



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

30 May 2013*

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — Articles 27(4) and 28(3)(c) — European arrest warrant and surrender procedures between Member States — Speciality rule — Application for extension of the European arrest warrant on which the surrender was based or for onward surrender to another Member State — Decision of the judicial authority of the executing Member State to give consent — Appeal with suspensive effect — Whether permitted)

In Case C-168/13 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil constitutionnel (France), made by decision of 4 April 2013, received at the Court on 9 April 2013, in the proceedings

Jeremy F

v

Premier ministre,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, G. Arestis, J.-C. Bonichot, A. Arabadjiev and J.L. da Cruz Vilaça, Judges,

Advocate General: N. Wahl,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 7 May 2013,

after considering the observations submitted on behalf of:

- Mr F, by C. Waquet, avocate,
- the French Government, by E. Belliard, B. Beaupère-Manokha and G. de Bergues, acting as Agents,
- the Czech Government, by M. Smolek, acting as Agent,
- the German Government, by J. Kemper and T. Henze, acting as Agents,
- Ireland, by E. Regan, acting as Agent,

* Language of the case: French.

— the Netherlands Government, by C. Schillemans, acting as Agent,
— the European Commission, by W. Bogensberger and R. Troosters, acting as Agents,
after hearing the Advocate General,
gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 27(4) and 28(3)(c) 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) ('the Framework Decision').
- 2 The reference has been made in proceedings on a priority question of constitutionality raised by the Cour de cassation (Court of Cassation, France) in connection with an appeal brought by Mr F against the judgment of 15 January 2013 of the Chambre de l'instruction (Indictment Division) of the Cour d'appel de Bordeaux (Court of Appeal, Bordeaux, France) consenting to an application for extension of surrender, made by the judicial authorities of the United Kingdom, for an offence committed before his surrender other than that which was the basis of the original European arrest warrant issued against him by the Crown Court at Maidstone (United Kingdom).

Legal context

International law

- 3 Under the heading 'Right to liberty and security', Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the Convention'), provides:
 - '1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

...'

4 Article 13 of the Convention, headed ‘Right to an effective remedy’, states:

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

European Union law

5 According to the Information concerning the declarations by the French Republic and the Republic of Hungary on their acceptance of the jurisdiction of the Court of Justice to give preliminary rulings on the acts referred to in Article 35 of the Treaty on European Union, published in the *Official Journal of the European Union* of 14 December 2005 (OJ 2005 L 327, p. 19), the French Republic made a declaration under Article 35(2) EU accepting the jurisdiction of the Court of Justice to give rulings in accordance with the arrangements laid down in Article 35(3)(b) EU.

6 In accordance with Article 9 of the Protocol (No 36) on transitional provisions, annexed to the FEU Treaty, the legal effects of the acts of the institutions, bodies, offices and agencies of the European Union adopted on the basis of the EU Treaty prior to the entry into force of the Treaty of Lisbon are to be preserved until those acts are repealed, annulled or amended in implementation of the Treaties. In accordance with Article 10(1) of that protocol, the powers of the Court of Justice under Title VI of the EU Treaty, in the version in force before the entry into force of the Treaty of Lisbon, are to remain the same with respect to acts of the European Union which were adopted before the entry into force of the Treaty of Lisbon, including where they have been accepted under Article 35(2) EU.

7 Recitals 5, 7, 8, 10 and 12 in the preamble to the Framework Decision read as follows:

‘(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

...

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(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.

...

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

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union [“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.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.’

8 Article 1 of the Framework Decision provides:

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

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

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

9 Articles 3, 4, 4a, 5, 8 and 9 of the Framework Decision provide for the grounds for mandatory and optional non-execution of a European arrest warrant, the guarantees to be given by the issuing Member State where the person did not appear at trial in person and in other particular cases, and the content, form and transmission of a European arrest warrant. Article 6 of the Framework Decision determines the competent judicial authorities for the issue and execution of a European arrest warrant.

