

KOZŁOWSKI

JUDGMENT OF THE COURT (Grand Chamber)

17 July 2008*

In Case C-66/08,

Reference for a preliminary ruling under Article 35 EU from the Oberlandesgericht Stuttgart (Germany), made by decision of 14 February 2008, received at the Court on 18 February 2008, in the proceedings concerning the execution of a European arrest warrant issued against

Szymon Kozłowski,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts, G. Arestis and L. Bay Larsen (Rapporteur), Presidents of Chambers, J. Makarczyk, P. Kūris, E. Juhász, A. Ó Caoimh, P. Lindh and J.-C. Bonichot, Judges,

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

* Language of the case: German.

having regard to the order of the President of the Court of 22 February 2008 applying an accelerated procedure to the reference for a preliminary ruling under the first paragraph of Article 104a of the Rules of Procedure,

having regard to the written procedure and further to the hearing on 22 April 2008,

after considering the observations submitted on behalf of:

— M. Kozłowski, by M. Stirnweiß, Rechtsanwalt,

— the German Government, by M. Lumma and J. Kemper, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the Danish Government, by J. Bering Liisberg, acting as Agent,

— the French Government, by J.-C. Niollet, acting as Agent,

— the Italian Government, by F. Arena, avvocato dello Stato,

- the Netherlands Government, by C. Wissels and M. Noort, acting as Agents,

- the Austrian Government, by C. Pesendorfer and T. Fülöp, acting as Agents,

- the Polish Government, by M. Dowgielewicz and L. Rędziniak, acting as Agents,

- the Slovak Government, by J. Čorba, acting as Agent,

- the Finnish Government, by J. Heliskoski, acting as Agent,

- the Commission of the European Communities, by S. Grünheid 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 4(6) 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; ‘the Framework Decision’).

² The reference was made in proceedings concerning the execution by the Generalstaatsanwaltschaft Stuttgart (‘the German executing judicial authority’) of a European arrest warrant issued on 18 April 2007 by the Sąd Okręgowy w Bydgoszczy (Regional Court, Bydgoszcz; ‘the Polish issuing judicial authority’) against Mr Kozłowski, a Polish national.

Legal framework

European Union law

3 Recital 5 in the preamble to the Framework Decision states:

‘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.’

4 Recital 7 of the Framework Decision provides:

‘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 ...’

5 Recital 8 to the Framework Decision provides:

‘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.’

6 Article 1(1) and (2) of the Framework Decision define the European arrest warrant and refer to the obligation to execute it as follows:

‘(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.’

7 Article 2(1) of the Framework Decision provides:

‘A European arrest warrant may be issued for acts ... where a sentence has been passed or a detention order has been made, for sentences of at least four months.’

8 Article 3 of the Framework Decision lists three ‘[g]rounds for mandatory non-execution of the European arrest warrant’.

- 9 Article 4 of the Framework Decision, entitled ‘Grounds for optional non-execution of the European arrest warrant’ sets out those grounds in seven numbered paragraphs. Paragraph 6 provides in that regard:

‘The executing judicial authority may refuse to execute the European arrest warrant:

...

- (6) if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law’.

- 10 Article 5 of the Framework Decision, entitled ‘Guarantees to be given by the issuing Member State in particular cases’, is worded as follows:

‘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.’

- 11 Article 6 of the Framework Decision, entitled ‘Determination of the competent judicial authorities’, provides:

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

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

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

- 12 It is apparent from the information concerning the date of entry into force of the Treaty of Amsterdam, published in the *Official Journal of the European Communities* of 1 May 1999 (OJ 1999 L 114, p. 56), that the Federal Republic of Germany made a declaration on the basis of Article 35(2) EU by which it accepted the jurisdiction of the Court to give preliminary rulings in accordance with the arrangements laid down in Article 35(3)(b) EU.

National law

- 13 The Framework Decision was transposed into the German legal system by Paragraphs 78 to 83k of the Law on international mutual legal assistance in criminal matters (Gesetz über die internationale Rechtshilfe in Strafsachen) of 23 December 1982, as amended by the Law on the European arrest warrant (Europäisches Haftbefehlsgesetz) of 20 July 2006 (BGBl. 2006 I, p. 1721; 'the IRG'), while retaining the usual German legal terminology — a 'surrender' within the meaning of the Framework Decision being described as an 'extradition'.
- 14 The IRG distinguishes between the decision concerning the admissibility of the extradition request and the decision to grant or refuse extradition.
- 15 According to Articles 29 to 32 of the IRG, it is in any event for the Oberlandesgerichte (Higher Regional Courts) to examine the admissibility of the extradition request, on application by the executing judicial authority.
- 16 By contrast, the decision to grant or refuse extradition, in the case of extradition requests submitted by an issuing judicial authority of another Member State, is a matter for the executing judicial authority.
- 17 Article 4(6) of the Framework Decision was transposed, in relation to persons other than German nationals — whether nationals of another Member State or of a third State — by Article 83b(2)(b) of the IRG. According to that provision, entitled 'Grounds for non-execution':

'The extradition of a foreign national whose habitual residence is in Germany may also be refused, if

...

