Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

12 December 2019 * [i]

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 6(1) – Definition of 'issuing judicial authority' – Criteria – European arrest warrant issued by the public prosecutor's office of a Member State for the purposes of executing a sentence)

In Case C-627/19 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 22 August 2019, received at the Court on 22 August 2019, in proceedings relating to the execution of a European arrest warrant issued in respect of

ZB,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 October 2019,

after considering the observations submitted on behalf of:

– ZB, by M.A.C. de Bruijn, advocaat,

– the Openbaar Ministerie, by K. van der Schaft and N. Bakkenes,

– the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,

– the Belgian Government, by C. Van Lul, C. Pochet and J.-C. Halleux, acting as Agents,

– Ireland, by G. Hodge and M. Browne, acting as Agents, and R. Kennedy, Senior Counsel,

* Language of the case: Dutch.

– the Spanish Government, by L. Aguilera Ruiz, acting as Agent,

– the French Government, by A. Daniel and A.-L. Desjonquères, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and L. Fiandaca, avvocato dello Stato,

– the Finnish Government, by M. Pere, acting as Agent,

– the European Commission, by S. Grünheid and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 November 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').

2 The request has been made in proceedings in the Netherlands concerning the execution of a European arrest warrant issued on 24 April 2019 by the Procureur des Konings te Brussel (Public Prosecutor's Office, Brussels, Belgium) for the purposes of executing two custodial sentences imposed on ZB.

Legal context

European Union law

3 Recitals 5, 6, 10 and 12 of Framework Decision 2002/584 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.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

…

(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) [EU], determined by the Council pursuant to Article 7(1) [EU] 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 [EU] and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. …'

4 Article 1 of that framework decision, entitled 'Definition of the European arrest warrant and obligation to execute it', provides:

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

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

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [EU].'

5 Article 2 of that framework decision, entitled 'Scope of the European arrest warrant', provides in paragraph 1 thereof:

'A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.'

6 Under Article 6 of Framework Decision 2002/584, entitled 'Determination of the competent judicial authorities':

'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.'

7 Article 8 of that framework decision, entitled 'Content and form of the European arrest warrant', provides in paragraph 1 thereof:

'The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

…

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

…

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

…'

Belgian law

The Belgian Constitution

8 According to the first subparagraph of Article 151(1) of the belgische Grondwet (Belgian Constitution):

'Courts shall be independent in the exercise of their jurisdiction. The Public Prosecutor's Office shall be independent in conducting investigations and prosecutions in individual cases, without prejudice to the right of the competent minister to order prosecutions and to issue binding guidelines on criminal policy, including policy concerning investigations and prosecutions.'

The Law on the European arrest warrant

9 Article 32(2) of the Wet betreffende het Europees aanhoudingsbevel (Law on the European arrest warrant) of 19 December 2003 (*Belgisch Staatsblad*, 22 December 2003, p. 60075) provides:

'Where it is reasonable to assume that a person requested for the purposes of executing a custodial sentence or detention order is in the territory of another Member State of the European Union, the Public Prosecutor shall issue a European arrest warrant in the manner and on the conditions established in Articles 2 and 3.

If, in this case, the custodial sentence or detention order has been imposed by a decision rendered *in absentia*, and if the requested person has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, the European arrest warrant shall state that the requested person will have an opportunity to challenge the decision in Belgium and to be present at the judgment.'

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

10 On 24 April 2019, the Public Prosecutor's Office in Brussels issued a European arrest warrant in respect of ZB for the purposes of enforcing a judgment delivered on 7 February 2019 by the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium) by which ZB was sentenced to prison terms of 30 months and 1 year.

11 On 3 May 2019, ZB was arrested in the Netherlands on the basis of the European arrest warrant.

12 On the same day, the Openbaar Ministerie (Public Prosecutor's Office, Netherlands) lodged an application for consideration of that European arrest warrant before the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), pursuant to Article 23 of the Overleveringswet (Law on surrender) of 29 April 2004, in the version applicable to the main proceedings.

13 The referring court observes, first, that it is apparent from the information provided by the Belgian authorities in the main proceedings that, in Belgium, members of the Public Prosecutor's Office participate in the administration of justice and act independently without being directly or indirectly subject to orders or instructions in a specific case from the executive.

14 Secondly, that court states that the Belgian legislation relating to the European arrest warrant does not provide for the possibility of bringing a separate action against the decision to issue such a warrant.

