



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

29 June 2017*

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Grounds for optional non-execution — Article 4(6) — Member State's undertaking to enforce the sentence in accordance with its domestic law — Implementation — Obligation of conforming interpretation)

In Case C-579/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 30 October 2015, received at the Court on 6 November 2015, in the proceedings relating to the execution of the European arrest warrant issued against

Daniel Adam Popławski,

intervener

Openbaar Ministerie,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, A. Tizzano, Vice-President of the Court, acting as Judge of the Fifth Chamber, M. Berger (Rapporteur), A. Borg Barthet and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 September 2016,

after considering the observations submitted on behalf of:

- Mr Popławski, by P.J. Verbeek, advocaat,
- the Openbaar Ministerie, by K. van der Schaft and J. Asbroek,
- the Netherlands Government, by M.K. Bulterman, B. Koopman and J. Langer, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

* Language of the case: Dutch.

after hearing the Opinion of the Advocate General at the sitting on 15 February 2017,
gives the following

Judgment

- 1 This request 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).
- 2 The request has been made in connection with the execution in the Netherlands of a European arrest warrant ('EAW') issued by the Sąd Rejonowy w Poznaniu (District Court, Poznań, Poland) against Mr Daniel Adam Popławski with a view to enforcing a custodial sentence in Poland.

Legal context

EU law

Framework Decision 2002/584

- 3 Recitals 6 and 11 of Framework Decision 2002/584 are worded as follows:

'(6) The [EAW] provided for in this framework decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

...

(11) In relations between Member States, the [EAW] should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement [of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen (Luxembourg) on 19 June 1990 and entered into force on 26 March 1995 (OJ 2000 L 239, p. 19] which concern extradition.'

- 4 Article 1(2) of that framework decision provides:

'Member States shall execute any [EAW] on the basis of the principle of mutual recognition and in accordance with the provisions of this framework decision.'

- 5 Article 4 of that framework decision, entitled 'Grounds for optional non-execution of the [EAW]', provides:

'The executing judicial authority may refuse to execute the [EAW]:

...

(6) if the [EAW] 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.

...'

Framework Decision 2008/909/JHA

6 Article 28 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27), entitled 'Transitional provision', is worded as follows:

'1. Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this framework decision.

2. However, any Member State may, on the adoption of this framework decision, make a declaration indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. If such a declaration is made, those instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than 5 December 2011. The said declaration shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.'

Netherlands law

7 Article 6 of the Overleveringswet (Law on surrender) of 29 April 2004 (Stb. 2004, No 195) transposing into Netherlands law Framework Decision 2002/584, in the version applicable prior to the entry into force of the Netherlands provisions implementing Framework Decision 2008/909 ('the OLW') provided:

'1. The surrender of a Netherlands national may be permitted provided that the surrender is requested for the purposes of a criminal investigation against that national and that, in the view of the executing judicial authority, it is guaranteed that, if he is sentenced to an unconditional custodial sentence in the issuing Member State on the basis of acts for which surrender may be permitted, he may serve that sentence in the Netherlands.

2. The surrender of a Netherlands national shall not be permitted if that surrender is sought for the purposes of execution of a custodial sentence imposed on him by a final judicial decision.

3. Where surrender is refused solely on the basis of Article 6(2) ..., the public prosecutor shall notify the issuing judicial authority that it is willing to execute the judgment in accordance with the procedure laid down in Article 11 of the Convention on the Transfer of Sentenced Persons [signed in Strasbourg on 21 March 1983] or on the basis of another applicable convention.

4. The Public Prosecutor shall immediately notify our Minister of ... any refusal to surrender under the terms of the declaration, referred to in paragraph 3, that the Netherlands is willing to execute the foreign judgment.

5. Paragraphs 1 to 4 shall also apply to a foreign national in possession of a residence permit of indefinite duration, in so far as he may be prosecuted in the Netherlands for the offences on which the EAW is based and in so far as he can be expected not to forfeit his right of residence in the Netherlands as a result of any sentence or measure which may be imposed on him after surrender.'

