



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 December 2022*

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 6(2) – Determination of the competent judicial authorities – Decision to postpone surrender adopted by a body not having the status of executing judicial authority – Article 23 – Expiry of the time limits provided for surrender – Consequences – Article 12 and Article 24(1) – Keeping the requested person in detention for the purposes of criminal proceedings in the executing Member State – Articles 6, 47 and 48 of the Charter of Fundamental Rights of the European Union – Right of the accused person to appear in person at his trial)

In Case C-492/22 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 22 July 2022, received at the Court on 22 July 2022, in the proceedings relating to the execution of a European arrest warrant issued against

CJ

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, L. Bay Larsen, Vice-President of the Court, acting as Judge of the First Chamber, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Administrator,

having regard to the written procedure and further to the hearing on 21 September 2022,

after considering the observations submitted on behalf of:

- CJ, by A.M.V. Bandhoe, A.G.P. de Boon, J.S. Dobosz and P.M. Langereis, advocaten,
- the Openbaar Ministerie, by M. Diependaal, C. McGivern and K. van der Schaft,
- the Netherlands Government, by M.K. Bulterman, M.H.S. Gijzen and J.M. Hoogveld, acting as Agents,

* Language of the case: Dutch.

– the European Commission, by S. Noë and M. Wasmeier, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 27 October 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 6(2), Article 12 and Article 24(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 Articles 6, 47 and 48 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in the context of the execution, in the Netherlands, of a European arrest warrant issued on 31 August 2021 by the Sąd Okręgowy w Krakowie Wydział III karny (Regional Court, Krakow (Criminal Division III), Poland) for the purposes of executing a custodial sentence imposed on CJ.

Legal framework

European Union law

- 3 Recitals 8, 9 and 12 of Framework Decision 2002/584 state:

'(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

(9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [EU] and reflected in the [Charter], in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.'

4 Article 1(1) and (3) of that framework decision provides:

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

...

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(2) of that framework decision provides as follows:

‘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:

...

– organised or armed robbery.’

6 Article 5 of that same framework decision provides:

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

...

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

7 Article 6(2) of Framework Decision 2002/584 is worded as follows:

‘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.’

8 Article 7(1) of that framework decision provides:

‘Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.’

9 Article 12 of that framework decision is worded as follows:

‘When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in

conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.’

10 Article 23 of that same framework decision is worded as follows:

‘1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person’s life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.’

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.’

11 Article 24(1) of Framework Decision 2002/584 provides:

‘The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.’

12 Article 26(1) of that framework decision is worded as follows:

‘The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.’

Netherlands law

13 Framework Decision 2002/584 was transposed into Netherlands law by the Wet tot implementatie van het kaderbesluit van de Raad van de Europese Unie betreffende het Europees aanhoudingsbevel en de procedures van overlevering tussen de lidstaten van de Europese Unie (Overleveringswet) (Law implementing the Framework Decision of the Council of the European Union on the European arrest warrant and the surrender procedures between the Member States of the European Union (Law on Surrender)) of 29 April 2004 (Stb. 2004, No 195) (‘the Law on Surrender’).

14 Under Article 1 of the Law on Surrender:

‘For the purposes of this Law:

...

- e. public prosecutor: shall include: where specified, any public prosecutor and, in the absence thereof, the officier van justitie bij het arrondissementsparket Amsterdam [public prosecutor for the Amsterdam judicial district, Netherlands)];

...’

15 Article 27(2) of that law provides:

‘Before the hearing is concluded, the court shall rule of its own motion on whether the requested person is to be kept in detention, if he or she has been placed in detention or in police custody.’

16 Article 33 of that law provides:

‘The deprivation of liberty ordered under Article 27 shall cease – except in the case of continued deprivation of liberty on other grounds – as soon as:

- a. it is ordered by the court or public prosecutor, of its own motion or at the request of the requested person or his or her counsel;
- b. ten days have elapsed since the date of the decision, unless the court, ruling on the indictment of the public prosecutor, has in the meantime extended the detention.’

17 Article 34 of that law is worded as follows:

‘1. The deprivation of liberty referred to in Article 33(b) may be extended for a period not exceeding 10 days.

2. By way of derogation from paragraph 1, the deprivation of liberty may be extended for a period not exceeding 30 days where:

...

- b. the surrender is authorised but the actual surrender could not take place within the prescribed time limit.

...’

