Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

28 June 2012*

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — European arrest warrant issued for the purposes of execution of a custodial sentence — Article 28 — Subsequent surrender — 'Chain' of European arrest warrants — Execution of a third European arrest warrant in respect of the same person — Concept of 'executing Member State' — Consent to surrender — Urgent preliminary ruling procedure)

In Case C-192/12 PPU,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Finland), made by decision of 24 April 2012, received at the Court on the same day, in the proceedings concerning the execution of a European arrest warrant issued in respect of

Melvin West,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, U. Lõhmus, A. Rosas, A. Arabadjiev (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: P. Cruz Villalón,

Registrar: C. Strömholm, Administrator,

having regard to the request of the referring court, of 24 April 2012, received at the Court on the same day, that the reference for a preliminary ruling be dealt with under an urgent procedure pursuant to Article 104b of the Rules of Procedure of the Court,

having regard to the decision of 3 May 2012 of the Second Chamber to grant that request,

having regard to the written procedure and further to the hearing on 4 June 2012,

after considering the observations submitted on behalf of:

— Mr West, by R. Sorsa, asianajaja,

— the Virallinen syyttäjä, by M. Mäkelä, kihlakunnansyyttäjä,

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

* Language of the case: Finnish.

— the French Government, by G. de Bergues and J.-S. Pilczer and by N. Rouam and B. Beaupère-Manokha, acting as Agents,

— the Hungarian Government, by M.Z. Fehér, acting as Agent,

— the United Kingdom Government, by J. Beeko, acting as Agent,

— the European Commission, by W. Bogensberger and I. Koskinen, acting as Agents,

after hearing the Advocate General,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 28(2) 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 the context of the execution in Finland of a European arrest warrant issued on 31 August 2007 by the Tribunal de grande instance de Paris (Regional Court, Paris) (France) in respect of Mr West, a national and resident of the United Kingdom, for the purposes of execution of a three-year prison sentence imposed on him for the theft of rare and ancient maps.

Legal context

European Union law

3 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 Republic of Finland 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.

4 In accordance with Article 10(1) of Protocol No 36 on transitional provisions, annexed to the FEU Treaty, the powers of the Court under Title VI of the Treaty on European Union, in the version preceding the Treaty of Lisbon, concerning acts of the Union which were adopted before the entry into force of the Treaty of Lisbon, are to remain the same, including where they have been accepted under Article 35(2) EU.

5 Recitals 1, 5 to 7 and 10 of the Framework Decision state as follows:

'(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

…

(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.

(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.

…

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States …'

6 Article 1(1) and (2) of the Framework Decision defines the European arrest warrant and 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 3 of the Framework Decision lists the '[g]rounds for mandatory non-execution of the European arrest warrant'.

8 Article 4 of the Framework Decision, headed 'Grounds for optional non-execution of the European arrest warrant', states those grounds and 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'.

9 Article 5 of the Framework Decision, headed 'Guarantees to be given by the issuing Member State in particular cases', provides:

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

…

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

10 Article 15 (2) of the Framework Decision, headed 'Surrender decision', provides:

'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.'

11 Under the heading 'Possible prosecution for other offences', Article 27 of the Framework Decision states:

'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:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the specialty rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(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.'

12 Pursuant to Article 28 of the Framework Decision, headed '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:

(a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

(c) where the requested person is not subject to the specialty 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.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.'

13 Article 32 of the Framework Decision, headed 'Transitional provision', provides:

'Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.'

Finnish law

14 According to Article 61 of Law 1286/2003 on surrender between Finland and the other Member States of the European Union (rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä annettu laki (1286/2003)) of 30 December 2003, a person surrendered by a Member State to the Republic of Finland may not be surrendered to another Member State except, inter alia, where the Member State which surrendered the person consents to a derogation from that prohibition.

15 According to Article 62 of that law, read in conjunction with Article 61 thereof, if a Member State requests the surrender of a person already surrendered to the Republic of Finland by another Member State and that person objects to that further surrender, it is the competent prosecutor who submits the request for consent to that surrender to the Member State from which that person was surrendered to the Republic of Finland.