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

- 8 By judgment of 5 February 2007, which became final on 13 July 2007, the Sąd Rejonowy w Poznaniu (District Court, Poznań) gave Mr Popławski, a Polish national, a one-year suspended prison sentence. By decision of 15 April 2010, that court ordered the enforcement of that custodial sentence.
- 9 On 7 October 2013, that court issued an EAW against Mr Popławski with a view to enforcement of that sentence.
- 10 In the main proceedings relating to the execution of that EAW, the rechtbank Amsterdam (District Court, Amsterdam, the Netherlands) asks whether it must apply Article 6(2) and (5) of the OLV which provides an optional ground for non-execution of an EAW in favour of, *inter alia*, persons residing in the Netherlands, as is the case with Mr Popławski.
- 11 The referring court observes that, under Article 6(3) of the OLV, where the Netherlands refuses to execute an EAW, it must state that it is 'willing' to take over the execution of the sentence on the basis of a convention in force between it and the issuing Member State. It states that taking over that execution in the main proceedings requires Poland to make a request to that end. However, Polish legislation precludes such a request in a situation where the person concerned is a Polish national.
- 12 The referring court makes it clear that, in such a situation, a refusal to surrender could lead to the impunity of the person to whom the EAW applies. After pronouncement of the judgment refusing the surrender, it may prove impossible to take over execution of the sentence, in particular because there has been no request to that end from the issuing Member State, and that fact would have no bearing on the judgment refusing to surrender the requested person.
- 13 In those circumstances, given its doubts as to whether Article 6(2) to (4) of the OLV is compatible with Article 4(6) of Framework Decision 2002/584 which permits a refusal to surrender only if the executing Member State 'undertakes' to execute the sentence in accordance with its domestic law, the rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- (1) May a Member State transpose Article 4(6) of Framework Decision 2002/584 in its national law in such a way that:
- its executing judicial authority is, without more, obliged to refuse surrender, for purposes of executing a sentence, of a national or resident of the executing Member State,
 - by operation of law, that refusal gives rise to the willingness to take over the execution of the custodial sentence imposed on the national or resident,
 - but the decision to take over execution of the sentence is taken only after refusal of surrender for purposes of executing the sentence, and a positive decision is dependent on (1) a basis for the decision in a treaty or convention which is in force between the issuing Member State and the executing Member State, (2) the conditions set by that treaty or convention, and (3) the cooperation of the issuing Member State by, for example, making a request to that effect,

with the result that there is a risk that, following refusal of surrender for purposes of executing the sentence, the executing Member State cannot take over execution of that sentence, while that risk does not affect the obligation to refuse surrender for purposes of executing the sentence?

- (2) If Question 1 is answered in the negative:
 - (a) can the national courts apply the provisions of Framework Decision 2002/584 directly even though, under Article 9 of Protocol (No 36) on transitional provisions [(OJ 2012 C 326, p. 322)], the legal effects of that framework decision are preserved after the entry into force of the Treaty of Lisbon until that framework decision is repealed, annulled or amended?
 - (b) if so, is Article 4(6) of Framework Decision 2002/584 sufficiently precise and unconditional to be applied by the national courts?
- (3) If the answers to Questions 1 and 2(b) are in the negative, may a Member State, whose national law requires that the taking-over of the execution of the foreign custodial sentence must be based on an appropriate treaty or convention, transpose Article 4(6) of that framework decision in its national law in such a way that that provision itself provides the required conventional basis, in order to avoid the risk of impunity associated with the national requirement of a conventional basis?
- (4) If the answers to Questions 1 and 2(b) are in the negative, may a Member State transpose Article 4(6) of that framework decision in its national law in such a way that, for refusal of surrender for purposes of executing a sentence in respect of a resident of the executing Member State who is a national of another Member State, it sets the condition that the executing Member State must have jurisdiction in respect of the offences cited in the EAW and that there must be no actual obstacles in the way of a criminal prosecution in the executing Member State of that resident in respect of those offences, such as the refusal by the issuing Member State to hand over the case-file to the executing Member State, whereas it does not set such a condition for refusal of surrender for purposes of executing a sentence in respect of a national of the executing Member State?