18 Article 35 of the Law on Surrender is worded as follows:

‘1. The actual surrender of the requested person shall take place as soon as possible after the decision authorising the surrender in full or in part, and no later than 10 days after that decision. The public prosecutor shall determine the place and time [of the actual surrender] after consulting the issuing judicial authority.

2. Where, owing to special circumstances, the actual surrender cannot take place within the time limit set out in paragraph 1, a new date shall be fixed by mutual agreement. In that case, the actual surrender shall take place within 10 days of the agreed date.

3. In exceptional circumstances, the actual surrender may be postponed for as long as it is precluded on serious humanitarian grounds, in particular for as long as the requested person's state of health does not allow him or her to travel. The issuing judicial authority shall be informed without delay. The public prosecutor shall determine the place and time at which the actual surrender may take place, after consulting the issuing judicial authority. In that case, the actual surrender shall take place within 10 days of the agreed date.

4. The requested person shall be released on expiry of the time limits referred to in paragraphs 1 to 3.'

19 Article 36 of that law provides:

'1. The decision on the date and place of the actual surrender may be reserved where and for as long as the requested person is the subject of a criminal prosecution in the Netherlands or a judgment in criminal proceedings delivered against him or her by a Netherlands court is still capable of being executed in whole or in part.

2. In the cases referred to in paragraph 1, the minister may, after consultation with the Public Prosecutor's Office, decide that the requested person may already be temporarily made available to the issuing judicial authority for the purposes of his or her trial or the execution of a custodial sentence imposed on him or her by a final judicial decision, and lay down the conditions for such temporary availability.

3. The conditions laid down by the minister include, in the case of:

a. an ongoing criminal prosecution as referred to in paragraph 1: in any event, that the right of the requested person to be present at the criminal proceedings in the Netherlands shall be respected and that he or she will serve in the Netherlands the sentence imposed on him or her in the Netherlands.

...'

The main proceedings and the questions referred for a preliminary ruling

20 On 31 August 2021, the Sąd Okręgowy w Krakowie Wydział III karny (Regional Court, Krakow (Criminal Division III), Poland) issued a European arrest warrant against CJ, a Polish national, for the purpose of executing in Poland a two-year custodial sentence imposed for 13 offences falling within the category of organised or armed robbery within the meaning of Article 2(2) of Framework Decision 2002/584. It is apparent from the information provided by the referring court, the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), that CJ must still serve almost the entirety of the sentence imposed for those offences.

- 21 In the context of the execution of that European arrest warrant, by decision of 2 June 2022 the referring court placed CJ in detention. By final decision of 16 June 2022, that court authorised the surrender of the person concerned for the offences set out in the aforementioned European arrest warrant.
- 22 At the same time as those proceedings, CJ was the subject of an ongoing criminal prosecution in the Netherlands for an act other than those on which the European arrest warrant was based. On 15 December 2021, the Kantonrechter in de rechtbank Den Haag (District Court (Cantonal Sector), The Hague, Netherlands) ordered CJ to pay a fine of EUR 360 or, in the alternative, to seven days' detention, for having driven a motor vehicle without holding a driving licence. However, that conviction is not final, as the person concerned has appealed against that judgment. The hearing before the appeal court was scheduled for November 2022 and an appeal on a point of law may still be brought against the judgment delivered on appeal. The referring court also states that CJ has not waived his right to appear in person at the hearings which will be held in those criminal proceedings.
- 23 Thus, on 17 June 2022, the officier van justitie bij het arrondissementsparket Amsterdam (public prosecutor for the Amsterdam judicial district, 'the Public Prosecutor for the Amsterdam District') requested that the referring court extend CJ's detention for a period of 30 days, as his surrender could not take place within 10 days on account of 'special circumstances'.
- 24 In that regard, the referring court notes, first, that under Article 36(1) of the Law on Surrender, read in conjunction with Article 35(1) of that law, the decision to postpone surrender is a matter for the public prosecutor. The referring court does not have jurisdiction to examine the lawfulness of such a decision.
- 25 Secondly, that court notes that, in the case before it, under Netherlands law, the only reason justifying an extension of detention is the postponement of surrender. Thus, the request for an extension of CJ's detention is necessarily due to the fact that the Public Prosecutor for the Amsterdam District had decided to postpone surrender on account of the ongoing criminal proceedings in the Netherlands.
- 26 The Rechtbank Amsterdam (District Court, Amsterdam) may, at the request of the Public Prosecutor for the Amsterdam District, decide to keep the requested person in custody, each time for a period not exceeding 30 days, as long as the Netherlands criminal proceedings are ongoing in the Netherlands, provided that the surrender procedure has been conducted in a sufficiently diligent manner, and that the duration of the detention is accordingly not excessive.
- 27 On 22 June 2022, the referring court granted the request of the Public Prosecutor for the Amsterdam District to keep CJ in detention, thus extending that detention for a period of 30 days.
- 28 On 6 July 2022, the Public Prosecutor for the Amsterdam District requested a second extension of the detention of the person concerned for a further period of 30 days on the ground that, 'on account of special circumstances, the actual surrender cannot take place within the 10-day period'. That prosecutor stated, in essence, that those 'special circumstances' consisted of the fact that CJ had not waived his right to appear at the hearing in the appeal proceedings.