10 Article 13 of the Framework Decision, headed ‘Consent to surrender’, provides in paragraphs 1 and 4:

‘1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the “speciality rule”, referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

...

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken

into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.'

11 Article 15 of the Framework Decision, 'Surrender decision', reads as follows:

'1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.'

12 Article 17 of the Framework Decision, 'Time limits and procedures for the decision to execute the European arrest warrant', provides:

'1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.'

13 Article 20 of the Framework Decision, 'Privileges and immunities', provides in paragraph 1:

'Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.’

14 Article 21 of the Framework Decision, ‘Competing international obligations’, provides:

‘This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.’

15 Under the heading ‘Possible prosecution for other offences’, Article 27 of the Framework Decision reads as follows:

‘1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

...

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.’

16 Under Article 28 of the Framework Decision, ‘Surrender or subsequent extradition’:

‘1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest

warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

...

(c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

(a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);

(b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;

(c) the decision shall be taken no later than 30 days after receipt of the request;

(d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

...'

¹⁷ Article 31 of the Framework Decision, 'Relation to other legal instruments', provides, in the second and third subparagraphs of paragraph 2:

'Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.'

French law

- 18 Article 695-46 of the Code of Criminal Procedure (Code de procédure pénale), as amended by Law No 2009-526 of 12 May 2009 simplifying and clarifying the law and alleviating procedures (Loi n° 2009-256, du 12 mai 2009, de simplification et de clarification du droit et d'allègement des procédures, JORF, 13 May 2009, p. 7920), aims to transpose Articles 27 and 28 of the Framework Decision into French law. Article 695-46 reads as follows:

'The indictment division before which the requested person has appeared shall hear any request from the competent authorities of the issuing Member State with a view to consenting to a prosecution or the execution of a sentence or detention order in respect of offences other than those which were the grounds for surrender which were committed before the surrender.

The indictment division is also competent to rule, after the surrender of the requested person, on any request from the competent authorities of the issuing Member State with a view to consenting to the surrender of the requested person to another Member State for the purpose of conducting a prosecution or executing a custodial sentence or detention order for any offence prior to the surrender different from the offence which was the ground for surrender.

In either case a record of the statements made by the requested person shall also be forwarded by the competent authorities of the issuing Member State and produced to the indictment division. Those statements may, if appropriate, be supplemented by the observations of a lawyer of his choice or, in default thereof, assigned by the chairman of the bar.

The indictment division shall give its ruling, not subject to appeal, after satisfying itself that the request also contains the information prescribed in Article 695-13 and, if appropriate, after obtaining guarantees with respect to the provisions of Article 695-32, within a period of 30 days from receipt of the request.

Consent shall be given where the acts in respect of which it is sought constitute one of the offences listed in Article 695-23 and fall within the scope of Article 695-12.

Consent shall be refused on one of the grounds referred to in Articles 695-22 and 695-23 and may be refused on one of the grounds mentioned in Article 695-24.'

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

- 19 On 25 September 2012 the Crown Court at Maidstone issued a European arrest warrant against the applicant in the main proceedings, a United Kingdom national, in connection with criminal proceedings brought against him for acts committed in the United Kingdom which could be classified in English law as child abduction, an offence for which the maximum sentence is seven years' imprisonment.
- 20 On being stopped and questioned in France on 28 September 2012, the applicant in the main proceedings expressly stated on that date before the principal public prosecutor at the Cour d'appel de Bordeaux that he agreed to be surrendered to the judicial authorities of the United Kingdom, without, however, waiving the speciality rule. That statement was repeated by the applicant, assisted by an interpreter, in the presence of his lawyer, at the hearing which took place before the indictment division of the Cour d'appel de Bordeaux.