Consideration of the questions referred

Preliminary remark

- 14 The questions referred for a preliminary ruling concern the compatibility with Framework Decision 2002/584 of national legislation which is no longer in force as a result of being repealed and replaced by national measures aimed at implementing Framework Decision 2008/909.
- 15 The referring court considers that that national legislation is still applicable in the main proceedings, in particular given the fact that the Kingdom of the Netherlands, on the basis of Article 28 of Framework Decision 2008/909, made a declaration indicating, in essence, that it will continue to apply to judgments which became final before 5 December 2011, such as the one made against Mr Popławski, legal instruments, prior to that framework decision, concerning the transfer of sentenced persons. However, the European Commission contests the validity of that declaration and a similar declaration made by the Republic of Poland, and submits that the situation at issue in the main proceedings, contrary to what the referring court believes, is governed by the national provisions implementing Framework Decision 2008/909.
- 16 In that regard, the Court has already held that it must in principle confine its examination to the matters which the referring court has decided to submit to it in its request for a preliminary ruling. Thus, as regards the application of the relevant national legislation, the Court must proceed on the basis of the situation which the referring court considers to be established (judgment of 8 June 2016,

Hünnebeck, C-479/14, EU:C:2016:412, paragraph 36 and the case-law cited). It is clear from the settled case-law of the Court that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgment of 8 December 2016, *Eurosanemientos and Others*, C-532/15 and C-538/15, EU:C:2016:932, paragraph 28 and the case-law cited).

- 17 In those circumstances, it is necessary to reply to the questions referred by the national court on the basis of the legislative and factual framework defined by that court.

The first question

- 18 By its first question, the referring court asks, in essence, whether Article 4(6) of Framework Decision 2002/584 must be interpreted to the effect that it precludes legislation of a Member State implementing that provision which, in a situation where the surrender of a foreign national in possession of a residence permit of indefinite duration in the territory of that Member State is sought by another Member State in order to execute a custodial sentence imposed on that national by a decision which has become final, first, does not authorise such a surrender, and secondly, merely lays down the obligation for the judicial authorities of the first Member State to inform the judicial authorities of the second Member State that they are willing to take over the enforcement of the judgment, where, on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged.
- 19 In that regard, it is apparent, first of all, from Article 1(2) of framework decision 2002/584 that that decision lays down the principle that Member States must execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision. Save in exceptional circumstances, the executing judicial authorities, as the Court has already held, may refuse to execute such a warrant only in the cases of non-execution, exhaustively listed and laid down by the framework decision, and the execution of the EAW may be made subject only to one of the conditions exhaustively laid down by that framework decision (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 80 and 82 and the case-law cited). Accordingly, while the execution of the EAW constitutes the rule, the refusal to execute is intended to be an exception which must be interpreted strictly.
- 20 Next, it must be recalled that Article 4(6) of Framework Decision 2002/584 sets out a ground for optional non-execution of the EAW under which the executing judicial authority ‘may’ refuse to execute an EAW for the purposes of enforcing a custodial sentence where, in particular, the requested person is a resident of the executing Member State, as is the case in the main proceedings, and that State ‘undertakes’ to enforce that sentence in accordance with its domestic law.
- 21 It is clear from the actual wording of Article 4(6) of Framework Decision 2002/584, as the Advocate General stated in point 30 of his Opinion, that, where a Member State chose to transpose that provision into domestic law, the executing judicial authority must, nevertheless, have a margin of discretion as to whether or not it is appropriate to refuse to execute the EAW. In that regard, that authority must take into consideration the objective of the ground for optional non-execution set out in that provision, which, according to the Court’s settled case-law, means 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 (see, to that effect, judgment of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 32 and the case-law cited).