(b) in the case of extradition for the purpose of execution of sentence, he does not consent to such extradition after being informed of his rights (such information being minuted by the judge) and if he has an interest in execution of the sentence in Germany that deserves protection and predominates ...'

18 Paragraph 79(2) of the IRG lays down the procedures for the ruling on the extradition request as follows:

'Before the Oberlandesgericht has ruled on the admissibility of the [extradition] request, the body competent to grant or refuse the request [the 'Generalstaatsanwaltschaften' — General Prosecutor's Offices] shall indicate whether it intends to raise any grounds of non-execution under Paragraph 83b. Reasons shall be given for a decision not to raise any such ground. That decision is subject to review by the Oberlandesgericht ...'

The main proceedings and the questions referred for a preliminary ruling

19 By judgment of 28 May 2002 of the Sąd Rejonowy w Tucholi (Local Court of Tuchola, Poland), Mr Kozłowski was sentenced to five months' imprisonment for destruction of another person's property. The sentence imposed by that judgment has become final, but has not yet been executed.

20 Since 10 May 2006, Mr Kozłowski has been imprisoned in Stuttgart (Germany), where he is serving a custodial sentence of three years and six months, to which he

was sentenced by two judgments of the Amtsgericht Stuttgart, dated 27 July 2006 and 25 January 2007, in respect of 61 fraud offences committed in Germany.

- 21 The Polish issuing judicial authority requested the German executing judicial authority, by a European arrest warrant issued on 18 April 2007, to surrender Mr Kozłowski for the purposes of execution of the sentence of imprisonment of five months imposed on him by the Sąd Rejonowy w Tucholi.
- 22 On 5 June 2007, Mr Kozłowski was heard on the matter by the Amtsgericht Stuttgart. He stated to the latter, in the course of that hearing, that he did not consent to his surrender to the Polish issuing judicial authority.
- 23 On 18 June 2007, the German executing judicial authority informed Mr Kozłowski that it did not intend to raise any ground for non-execution. According to that authority, there is no ground for non-execution within the meaning of Paragraph 83b of the IRG and, in particular, Mr Kozłowski does not have his habitual residence in Germany. His successive periods of presence on German territory were characterised by the commission of several crimes, without any lawful activity.
- 24 Consequently, since it considered that it was not necessary to initiate enquiries in order to discover where, with whom and why Mr Kozłowski was staying in Germany, the executing judicial authority requested the Oberlandesgericht Stuttgart to authorise the execution of the European arrest warrant in question.
- 25 With regard to Mr Kozłowski's personal situation, the order for reference indicates that, according to the convictions against him in Germany, he is single and childless. He has little or even no command of the German language. He grew up, then worked, in Poland until the end of 2003. Thereafter, for approximately one year, he drew unemployment benefit in that Member State.

26 The national court proceeds on the assumption that from February 2005 until 10 May 2006, the date of his arrest in Germany, Mr Kozłowski lived predominantly in Germany. That stay was interrupted during the 2005 Christmas holidays, and possibly even in the month of June 2005 and the months of February and March 2006. He worked occasionally on building sites but earned his living essentially by committing crimes.

27 Finally, the national court explains that, in the course of the review which it is required to carry out under Paragraph 79(2) of the IRG, it is called upon to ascertain whether Mr Kozłowski's 'habitual residence' within the meaning of Article 83b(2) of that law was, at the time of the request for surrender, in Germany, and whether it is still there. If that question is answered in the negative, the national court must according to German law authorise the execution of the European arrest warrant, since all the other conditions required under that law are fulfilled.

28 In those circumstances, the Oberlandesgericht Stuttgart decided to stay the proceedings and to refer to the Court of Justice the following questions for a preliminary ruling:

'(1) Do the following facts preclude the assumption that a person is a 'resident' of or is 'staying' in a Member State in the sense of Article 4(6) of Council Framework Decision ... :

(a) his stay in the Member State [of execution] has not been uninterrupted;

(b) his stay there does not comply with the national legislation on residence of foreign nationals;

(c) he commits crimes there systematically for financial gain; and/or

(d) he is in detention there serving a custodial sentence?