- 21 By judgment of 4 October 2012, the indictment division of the Cour d'appel de Bordeaux ordered the surrender of the applicant in the main proceedings to the judicial authorities of the United Kingdom for the purpose of the above-mentioned criminal proceedings. He was surrendered on 10 October 2012 and has been in custody in the United Kingdom since then.
- 22 On 22 October 2012 the principal public prosecutor at the Cour d'appel de Bordeaux received a request from the judicial authorities of the United Kingdom for the consent of the indictment division of that court to the prosecution of the applicant in the main proceedings for acts committed in the United Kingdom before his surrender which might constitute an offence other than that for which he had been surrendered.
- 23 According to the United Kingdom judicial authorities, on the return of the girl who was the subject of the alleged abduction, she had stated that she had had sexual relations with the applicant in the main proceedings in the period from 1 July to 20 September 2012. As such acts could be classified in English law as the offence of sexual activity with a child under 16, for which the maximum sentence is 14 years' imprisonment, the judicial authorities therefore decided to prosecute him for that offence.
- 24 The request from the United Kingdom judicial authorities was on 16 November 2012 embodied in a European arrest warrant referring to the offences which were the subject of the new prosecution.
- 25 Following the hearing of 18 December 2012, the indictment division of the Cour d'appel de Bordeaux decided, by judgment of 15 January 2013, to give consent to the request to extend the surrender with a view to new criminal proceedings being brought against the applicant in the main proceedings for the acts of sexual activity with a child under 16 during the above-mentioned period.
- 26 The applicant in the main proceedings appealed to the Cour de cassation against the judgment of 15 January 2013, and the Cour de cassation referred to the Conseil constitutionnel (Constitutional Council) a priority question of constitutionality relating to Article 695-46 of the Code of Criminal Procedure, concerning in particular the principle of equality before the law and the right to an effective judicial remedy.
- 27 In those circumstances, the Conseil constitutionnel decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Articles 27 and 28 of [the Framework Decision] be interpreted as precluding Member States from providing for an appeal suspending execution of the decision of the judicial authority which rules, within a period of 30 days from receipt of the request, in order either to consent to the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order of a person for an offence committed prior to his surrender pursuant to a European arrest warrant, other than that for which he was surrendered, or to consent to the surrender of a person to a Member State other than the executing Member State, pursuant to a European arrest warrant issued for an offence committed prior to his surrender?'

The request for a preliminary ruling

The urgent procedure

- 28 By a separate application of 4 April 2013, lodged at the Registry of the Court on that date, the Conseil constitutionnel applied for this request for a preliminary ruling to be dealt with under the urgent procedure pursuant to Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Court's Rules of Procedure.

- 29 The referring court stated, as reasons for that application, that both the three-month period within which it is required to rule on the priority question of constitutionality referred to it and the deprivation of liberty to which the applicant in the main proceedings is subject in the proceedings in which that question has been raised justify applying the urgent preliminary ruling procedure.
- 30 In this respect, it must be observed, first, that this request for a preliminary ruling concerns the interpretation of the Framework Decision, which is within the field covered by Part Three, Title V, of the FEU Treaty, relating to the area of freedom, security and justice. It is therefore amenable to being dealt with under the urgent preliminary ruling procedure.
- 31 It must be observed, secondly, that, as the referring court points out, the applicant in the main proceedings is currently deprived of liberty, and the resolution of the main proceedings may have considerable influence on the length of that deprivation.
- 32 In the light of the foregoing, the Second Chamber of the Court decided on 10 April 2013, on the proposal of the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court's application for the request for a preliminary ruling to be dealt with under the urgent procedure.

