



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

14 July 2022 *

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – Article 2(4) – Condition of double criminality of the act – Article 4(1) – Ground for optional non-execution of the European arrest warrant – Verification by the executing judicial authority – Acts some of which constitute an offence under the law of the executing Member State – Article 49(3) of the Charter of Fundamental Rights of the European Union – Principle of proportionality of criminal offences and penalties)

In Case C-168/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 26 January 2021, received at the Court on 16 March 2021, in the proceedings concerning the execution of a European arrest warrant issued against

KL

other party:

Procureur général près la cour d’appel d’Angers,

THE COURT (Third Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, N. Jääskinen, M. Safjan, N. Piçarra and M. Gavalec, Judges,

Advocate General: A. Rantos,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 20 January 2022,

after considering the observations submitted on behalf of

- KL, by A. Barletta, avvocato, C. Glon and P. Mathonnet, avocats,
- the French Government, by A. Daniel and A.L. Desjonquères, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by W. Ferrante, avvocato dello Stato,

* Language of the case: French

– the European Commission, by A. Azéma and S. Grünheid, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 31 March 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(4) and Article 4(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'), and of Article 49(3) of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 This request was made in the context of the execution in France of a European arrest warrant issued by the Italian judicial authorities against KL for the purpose of enforcing a custodial sentence of 12 years and 6 months for acts classified as theft committed in conjunction with others and while carrying a weapon, devastation and looting, carrying a weapon and detonation of explosive devices, committed in Genoa (Italy) in 2001.

Legal context

European Union law

- 3 Recitals 6 and 12 of Framework Decision 2002/584 read as follows:

'(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.

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [TEU] and reflected in the [Charter]..., 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 [TEU].’
- 5 Article 2 of Framework Decision 2002/584, entitled ‘Scope of the European arrest warrant’, provides in paragraphs 1, 2 and 4 thereof:
- ‘1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.
2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:
- ...
4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.’
- 6 Articles 3, 4 and 4a of the same framework decision list the grounds for mandatory and optional non-execution of the European arrest warrant. In particular, Article 4 of Framework Decision 2002/584, entitled ‘Grounds for optional non-execution of the European arrest warrant’, provides, in paragraph 1 thereof:
- ‘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 Article 5 of Framework Decision 2002/584 provides for the guarantees to be given by the issuing Member State in particular cases.

French law

- 8 Article 695-23 of the code de procédure pénale (Code of Criminal Procedure) provides:
- ‘The execution of a European arrest warrant shall also be refused if the offence for which the warrant has been issued does not constitute an offence under French law.
- By way of derogation from the first paragraph, a European arrest warrant shall be executed without verification of the double criminality of the alleged acts where the acts under consideration are, under the law of the issuing Member State, punished by a custodial sentence of or exceeding three years’ imprisonment or a custodial safety measure of a similar duration and falling within one of the categories of offence provided for in Article 694-32.

Where the provisions of the preceding paragraph are applicable, the legal qualification of the offence and the determination of the penalty incurred depend exclusively on the assessment of the judicial authorities of the issuing Member State. ...'

Italian law

- 9 Article 419 of the codice penale (Criminal Code), in the version applicable to the facts of the main proceedings, provides:

'Any person who, other than in the circumstances provided for in Article 285, commits acts of devastation or looting shall be punished by a term of imprisonment of between eight and fifteen years. This penalty shall be increased if the offence is committed on weapons, ammunition or foodstuffs in a place of sale or storage.'