- 29 The Public Prosecutor for the Amsterdam District further stated that he would order the postponement of the surrender and periodically request an extension of CJ's detention for as long as the criminal proceedings against him in the Netherlands were ongoing. On 6 July 2022, the referring court granted the request of the Public Prosecutor for the Amsterdam District and extended CJ's detention for a further period of 30 days.
- 30 In that context, the referring court queries, firstly, as to the possibility of keeping CJ in custody where surrender to the issuing Member State is postponed on the ground that the person concerned is the subject of criminal proceedings in the executing Member State.
- 31 The referring court notes in that regard that Articles 12 and 24 of Framework Decision 2002/584 do not preclude the continued detention of a person in CJ's situation until the conclusion of criminal proceedings concerning him or her in the Netherlands. Thus, read in conjunction with Articles 33 to 36 of the Law on Surrender, those provisions constitute a clear and accessible legal basis conferring on the national authorities the power to keep in detention a person who is the subject of a European arrest warrant when his or her surrender has been postponed.
- 32 Hence, according to the referring court, the only remaining question is whether that person's period of detention then becomes excessive, which would be contrary to the requirements of Article 6 of the Charter.
- 33 Secondly, the referring court notes that, under Article 24(1) of Framework Decision 2002/584, it is for the 'executing judicial authority' to adopt the decision to postpone the surrender so that the criminal prosecution may proceed in the executing Member State. As is apparent from paragraph 24 above, it is the Public Prosecutor for the Amsterdam District who is the competent authority in this case to decide whether a surrender is to be postponed.
- 34 The referring court notes first, in that regard, that the Court of Justice has held previously, in paragraph 67 of the judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953), that such a public prosecutor cannot be classified as an 'executing judicial authority' because of the influence that the executive might exert over that body. Secondly, as regards the application of Article 23(2) of Framework Decision 2002/584, that court states that, in the judgment of 28 April 2022, *C and CD (Legal Obstacles to the execution of a surrender decision)* (C-804/21 PPU, EU:C:2022:307), the Court held that the assessment of whether there is a situation of *force majeure* for the purposes of that provision and, as appropriate, the setting of a new surrender date, constitute decisions on the execution of the European arrest warrant, which accordingly are exclusively a matter for the executing judicial authority pursuant to Article 6(2) of that framework decision, read in the light of recital (8) thereof.
- 35 In those circumstances, the question arises whether the decision to order the postponement of surrender, provided for in Article 24(1) of Framework Decision 2002/584, constitutes a decision on the execution of the European arrest warrant which must be taken by the executing judicial authority pursuant to Article 6(2) of that framework decision.
- 36 The referring court further observes that, other than the situations provided for in Article 23(3) and (4) of Framework Decision 2002/584, Article 23(2) and (5) requires the surrender to take place within 10 days. As those time limits were not observed in the present case, that court queries whether CJ may be kept in detention, given that the decision to postpone the surrender is, in essence, the basis justifying that continued detention.

