7)(b) simply states 'outside' the issuing State, without adding anything further. The ground for exclusion under that provision therefore applies only if the offence was committed *entirely* outside the requesting State, whereas it is not sufficient if only part of it took place there.

79. This conclusion is confirmed by the consideration that Article 4(7)(b) of Framework Decision 2002/584 applies not only to the enforcement of a prison sentence, as is relevant in the present case, but also to criminal prosecution. However, this should also be possible where the requesting State takes action because it bases its territorial jurisdiction on just part of the acts constituting the offence.

³¹ See, in this respect, judgments of 17 July 2008, *Kozłowski* (C-66/08, EU:C:2008:437, paragraph 42); of 16 November 2010, *Mantello* (C-261/09, EU:C:2010:683, paragraph 38); of 14 November 2013, *Baláž* (C-60/12, EU:C:2013:733, paragraph 26); of 18 October 2016, *Nikiforidis* (C-135/15, EU:C:2016:774, paragraph 28); and of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI* (C-507/18, EU:C:2020:289, paragraph 31).

(b) The concept of an offence

80. The referring court is also asking to what extent preparatory acts are to be attributed to the offence for which extradition is being requested.

81. In that respect, reference can be made to Article 3(2) of Framework Decision 2002/584. As a manifestation of the prohibition of double jeopardy under Article 50 of the Charter, pursuant thereto, execution of a European arrest warrant is to be refused if the requested person has already been convicted in respect of the same acts. In this context, when interpreting the concept of ‘the same acts’, the Court has focused on the actual acts irrespective of their legal classification or the legal interest being protected, and found that it involves a set of specific circumstances which are inextricably linked together.³²

82. As a result, also when determining the criminal offence committed, focus has to be on the actual act. The specific circumstances which are inextricably linked together are decisive.

83. As far as criminal activities in the area of illicit drug trafficking are concerned, exporting and importing the same narcotics in different States may therefore constitute a set of circumstances which, by their very nature, are inextricably linked together.³³

84. Accordingly, it comes to mind naturally that, in addition to the offences of supplying and importing narcotics into Norway, the convicted person also carried out acts constituting the offence in Lithuania, in particular the exporting of drugs. As a result, the offence was not committed exclusively outside the issuing Member State. Whether agreeing with another person to transport drugs in return for money is likewise part of such a set of circumstances therefore requires no conclusive assessment. However, that agreement suggests that the convicted person was exporting the narcotics from Lithuania in order to import them into Norway, in other words that he was acting with consistent criminal intent.

85. The definitive assessment in that regard is a matter for the respective competent domestic courts which have the task of determining whether the material acts at issue constitute a set of circumstances which are inextricably linked together in time, in space and in terms of their purpose.³⁴ In the present extradition proceedings, it is predominantly for the Irish courts to determine this, but they have to give due consideration to the findings of the Norwegian courts recognised in Lithuania. If further clarification is required, they might also have to request supplementary information from the Lithuanian courts under Article 15(2) of Framework Decision 2002/584.

(c) The subject matter of the conviction

86. In the present case, the executing judicial authority may also not refuse to execute the European arrest warrant on the ground that the Norwegian conviction is not connected to the border crossing, but was instead made only by reason of the supply of narcotics.

³² Judgment of 16 November 2010, *Mantello* (C-261/09, EU:C:2010:683, paragraphs 39 and 40), based on the judgments of 9 March 2006, *van Esbroeck* (C-436/04, EU:C:2006:165, paragraphs 27, 32 and 36), and of 28 September 2006, *van Straaten* (C-150/05, EU:C:2006:614, paragraphs 41, 47 and 48), regarding Article 54 of the Convention implementing the Schengen Agreement.

³³ Judgments of 9 March 2006, *van Esbroeck* (C-436/04, EU:C:2006:165, paragraph 37), and of 28 September 2006, *van Straaten* (C-150/05, EU:C:2006:614, paragraph 51).

³⁴ Judgments of 9 March 2006, *van Esbroeck* (C-436/04, EU:C:2006:165, paragraph 38), and of 28 September 2006, *van Straaten* (C-150/05, EU:C:2006:614, paragraph 52).

87. It is true that, in the present case, the conviction – as far as can be seen – relates only to an offence committed outside the territory of the issuing Member State. However, according to the wording of Article 4(7)(b) of Framework Decision 2002/584, what matters is where the offence was ‘committed’. If the legislature had wanted to focus on acts for which a conviction was given, the term ‘judged’ would have been used, as, for example, in Article 3(2) or Article 4(5).

88. Focusing on the conviction would also make Framework Decision 2002/584 disproportionately more difficult to apply. This is because, at the time of the conviction, it is usually not conceivable to tell which acts constituting the offence might subsequently be relevant to the application of that framework decision and should therefore be included. This applies notably to convictions in third States since application of Framework Decision 2002/584 is particularly far from the thoughts of the courts there.

89. Nor, ultimately, is anything to the contrary apparent from the case-law of the Court regarding double criminality. It is true that double criminality is crucially linked to the factual elements underlying the offence as reflected in the judgment handed down in the issuing State.³⁵ However, double criminality also revolves around the commission of the offence and not the conviction. That is because, according to Article 7(3) of Framework Decision 2008/909/JHA,³⁶ the executing State may make recognition of a judgment subject to the condition that *it relates to acts* which also constitute an offence under the law of the executing State.

3. Conclusion in relation to the second question

90. An executing judicial authority may therefore not refuse to execute a European arrest warrant pursuant to Article 4(7)(b) of Framework Decision 2002/584 if it has been established that the requested person carried out punishable preparatory acts in the issuing State which are specifically inextricably linked to the offence for which the requested person was convicted.

V. Conclusion

91. I therefore propose that the Court respond to the request for a preliminary ruling as follows:

- (1) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States is applicable in a situation where the requested person was convicted and sentenced in the Kingdom of Norway, but by virtue of an international agreement with the Kingdom of Norway the judgment is recognised in the issuing Member State and executed according to the laws of the issuing State.

However, the executing judicial authority will end the surrender procedure where it has substantial grounds to assume that execution of the Norwegian custodial sentence, which the Republic of Lithuania has recognised, would lead to a serious breach of fundamental rights.

- (2) An executing judicial authority may not refuse to execute a European arrest warrant pursuant to Article 4(7)(b) of Framework Decision 2002/584 where it has been established that the requested person carried out punishable preparatory acts in the issuing State which are specifically inextricably linked to the offence for which the requested person was convicted.

³⁵ Judgment of 11 January 2017, *Grundza* (C-289/15, EU:C:2017:4, paragraph 37).

³⁶ Council Framework Decision 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 (OJ 2008 L 327, p. 27).