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

- 10 On 6 June 2016, the Italian judicial authorities issued a European arrest warrant against KL for the purpose of enforcing a custodial sentence of 12 years and 6 months, handed down by the judgment of the Corte d'appello di Genova (Court of Appeal, Genoa, Italy) of 9 October 2009, which became enforceable on 13 July 2012 following the dismissal of KL's appeal by the Corte suprema di cassazione (Supreme Court of Cassation, Italy) on the same date.
- 11 This is a cumulative sentence representing four sentences imposed for four offences, namely, first, theft committed in conjunction with others and while carrying a weapon, punishable by 1 year's imprisonment; secondly, devastation and looting, punishable by 10 years' imprisonment; thirdly, carrying a weapon, punishable by 9 months' imprisonment; and, fourthly, the detonation of explosive devices, punishable by 9 months' imprisonment.
- 12 With specific reference to the offence of 'devastation and looting', the European arrest warrant describes the circumstances in which that offence was committed as follows:
- 'In conjunction with more than five others, taking part in the demonstration against the G8 summit, [KL] committed [some] acts of devastation and looting in circumstances – with regard to time and place – in which there was an objective danger to public order; several instances of damage to street furniture and public property with consequential damage which could not be precisely quantified, but which represented hundreds of millions of lire; damage, looting and destruction by fire of [a] credit institution, cars and other commercial property, with the aggravating factor of causing serious financial loss to the persons concerned'.
- 13 According to the information provided to the Court, it is apparent from the judgment of the Corte d'appello di Genova (Court of Appeal, Genoa) of 9 October 2009 that, under the classification of 'devastation and looting', provided for in Article 419 of the Criminal Code, KL was charged with the commission of seven acts, punishable as a single offence. Those seven acts were damage to street furniture and public property, damage to and looting of a construction site, destruction of premises belonging to Credito Italiano SpA, destruction by fire of a Fiat Uno vehicle, destruction by fire of premises belonging to Banca Carige SpA, destruction by fire of a Fiat Brava vehicle and destruction and looting of a supermarket.

- 14 KL did not consent to surrender pursuant to the European arrest warrant referred to in paragraph 10 of the present judgment.
- 15 By judgment of 23 August 2019, the indictment division of the cour d'appel de Rennes (Court of Appeal, Rennes, France) made an order for further information requiring, inter alia, the production of the judgment of the Corte d'appello di Genova (Court of Appeal, Genoa) of 9 October 2009 and the judgment of the Corte suprema di cassazione (Supreme Court of Cassation) of 13 July 2012, referred to in paragraph 10 of this judgment.
- 16 By judgment of 15 November 2019, the indictment division of the cour d'appel de Rennes (Court of Appeal, Rennes) refused to surrender KL on procedural grounds. That judgment was set aside by the Cour de cassation (Court of Cassation, France) and the case was referred back to the cour d'appel d'Angers (Court of Appeal, Angers, France).
- 17 By judgment of 4 November 2020, the indictment division of the cour d'appel d'Angers (Court of Appeal, Angers), first, refused to surrender KL to the Italian authorities by way of execution of the European arrest warrant in so far as the warrant had been issued for the purpose of enforcing the 10-year custodial sentence handed down for the offence of 'devastation and looting', and secondly, made an order for further information from the Italian judicial authority, asking it to specify whether it wished the sentence of two years and six months, handed down for the other three offences covered by that warrant, to be enforced in France.
- 18 The procureur général près la cour d'appel d'Angers (Public Prosecutor at the Court of Appeal, Angers, France) and KL brought an appeal on a point of law against that judgment before the Cour de cassation (Court of Cassation), which is the referring court.
- 19 The Cour de cassation (Court of Cassation) considers that the case before it raises questions concerning the interpretation of the condition of double criminality of the act, laid down in Articles 2(4) and 4(1) of Framework Decision 2002/584 ('the condition of double criminality of the act').
- 20 In that regard, the referring court states that, in refusing to surrender KL for the purpose of enforcing the 10-year custodial sentence handed down for the acts classified as 'devastation and looting', the indictment division of the cour d'appel d'Angers (Court of Appeal, Angers) found that two of the acts underlying that offence – namely, first, the destruction of premises belonging to Credito Italiano and, secondly, the destruction by fire of a Fiat Brava vehicle – did not constitute an offence in France. That indictment division concluded that, as the Corte d'appello di Genova (Court of Appeal, Genoa) and the Corte suprema di cassazione (Supreme Court of Cassation) had 'expressed the clear intention' to analyse the seven acts charged under the offence of 'devastation and looting' as forming an indivisible whole, the condition of double criminality of the act meant that all of the indivisible acts punished under that offence had to be disregarded.
- 21 In that context, the referring court states that, in the light of the case-law of the Court arising from the judgment of 11 January 2017, *Grundza* (C-289/15, EU:C:2017:4), when assessing the condition of double criminality of the act, the executing judicial authority is required to verify whether the factual elements underlying the offence, as reflected in the judgment handed down by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State. There does not have to be an exact match