- 22 It also follows from the wording of Article 4(6) of Framework Decision 2002/584, as the Advocate General stated in point 45 of his Opinion, that any refusal to execute an EAW presupposes an actual undertaking on the part of the executing Member State to execute the custodial sentence imposed on the requested person, even though, in any event, the mere fact that that Member State declares itself 'willing' to execute the sentence could not be regarded as justifying such a refusal. This indicates that any refusal to execute an EAW must be preceded by the executing judicial authority's examination of whether it is actually possible to execute the sentence in accordance with its domestic law. In the event that the executing Member State finds that it is in fact impossible to undertake to execute the sentence, it falls to the executing judicial authority to execute the EAW and, therefore, to surrender the requested person to the issuing Member State.
- 23 Accordingly, legislation of a Member State which implements Article 4(6) of Framework Decision 2002/584 by providing that its judicial authorities are, in any event, obliged to refuse to execute an EAW in the event that the requested person resides in that Member State, without those authorities having any margin of discretion, and without that Member State actually undertaking to execute the custodial sentence pronounced against that requested person, thereby creating a risk of impunity of that requested person, cannot be regarded as compatible with that framework decision.
- 24 Therefore the answer to the first question is that Article 4(6) of Framework Decision 2002/584 must be interpreted to the effect that it precludes legislation of a Member State implementing that provision which, in a situation where the surrender of a foreign national in possession of a residence permit of indefinite duration in the territory of that Member State is sought by another Member State in order to execute a custodial sentence imposed on that national by a decision which has become final, first, does not authorise such a surrender, and secondly, merely lays down the obligation for the judicial authorities of the first Member State to inform the judicial authorities of the second Member State that they are willing to take over the enforcement of the judgment, where, on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged.

Concerning the second and third questions

- 25 By its second and third questions, which must be examined together, the referring court asks, in essence, whether the provisions of Framework Decision 2002/584 have direct effect, and if not, whether Netherlands law may be interpreted in a manner consistent with EU law, so that, where a Member State makes the act of taking over execution of the custodial sentence conditional upon there being a legal basis in an international convention, Article 4(6) of that framework decision itself constitutes the formal basis required under domestic law.
- 26 In that regard, it must be pointed out that Framework Decision 2002/584 does not have direct effect. That is because that framework decision was adopted on the basis of the former third pillar of the European Union, in particular, under Article 34(2)(b) EU (in the version prior to the Lisbon Treaty). That provision stated that framework decisions are not to entail direct effect (see, by analogy, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 56).
- 27 It must be added that, under Article 9 of the Protocol (No 36) on transitional provisions, 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 before the entry into force of the Treaty of Lisbon are to be preserved only until those acts are repealed, annulled or amended in implementation of the Treaties. As the Advocate General stated in point 67 of his Opinion, Framework Decision 2002/584 was not repealed, annulled or amended after the Treaty of Lisbon entered into force.

- 28 Although the provisions of Framework Decision 2002/584 may not, therefore, entail direct effect, in accordance with Article 34(2)(b) EU, that framework decision is still binding on the Member States as to the result to be achieved, but leaves to the national authorities the choice of form and methods (see, by analogy, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 56).
- 29 In the present case, as is apparent from paragraphs 19 to 24 above, where the conditions laid down in Article 4(6) of Framework Decision 2002/584 have not been satisfied, Article 1(2) of that framework decision requires Member States to execute any EAW on the basis of the principle of mutual recognition.
- 30 In that context, it must be recalled that, in accordance with the Court's settled case-law, Member States must take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under a framework decision (see, to that effect, by analogy, judgment of 16 June 2005, *Pupino*, C-105/03, EU:C:2005:386, paragraph 42).
- 31 In particular, it is clear from the Court's settled case-law, that the binding character of a framework decision places on national authorities, including national courts, an obligation to interpret national law in conformity with EU law. When those 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 the framework 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, paragraphs 58 and 59 and the case-law cited).
- 32 It is true that the principle of interpreting national law in conformity with EU law has certain limitations. Thus, the obligation on the national court to refer to the content of a framework decision when interpreting and applying the relevant rules of its national law is limited by general principles of law, particularly those of legal certainty and non-retroactivity. In particular, those principles preclude that obligation from leading to the criminal liability of individuals being determined or aggravated, on the basis of a framework decision alone, absent any legislation implementing its provisions, where they are in breach of those provisions (judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 62 to 64 and the case-law cited).
- 33 Moreover, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem* (judgment of 28 July 2016, *JZ*, C-294/16 PPU, EU:C:2016:610, paragraph 33 and the case-law cited).
- 34 However, the fact remains that the principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the framework decision in question is fully effective and to achieving an outcome consistent with the objective pursued by it (judgment of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 56 and the case-law cited).
- 35 In that connection, the Court has already held that the obligation to interpret domestic law in conformity with EU law requires national courts to change established case-law, where necessary, if it is based on an interpretation of domestic law that is incompatible with the objectives of a framework decision (judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 67 and the case-law cited).
- 36 The Court has also held that, in a situation where a national court claims that it is impossible for it to interpret a provision of domestic law in a manner that is compatible with a framework decision, on the ground that it is bound by the interpretation given to that national provision by the national Supreme