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

Background to the dispute

16 Mr West was the subject of three successive European arrest warrants.

17 The first European arrest warrant was issued by the French judicial authorities on 14 March 2005 for the purposes of the prosecution of Mr West for the theft of ancient and rare maps on 26 October 1999 and 5 September 2000 from the Bibliothèque nationale de France (French national library). That arrest warrant, after having been initially transmitted through the Schengen Information System (SIS) and Interpol, was sent to the competent authorities of the United Kingdom of Great Britain and Northern Ireland, given that Mr West was at that time in detention in the United Kingdom. On 15 February 2007, not having been able to obtain Mr West's surrender in execution of that European arrest warrant, the Tribunal de grande instance de Paris sentenced him *in absentia* to three years' imprisonment. Consequently, on 31 August 2007, the French judicial authorities issued a new European arrest warrant for the purposes of executing that custodial sentence, which was transmitted via the SIS and Interpol.

18 The second European arrest warrant was issued by the Finnish judicial authorities on 9 December 2009 for the purposes of the execution by Mr West of a custodial sentence, upheld on appeal by a judgment of 31 May 2002 of the Helsingin hovioikeus (Helsinki court of appeal), for thefts carried out by him at the university library of Helsinki (Finland) in the period 22 to 26 February 2001.

19 The third European arrest warrant was issued by the Hungarian judicial authorities on 1 April 2010 for the purposes of criminal proceedings instituted against Mr West, prosecuted for having damaged, in the period 16 to 18 August 2000, at the Széchenyi National Library (Hungary), a number of seventeenth century atlases of great value, by removing eight plates from the atlases in order to appropriate them.

The surrender procedures concerning Mr West

20 On a date not apparent from the file before the Court, the judicial authorities of the United Kingdom, in execution of the European arrest warrant issued by the abovementioned Hungarian judicial authorities, surrendered Mr West to Hungary. That surrender was not made subject to any condition. The Budai Központi kerületi bíróság (Central District court of Buda (Hungary)) sentenced Mr West for the thefts of which he was accused to 16 months' imprisonment. By decision of 27 January 2011, the Fővárosi Bíróság (Budapest Municipal Court), after having found that the conditions for Mr West's surrender were fulfilled, both with regard to the arrest warrant issued by the Finnish judicial authorities and that issued by the French judicial authorities, adopted a decision ordering Mr West's surrender to the Republic of Finland. According to the file before the Court, the judicial authority of the United Kingdom granted its unconditional consent to that surrender.

21 On 15 September 2011, Hungary surrendered Mr West to the Republic of Finland pursuant to a European arrest warrant issued by the Finnish judicial authorities for the purposes of execution of the prison sentence imposed on him by the Helsingin hovioikeus. Seventeen months' imprisonment remained to be served. The date of Mr West's release was set as 29 April 2012. On 25 January 2012, the Hungarian Minister of Public Administration and Justice sent to the Virallinen syyttäjä (Finnish prosecutor) a letter informing it of the decision of the Fővárosi Bíróság of 27 January 2011. That letter stated that the court had decided that once the Finnish criminal proceedings were concluded, the person concerned would have to be surrendered to the French authorities.

22 On 9 February 2012, the Virallinen syyttäjä applied to the Helsingin käräjäoikeus (Helsinki District Court) seeking the surrender of Mr West, in execution of the European arrest warrant issued by the French judicial authorities on 31 August 2007, to the French Republic, stating that Hungary had consented to that surrender. According to the observations submitted at the hearing before the Court, the Virallinen syyttäjä also took steps to find out, via the central police authority, whether the United Kingdom had consented to that surrender. The competent authorities of the United Kingdom replied that the decision on Mr West's surrender to the French Republic had to be taken by the Finnish authorities. In its replies to the Court's written questions, the United Kingdom, for its part, made clear in that regard that the Republic of Finland had requested its consent to Mr West's surrender to the French Republic but that it had not given that consent.

23 By decision of 17 February 2012, the Helsingin käräjäoikeus gave its permission for the surrender of Mr West to the French Republic. He appealed to the Korkein oikeus against that decision. Mr West objects to such surrender on the ground that the United Kingdom has not consented to that third surrender. The Virallinen syyttäjä considers, by contrast, that that surrender requires only Hungary's consent, since Hungary is the Member State from which Mr West was in fact surrendered to the Republic of Finland.

The order for reference

24 In its order for reference, the Korkein oikeus states that it must rule on the question whether, in application of the Framework Decision, the surrender requested by the French judicial authorities requires the consent of a Member State other than Hungary. In the present case, it is neither proved nor even argued that the United Kingdom consented to the surrender of Mr West to the French Republic. Hungary, by contrast, consented to that effect.