(2) Is transposition of Article 4(6) of the Framework Decision ... in such a way that the extradition of a national of the [executing] Member State against his will for the purpose of execution of sentence is always impermissible, whereas extradition of nationals of other Member States against their will can be authorised at the discretion of the authorities, compatible with Union law, in particular with the principle of non-discrimination and with Union citizenship under Article 6(1) EU, read in conjunction with Articles 12 EC and 17 EC et seq., and if so, are those principles at least to be taken into account in the exercise of that discretion?’

Questions referred for a preliminary ruling

²⁹ As a preliminary point, it should be recalled that, as noted in paragraph 12 of this judgment, the Court has jurisdiction, in the present case, to rule on the interpretation of the Framework Decision under Article 35 EU.

First question

³⁰ By its first question, the national court seeks, in essence, to ascertain what is the scope of the terms ‘resident’ and ‘staying’ contained in Article 4(6) of the Framework Decision and, in particular, whether in circumstances such as those in the main proceedings, a requested person in proceedings relating to the execution of a European arrest warrant can be considered as covered by that provision.

- 31 In order to reply to that question, it should be recalled that the objective of the Framework Decision, as made clear in particular by Article 1(1) and (2) and by recitals 5 and 7 in its preamble, is to replace the multilateral system of extradition between Member States by a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, that system of surrender being based on the principle of mutual recognition (see C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 28).
- 32 According to Article 1(2) of the Framework Decision, Member States are to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of that Framework Decision.
- 33 In that regard, Article 4(6) of the Framework Decision sets out a ground for optional non-execution of the European arrest warrant pursuant to which the executing judicial authority may refuse to execute such a warrant issued for the purposes of execution of a sentence where the requested person 'is staying in, or is a national or a resident of, the executing Member State', and that State undertakes to execute that sentence in accordance with its domestic law.
- 34 Thus, according to Article 4(6) of the Framework Decision, the scope of that ground for optional non-execution is limited to persons who, if not nationals of the executing Member State, are 'staying' or 'resident' there. However, the meaning and scope of those two terms are not defined in the Framework Decision.
- 35 The Commission of the European Communities, while conceding that, in some linguistic versions of the Framework Decision, the wording of Article 4(6) could suggest that the term 'staying' is on the same level of importance as the criteria of residence or nationality, contends that, in any case, that provision must be interpreted as meaning that the fact that the requested person is staying in the executing Member State is a necessary but not sufficient condition for invoking the ground for optional non-execution referred to in Article 4(6).

- 36 In that regard, it is certainly true that the term 'staying' cannot be interpreted in a broad way which would imply that the executing judicial authority could refuse to execute a European arrest warrant merely on the ground that the requested person is temporarily located on the territory of the executing Member State.
- 37 However, Article 4(6) of the Framework Decision equally cannot be interpreted as meaning that a requested person who, without being a national or resident of the executing Member State, has been staying there for a certain period of time is not in any circumstances capable of having established connections with that State which could enable him to invoke that ground for optional non-execution.
- 38 It follows that, notwithstanding differences in the various language versions of Article 4(6), the category of requested persons who are 'staying' in the executing Member State within the meaning of that provision is not, as was argued in particular by the Netherlands Government at the hearing of the present case, completely irrelevant for the purposes of ascertaining the scope of that provision.
- 39 Consequently, it is not sufficient to take into account only the term 'resident' within the meaning of Article 4(6) of the Framework Decision, but it is also necessary to ascertain in what way the term 'staying' may complement the meaning of the first of those two terms.
- 40 First, that reading of Article 4(6) of the Framework Decision cannot be affected by the fact that, according to the wording of Article 5(3) of the Framework Decision, which concerns a person who is the subject of a European arrest warrant for the purposes of prosecution, surrender may be made subject by the law of the executing Member State to the condition contained in that provision only if the person concerned is a national or resident of that Member State, no reference being made to his 'staying' there.

41 Second, with regard to the interpretation of the terms ‘staying’ and ‘resident’, it should be pointed out that, contrary to the argument of the Czech and Netherlands Governments, the definition of those two terms cannot be left to the assessment of each Member State.

42 It follows from the need for uniform application of Community law and from the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Union, having regard to the context of the provision and the objective pursued by the legislation in question (see, by analogy, Case C-195/06 *Österreichischer Rundfunk* [2007] ECR I-8817, paragraph 24 and case-law cited).

43 Since the objective of the Framework Decision, as indicated in paragraph 31 of this judgment, is to put in place a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, based on the principle of mutual recognition — a surrender which the executing judicial authority can oppose only on one of the grounds for refusal provided for by the Framework Decision — the terms ‘staying’ and ‘resident’, which determine the scope of Article 4(6), must be defined uniformly, since they concern autonomous concepts of Union law. Therefore, in their national law transposing Article 4(6), the Member States are not entitled to give those terms a broader meaning than that which derives from such a uniform interpretation.