Court in an interpretative judgment, it is for that national court to ensure that the framework decision is given full effect, and if necessary to disapply, on its own authority, the interpretation adopted by the national Supreme Court, since that interpretation is not compatible with EU law (see, to that effect, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 69 and 70).

- 37 Having made those preliminary points, it must be made clear that, in the present case, although the national court's obligation to ensure the complete effectiveness of Framework Decision 2002/584 brings with it the obligation for the Netherlands State to execute the EAW in question or, in the event of a refusal, the obligation to ensure that the sentence pronounced in Poland is actually executed, it has no bearing on the determination of Mr Popławski's criminal liability which stems from the judgment pronounced against him on 5 February 2007 by the Sąd Rejonowy w Poznaniu (District Court, Poznań) and, a fortiori, cannot be regarded as aggravating that liability.
- 38 It should also be noted that the referring court considers that, contrary to what the Openbaar Ministerie (Public Prosecutor, Netherlands) suggested at the hearing, the declaration in which the latter informed the issuing judicial authority that, pursuant to Article 6(3) of the OLW, it is willing to take over the execution of the sentence on the basis of the EAW concerned cannot be interpreted as constituting an actual undertaking on the part of the Netherlands State to execute that sentence, unless Article 4(6) of Framework Decision 2002/584 constitutes a formal legal basis, for the purposes of Article 6(3) of the OLW, for the actual execution of such a sentence in the Netherlands.
- 39 In that regard, it must be recalled that the Court has consistently held that it does not have jurisdiction to interpret the domestic law of a Member State (judgment of 16 February 2017, *Agro Foreign Trade & Agency*, C-507/15, EU:C:2017:129, paragraph 23 and the case-law cited). It is therefore for the referring court alone to assess whether Netherlands law may be interpreted to the effect that it puts Framework Decision 2002/584 on the same footing as that formal legal basis, for the purposes of Article 6(3) of the OLW.
- 40 However, the Court, which is called on to provide answers that are of use to the national court in context of a reference for a preliminary ruling, may provide guidance, based on the file in the main proceedings and on the written and oral observations which have been submitted to it, in order to enable the national court to give judgment (see, to that effect, judgment of 17 July 2014, *Leone*, C-173/13, EU:C:2014:2090, paragraph 56).
- 41 With that in mind, it must be stated, first, that, in accordance with recital 11 of Framework Decision 2002/584, in relations between Member States, the EAW must replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement, referred to in paragraph 3 above, relating to extradition. Given that the framework decision has thus replaced all conventions which existed between Member States and that it coexists, whilst having its own legal arrangements defined by EU law, with the extradition conventions in force between the various Member States and third States, it is not inconceivable that that framework decision could be placed on the same footing as such a convention.
- 42 Secondly, Framework Decision 2002/584 does not contain any provision which leads to the conclusion that it precludes the term 'another applicable convention', in Article 6(3) of the OLW, from being interpreted to the effect that it also covers Article 4(6) of that framework decision, provided that such an interpretation would ensure that the discretionary power of the executing judicial authority to refuse to execute the EAW is exercised only on condition that the sentence pronounced against Mr Popławski is in fact executed in the Netherlands and a solution that is compatible with the purpose of that framework decision is thus achieved.
- 43 In those circumstances, the answer to the second and third questions is that the provisions of Framework Decision 2002/584 do not have direct effect. However, the competent national court, by taking the whole body of domestic law into consideration and applying the interpretative methods

