



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

12 December 2019\*

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 6(1) – Concept of ‘issuing judicial authority’ – Criteria – European arrest warrant issued by the public prosecutor’s office of a Member State for the purposes of criminal proceedings)

In Case C-625/19 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 22 August 2019, received at the Court on 22 August 2019, in proceedings relating to the execution of a European arrest warrant issued in respect of

**XD,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 October 2019,

after considering the observations submitted on behalf of:

- XD, by D. Bektesevic and T.E. Korff, advocaten,
- the Openbaar Ministerie, by K. van der Schaft and N. Bakkenes,
- the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,
- Ireland, by G. Hodge and M. Browne, acting as Agents, and R. Kennedy, Senior Counsel,
- the Spanish Government, by L. Aguilera Ruiz, acting as Agent,

\* Language of the case: Dutch.

- the French Government, by A. Daniel and A.-L. Desjonquères, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and L. Fiandaca, avvocato dello Stato,
- the Finnish Government, by M. Pere, acting as Agent,
- the Swedish Government, by A. Falk, C. Meyer-Seitz, H. Shev, J. Lundberg and H. Eklinder, acting as Agents,
- the European Commission, by S. Grünheid and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 November 2019,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').
- 2 The request has been made in proceedings in the Netherlands concerning the execution of a European arrest warrant issued on 27 May 2019 by the Åklagarmyndigheten (Public Prosecutor's Office, Sweden) for the purposes of criminal proceedings in respect of XD.

### **Legal context**

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

- 3 Recitals 5, 6, 10 and 12 of Framework Decision 2002/584 read as follows:
  - '(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.
  - (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

...

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) [EU], determined by the Council pursuant to Article 7(1) [EU] with the consequences set out in Article 7(2) thereof.

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [EU] and reflected in the Charter of Fundamental Rights of the European Union ..., in particular Chapter VI thereof. ...'

4 Article 1 of that framework decision, entitled 'Definition of the European arrest warrant and obligation to execute it', provides:

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

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

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

5 Article 2 of that framework decision, entitled 'Scope of the European arrest warrant', provides in paragraph 1 thereof:

'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.'

6 Under Article 6 of the framework decision, entitled 'Determination of the competent judicial authorities':

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

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

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

## *Swedish law*

### *The Code of Judicial Procedure*

- 7 Chapter 24 of the rättegångsbalken (Code of Judicial Procedure; 'the RB') sets out the rules on provisional detention.
- 8 According to Article 13 of that chapter, as soon as a public prosecutor makes an application for provisional detention, the court must hold a hearing to decide on the application, to which the alleged offender and his or her defence counsel are to be summoned to appear.
- 9 Under the second paragraph of Article 17 of that chapter, the court may order provisional detention in the absence of the alleged offender.
- 10 It follows from the provisions of the first subparagraph of Article 20(2) in Chapter 24 of the RB that the court seised is required to bring an end to provisional detention immediately if that measure is no longer justified. Under the second subparagraph of Article 20 of that chapter, a public prosecutor is required throughout the period of provisional detention to examine whether that measure is proportionate and he or she may terminate it *ex officio* before a judicial investigation is opened.
- 11 In accordance with Article 1 of Chapter 52 of the RB, the provisional detention decision ordered at first instance may be the subject of an appeal without any temporal limitation. The appeal decision may in turn be referred to the Högsta domstolen (Supreme Court, Sweden) without any temporal limitation, pursuant to Article 1 of Chapter 56 of the RB.

### *Regulation (2003:1178)*

- 12 The Förordning (2003:1178) om överlämnande till Sverige enligt en europeisk arresteringsorder (Regulation (2003:1178) on [the] surrender [of a person] in Sweden under a European arrest warrant) (SFS 2003, No 1178) transposed Framework Decision 2002/584 into Swedish law.
- 13 Under Article 2 of Regulation (2003:1178), a public prosecutor issues the European arrest warrant for the purposes both of conducting criminal proceedings and of executing a custodial sentence or detention order.
- 14 A European arrest warrant for the purposes of conducting criminal proceedings may be issued, pursuant to Article 3 of that regulation, where an order for the provisional detention of the requested person has been made on the grounds that there is a serious suspicion that that person committed an offence punishable by a custodial sentence of at least one year.
- 15 Under Article 5(1) of that regulation, a public prosecutor may issue a European arrest warrant only after an assessment of whether the possible harm caused to the person concerned and the procedural time limits and costs entailed can be justified in the light of the nature and seriousness of the offence and other circumstances.