25 According to the Korkein oikeus, the requirement of consent of the Member State of execution pursuant to Article 28(2) of the Framework Decision is not a question of national law. The sound functioning of the system established by the Framework Decision requires in that regard a uniform interpretation.

26 The Korkein oikeus states that the conditions laid down in Article 28(2)(a) and (b) of the Framework Decision are not fulfilled in the present case. By contrast, Article 28(2)(c) may be relevant. According to that provision, which refers back to Article 27(3)(g) of the Framework Decision, specific consent of the Member State of execution to a subsequent surrender is not required if the 'executing judicial authority which surrendered the person' consents to new measures of prosecution or sentencing. There is however some doubt concerning the question whether 'executing judicial authority which surrendered the person' refers to an authority of a Member State strictly identical to the one referred to at the beginning of Article 28(2) as the executing Member State.

27 The referring court considers that the wording of Article 28(2) of the Framework Decision seems to indicate that the executing Member State whose consent is necessary is only the Member State which last surrendered the person to the Member State to which the current new arrest warrant was submitted. That interpretation is supported by the general objective of the Framework Decision according to which the surrender procedure should operate with as few checks as possible. While that interpretation applies without difficulty in the case of surrenders among three Member States, that is not the case where four Member States are concerned by the surrender. Thus, in the present case, the question is whether the United Kingdom has retained its right to consent even after Mr West was surrendered by Hungary to the Republic of Finland.

28 The Korkein oikeus considers it necessary to examine the purpose of such consent. The grounds for optional non-execution of the European arrest warrant set out in Article 4 of the Framework Decison could be relevant in that regard. In addition, pursuant to Article 5 of the Framework Decision, national law may impose certain conditions on the surrender of persons who are nationals and residents of the executing Member State.

29 According to that court, the reasoning underlying those provisions favours an interpretation of Article 28(2) of the Framework Decision to the effect that the position of the Member State initially responsible for execution cannot be weakened because, following an offence, that Member State gave its consent to a subsequent surrender of the person concerned. That subsequent surrender does not therefore lead to competence and discretion being transferred to the Member State which would end up as the last in a chain of surrenders concerning the same person. The only link between a Member State which carried out a subsequent surrender and the requested person would be the criminal proceedings already conducted and executed before the surrender of that person to another Member State.

30 In those circumstances, the Korkein oikeus decided to stay the proceedings and refer to the Court the following question for a preliminary ruling:

'In applying Article 28(2) of the Framework Decision, does "executing Member State" mean the Member State from which a person was originally surrendered to another Member State on the basis of a European arrest warrant, or that second Member State from which the person was surrendered to a third Member State which is now requested to surrender the person onward to a fourth Member State? Or is consent perhaps required from both Member States?'

31 By a separate decision also issued on 24 April 2012, the Korkein oikeus ordered the continuation of Mr West's detention.

The urgent procedure

32 By a separate application of 24 April 2012, lodged at the Registry of the Court the same day, the Korkein oikeus requested that the present reference for a preliminary ruling 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 104b of its Rules of Procedure.

33 Justifying that request, the referring court stated that, following the European arrest warrant issued by the French judicial authorities, Mr West's detention in Finland, which in principle came to an end on 29 April 2012, was extended. Given that Mr West has been deprived of his liberty, the urgent procedure is absolutely essential in the light of the legal certainty which he is entitled to claim.

34 Accepting that reasoning, the Second Chamber of the Court decided on 3 May 2012, on the proposal of the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court's request that the reference for a preliminary ruling be dealt with under the urgent procedure.

The question referred for a preliminary ruling

35 As a preliminary point, it should be recalled that, as is clear from paragraphs 3 and 4 of this judgment, the Court has jurisdiction, in the present case, to rule on the interpretation of the Framework Decision pursuant to Article 10(1) of Protocol No 36 on transitional provisions. Second, in accordance with Article 32 of the Framework Decision, the framework decision applies to requests relating to acts which, like those in the main proceedings, were committed before 1 January 2004, provided that the executing Member State has not made a statement indicating that it will continue to deal with such requests in accordance with the extradition system applicable before that date. It is common ground that no such statement was made by the United Kingdom or Hungary, both of which have already executed a European arrest warrant concerning Mr West, or by the Republic of Finland, which is requested, in the main proceedings, to execute another European arrest warrant in respect of Mr West.