- 37 Should the Court find that the Public Prosecutor for the Amsterdam District cannot be categorised as an ‘executing judicial authority’ and therefore is not empowered to adopt a decision to postpone the surrender as provided for in Article 24(1) of Framework Decision 2002/584, the referring court asks what the ensuing implications would be for CJ’s situation.
- 38 Thirdly, the referring court notes, as an initial point, that CJ’s actual surrender could be postponed for several months given, first, the intention of the Public Prosecutor for the Amsterdam District to request postponement until the conclusion of the criminal proceedings pending in the Netherlands and, secondly, the fact that the appeal court’s decision could still be the subject of an appeal on a point of law.
- 39 Next, that court notes that CJ must serve a custodial sentence in the issuing Member State, whereas in the executing Member State he is being prosecuted only for a much less serious offence, which is liable to lead to a milder sentence. Nevertheless, in view, first, of the possible extension of his continued detention in the Netherlands and, second, of the obligation under Article 26(1) of Framework Decision 2002/584 to deduct from the sentence to be served in the issuing Member State any period of detention served in the executing Member State arising from the execution of the European arrest warrant, CJ would in reality serve a significant part of the custodial sentence imposed on him in Poland in the executing Member State, that is to say, in the Netherlands. Such a consequence would not help to bolster the prospects of social reintegration of the person concerned in the issuing Member State.
- 40 In those circumstances, the referring court queries whether it should perhaps undertake a weighing-up of the interests involved when it is called upon to rule on an application seeking to extend the detention of a person who is the subject of a European arrest warrant. In particular, that court raises the question whether it must strike a balance comparable to that required of the issuing judicial authority under Article 5(3) of Framework Decision 2002/584, in its decision as to when the person to be surrendered is returned to the executing Member State in order to serve his custodial sentence there. It notes that the Court, in its judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)* (C-314/18, EU:C:2020:191) interpreted that provision as meaning that it is not open to the issuing judicial authority to postpone systematically and automatically the return of the person concerned to the executing Member State until such time as the other procedural steps coming within the scope of the criminal proceedings relating to the offence underlying the European arrest warrant have been definitively closed.
- 41 According to the referring court, an application by analogy of that case-law to the case before it would mean that the executing authority may not postpone surrender solely on the ground that the requested person has not waived his right to appear in person before the courts seised in connection with the criminal proceedings brought against him in the executing Member State.

- 42 In those circumstances, the Rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Do Articles 12 and 24(1) of Framework Decision [2002/584], read in conjunction with Article 6 of the [Charter], preclude a requested person, whose surrender for the purpose of executing a custodial sentence was definitively authorised but has been postponed “so that he or she may be prosecuted in the executing Member State ... for an act other than that referred to in the European arrest warrant”, from being detained for the duration of that criminal prosecution in order to execute the European arrest warrant?
- (2) (a) Is the decision to exercise the power to postpone surrender provided for in Article 24(1) of Framework Decision [2002/584] a decision on the execution of the European arrest warrant which, pursuant to Article 6(2) of Framework Decision [2002/584], read in conjunction with recital 8 thereof, must be taken by the executing judicial authority?
(b) If so, does the fact that that decision was taken without the intervention of an executing judicial authority within the meaning of Article 6(2) of Framework Decision [2002/584] have the consequence that the requested person may no longer be detained for the purpose of executing the European arrest warrant issued against him?
- (3) (a) Does Article 24(1) of Framework Decision [2002/584], read in conjunction with Articles 47 and 48 of the [Charter], preclude the surrender of the requested person for the purpose of a criminal prosecution in the executing Member State for the sole reason that, upon request, the requested person does not wish to waive his right to be present at that criminal prosecution?
(b) If so, which factors should the executing judicial authority then take into account when deciding whether to postpone the actual surrender?’

The request for the application of the urgent preliminary ruling procedure

- 43 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.
- 44 In support of that request, that court states, first, that CJ has been placed in detention pending extradition since 2 June 2022. Secondly, the Court’s answers to the questions referred for a preliminary ruling will have a direct and decisive influence on the duration of the detention of the person concerned.
- 45 In that regard, it must be observed, firstly, that this reference for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which comes under Title V of Part Three of the FEU Treaty, which relates to the area of freedom, security and justice. Consequently, this reference is capable of being dealt with under the urgent preliminary ruling procedure.
- 46 Secondly, as regards the condition relating to urgency, it should be emphasised that that condition is satisfied, in particular, where the person concerned in the main proceedings is currently deprived of his or her liberty and when his or her continued detention turns on the outcome of the dispute in the main proceedings, and that the situation of the person concerned must be

assessed as it stood at the time when consideration was given to whether the reference for a preliminary ruling should be dealt with under the urgent procedure (see, to that effect, judgment of 30 June 2022, *Valstybės sienos apsaugos tarnyba and Others*, C-72/22 PPU, EU:C:2022:505, paragraph 37).