The question referred for a preliminary ruling

- 33 By its question the referring court essentially asks whether Articles 27(4) and 28(3)(c) of the Framework Decision must be interpreted as precluding Member States from providing for an appeal suspending execution of the decision of the judicial authority which rules, within a period of 30 days from receipt of the request, in order to give consent either to the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order of a person for an offence committed prior to his surrender pursuant to a European arrest warrant, other than that for which he was surrendered, or to the surrender of a person to a Member State other than the executing Member State, pursuant to a European arrest warrant issued for an offence committed prior to his surrender.
- 34 It should be recalled, as a preliminary point, that the purpose of the Framework Decision, as is apparent in particular from Article 1(1) and (2) and recitals 5 and 7 in the preamble, is to replace the multilateral system of extradition between Member States with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, that system of surrender being based on the principle of mutual recognition (see Case C-396/11 *Radu* [2013] ECR, paragraph 33, and Case C-399/11 *Melloni* [2013] ECR, paragraph 36).
- 35 The Framework Decision thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States (*Radu*, paragraph 34, and *Melloni*, paragraph 37).
- 36 The principle of mutual recognition, which is the 'cornerstone' of judicial cooperation, means that, pursuant to Article 1(2) of the Framework Decision, Member States are in principle obliged to give effect to a European arrest warrant. They are either obliged to execute, or may not refuse to execute, such a warrant, and they may make its execution subject to conditions only in the cases listed in Articles 3 to 5 of the Framework Decision. Equally, in accordance with Article 28(3) of the Framework Decision, consent to an onward surrender may be refused only in those cases (see Case C-192/12 *PPU West* [2012] ECR, paragraph 55 and the case-law cited), and only those cases can justify a refusal of

consent to the extension of a European arrest warrant to an offence committed before the surrender of the requested person other than that for which he was surrendered, in accordance with Article 27(4) of the Framework Decision.

Possibility of bringing an appeal with suspensive effect

- 37 As regards the possibility of bringing an appeal with suspensive effect against a decision to execute a European arrest warrant or a decision giving consent to an extension of the warrant or to an onward surrender, it is clear that the Framework Decision makes no express provision for such a possibility.
- 38 However, that absence of express provision does not mean that the Framework Decision prevents the Member States from providing for such an appeal or requires them to do so.
- 39 In the first place, the Framework Decision itself ensures that decisions relating to European arrest warrants are attended by all the guarantees appropriate for decisions of such a kind.
- 40 Thus, to begin with, Article 1(3) of the Framework Decision expressly states 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, an obligation which moreover concerns all the Member States, in particular both the issuing and the executing Member States.
- 41 Next, while corresponding to the objective, referred to in paragraph 35 above, of facilitating and accelerating judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice, the Framework Decision itself, as stated in the first paragraph of recital 12 in its preamble, also respects fundamental rights and observes the principles recognised by Article 6 EU and reflected in the Charter, in particular Chapter VI, as regards the person for whom a European arrest warrant has been issued.
- 42 On this point, it must be noted that, as in extradition procedures, in the surrender procedure established by the Framework Decision the right to an effective remedy, set out in Article 13 of the Convention and Article 47 of the Charter, which is at issue in the main proceedings, is of special importance.
- 43 Thus the European Court of Human Rights has found, in relation to cases of detention with a view to extradition, that Article 5(4) of the Convention provides a *lex specialis* in relation to the more general requirements of Article 13 of the Convention (see, inter alia, ECtHR, *Chahal v. the United Kingdom*, 15 November 1996, § 126, *Reports of Judgments and Decisions* 1996-V). It has held that, when the decision depriving a person of his liberty is made by a court at the close of judicial proceedings, the supervision required by Article 5(4) of the Convention is incorporated in the decision (see ECtHR, *Khodzhamberdiyev v. Russia*, no. 64809/10, § 103 and the case-law cited, 5 June 2012), and that that provision does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release (see ECtHR, *Marturana v. Italy*, no. 63154/00, § 110 and the case-law cited, 4 March 2008).
- 44 Similarly, the Court has previously had occasion to find, in connection with the interpretation of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2006 L 326, p. 13), that the principle of effective judicial protection affords an individual a right of access to a court but not to a number of levels of jurisdiction (Case C-69/10 *Samba Diouf* [2011] ECR I-7151, paragraph 69).
- 45 It must be observed that, as stated in recital 8 in the preamble to the Framework Decision, 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 has to

take a decision on his surrender. Moreover, Article 6 of the Framework Decision provides that not only that decision but also the decision on issuing the warrant must be taken by a judicial authority. Action by a judicial authority is likewise required with respect to the consent provided for in Articles 27(4) and 28(3)(c) of the Framework Decision, and at other stages of the surrender procedure, such as hearing the requested person, deciding to keep him in detention, or deciding on his temporary transfer.