36 By its question, the referring court asks in essence whether Article 28(2) of the Framework Decision must be interpreted as meaning that, where a person has been subject to more than one surrender between Member States pursuant to successive European arrest warrants, the subsequent surrender of that person to a Member State other than that which last surrendered him is subject to the consent of the Member State which carried out his initial surrender, to the consent of the Member State which carried out his last surrender or to that of each of the surrendering Member States.

37 That question concerns the situation of Mr West, a national and resident of the United Kingdom, who was surrendered by the judicial authorities of that Member State ('the first executing Member State') to Hungary pusuant to a European arrest warrant issued by the Hungarian national authorities for the purposes of conducting a criminal prosecution, before then being surrendered by Hungary (the 'second executing Member State') to the Republic of Finland pursuant to a European arrest warrant issued by the Finnish judicial authorities for the purposes of execution of a custodial sentence, and who is now subject to a procedure for the purposes of his surrender by the Republic of Finland ('the third executing Member State') to the French Republic pursuant to a European arrest warrant issued by the French authorities for the purposes of execution of a custodial sentence imposed *in absentia* for crimes committed prior to the first surrender.

38 The second executing Member State gave its consent to Mr West's surrender to the French Republic by the third executing Member State. By contrast, it is not possible to tell from the file, as follows from paragraph 22 above, whether the first executing Member State itself gave such consent.

39 Accordingly, the referring court wishes to know whether Mr West's surrender by the third executing Member State to the French Republic makes it necessary to obtain, apart from the consent already given by the second executing Member State, the consent of the first executing Member State, or whether it is sufficient if the consent of one of those two executing Member States is obtained.

40 According to the wording of Article 28(2) of the Framework Decision, in principle, a person who was surrendered to the issuing Member State pursuant to a European arrest warrant may be surrendered to a Member State other than 'the executing Member State' pursuant to a European arrest warrant issued in respect of an offence committed prior to his surrender to that issuing Member State only with 'the consent of the executing Member State'.

41 Like the specialty rule set out in Article 27(2) of the Framework Decision, according to which a person may not be prosecuted, sentenced or otherwise deprived of his liberty for an offence committed prior to his surrender other than that for which he was surrendered (see Case C-388/08 PPU *Leymann and Pustovarov* [2008] ECR I-8983, paragraph 43), the rule laid down in Article 28(2) of that Framework Decision confers on the requested person the right not to be surrendered to a Member State other than the executing Member State for the purposes of conducting a criminal prosecution or executing a custodial sentence for an offence committed prior to his surrender to the issuing Member State.

42 In accordance with Article 28(1) of the Framework Decision, any Member State may renounce application of the rule laid down in the preceding paragraph by making the notification provided for in that provision. It is however common ground that, in the present case, none of the Member States involved in the execution of the successive European arrest warrants issued in respect of Mr West has made such a notification.

43 The rule set out in Article 28(2) of the Framework Decision contains, in addition, three exceptions stated in the same paragraph, under points (a) to (c), which are not however applicable to the case in the main proceedings. In particular, in that case, it is established that the first executing Member State, when the European arrest warrant issued by the Hungarian judicial authorities was executed for the purposes of his surrender to Hungary, did not renounce the application of the specialty rule laid down in Article 28(2)(c) of the Framework Decision and, consequently, did not waive the giving of the consent required by that Article 28(2) for a subsequent surrender to another Member State for offences committed before Mr West's surrender to Hungary.

44 It is furthermore common ground that Hungary, as the second executing Member State, when the European arrest warrant issued by the Finnish judicial authorities was executed for the purposes of Mr West's surrender to Finland, sought the consent of the first executing Member State to that surrender and that that Member State gave such consent.

45 It follows that the surrender of a person such as Mr West in the case in the main proceedings requires the consent provided for under Article 28(2) of the Framework Decision.

46 With regard to the question whether the consent required for the surrender of the person concerned must be given by only one or two of the Member States which executed a European arrest warrant issued in respect of that person, Article 28(2) of the Framework Decision, as the European Commission stated in its written observations, can be interpreted in three different ways in a situation such as that at issue in the main proceedings. According to the first interpretation, that provision requires the consent of both the first and second executing Member States. According to the second interpretation, only the consent of the first executing Member State would be required, Finally, according to the third interpretation, that provision would require the consent of the second executing Member State alone.