- 47 In the present case, it is apparent from the description of the facts provided by the referring court that CJ, the person concerned in the main proceedings, is in fact deprived of his liberty on the date of consideration of the request seeking to have the reference for a preliminary ruling dealt with under the urgent procedure.
- 48 In addition, the questions put by the referring court are aimed at ascertaining the circumstances in which a person in CJ's situation, whose surrender to the authorities of the issuing Member State pursuant to a European arrest warrant has been postponed for the purposes of criminal proceedings brought against him or her in the executing Member State, may continue to be held in custody.
- 49 In those circumstances, on 3 August 2022, the First Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

The second question

- 50 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 24(1) of Framework Decision 2002/584 must be interpreted as meaning that the decision to postpone the surrender referred to in that provision constitutes a decision on the execution of a European arrest warrant which, under Article 6(2) of that framework decision, must be taken by the executing judicial authority. If so, the referring court asks whether, where such a decision has been adopted by an entity other than the executing judicial authority, the person who is the subject of the European arrest warrant may still be kept in detention for the purpose of executing that warrant.
- 51 As regards the first part of that question, it should be noted, firstly, that the wording of Article 24(1) of Framework Decision 2002/584 clearly indicates that it is for the executing judicial authority to postpone the surrender of the requested person. Where the meaning of a provision of EU law is absolutely plain from its very wording, the Court cannot depart from that interpretation (judgment of 25 January 2022, *VYSOČINA WIND*, C-181/20, EU:C:2022:51, paragraph 39).
- 52 It is apparent from Article 7 of Framework Decision 2002/584, read in the light of recital 9 thereof, that the intervention of an authority other than the executing judicial authority, such as the 'central authority' referred to in that article, must remain limited to practical and administrative assistance for the competent judicial authorities (see, to that effect, judgment of 28 April 2022, *C and CD (Legal Obstacles to the execution of a surrender decision)*, C-804/21 PPU, EU:C:2022:307, paragraph 65).

- 53 However, the exercise of the option provided for in Article 24(1) of Framework Decision 2002/584 goes beyond the mere ‘practical and administrative assistance’ which may be entrusted to central authorities. The decision to postpone surrender, entailing as it does suspension of execution of the European arrest warrant for a period at least equivalent to that of the postponement, goes to the very essence of the mechanisms for cooperation between the judicial authorities of the Member States established by Framework Decision 2002/584.
- 54 Consequently, since a decision to postpone surrender constitutes a decision on the execution of the European arrest warrant, it falls within the exclusive competence of the executing judicial authority pursuant to Article 6(2) of Framework Decision 2002/584.
- 55 As regards the possibility in the present case of categorising the Public Prosecutor for the Amsterdam District as an ‘executing judicial authority’ for the purposes of Article 6(2) of Framework Decision 2002/584, it must be remembered that the Court, in paragraph 67 of the judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953), has held previously that it does not fall within that concept, since that authority may be subject to individual instructions from the Netherlands Minister for Justice. It thus seems that the decision to postpone the surrender at issue in the main proceedings, taken as it was by the Public Prosecutor for the Amsterdam District, was not adopted by such an ‘executing judicial authority’, which it is for the referring court to determine.
- 56 As regards, secondly, the implications of a potential finding of unlawfulness of such a decision to postpone the surrender for the continued detention of the requested person, which are the subject of the second part of the second question, Article 24(1) of Framework Decision 2002/584 does not offer any clarification in that regard.
- 57 It should be noted that, where there is no intervention by an ‘executing judicial authority’ within the meaning of Article 6(2) of Framework Decision 2002/584 in the adoption of a decision to postpone the surrender of the requested person, that decision does not satisfy the formal requirements laid down in Article 24(1) of that framework decision (see, by analogy, judgment of 28 April 2022, *C and CD (Legal Obstacles to the execution of a surrender decision)*, C-804/21 PPU, EU:C:2022:307, paragraphs 67 to 69).
- 58 Accordingly, as the decision to execute the European arrest warrant was adopted in accordance with Article 15 of Framework Decision 2002/584, which provides, *inter alia*, for the intervention of the executing judicial authority, it must be held that such a situation falls within Article 23 of that framework decision, which lays down the time limits for surrender.
- 59 In that regard, Article 23(1) of Framework Decision 2002/584 provides that, where the final decision on the execution of the European arrest warrant has been taken, the executing judicial authority must, as soon as possible, surrender the requested or convicted person on a date agreed between the authorities concerned. Although Article 23(2) provides that the person concerned is to be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant, Article 23(3) and (4) lays down the time limits for surrender in cases where the surrender is not practicable on grounds of *force majeure* or for serious humanitarian reasons. Upon expiry of the time limits referred to in Article 23(2) to (4), Article 23(5) of that framework decision requires that, if the requested person is still being held in custody, he or she is to be released.