between the constituent elements of the offence, as defined in the law of the issuing State and the executing State, respectively, or between the name given to or the classification of the offence under the national law of the respective States.

- 22 The referring court states that, although that judgment was given in the context of the interpretation 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 (OJ 2008 L 327, p. 27), that case-law appears to be transposable to circumstances in which the double criminality of the act in connection with a European arrest warrant must be verified on account of the similarity between the provisions on double criminality in those two framework decisions.
- 23 The same court indicates that, under Italian law, the offence of ‘devastation and looting’ relates to multiple acts of wholesale destruction and damage that not only result in losses to the owners of the property in question, but also cause a breach of the public peace by threatening the normal course of life in civil society. Under French criminal law, there is no specific offence of endangering the public peace through the wholesale destruction of movable or immovable property. The only such offences are destruction, damage or theft accompanied by damage, whether or not involving multiple offenders, causing loss to the owners of the property in question.
- 24 Although there does not have to be an exact match between the constituent elements of the offence concerned under Italian law and under French law, a breach of the public peace nonetheless appears to be an essential element of the offence of ‘devastation and looting’. Therefore, according to the referring court, the application of the condition of double criminality of the act is not so obvious as to leave no scope for any reasonable doubt.
- 25 If the condition of double criminality of the act does not prevent the surrender of KL, that court considers that the question then arises as to the proportionality of the sentence for which surrender is sought, taking into account only those acts in respect of which that condition is met.
- 26 In that regard, in the first place, the referring court observes that Framework Decision 2002/584 does not contain any provision permitting the executing judicial authority to refuse to surrender the person concerned on the ground that the sentence handed down by the issuing Member State appears to be disproportionate to the acts for which surrender is sought.
- 27 In the second place, while Article 5 of that framework decision stated that the execution of the European arrest warrant may be made conditional, by the law of the executing Member State, on the existence of provisions within the legal order of the issuing Member State enabling the sentence imposed to be reviewed, that applies only where the offence which forms the basis for the issuing of the European arrest warrant is punishable by a custodial life sentence or lifetime detention order.
- 28 Therefore, even if the executing judicial authority considered that there were serious difficulties with regard to the proportionality of the European arrest warrant, it could not refuse, on that ground, to order the surrender of the person requested for the purpose of enforcing the sentence handed down in the issuing Member State. Moreover, while, in principle, it is for the issuing judicial authority to verify that the European arrest warrant is proportionate before issuing it, where such a warrant has been issued for the purpose of enforcing a sentence for a single offence

characterised by multiple acts, only some of which constitute an offence under the law of the executing Member State, that warrant may no longer be proportionate at the time of its execution, even if it was proportionate when it was issued.