47 Mr West and the Finnish and French Governments propose in essence the first interpreation. In that regard, whereas Mr West and the Finnish Government consider that it is for the third executing Member State to request simultaneously the consent of the first and second executing Member States, the French Government claims that each executing Member State is bound itself to apply Article 28(2) of the Framework Decision, meaning that, in the case in the main proceedings, the third executing Member State must seek the consent only of the second executing Member State, that Member State being bound in turn to request the consent of the first executing Member State.

48 The Virallinen syyttäjä favours, for its part, the third interpretation in order to ensure the smooth functioning of surrenders, even if it does not exclude, in the alternative, the second interpretation. The Commission also considers that the third interpretation should be preferred, given that it is based on the wording of Article 28(2) of the Framework Decision and that it complies most closely with the principle of mutual recognition. The Commission however states that the second interpretation is

confirmed by the objective of maintaining a certain long-distance check on surrendered persons and by the concern to ensure the greatest possible clarity of the system of surrender by making it necessary to obtain the consent of the same executing Member State however many surrenders occur. Both the Virallinen syyttäjä and the Commission reject the first interpretation.

49 In order to understand the scope of Article 28(2) of the Framework Decision and, in particular, the phrase 'executing Member State' in a situation such as that at issue in the main proceedings, both the wording of that provision and the objective pursued by the Framework Decision must be taken into account (see, to that effect, *Leymann and Pustovarov*, paragraph 46).

50 With regard, first, to the wording of the Article 28(2) of the Framework Decision, it must be noted that, according to that provision, as already stated in paragraph 40 above, where none of the exceptions referred to in that article applies, a person who was surrendered to the issuing Member State pursuant to a European arrest warrant may be surrendered by that State to a Member State other than the 'executing Member State' pursuant to a European arrest warrant only with the consent of that 'executing Member State'.

51 According to that wording, even if Article 28(2) of the Framework Decision does not explicitly envisage a situation such as that at issue in the main proceedings, in which the requested person is the subject of three requests for successive surrenders, in the scheme established by that provision, which concerns the subsequent surrender by the issuing Member State of a person already surrendered to it, the concept of 'executing Member State' refers, as maintained by the referring court, the French Government and the Commission, to the Member State which executed the European arrest warrant on the basis of which the person concerned was surrendered to that issuing Member State and which confers on the latter the power to surrender that person, as executing Member State, to another Member State.

52 It follows from the foregoing that, in a case such as that in the main proceedings, the concept of 'executing Member State' refers to the execution of a European arrest warrant issued by the Finnish judicial authorities for the purposes of Mr West's surrender by Hungary to the Republic of Finland and, therefore, that concept refers to the second executing Member State, that is to say, the State which carried out the last surrender of Mr West to the Member State which, as third executing Member State, is called upon in the present case to surrender that person to the French Republic pursuant to the arrest warrant issued by the French judicial authorities.

53 With regard, second, to the objective pursued by the Framework Decision, it must be pointed out that it seeks, inter alia, to facilitate and accelerate judicial cooperation (see Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 31; Case C-296/08 PPU *Santesteban Goicoechea* [2008] ECR I-6307, paragraphs 51, 55 and 76; and *Leymann and Pustovarov*, paragraph 42). That Framework Decision thus seeks to contribute to the objective set for the European Union to become an area of freedom, security and justice by basing itself on the high degree of confidence which should exist between the Member States (*Leymann and Pustovarov*, paragraphs 48 and 50).

54 Furthermore, as is clear from recitals 5 and 7 in the preamble to the Framework Decision, the purpose of the Framework Decision is to replace the multilateral system of extradition between Member States with 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 (*Advocaten voor de Wereld*, paragraph 28; Case C-66/08 *Kozłowski* [2008] ECR I-6041, paragraphs 31 and 43; Case C-123/08 *Wolzenburg* [2009] ECR I-9621, paragraph 56; and Case C-261/09 *Mantello* [2010] ECR I-11477, paragraph 35).

55 That principle, which constitutes 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 thus 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 that Framework Decision. Equally, according to Article 28(3) of the Framework Decision, consent to a subsequent surrender may be refused only in those same cases (see, to that effect, *Leymann and Pustovarov*, paragraphs 49 and 51; *Wolzenburg*, paragraph 57; and *Mantello*, paragraphs 36 and 37).