- 60 In those circumstances, where the decision to postpone the surrender has not been taken by an ‘executing judicial authority’ within the meaning of Article 6(2) of Framework Decision 2002/584, it must be held that, once the final decision on the execution of the European arrest warrant has been validly adopted, Article 23(5) of that framework decision requires the competent authority of the executing Member State to release the requested person, without prejudice to the application of the measures that that authority deems necessary under Article 12 of that framework decision to prevent that person absconding.
- 61 In the present case, as alluded to by the Advocate General in points 40 and 41 of her Opinion, it cannot be ruled out that the referring court may interpret the provisions of the Law on Surrender in a manner consistent with the requirements of Article 24(1) of Framework Decision 2002/584 and substitute its own postponement decision for that adopted by the Public Prosecutor for the Amsterdam District which it has previously found to be unlawful, if necessary by providing for CJ to remain in detention.
- 62 In that regard, it must be borne in mind that it is apparent from the case-law of the Court that, although Framework Decision 2002/584 does not have direct effect, as it was adopted on the basis of the former third pillar of the European Union, in particular, under Article 34(2)(b) EU (see, to that effect, judgment of 24 June 2019, *Popławski*, C 573/17, EU:C:2019:530, paragraph 69), its binding character nevertheless places on national authorities, and in particular national courts, an obligation to interpret national law in conformity with EU law (see, to that effect, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 58 and the case-law cited).
- 63 When national courts apply domestic law they are therefore bound to interpret it, so far as possible, in the light of the wording and the purpose of that decision concerned in order to achieve the result sought by it. This obligation to interpret national law in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they rule on the disputes before them (judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 59 and the case-law cited).
- 64 If it is not possible to give an interpretation of the Law on Surrender that is in accordance with the requirements laid down in Framework Decision 2002/584, it follows from Article 23(5) of that framework decision that the referring court will be required to order the release of a person in CJ’s situation, should it find that the time limits laid down in Article 23(2) to (4) have been exceeded.
- 65 In the light of all those considerations, the answer to the second question is that Article 24(1) of Framework Decision 2002/584 must be interpreted as meaning that the decision to postpone the surrender referred to in that provision constitutes a decision on the execution of a European arrest warrant which, under Article 6(2) of that framework decision, must be taken by the executing judicial authority. Where such a decision has not been taken by that authority and the time limits referred to in Article 23(2) to (4) of that framework decision have expired, the person who is the subject of the European arrest warrant must be released, in accordance with Article 23(5) of that same framework decision.

The first question

- 66 By its first question, which it is appropriate to examine next, the referring court asks, in essence, whether Article 12 and Article 24(1) of Framework Decision 2002/584, read in conjunction with Article 6 of the Charter, must be interpreted as precluding a person who is the subject of a European arrest warrant, whose surrender to the authorities of the issuing Member State was postponed for the purposes of a criminal prosecution instituted against him or her in the executing Member State, from being kept in detention there on the basis of the European arrest warrant whilst the criminal prosecution in question is being conducted.
- 67 According to settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 18 November 2020, *Kaplan International colleges UK*, C-77/19, EU:C:2020:934, paragraph 39 and the case-law cited).
- 68 Firstly, it should be noted that, under Article 12 of Framework Decision 2002/584, where a person is arrested on the basis of a European arrest warrant, the executing judicial authority is to decide whether it is appropriate to keep that person in detention in accordance with the domestic law of the executing Member State. The person may be released provisionally at any time, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the requested person absconding.
- 69 Under Article 24(1) of that framework decision, the executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.
- 70 It is not apparent from the wording of those provisions that they preclude the continued detention of a person who is the subject of a European arrest warrant in accordance with the national law of the executing Member State, where he or she is prosecuted in that Member State for an offence committed in that Member State other than that covered by that warrant.
- 71 Secondly, as regards the context of which those provisions form part, it is indeed apparent from Article 23 of Framework Decision 2002/584 that, upon expiry of the time limits referred to in paragraphs 2 and 4 of that article, the requested person must, in accordance with paragraph 5 thereof, be released, that is to say, no later than 10 days after the final decision on the execution of the European arrest warrant or the new date agreed, as the case may be.
- 72 However, as observed by the Advocate General in point 66 of her Opinion, the postponed surrender on the grounds set out in Article 24(1) of Framework Decision 2002/584 constitutes a special rule distinct from the arrangements for executing the surrender provided for in Article 23 thereof.
- 73 Consequently, the time limits stipulated in Article 23(5) of Framework Decision 2002/584 do not apply in the case of a postponed surrender as referred to in Article 24 thereof and it is therefore on the basis of Article 12 of that framework decision that the executing judicial authority may decide to continue to hold the person who is the subject of a European arrest warrant in detention.