- 46 The entire surrender procedure between Member States provided for by the Framework Decision is therefore, in accordance with that decision, carried out under judicial supervision.
- 47 It follows that the provisions of the Framework Decision themselves already provide for a procedure that complies with the requirements of Article 47 of the Charter, regardless of the methods of implementing the Framework Decision chosen by the Member States.
- 48 Finally, it should be observed that even in criminal proceedings for the enforcement of a custodial sentence or detention order, or indeed in substantive criminal proceedings, which lie outside the scope of the Framework Decision and of European Union law, the Member States are still obliged to respect fundamental rights as enshrined in the Convention or laid down by their national law, which may include the right to a second level of jurisdiction for persons found guilty of a criminal offence by a court.
- 49 That obligation reinforces the high level of confidence between Member States and the principle of mutual recognition on which the mechanism of the European arrest warrant is based, and justifies the wording of recital 10 in the preamble to the Framework Decision, according to which the implementation of the European arrest warrant may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) EU, determined by the Council pursuant to Article 7(1) EU with the consequences set out in Article 7(2) EU.
- 50 The principle of mutual recognition on which the European arrest warrant system is based is itself founded on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at European Union level, particularly in the Charter, so that it is therefore within the legal system of the issuing Member State that persons who are the subject of a European arrest warrant can avail themselves of any remedies which allow the lawfulness of the criminal proceedings for the enforcement of the custodial sentence or detention order, or indeed the substantive criminal proceedings which led to that sentence or order, to be contested (see, by analogy, Case C-491/10 PPU *Aguirre Zarraga* [2010] ECR I-14247, paragraphs 70 and 71).
- 51 In the second place, however, independently of the guarantees expressly provided for by the Framework Decision, the fact that that decision does not provide for a right of appeal with suspensive effect against decisions relating to European arrest warrants does not prevent the Member States from providing for such a right.
- 52 In the absence of further detail in the actual provisions of the Framework Decision, and having regard to Article 34 EU, which leaves to the national authorities the choice of form and methods needed to achieve the desired results of framework decisions, it must be concluded that the Framework Decision leaves the national authorities a discretion as to the specific manner of implementation of the objectives it pursues, with respect inter alia to the possibility of providing for an appeal with suspensive effect against decisions relating to a European arrest warrant.
- 53 It should be recalled that, provided that the application of the Framework Decision is not frustrated, as the second paragraph of recital 12 in the preamble states, it does not prevent a Member State from applying its constitutional rules relating inter alia to respect for the right to a fair trial.

- 54 Furthermore, in the case of a decision to execute a European arrest warrant, the possibility of having a right of appeal follows implicitly but necessarily from the expression ‘final decision’ used in Article 17(2), (3) and (5) of the Framework Decision, and there is no reason to suppose that, having regard to the wording of its provisions, such a possibility must be excluded in relation to the decision of the judicial authority which gives its consent to the extension of an arrest warrant or to an onward surrender to another Member State, in accordance with Articles 27(4) and 28(3)(c) of the Framework Decision, especially as that extension or surrender may, as shown by the case in the main proceedings, be requested for a more serious offence than that which was the ground for surrender.
- 55 It follows that Articles 27(4) and 28(3)(c) of the Framework Decision must be interpreted as not precluding Member States from providing for an appeal suspending execution of the decision of the judicial authority which rules on giving consent either to the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order of a person for an offence committed prior to his surrender pursuant to a European arrest warrant, other than that for which he was surrendered, or to the surrender of a person to a Member State other than the executing Member State, pursuant to a European arrest warrant issued for an offence committed prior to his surrender.