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

- 16 On 27 May 2019, the Swedish Public Prosecutor's Office issued a European arrest warrant for the purposes of criminal proceedings in respect of XD, suspected of having participated, as part of a criminal organisation, in narcotics offences in the territory of several States, including Sweden.
- 17 The European arrest warrant was issued pursuant to a provisional detention order made on the same day by the Göteborgs tingsrätt (District Court, Gothenburg, Sweden).
- 18 The following day, 28 May 2019, XD was arrested in the Netherlands on the basis of the European arrest warrant.
- 19 The next day, 29 May 2019, the Openbaar Ministerie (Public Prosecutor's Office, Netherlands) lodged an application for consideration of that European arrest warrant before the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), pursuant to Article 23 of the Overleveringswet (Law on surrender) of 29 April 2004, in the version applicable to the main proceedings.
- 20 The referring court observes, first, that it is apparent from the information provided by the Swedish authorities in the main proceedings that, in Sweden, members of the Public Prosecutor's Office participate in the administration of justice and act independently without being exposed to any risk of being directly or indirectly subject to orders or instructions in a specific case from the executive.
- 21 Secondly, although the Swedish legislation relating to the European arrest warrant does not provide for the possibility of lodging an appeal against the decision to issue such a warrant, the referring court explains that the information provided by the Swedish authorities suggests that the proportionality of the decision to issue a European arrest warrant is examined when the provisional detention decision is taken, which occurs before the European arrest warrant is issued.
- 22 Thirdly, in the present case, at the hearing before the Göteborgs tingsrätt (District Court, Gothenburg) concerning XD's detention, the exchange of argument also addressed the question of issuing a European arrest warrant for the surrender of XD to the Swedish authorities. Thus, that court examined the proportionality of any decision to issue a European arrest warrant when it decided to order XD's provisional detention.
- 23 Having regard to those circumstances, the referring court is uncertain whether the assessment made by a court when adopting the national judicial decision — before a decision is made by the Public Prosecutor's Office to issue a European arrest warrant — concerning in particular the proportionality of a decision to issue such a warrant, fulfils, in essence, the requirements set out in paragraph 75 of the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), that a decision by the Public Prosecutor's Office to issue a European arrest warrant must be capable of being the subject of court proceedings which meet in full the requirements inherent in effective judicial protection.
- 24 In that regard, that court points out that, although, in the present case, the national and European arrest warrants were issued on the same day, it is not possible to rule out the possibility that, between, on the one hand, the adoption of a national judicial decision and the assessment of the proportionality of any decision to issue a European arrest warrant and, on the other hand, the point at which the European arrest warrant is in fact issued, there may elapse a period of time

during which new facts come to light that have an impact on the issue of that European arrest warrant. In such a situation, the assessment carried out by the court prior to the actual issuing of the European arrest warrant may not offer effective judicial protection if the decision to issue such a warrant is disproportionate.

- 25 In those circumstances, the Rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Can a Public Prosecutor who participates in the administration of justice in the issuing Member State, who acts independently in the execution of those of his responsibilities which are inherent in the issuing of a European arrest warrant, and who has issued an European arrest warrant, be regarded as an issuing judicial authority within the meaning of Article 6(1) of Framework Decision [2002/584] if a judge in the issuing Member State has assessed the conditions for issuing a European arrest warrant and, in particular, its proportionality, prior to the actual decision of that Public Prosecutor to issue the EAW?’

### **The urgent procedure**

- 26 On 17 September 2019, the First Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to deal with Case C-625/19 PPU under the urgent preliminary ruling procedure.
- 27 After pointing out that the reference for a preliminary ruling concerned the interpretation of Framework Decision 2002/584, which falls within the scope of Title V of Part Three of the FEU Treaty, concerning the area of freedom, security and justice, and could therefore, as requested by the referring court, be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Court's Rules of Procedure, the First Chamber of the Court relied on the fact that XD had, since 28 May 2019, been held in custody for the purposes of extradition pending a decision on the execution of the European arrest warrant issued against him and that the question as to whether he could continue to be held in custody depended on the outcome of the dispute in the main proceedings.

### **Consideration of the question referred for a preliminary ruling**

- 28 As a preliminary point, it must be observed that it is settled case-law that, under the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St. Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 32 and the case-law cited).
- 29 In the present case, by the question which it has referred for a preliminary ruling, the referring court appears to start from the premiss that the status of issuing judicial authority, within the meaning of Article 6(1) of Framework Decision 2002/584, is subject, *inter alia*, to the requirement that judicial review of a decision to issue a European arrest warrant must be available.