- 74 Thirdly, the interpretation of Articles 12 and 24 of Framework Decision 2002/584 adopted in paragraph 70 above contributes to the attainment of the objectives of that framework decision which seek, inter alia, to combat impunity (see, to the effect, 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 62).
- 75 There can be no question that if it were not possible to keep such a person in detention for the period up to the date on which his or her surrender was postponed pursuant to Article 24(1) of Framework Decision 2002/584, there would be an escalation in the risk that that person might abscond and the proper execution of the European arrest warrant to which he is subject would thus be undermined.
- 76 Fourthly, nor is such an interpretation of Articles 12 and 24 of Framework Decision 2002/584 called into question by the need to interpret those provisions in a manner consistent with Article 6 of the Charter, which provides that everyone has the right to liberty and security.
- 77 In that regard, Article 1(3) of Framework Decision 2002/584 states expressly that the decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 EU and reflected in the Charter, an obligation which, moreover, concerns all the Member States, in particular both the issuing and the executing Member States (judgment of 12 February 2019, *TC*, C-492/18 PPU, EU:C:2019:108, paragraph 54 and the case-law cited).
- 78 It should also be borne in mind that Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights such as those enshrined in Article 6 thereof, as long as those limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (judgment of 12 February 2019, *TC*, C-492/18 PPU, EU:C:2019:108, paragraph 56 and the case-law cited).
- 79 Furthermore, it follows from Article 52(3) of the Charter that, in so far as the Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), the meaning and scope of those rights are to be the same as those conferred by that convention. Article 53 of the Charter further states that nothing in the Charter is to be interpreted as restricting or adversely affecting the rights recognised inter alia by the ECHR (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474 paragraph 56 and the case-law cited).
- 80 It should be remembered, in that regard, that the European arrest warrant mechanism established by Framework Decision 2002/584 corresponds to the situation referred to in Article 5(1)(f) ECHR (judgment of 30 June 2022, *Spetsializirana prokuratura (Information on the national arrest decision)*, C-105/21, EU:C:2022:511, paragraph 56 and the case-law cited).
- 81 As regards Article 12 of that framework decision, it is clear from that provision that it is for the executing judicial authority to take a decision on whether the requested or convicted person should be kept in detention in accordance with the law of the executing Member State, and that that person may be released provisionally at any time in conformity with that law, provided that the competent authority takes all the measures it deems necessary to prevent the person absconding.

- 82 In addition, where the executing judicial authority decides to postpone the surrender pursuant to Article 24(1) of that framework decision, Article 6 of the Charter allows that authority to decide to keep the requested or sentenced person in detention only in so far as the surrender procedure has been conducted in a sufficiently diligent manner and the duration of detention is accordingly not excessive. In order to ensure that that is indeed the case, that authority will have to carry out a specific review of the situation at issue, taking into account all relevant factors (see, to that effect, judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 43).
- 83 In the light of those considerations, the answer to the first question is that Article 12 and Article 24(1) of Framework Decision 2002/584, read in conjunction with Article 6 of the Charter, must be interpreted as not precluding a person who is the subject of a European arrest warrant, whose surrender to the authorities of the issuing Member State has been postponed for the purposes of a criminal prosecution instituted against him in the executing Member State, from being kept in detention on the basis of the European arrest warrant whilst the criminal prosecution is being conducted.

The third question

- 84 By its third question, the referring court asks, in essence, whether Article 24(1) of Framework Decision 2002/584, read in conjunction with Article 47 and Article 48(2) of the Charter, must be interpreted as precluding the postponement of the surrender of a person who is the subject of a European arrest warrant for the purposes of a criminal prosecution instituted against that person in the executing Member State solely on the ground that that person has not waived their right to appear in person before the courts seised in connection with that prosecution. If so, the referring court asks what factors the executing judicial authority must take into account when deciding on the postponement of surrender.
- 85 Article 24(1) of Framework Decision 2002/584 provides that the executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.
- 86 It is clear from the wording of that provision that it grants the executing judicial authority a discretion in the adoption of a decision to postpone surrender, the exercise of which is subject only to the condition that that decision be adopted for the purpose of conducting a criminal prosecution in the executing Member State or the serving of a sentence passed for an act other than that referred to in the European arrest warrant.
- 87 In that regard, it should be noted that, although, according to the wording of that provision, the exercise of the option provided for therein is not subject to any additional conditions, Framework Decision 2002/584 must, as is apparent from Article 1(3) thereof, read in the light of recital 12 thereof, be interpreted in a manner consistent with the requirements of respect of fundamental rights.
- 88 The right of an accused person to appear in person at the trial in criminal proceedings, which constitutes an essential element of the right to a fair trial enshrined in the second and third paragraphs of Article 47 and Article 48(2) of the Charter, requires the Member States to