- 29 In those circumstances, in the light of the fundamental rights and legal principles which must be respected in the context of the European arrest warrant, in accordance with Article 1(3) of Framework Decision 2002/584, the referring court asks whether Article 49(3) of the Charter, which sets out the principle that the severity of penalties must not be disproportionate to the criminal offence concerned, requires the executing judicial authority to refuse to execute a European arrest warrant where, first, that warrant has been issued for the purpose of enforcing a single sentence handed down for a single offence and, secondly, some of the acts for which that sentence was handed down do not constitute an offence under the law of the executing Member State.
- 30 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Articles 2(4) and 4(1) of Framework Decision 2002/584 be interpreted as meaning that the condition of double criminality [of the act] is met in a situation, such as that at issue in the main proceedings, in which surrender is sought for acts which, in the issuing [Member] State, have been categorised as devastation and looting and which consist of acts of devastation and looting such as to cause a breach of the public peace when, in the executing [Member] State, there are criminal offences of theft accompanied by damage or offences of causing destruction or damage that do not require that element of a breach of the public peace?¹
- (2) In the event that the first question is answered in the affirmative, must Articles 2(4) and 4(1) of Framework Decision 2002/584 be interpreted as meaning that the courts in the executing [Member] State may refuse to execute a European arrest warrant issued for the purpose of enforcing a sentence where they find that the judicial authorities in the issuing [Member] State imposed that sentence on the person concerned for the commission of a single offence covering various acts and where only some of those acts constitute a criminal offence in the executing [Member] State? Does a distinction need to be made depending on whether or not the trial court in the issuing [Member] State considered those various acts to be divisible or indivisible?
- (3) Does Article 49(3) of the [Charter] require the judicial authorities in the executing Member State to refuse to execute a European arrest warrant where, first, that warrant was issued in order to enforce a single sentence imposed for a single offence and, second, where, given that some of the acts for which that sentence was imposed do not constitute an offence under the law of the executing Member State, a surrender can only be ordered in relation to some of those acts?’

¹ Or rather ‘that do not require such a breach of the public peace?’

The questions referred for a preliminary ruling

The first question

- 31 By its first question, the national court asks, in essence, whether Articles 2(4) and 4(1) of Framework Decision 2002/584 are to be interpreted as meaning that the condition of double criminality of the act is met where the European arrest warrant is issued for the purpose of enforcing a custodial sentence handed down for acts which relate, in the issuing Member State, to an offence requiring that those acts impair a legal interest protected in that Member State when such acts also constitute a criminal offence, under the law of the executing Member State, of which the impairment of that protected legal interest is not a constituent element.
- 32 In accordance with the settled case-law of the Court, in order to establish the scope of the condition of double criminality of the act, it is necessary to consider not only the wording of Articles 2(4) and 4(1) of Framework Decision 2002/584, but also the context in which they occur and the objectives pursued by the rules of which those provisions form part (see, to that effect, judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraph 42 and the case-law cited).
- 33 In the first place, it follows from the terms of Article 2(4) of Framework Decision 2002/584 that the assessment of the condition of double criminality of the act requires verification of whether 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’. At the same time, Article 4 of that framework decision, which concerns the grounds for optional non-execution of the European arrest warrant, provides in paragraph 1 that the executing judicial authority may refuse to execute the European arrest warrant if, in one of the cases referred to in Article 2(4) of that framework decision, the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State.
- 34 Accordingly, in order to determine whether the condition of double criminality of the act is met, it is necessary and sufficient that the acts giving rise to the issuing of the European arrest warrant also constitute an offence under the law of the executing Member State. It follows that the offences do not need to be identical in the two Member States concerned (see, by analogy, as regards the application of the principle of mutual recognition to judgments in criminal matters, judgment of 11 January 2017, *Grundza*, C-289/15, EU:C:2017:4, paragraph 34).
- 35 It is clear from the words ‘whatever the constituent elements’ of the offence as laid down in the executing Member State and ‘however it is described’ that the EU legislature does not require there to be an exact match between the constituent elements of the offence, as defined in the law of the issuing Member State and the executing Member State, respectively, or between the name given to or the classification of the offence under the national law of the respective States (see, by analogy, judgment of 11 January 2017, *Grundza*, C-289/15, EU:C:2017:4, paragraph 35).
- 36 It follows that, when assessing the condition of double criminality of the act, in order to establish whether there are grounds for non-execution of the European arrest warrant under Article 4(1) of Framework Decision 2002/584, the executing judicial authority is required to verify whether the factual elements underlying the offence which gave rise to the issuing of that European arrest warrant would also, per se, constitute an offence under the law of the executing Member State if they were present in that State (see, by analogy, judgment of 11 January 2017, *Grundza*, C-289/15, EU:C:2017:4, paragraph 38).