- 30 However, the availability of judicial review of a decision taken by an authority other than a court to issue a European arrest warrant is not a condition for classification of that authority as an issuing judicial authority within the meaning of Article 6(1) of Framework Decision 2002/584. That requirement does not fall within the scope of the statutory rules and institutional framework of that authority, but concerns the procedure for issuing such a warrant (judgment delivered today, *JR and YC*, C-566/19 PPU and C-626/19 PPU, paragraph 48).
- 31 That interpretation is supported by the judgment of 27 May 2019, *PF (Prosecutor General of Lithuania)* (C-509/18, EU:C:2019:457), in which the Court held that the Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position, in that Member State, affords him or her a guarantee of independence from the executive in connection with the issuing of a European arrest warrant must be regarded as an issuing judicial authority, within the meaning of Framework Decision 2002/584, and left it to the referring court to verify also whether a decision of that prosecutor may be the subject of court proceedings which meet in full the requirements inherent in effective judicial protection.
- 32 In those circumstances, by its question, the referring court must be regarded as asking, in essence, whether Framework Decision 2002/584 must be interpreted as meaning that, where competence to issue a European arrest warrant for the purpose of criminal proceedings is conferred on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, the requirements inherent in effective judicial protection are fulfilled if, prior to the actual decision by that authority to issue a European arrest warrant, a court has assessed the conditions for issuing that arrest warrant and, in particular, its proportionality.
- 33 In that regard, it should be recalled at the outset that 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 of fundamental importance in EU law because they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 36 and the case-law cited).
- 34 It should also be observed that, as stated in recital 6 thereof, Framework Decision 2002/584 is the first concrete measure in the field of criminal law implementing the principle of mutual recognition of judgments and judicial decisions, established in Article 82(1) TFEU, which replaced Article 31 EU, on the basis of which that framework decision was adopted. Since then, the field of judicial cooperation in criminal matters has gradually acquired legal instruments whose coordinated application is intended to strengthen the confidence of Member States in their respective national legal orders with a view to ensuring that judgments in criminal matters are recognised and enforced within the European Union in order to ensure that persons who have committed offences do not go unpunished.
- 35 The principle of mutual recognition, which underpins Framework Decision 2002/584, means that, in accordance with Article 1(2) thereof, the Member States are in principle obliged to act upon a European arrest warrant (judgment of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraph 36 and the case-law cited).

- 36 According to the provisions of Framework Decision 2002/584, the Member States may refuse to execute such a warrant only in the cases of mandatory non-execution provided for in Article 3 thereof and in the cases of optional non-execution listed in Articles 4 and 4a. Furthermore, the executing judicial authority may make the execution of a European arrest warrant subject solely to the conditions set out in Article 5 of the framework decision (judgment of 29 January 2013, *Radu*, C-396/11, EU:C:2013:39, paragraph 36 and the case-law cited).
- 37 It should also be noted that the effectiveness and proper functioning of the simplified system for the surrender of persons convicted or suspected of having infringed criminal law, established by Framework Decision 2002/584, are based on compliance with certain requirements laid down by that framework decision, the scope of which has been established by the Court's case-law.
- 38 In that regard, it is clear from that case-law that the European arrest warrant system entails a dual level of protection of procedural rights and fundamental rights which must be enjoyed by the requested person, since, in addition to the judicial protection provided at the first level, at which a national decision, such as a national arrest warrant, is adopted, there is the protection that must be afforded at the second level, at which a European arrest warrant is issued, which may occur, depending on the circumstances, shortly after the adoption of the national judicial decision (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 67 and the case-law cited).
- 39 Thus, as regards a measure, such as the issuing of a European arrest warrant, which is capable of impinging on the right to liberty of the person concerned, that protection means that a decision meeting the requirements inherent in effective judicial protection should be adopted, at least, at one of the two levels of that protection (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 68).
- 40 In particular, the second level of protection of the rights of the person concerned requires that the issuing judicial authority review observance of the conditions to be met when issuing the European arrest warrant and examine objectively – taking into account all incriminatory and exculpatory evidence, without being exposed to the risk of being subject to external instructions, in particular from the executive – whether it is proportionate to issue that warrant (see, to that effect, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraphs 71 and 73).
- 41 Furthermore, where the law of the issuing Member State confers competence to issue a European arrest warrant on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, the decision to issue such an arrest warrant and, inter alia, the proportionality of such a decision, must be capable of being the subject, in the Member State, of court proceedings which meet in full the requirements inherent in effective judicial protection (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 75).
- 42 Such proceedings against a decision to issue a European arrest warrant for the purpose of criminal proceedings taken by an authority which, whilst participating in the administration of justice and having the necessary independence from the executive, does not constitute a court serve to ensure that judicial review of that decision and of the conditions to be met when issuing that arrest warrant, in particular its proportionality, complies with the requirements inherent in effective judicial protection.