44 In order to establish whether, in a specific situation, the executing judicial authority may refuse to execute a European arrest warrant, it must, initially, ascertain only whether the requested person is a national of the executing Member State, a ‘resident’ of that State or ‘staying’ there within the meaning of Article 4(6) of the Framework Decision and thus covered by it. Second, and only if the executing judicial authority finds that that person is covered by one of those terms, it must assess whether there is a legitimate interest which would justify the sentence imposed in the issuing Member State being executed on the territory of the executing Member State.

- 45 In that regard, it must be emphasised, as also pointed out by all the Member States which submitted observations to the Court as well as by the Commission, that the ground for optional non-execution stated in Article 4(6) of the Framework Decision has in particular the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him expires.
- 46 Accordingly, the terms 'resident' and 'staying' cover, respectively, the situations in which the person who is the subject of a European arrest warrant has either established his actual place of residence in the executing Member State or has acquired, following a stable period of presence in that State, certain connections with that State which are of a similar degree to those resulting from residence.
- 47 In the light of the information contained in the order for reference, Mr Kozłowski is not 'resident' in Germany within the meaning of Article 4(6) of the Framework Decision. Consequently, the interpretation which follows concerns only the term 'staying' contained in that provision.
- 48 In order to determine whether, in a specific situation, there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term 'staying' within the meaning of Article 4(6) of the Framework Decision, it is necessary to make an overall assessment of various objective factors characterising the situation of that person, which include, in particular, the length, nature and conditions of his presence and the family and economic connections which he has with the executing Member State.
- 49 Since it is for the executing judicial authority to make an overall assessment in order to determine, initially, whether the person concerned falls within Article 4(6) of the Framework Decision, a single factor characterising the person concerned cannot, in principle, have a conclusive effect of itself.

50 With regard to circumstances such as those related by the national court in its first question, under points (a) to (d), the fact that, as explained under point (a), the requested person's stay in the executing Member State was not uninterrupted and the fact that, as described under point (b), his stay in that State does not comply with the national legislation on residence of foreign nationals, while not constituting factors which lead by themselves to the conclusion that he is not 'staying' in that Member State within the meaning of Article 6(4) of the Framework Decision, can however be of relevance to the executing judicial authority when it is called upon to assess whether the person concerned is covered by that provision.

51 With regard to the fact that, as explained in point (c) of the first question, according to which that person systematically commits crimes in the executing Member State and the fact that, as described in point (d) of that question, he is in detention there serving a custodial sentence, it must be held that they are not relevant factors for the executing judicial authority when it initially has to ascertain whether the person concerned is 'staying' within the meaning of Article 4(6) of the Framework Decision. By contrast, such factors may, supposing that the person concerned is 'staying' in the executing Member State, be of some relevance for the assessment which the executing judicial authority is then called upon to carry out in order to decide whether there are grounds for not implementing a European arrest warrant.

52 It follows that, without being conclusive, two of the four circumstances related by the national courts in its first question, under points (a) and (b), can be of relevance for the executing judicial authority when it has to ascertain whether the situation of the person concerned falls within Article 4(6) of the Framework Decision.

53 In that regard, it must be held that, in the light of various factors referred to by the national court as characterising the situation of a person such as Mr Kozłowski, in particular the length, nature and conditions of his stay, the absence of family ties and his very weak economic connections with the executing Member State, such a person cannot be regarded as covered by the term 'staying' within the meaning of Article 4(6) of the Framework Decision.

54 Having regard to all of the foregoing considerations, the answer to the first question must be that Article 4(6) of the Framework Decision is to be interpreted as meaning that:

- a requested person is ‘resident’ in the executing Member State when he has established his actual place of residence there and he is ‘staying’ there when, following a stable period of presence in that State, he has acquired connections with that State which are of a similar degree to those resulting from residence;

- in order to ascertain whether there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term ‘staying’ within the meaning of Article 4(6), it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State.

Second question

55 According to the national court, it must authorise the execution of the European arrest warrant issued against Mr Kozłowski if it finds that he does not have his ‘habitual residence’, within the meaning of Article 83b(2)(b) of the IRG, in Germany.

56 Having regard to paragraphs 47 and 53 of this judgment and to the reply given by the Court to the first question, it is no longer necessary in the present case to reply to the second question referred, since the requested person in the main proceedings is not covered by Article 4(6) of the Framework Decision.

Costs

⁵⁷ 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 (Grand Chamber) hereby rules:

Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, is to be interpreted to the effect that:

- **a requested person is ‘resident’ in the executing Member State when he has established his actual place of residence there and he is ‘staying’ there when, following a stable period of presence in that State, he has acquired connections with that State which are of a similar degree to those resulting from residence;**

- **in order to ascertain whether there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term ‘staying’ within the meaning of Article 4(6), it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State.**

[Signatures]