- 37 In the second place, the context of Articles 2(4) and 4(1) of Framework Decision 2002/584 and the objectives of that framework decision also support such an interpretation.
- 38 In that respect, it should be borne in mind that that framework decision seeks, by the establishment of a simplified and 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 (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 42 and the case-law cited).
- 39 The principle of mutual recognition, which, according to recital 6 of Framework Decision 2002/584, constitutes the ‘cornerstone’ of judicial cooperation in criminal matters, is expressed in Article 1(2) thereof which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 43 and the case-law cited).
- 40 It follows that executing judicial authorities may therefore, in principle, refuse to execute a European arrest warrant only on the grounds for non-execution exhaustively listed by Framework Decision 2002/584, and that execution of the warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 thereof. 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 (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 44 and the case-law cited).
- 41 The principle of mutual recognition, which underpins the surrender mechanism established by Framework Decision 2002/584, led to, inter alia, the establishment, in Article 2(2) of that framework decision, of a list of criminal offences which, without verification of the double criminality of the act, give rise to the surrender of the person concerned on the basis of a European warrant.
- 42 As regards offences which do not appear on that list, Article 2(4) of that framework decision provides the executing Member State with the option of making execution of the European arrest warrant subject to the requirement that the condition of double criminality be met.
- 43 That condition constitutes, in accordance with Article 4(1) of that framework decision, a ground for optional non-execution of the European arrest warrant and thus an exception to the rule that the European arrest warrant must be executed, so that the scope of application of that ground for non-execution of the European arrest warrant must be interpreted strictly in order to limit cases of non-execution of that arrest warrant (see, by analogy, judgment of 11 January 2017, *Grundza*, C-289/15, EU:C:2017:4, paragraph 46).
- 44 Therefore, although Article 4(1) of Framework Decision 2002/584 confers on the executing judicial authority the power to refuse to execute a European arrest warrant where the condition of double criminality of the act is not met, that provision, where it lays down a rule derogating from the principle of mutual recognition stated in Article 1(2) of that framework decision,

cannot be interpreted in a way which would frustrate the objective set out in paragraphs 38 to 40 of the present judgment, which is to facilitate and accelerate surrenders between the judicial authorities of the Member States in the light of the mutual confidence which must exist between them (see, by analogy, judgment of 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)*, C-195/20 PPU, EU:C:2020:749, paragraph 35 and the case-law cited).

- 45 If the condition of double criminality of the act were to be interpreted as requiring there to be an exact match between the constituent elements of the offence as defined in the law of the issuing Member State and those of the offence as provided for in the law of the executing Member State, as well as between the legal interests protected under the laws of those two Member States, the effectiveness of the surrender procedure would be undermined.
- 46 Indeed, given the minimal harmonisation in the field of criminal law at EU level, it is likely that there will be no exact match for a large number of offences. The interpretation envisaged in the paragraph above would therefore considerably limit the situations in which the condition of double criminality of the act could be met, thereby jeopardising the objective pursued by Framework Decision 2002/584.
- 47 In addition, and as a consequence, that interpretation would also disregard the objective of combating the impunity of a requested person who is present in a territory other than that in which he or she has committed an offence, which is also an objective of Framework Decision 2002/584 (see, to that effect, judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 62 and the case-law cited).
- 48 Indeed, if the condition of double criminality of the act is interpreted as requiring that the impairment of the protected legal interest, which is a constituent element of the offence under the law of the issuing Member State, must be a constituent element of the offence under the law of the executing Member State, this could lead to a refusal to surrender the person concerned in execution of the European arrest warrant, even if that person was convicted in the issuing Member State and the acts for which the European arrest warrant was issued constitute an offence under the law of the executing Member State.
- 49 Therefore, the application of the condition of double criminality of the act cannot require the executing judicial authority to verify that the impairment of the legal interest protected by the law of the issuing Member State is also a constituent element of the offence under the law of the executing Member State.
- 50 Consequently, it is irrelevant that the acts which gave rise to the issuing of the European arrest warrant relate, in the issuing Member State, to an offence requiring that those acts impair a legal interest protected under the law of that Member State, such as, in the present case, a breach of the public peace, when that element is not required under the law of the executing Member State in order for the same acts to constitute an offence.
- 51 In the light of the foregoing, the answer to the first question is that Articles 2(4) and 4(1) of Framework Decision 2002/584 must be interpreted as meaning that the condition of double criminality of the act is met where the European arrest warrant is issued for the purpose of enforcing a custodial sentence handed down for acts which relate, in the issuing Member State,