- 43 Accordingly, it is for the Member States to ensure that their legal orders effectively safeguard the level of judicial protection required by Framework Decision 2002/584, as interpreted by the Court's case-law, by means of the remedies which they provide for and which may vary from one system to another.
- 44 In particular, introducing a separate right of appeal against the decision to issue a European arrest warrant taken by a judicial authority other than a court is just one possibility in that regard.
- 45 Framework Decision 2002/584 does not prevent a Member State from applying its procedural rules with respect to the issuing of a European arrest warrant provided that the objective of that framework decision and the requirements deriving from it are not frustrated (see, to that effect, judgment of 30 May 2013, *F*, C-168/13 PPU, EU:C:2013:358, paragraph 53).
- 46 In the present case, as is apparent from the documents before the Court, the decision to issue a European arrest warrant for the purpose of criminal proceedings is, in the Swedish legal system, necessarily based on a decision ordering the provisional detention of the person concerned, which is made by a court.
- 47 The referring court also states that the information communicated to it by the Swedish authorities shows that, in order to establish that it is necessary to order provisional detention, the court having jurisdiction must also assess the proportionality of other possible measures, such as the issuing of a European arrest warrant.
- 48 Moreover, according to the Swedish Government, when examining whether it is necessary to order the provisional detention of a person suspected of having infringed criminal law, the court having jurisdiction must always assess the proportionality of such a measure. If the person suspected of having committed an offence absconds or does not reside in the territory of the issuing Member State, the only reason for a public prosecutor to apply to a court for an arrest warrant to be issued against that person is that it is necessary to issue a European arrest warrant. Accordingly, the examination of proportionality which that court will be required to carry out in examining whether it is necessary to order provisional detention will also cover the issuing of a European arrest warrant.
- 49 This seems to have been the situation in the case in the main proceedings, since, as is apparent from the order for reference, in the course of the hearings before the Swedish courts relating to XD's detention, the exchange of arguments also addressed the need to issue a European arrest warrant for the surrender of the requested person to the Swedish authorities.
- 50 Furthermore, the Swedish Government stated in its written observations and at the hearing before the Court that a person requested on the basis of a European arrest warrant has the right to appeal against the decision ordering his or her provisional detention, without any temporal limitation, even after the European arrest warrant has been issued and after he or she has been arrested in the executing Member State. If the decision ordering the contested provisional detention is annulled, the European arrest warrant is automatically invalid, since it was issued on the basis of that decision.
- 51 Finally, that government stated that any higher court hearing an appeal against a decision ordering provisional detention also assesses the proportionality of the decision to issue the European arrest warrant.

- 52 The inclusion of such procedural rules in the Swedish legal system supports the finding that, even in the absence of a separate remedy against a public prosecutor's decision to issue a European arrest warrant, the conditions for issuing that warrant and, in particular, its proportionality, may be subject to judicial review in the issuing Member State not only before or at the time of its adoption but also thereafter.
- 53 Such a system therefore meets the requirement of effective judicial protection.
- 54 In addition, as recalled in paragraph 34 above, Framework Decision 2002/584 forms part of a comprehensive system of safeguards relating to effective judicial protection provided for by other EU rules, adopted in the field of judicial cooperation in criminal matters, which contribute to helping a person requested on the basis of a European arrest warrant exercise his or her rights, even before his or her surrender to the issuing Member State.
- 55 In particular, Article 10 of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ 2013 L 294, p. 1) requires the competent authority of the executing Member State to inform persons whose surrender is sought without undue delay after they have been deprived of their liberty that they have the right to appoint a lawyer in the issuing Member State.
- 56 In the light of those considerations, the answer to the question referred is that Framework Decision 2002/584 must be interpreted as meaning that the requirements inherent in effective judicial protection which must be afforded any person in respect of whom a European arrest warrant is issued in connection with criminal proceedings are fulfilled if, according to the law of the issuing Member State, the conditions for issuing such a warrant, and in particular its proportionality, are subject to judicial review in that Member State.

### Costs

- 57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

**Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the requirements inherent in effective judicial protection which must be afforded any person in respect of whom a European arrest warrant is issued in connection with criminal proceedings are fulfilled if, according to the law of the issuing Member State, the conditions for issuing such a warrant, and in particular its proportionality, are subject to judicial review in that Member State.**

[Signatures]