Limits of a right of appeal with suspensive effect

- 56 Although the Framework Decision makes no provision on any right of appeal with suspensive effect against decisions relating to a European arrest warrant, it follows from the decision that certain limits must be set as regards the margin of discretion enjoyed by Member States in this respect.
- 57 It must be observed that, as pointed out in paragraphs 34 and 35 above, the object of the Framework Decision is to replace the multilateral system of extradition between Member States with a simplified and more effective system of surrender between judicial authorities which facilitates and accelerates judicial cooperation. As stated in recital 5 in the preamble to the Framework Decision, the introduction of such a system of surrender makes it possible to remove the complexity and potential for delay inherent in the extradition procedures existing before the adoption of that decision.
- 58 That objective of accelerating judicial cooperation is present in various aspects of the Framework Decision, inter alia in the treatment of the time-limits for adopting decisions relating to a European arrest warrant.
- 59 With respect to those time-limits, a distinction must be drawn between those laid down in Article 17 of the Framework Decision for the execution of the European arrest warrant and those laid down in Articles 27(4) and 28(3)(c) relating to consent to an extension of the warrant or an onward surrender. In any case, Article 15(1) of the Framework Decision provides generally that the executing judicial authority is to decide whether a person is to be surrendered ‘within the time-limits and under the conditions defined in this Framework Decision’.
- 60 As regards, first, the decision to execute a European arrest warrant, Article 17(1) of the Framework Decision provides that the warrant is to be ‘dealt with and executed as a matter of urgency’. Article 17(2) and (3) prescribe precise time-limits of 10 and 60 days respectively for taking the final decision on the execution of the warrant, depending on whether or not the requested person consents to his surrender.
- 61 Only in specific cases in which the warrant cannot be executed within those time-limits does Article 17(4) of the Framework Decision allow them to be extended by a further 30 days, the executing judicial authority being obliged immediately to inform the issuing judicial authority, giving the reasons for the delay. Outside such specific cases, only exceptional circumstances can allow a Member State, in accordance with Article 17(7) of the Framework Decision, not to observe those time-limits, that Member State similarly having to inform Eurojust, giving the reasons for the delay.

- 62 The importance of the time-limits set by Article 17 is seen not only in that article but also in other provisions of the Framework Decision, such as Articles 13(4), 15(2), 20 and 21 and the second indent of Article 31(2).
- 63 Moreover, while in the course of the legislative procedure leading to the adoption of the Framework Decision the words ‘the final decision on the execution of the European arrest warrant should be taken’, in Article 17, were indeed substituted for the words ‘[t]he decision on whether to execute the European arrest warrant shall be taken’ which appeared in the Proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 final), published in the *Official Journal of the European Union* of 27 November 2001 (OJ 2001 C 332 E, p. 305, ‘the proposal for a framework decision’), the fact remains that in the course of that procedure the adjective ‘final’ was also added to the word ‘decision’ and the single time-limit of 90 days provided for in the proposal for a framework decision was replaced by the shorter differentiated time-limits referred to in paragraphs 60 and 61 above.
- 64 It follows that the time-limits prescribed in Article 17 of the Framework Decision must be interpreted as requiring the final decision on the execution of the European arrest warrant to be taken, in principle, either within 10 days from consent being given to the surrender of the requested person, or, in other cases, within 60 days from his arrest. Only in specific cases may those periods be extended by an additional 30 days, and only in exceptional circumstances may the time-limits prescribed in Article 17 not be complied with by a Member State.
- 65 Consequently, any appeal with suspensive effect against a decision executing a European arrest warrant provided for by the national legislation of a Member State cannot, in any event, unless the competent court decides to make a reference to the Court for a preliminary ruling, intervene such as to disregard the time-limits for the adoption of a final decision mentioned in the preceding paragraph.
- 66 As regards, secondly, the decision to give consent to the extension of the warrant or to an onward surrender, in accordance with Articles 27(4) and 28(3)(c) of the Framework Decision, it must be observed that those provisions both state that the decision ‘shall be taken no later than 30 days after receipt of the request’.
- 67 The wording of those provisions which, just like the speciality rule which the provisions implement, did not appear in the proposal for a framework decision, is a wording which differs from that of Article 17 of the Framework Decision and corresponds to different situations from the point of view of the decision to be taken.
- 68 In the first place, the requested person is no longer under arrest in the Member State executing the European arrest warrant and has already been surrendered to the Member State which issued the warrant.
- 69 In the second place, the executing juridical authority, which is the one that has to give the consent referred to in Articles 27(4) and 28(3)(c) of the Framework Decision, already has a certain amount of information before it on the basis of which it can take an informed decision, in so far as, as recalled in paragraph 36 above, that consent can be refused only in the same cases as those in which, in the case of the decisions mentioned in Article 17 of the Framework Decision, execution of a European arrest warrant may be refused, and, moreover, consent must be given where the offence for which the extension of the warrant or the onward surrender is requested is itself subject to surrender.
- 70 However, the decisions mentioned in Articles 27(4) and 28(3)(c) of the Framework Decision concern either an offence other than that which was the ground of surrender or a Member State other than the Member State which issued the original European arrest warrant, which justifies a period of 30 days being allowed for giving that consent.