guarantee the accused the right to be present at the hearing during his trial (see, to that effect, judgment of 15 September 2022, *HN (Trial of an accused person removed from the territory)*, C-420/20, EU:C:2022:679, paragraphs 54 to 56).

- 89 Thus, if the executing judicial authority of a Member State were to decide not to postpone the surrender of a requested person who is the subject of a criminal prosecution in that Member State, that Member State would be obliged to accept all the consequences arising from respect of that right in the organisation of that person's trial, with a view to ensuring that that person has a genuine opportunity to attend (see, to that effect, judgment of 15 September 2022, *HN (Trial of an accused person removed from the territory)*, C-420/20, EU:C:2022:679, paragraph 61).
- 90 On the other hand, where the effect of the executing judicial authority's adoption of a decision to postpone surrender is not that the requested person's trial in the executing Member State will take place in his absence, that is not by itself liable to undermine that person's right to appear at his trial.
- 91 In those circumstances, it must be held that, although the executing judicial authority is in no way required to decide to postpone surrender on the basis of the right of the accused to appear in person at the trial, there is nothing preventing it, given the discretion it has in that regard, from postponing the surrender in order to ensure respect of that right in the context of the ongoing criminal proceedings in the executing Member State.
- 92 In that context, the considerations which may be relevant for the purposes of deciding to postpone the surrender of the requested person include, in particular, the interest of the executing Member State in completing the criminal proceedings relating to that person, the interest of the issuing Member State in obtaining that person's surrender without delay for the purposes of conducting a criminal prosecution or the execution of a sentence relating to the offence which is the subject of the European arrest warrant and the seriousness of the offences committed in those Member States.
- 93 Lastly, it must be remembered that, under Article 24(2) of Framework Decision 2002/584, the executing judicial authority may, instead of postponing surrender, temporarily surrender the requested person to the issuing Member State, under conditions to be determined by mutual agreement between the executing and issuing judicial authorities. In that regard, it could be agreed, *inter alia*, that the requested person would be returned to the executing Member State for the purposes of prosecution in that State.
- 94 In the light of all those grounds, the answer to the third question is that Article 24(1) of Framework Decision 2002/584, read in conjunction with the second and third paragraphs of Article 47 and Article 48(2) of the Charter, must be interpreted as not precluding the postponement of the surrender of a person who is the subject of a European arrest warrant, for the purposes of a criminal prosecution instituted against that person in the executing Member State, solely on the ground that that person has not waived their right to appear in person before the courts seised in connection with that prosecution.

Costs

- 95 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 (First Chamber) hereby rules:

1. **Article 24(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 decision to postpone a surrender referred to in that provision constitutes a decision on the execution of the European arrest warrant which, pursuant to Article 6(2) of that framework decision, must be taken by the executing judicial authority. Where such a decision has not been taken by that authority and the time limits referred to in Article 23(2) to (4) of that framework decision have expired, the person who is the subject of a European arrest warrant must be released, in accordance with Article 23(5) of that same framework decision.

2. **Article 12 and Article 24(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union,**

must be interpreted as:

not precluding a person who is the subject of a European arrest warrant, whose surrender to the authorities of the issuing Member State has been postponed for the purposes of a criminal prosecution instituted against him or her in the executing Member State, from being kept in detention on the basis of the European arrest warrant whilst the criminal prosecution is being conducted.

3. **Article 24(1) of Framework 2002/584, as amended by Framework Decision 2009/299, read in conjunction with the second and third paragraphs of Article 47 and Article 48(2) of the Charter of Fundamental Rights**

must be interpreted as:

not precluding the postponement of the surrender of a person who is the subject of a European arrest warrant, for the purposes of a criminal prosecution instituted against that person in the executing Member State, solely on the ground that that person has not waived their right to appear in person before the courts seised in connection with that prosecution.

[Signatures]