to an offence requiring that those acts impair a legal interest protected in that Member State when such acts also constitute a criminal offence, under the law of the executing Member State, of which the impairment of that protected legal interest is not a constituent element.

The second and third questions

- 52 By its second and third questions, which should be examined together, the referring court asks, in essence, whether Articles 2(4) and 4(1) of Framework Decision 2002/584, read in the light of Article 49(3) of the Charter, are to be interpreted as meaning that the executing judicial authority may refuse to execute a European arrest warrant issued for the purpose of enforcing a custodial sentence where that sentence was imposed in the issuing Member State for the commission, by the requested person, of a single offence consisting of multiple acts, only some of which constitute a criminal offence in the executing Member State.
- 53 First of all, it must be stated that Articles 2(4) and 4(1) of Framework Decision 2002/584 do not explicitly provide that execution of a European arrest warrant may be refused on the ground that only some of the acts giving rise to the single offence in the issuing Member State in respect of which the European arrest warrant has been issued constitute an offence under the law of the executing Member State.
- 54 In those circumstances, regard must be had to the context of those provisions and to the objectives pursued by Framework Decision 2002/584.
- 55 In the first place, it follows from the answer to the first question that it is irrelevant, for the purpose of assessing the condition of double criminality of the act, that the acts for which the European arrest warrant was issued were classified as a single offence under the law of the issuing Member State.
- 56 As is clear from paragraph 51 of this judgment, that assessment is limited to determining whether, if the acts concerned occurred in the territory of the executing Member State, those acts would also have constituted an offence under the law of the executing Member State, irrespective of the constituent elements of that offence and of how the offence is classified in the issuing Member State.
- 57 In the second place, as regards the question whether the executing judicial authority may find a ground for non-execution of the European arrest warrant in the fact that only some of the acts in question constitute an offence under the law of the executing Member State, it should be recalled, as indicated in paragraph 43 of this judgment, that the condition of double criminality of the act is one of the grounds for optional non-execution of the European arrest warrant set out in Article 4 of that framework decision, which must be interpreted strictly in order to limit cases of non-execution of the European arrest warrant.
- 58 Therefore, as the Advocate General observed, in essence, in point 55 of his Opinion, unless the ground for non-execution referred to in Article 4(1) of Framework Decision 2002/584 is transposed to those acts which constitute an offence under the law of the executing Member State and which thus fall outside the scope of that ground, the fact that only some of the acts constituting an offence in the issuing Member State also constitute an offence under the law of the executing Member State cannot permit the executing judicial authority to refuse to execute the European arrest warrant.