- 71 It follows that Articles 27(4) and 28(3)(c) of the Framework Decision must be interpreted as requiring decisions of the judicial authority which rules on giving consent either to the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order of a person for an offence committed prior to his surrender pursuant to a European arrest warrant, other than that for which he was surrendered, or to the surrender of a person to a Member State other than the executing Member State, pursuant to a European arrest warrant issued for an offence committed prior to his surrender, to be made, in principle, within a period of 30 days from receipt of the request.
- 72 As regards the possibility of Member States providing in their national law for an appeal with suspensive effect against the decisions referred to in Articles 27(4) and 28(3)(c) of the Framework Decision, it must be noted that those provisions, unlike Article 17 of the Framework Decision, do not set time-limits for the ‘final decision’, and must consequently be interpreted as meaning that the time-limit they lay down relates only to the original decision and does not concern cases in which such an appeal is brought.
- 73 It would, however, be contrary to the underlying logic of the Framework Decision and to its objectives of accelerating surrender procedures if the periods for adoption of a final decision under Articles 27(4) and 28(3)(c) of the Framework Decision were longer than those laid down in Article 17.
- 74 Consequently, to ensure the consistent application and interpretation of the Framework Decision, any appeal with suspensive effect provided for by the national legislation of a Member State against the decisions referred to in Articles 27(4) and 28(3)(c) of the Framework Decision must, in any event, comply with the time-limits laid down in Article 17 of the Framework Decision for making a final decision.
- 75 In the light of the foregoing, the answer to the question is that Articles 27(4) and 28(3)(c) of the Framework Decision must be interpreted as not precluding Member States from providing for an appeal suspending execution of the decision of the judicial authority which rules, within 30 days from receipt of the request, on giving consent either to the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order of a person for an offence committed prior to his surrender pursuant to a European arrest warrant, other than that for which he was surrendered, or to the surrender of a person to a Member State other than the executing Member State, pursuant to a European arrest warrant issued for an offence committed prior to his surrender, provided that the final decision is adopted within the time-limits laid down in Article 17 of the Framework Decision.

Costs

- 76 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 (Second Chamber) hereby rules:

Articles 27(4) and 28(3)(c) 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 not precluding Member States from providing for an appeal suspending execution of the decision of the judicial authority which rules, within 30 days from receipt of the request, on giving consent either to the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order of a person for an offence committed prior to his surrender pursuant to a European arrest warrant, other than that for which he was surrendered, or to the surrender of a person to a Member State other than the executing Member State, pursuant to a

European arrest warrant issued for an offence committed prior to his surrender, provided that the final decision is adopted within the time-limits laid down in Article 17 of the Framework Decision.

[Signatures]