recognised by it, is obliged to interpret the provisions of national law at issue in the main proceeding, so far as is possible, in the light of the wording and the purpose of that framework decision, which in the present case means that, in the event of a refusal to execute an EAW issued with a view to the surrender of a person who has been finally judged in the issuing Member State and given a custodial sentence, the judicial authorities of the executing Member State are themselves required to ensure that the sentence pronounced against that person is actually executed.

The fourth question

- 44 By its fourth question, the referring court, asks, in essence, whether Article 4(6) of Framework Decision 2002/584 must be interpreted to the effect that it authorises a Member State to refuse to execute an EAW issued with a view to the surrender of a person who is a national of another Member State and who has been finally judged and given a custodial sentence, on the sole ground that the first Member State intends to prosecute that person in relation to the same acts as those for which that judgment was pronounced, whereas that Member State, as a matter of course, refuses to surrender its own nationals for the purposes of executing judgments which impose custodial sentences on them.
- 45 In that regard it must be stated that there is nothing in Article 4(6) of Framework Decision 2002/584 that makes it possible to interpret that provision as authorising the judicial authority of a Member State to refuse to execute an EAW in the event that a fresh prosecution, for the same acts as those which form the subject matter of the final criminal judgment pronounced against the requested person, may be brought against that person on his own territory.
- 46 Apart from the fact that Article 4(6) of Framework Decision 2002/584 makes no mention whatsoever of that possibility, it must be pointed out that such an interpretation would be inconsistent with Article 50 of the Charter of Fundamental Rights of the European Union, which provides, inter alia, that no one may be liable to be tried again in criminal proceedings for an offence for which he has already been finally acquitted or convicted within the Union in accordance with the law.
- 47 In those circumstances, since that interpretation is not, in any event, compatible with EU law, there is no need to take a view on the question whether it would lead to possible discrimination between nationals of the Netherlands and nationals of other Member States, which is also incompatible with EU law.
- 48 In the light of the foregoing, the answer to the fourth question is that Article 4(6) of Framework Decision 2002/584 must be interpreted to the effect that it does not authorise a Member State to refuse to execute an EAW issued with a view to the surrender of a person who has been finally judged and given a custodial sentence, on the sole ground that that Member State intends to prosecute that person in relation to the same acts as those for which that judgment was pronounced.

Costs

- 49 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 (Fifth Chamber) hereby rules:

- 1. Article 4(6) of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted to the effect that it precludes legislation of a Member State implementing that provision which, in a situation where the surrender of a foreign national in possession of a residence permit of**

indefinite duration in the territory of that Member State is sought by another Member State in order to execute a custodial sentence imposed on that national by a decision which has become final, first, does not authorise such a surrender, and secondly, merely lays down the obligation for the judicial authorities of the first Member State to inform the judicial authorities of the second Member State that they are willing to take over the enforcement of the judgment, where, on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged.

- 2. The provisions of Framework Decision 2002/584 do not have direct effect. However, the competent national court, by taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, is obliged to interpret the provisions of national law at issue in the main proceeding, so far as is possible, in the light of the wording and the purpose of that framework decision, which in the present case means that, in the event of a refusal to execute a European arrest warrant issued with a view to the surrender of a person who has been finally judged in the issuing Member State and given a custodial sentence, the judicial authorities of the executing Member State are themselves required to ensure that the sentence pronounced against that person is actually executed.**
- 3. Article 4(6) of Framework Decision 2002/584 must be interpreted to the effect that it does not authorise a Member State to refuse to execute a European arrest warrant issued with a view to the surrender of a person who has been finally judged and given a custodial sentence, on the sole ground that that Member State intends to prosecute that person in relation to the same acts as those for which that judgment was pronounced.**

[Signatures]