15 That court is therefore uncertain whether the requirement in paragraph 75 of judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), that the decision to issue a European arrest warrant and, inter alia, the proportionality of such a decision must be capable of being the subject of court proceedings which meet in full the requirements inherent in effective judicial protection, also applies where the European arrest warrant seeks the enforcement of a custodial sentence.

16 While the referring court considers that the requirements laid down in the judgments of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), and of 27 May 2019, *PF (Prosecutor General of Lithuania)* (C-509/18, EU:C:2019:457), must be fulfilled for all European arrest warrants, whether such warrants are issued for the purposes of conducting criminal proceedings or executing a sentence, including where they are issued on the basis of an enforceable judgment delivered by a court, it nevertheless notes that, in the present case, the issuing judicial authority and the Netherlands Public Prosecutor's Office both take the contrary view.

17 In those circumstances, the Rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'In the case where an European arrest warrant seeks the enforcement of a custodial sentence imposed by an enforceable decision of a judge or court, whereas the warrant has been issued by a public prosecutor who participates in the administration of justice in the issuing Member State, and there is a guarantee that he acts independently in the execution of those of his responsibilities which are inherent in the issuing of a European arrest warrant, does the condition also apply that there must be a possibility of instituting court proceedings against the decision to issue a European arrest warrant which meet in full the requirements inherent in effective judicial protection, in particular the proportionality of the decision?'

The urgent procedure

18 On 17 September 2019, the First Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to deal with Case C-627/19 PPU under the urgent preliminary ruling procedure.

19 After pointing out that the reference for a preliminary ruling concerned the interpretation of Framework Decision 2002/584, which falls within the scope of Title V of Part Three of the FEU Treaty, concerning the area of freedom, security and justice, and could therefore, as requested by the referring court, be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Court's Rules of Procedure, the First Chamber of the Court relied on the fact that ZB had, since 3 May 2019, been held in custody for the purposes of extradition pending a decision on the execution of the European arrest warrant issued against him and that the question as to whether he could continue to be held in custody depended on the outcome of the dispute in the main proceedings.

Consideration of the question referred for a preliminary ruling

20 By its question, the referring court seeks to ascertain, in essence, whether Framework Decision 2002/584 must be interpreted as precluding the legislation of a Member State which, although conferring competence to issue a European arrest warrant for the purposes of executing a sentence on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, does not provide for a separate judicial remedy against the decision of that authority to issue such a European arrest warrant.

21 In that regard, it should be recalled at the outset that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are of fundamental importance in EU law because they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies of the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 36 and the case-law cited).

22 It should also be observed that, as stated in recital 6 thereof, Framework Decision 2002/584 is the first concrete measure in the field of criminal law implementing the principle of mutual recognition of judgments and judicial decisions, established in Article 82(1) TFEU, which replaced Article 31 EU, on the basis of which that framework decision was adopted. Since then, the field of judicial cooperation in criminal matters has gradually acquired legal instruments whose coordinated application is intended to strengthen the confidence of Member States in their respective national legal orders with a view to ensuring that judgments in criminal matters are recognised and enforced within the European Union in order to ensure that persons who have committed offences do not go unpunished.

23 The principle of mutual recognition, which underpins Framework Decision 2002/584, means that, in accordance with Article 1(2) thereof, the Member States are in principle obliged to act upon a European arrest warrant (judgment of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraph 36 and the case-law cited).

24 According to the provisions of Framework Decision 2002/584, the Member States may refuse to execute such a warrant only in the cases of mandatory non-execution provided for in Article 3 thereof and in the cases of optional non-execution listed in Articles 4 and 4a. Furthermore, the

executing judicial authority may make the execution of a European arrest warrant subject only to the conditions set out in Article 5 of the framework decision (judgment of 29 January 2013, *Radu*, C-396/11, EU:C:2013:39, paragraph 36 and the case-law cited).

25 The Court has also ruled that only European arrest warrants, within the meaning of Article 1(1) of Framework Decision 2002/584, must be executed in accordance with the provisions of that decision. It follows from that article that such an arrest warrant is a 'judicial decision', which requires that it be issued by a 'judicial authority' within the meaning of Article 6(1) of the framework decision (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 46, and the case-law cited).

26 In the present case, the referring court states that it follows from the information provided by the Belgian authorities in the main proceedings that, in Belgium, public prosecutors fulfil the requirements deriving from paragraphs 51 and 74 of the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), for classification as an 'issuing judicial authority', as they participate in the administration of criminal justice in that Member State and act independently in the execution of those of their responsibilities which are inherent in the issuing of a European arrest warrant.