- 59 That interpretation is borne out by the scheme of the framework decision.
- 60 Even if, in the circumstances referred to in paragraph 58 of this judgment, surrender were subject to the condition that the person concerned must not serve the sentence in the issuing Member State for those acts which do not constitute an offence in the executing Member State, it should be noted that no such condition is laid down in Article 5 of Framework Decision 2002/584. The Court has repeatedly held that the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of that framework decision (see, to that effect, judgment of 3 March 2020, *X (European arrest warrant – Double criminality)*, C-717/18, EU:C:2020:142, paragraph 41 and the case-law cited).
- 61 The interpretation of Articles 2(4) and 4(1) of Framework Decision 2002/584 set out in the preceding paragraphs of this judgment is further supported by the analysis of the objectives pursued by Framework Decision 2002/584, recalled in paragraphs 38 to 40 and paragraph 47 of this judgment, which are, first, to facilitate and accelerate surrenders between the judicial authorities of the Member States in the light of the mutual confidence which must exist between them, and secondly, to combat the impunity of a requested person who is present in a territory other than that in which he or she has allegedly committed an offence.
- 62 As the French Government argues, in essence, in its written observations, interpreting the condition of double criminality of the act as meaning that execution of the European arrest warrant may be refused on the ground that some of the elements of the offence in the issuing Member State do not constitute an offence in the executing Member State would create an obstacle to the effective surrender of the person concerned and would lead to the impunity of that person for all the acts concerned. That interpretation would lead to a refusal to surrender even if some of the acts in question met that condition.
- 63 Therefore, the condition of double criminality of the act must be considered to be met where the European arrest warrant is issued for the purpose of enforcing a custodial sentence, even if that sentence was imposed in the issuing Member State for the commission by the requested person of a single offence consisting of multiple acts, only some of which constitute a criminal offence in the executing Member State.
- 64 Such an interpretation is also consistent with the principle of proportionality of criminal offences and penalties, provided for in Article 49(3) of the Charter, to which the questions referred by the national court relate.
- 65 First, in the system established by Framework Decision 2002/584, it is for the judicial authorities of the issuing Member State to ensure compliance with the principle of proportionality of criminal offences and penalties. The Court has held that observance of the rights of the person whose surrender is sought falls primarily within the responsibility of the issuing Member State (judgments of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 50, and of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraph 66).
- 66 Secondly, as the Advocate General pointed out in point 63 of his Opinion, possible disproportionality of the sentence handed down in the issuing Member State is not among the grounds for mandatory and optional non-execution of a European arrest warrant set out in Articles 3, 4 and 4a of Framework Decision 2002/584.

- 67 Furthermore, it is clear from paragraph 36 of this judgment that the condition of double criminality of the act requires only verification of whether the factual elements of the offence which gave rise to the issuing of that European arrest warrant would also, per se, constitute an offence under the law of the executing Member State if they were present in that State.
- 68 It is therefore not for the executing judicial authority, when assessing that condition, to assess the sentence handed down in the issuing Member State in the light of Article 49(3) of the Charter.
- 69 In the light of all the foregoing considerations, the answer to the second and third questions is that Articles 2(4) and 4(1) of Framework Decision 2002/584, read in the light of Article 49(3) of the Charter, must be interpreted as meaning that the executing judicial authority may not refuse to execute a European arrest warrant issued for the purpose of enforcing a custodial sentence where that sentence was imposed in the issuing Member State for the commission, by the requested person, of a single offence consisting of multiple acts, only some of which constitute a criminal offence in the executing Member State.

Costs

- 70 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 (Third Chamber) hereby rules:

1. **Articles 2(4) and 4(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the condition of double criminality of the act laid down in those provisions is met where a European arrest warrant is issued for the purpose of enforcing a custodial sentence handed down for acts which relate, in the issuing Member State, to an offence requiring that those acts impair a legal interest protected in that Member State when such acts also constitute a criminal offence, under the law of the executing Member State, of which the impairment of that protected legal interest is not a constituent element.**
2. **Articles 2(4) and 4(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in the light of Article 49(3) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the executing judicial authority may not refuse to execute a European arrest warrant issued for the purpose of enforcing a custodial sentence where that sentence was imposed in the issuing Member State for the commission, by the requested person, of a single offence consisting of multiple acts, only some of which constitute a criminal offence in the executing Member State.**

[Signatures]