27 In that regard, the Belgian Government has also confirmed in its written and oral observations that the independence of the Public Prosecutor's Office in conducting investigations and prosecutions in individual cases is guaranteed by the Belgian Constitution. The Belgian Government has likewise indicated that, while the Minister for Justice may draw up guidelines concerning criminal policy, those guidelines do not constitute directions or instructions concerning a particular case.

28 The referring court is nevertheless uncertain whether, having regard to paragraph 75 of the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), the decision to issue a European arrest warrant for the purposes of executing a sentence must be capable of being the subject, in the issuing Member State, of court proceedings.

29 In that regard, the European arrest warrant system entails a dual level of protection of procedural rights and fundamental rights which must be enjoyed by the requested person, since, in addition to the judicial protection provided at the first level, at which a national decision, such as a national arrest warrant, is adopted, there is the protection that must be afforded at the second level, at which a European arrest warrant is issued, which may occur, depending on the circumstances, shortly after the adoption of the national judicial decision (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 67 and the case-law cited).

30 Thus, as regards a measure, such as the issuing of a European arrest warrant, which is capable of impinging on the right to liberty of the person concerned, that protection means that a decision meeting the requirements inherent in effective judicial protection should be adopted, at least, at one of the two levels of that protection (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 68).

31 In particular, the second level of protection of the rights of the person concerned, requires that the issuing judicial authority review observance of the conditions to be met when issuing the European arrest warrant and examine objectively – taking into account all incriminatory and exculpatory evidence, without being exposed to the risk of being subject to external instructions, in particular from the executive – whether it is proportionate to issue that warrant (see, to that effect, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraphs 71 and 73).

32 As regards a European arrest warrant issued for the purposes of conducting criminal proceedings, the Court added that, where the law of the issuing Member State confers competence to issue a European arrest warrant on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, the decision to issue such an arrest warrant and, inter alia, the proportionality of such a decision must be capable of being the subject, in the Member State, of court proceedings which meet in full the requirements inherent in effective judicial protection (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 75).

33 In this case, unlike the situations giving rise to the judgments of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), and of 27 May 2019, *PF (Prosecutor General of Lithuania)* (C-509/18, EU:C:2019:457), which concerned European arrest warrants issued for the purposes of conducting criminal proceedings, the main proceedings concern a European arrest warrant issued for the purposes of executing a sentence.

34 In that regard, such a warrant is, as is apparent from Article 8(1)(c) and (f) of Framework Decision 2002/584, based on an enforceable judgment imposing a custodial sentence on the person concerned, by which the presumption of innocence enjoyed by that person is rebutted in judicial proceedings that must meet the requirements laid down in Article 47 of the Charter of Fundamental Rights.

35 In such a situation, the judicial review referred to in paragraph 75 of the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), which meets the need to ensure effective judicial protection for the person requested on the basis of a European arrest warrant issued for the purposes of executing a sentence, is carried out by the enforceable judgment.

36 The existence of earlier judicial proceedings ruling on the guilt of the requested person allows the executing judicial authority to presume that the decision to issue a European arrest warrant for the purposes of executing a sentence is the result of a national procedure in which the person in respect of whom an enforceable judgment has been delivered has had the benefit of all safeguards appropriate to the adoption of that type of decision, including those derived from the fundamental rights and fundamental legal principles referred to in Article 1(3) of Framework Decision 2002/584.

37 Moreover, the provisions of Framework Decision 2002/584 themselves provide for a procedure that complies with the requirements of Article 47 of the Charter of Fundamental Rights, regardless of the methods of implementing that framework decision chosen by the Member States (judgment of 30 May 2013, *F*, C-168/13 PPU, EU:C:2013:358, paragraph 47).

38 Furthermore, where a European arrest warrant is issued for the purposes of executing a sentence, it follows that it is proportional from the sentence imposed, which, as is clear from Article 2(1) of Framework Decision 2002/584, must consist of a custodial sentence or a detention order of at least four months.

39 In the light of the foregoing considerations, the answer to the question referred is that Framework Decision 2002/584 must be interpreted as not precluding the legislation of a Member State which, although conferring competence to issue a European arrest warrant for the purposes of executing a sentence on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, does not provide for a separate judicial remedy against the decision of that authority to issue such a European arrest warrant.

Costs

40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

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 the legislation of a Member State which, although conferring competence to issue a European arrest warrant for the purposes of executing a sentence on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, does not provide for a separate judicial remedy against the decision of that authority to issue such a European arrest warrant.

[Signatures]

[i] The wording of the header of this document has been amended since it was first put online.