56 In a case such as that in the main proceedings, to require, as suggested by Mr West and the Finnish and French Governments, that consent be given by both the first and second executing Member States, could undermine the attainment of the objective pursued by the Framework Decision of accelerating and simplifying judicial cooperation between the Member States.

57 Admittedly, as the Finnish Government and the Virallinen syyttäjä stated at the hearing, a request for consent may be sent simultaneously to all the executing Member States involved in a chain of European arrest warrants and the identification of each of those executing Member States does not seem to be a particularly complex task, taking into account, inter alia, the existence of the SIS. The requirement to obtain the consent of several Member States does not therefore appear likely, as such, to give rise to insurmountable practical difficulties.

58 The fact none the less remains that such a requirement can complicate and slow down the execution of a European arrest warrant because the obligation to obtain the consent of a number of Member States for the purposes of carrying out a subsequent surrender of the person convicted or suspected may cause those Member States to send multiple requests for supplementary information under Article 15(2) of the Framework Decision and, in any case, increase the possibility of divergent decisions both between the Member States whose consent is required under Article 28(2) of that Framework Decision and between them and the Member State responsible for the execution of that European arrest warrant pursuant to Article 1(2) thereof. That applies all the more since the underlying logic of that interpretation would clearly have the consequence that every Member State executing a European arrest warrant in respect of a certain person would have to give its consent in the case of his subsequent surrender.

59 It cannot in particular be excluded that, in a situation such as that at issue in the main proceedings, the second executing Member State, which must give its consent to the subsequent surrender pursuant to Article 28(2) of the Framework Decision, and the third executing Member State, which is responsible for carrying out the surrender pursuant to Article 1(2) thereof, would adopt divergent decisions on that surrender and, therefore, that the surrender could no longer be carried out. However, such a possibility is inherent in the system established by Article 28(2) of that Framework Decision, since that provision requires, in principle, the agreement of two Member States for a subsequent surrender in respect of an offence committed before the last surrender.

60 It is true that to require the consent only of the first executing Member State would also be capable of achieving the objective of simplicity and rapidity pursued by the Framework Decision, all the more so because it would be the same Member State which would have to give its consent to a subsequent surrender of the same person, however many successive surrenders took place.

61 However, as noted by the Commission, in a case such as that in the main proceedings, the direct and immediate nature of the relationship between the second and third executing Member States is such as to facilitate judicial cooperation between those two Member States.

62 It follows from the above that the interpretation according to which the concept of ‘executing Member State’ refers only to the Member State which carried out the last surrender of the person concerned reinforces the system of surrender established by the Framework Decision for the good of the area of freedom, security and justice, in accordance with the mutual confidence which must exist between the Member States. By limiting the situations in which the executing judicial authorities of the Member States involved in the successive surrenders of the same person may refuse to consent to the execution of a European arrest warrant, such an interpretation only facilitates the surrender of

requested persons, in accordance with the principle of mutual recognition set out in Article 1(2) of the Framework Decision, which constitutes the essential rule introduced by that decision (see, to that effect, *Wolzenburg*, paragraphs 58 and 59).

63 The Finnish Government claims that that interpretation is capable of frustrating the attainment of the objective pursued by Article 28(2) of the Framework Decision, which aims to protect the sovereignty of the Member State which surrendered the person and to guarantee that, after his surrender, that person is not prosecuted, convicted or subsequently surrendered to another Member State on account of offences which took place before the initial surrender and on which that surrender was not based.

64 In that regard, it should be recalled that the principle of mutual recognition does not impose an absolute obligation to execute the European arrest warrant. According to paragraph 55 above, the system established by the Framework Decision, as is apparent inter alia from Articles 3 to 5 thereof, leaves the Member States with the possibility of allowing the competent judicial authorities, in specific situations, to refuse to execute such a surrender (see, to that effect, Case C-306/09 *B.* [2010] ECR I-10341, paragraphs 50 and 51).

65 Article 28(2) of the Framework Decision must be understood in that same context. While, as is clear from Article 28(3) of the Framework Decision, the executing judicial authorities must in principle give their consent to a subsequent surrender, they are entitled, under Article 28(3)(d), to refuse to give their consent to a subsequent surrender on the grounds set out in Articles 3 and 4 of the Framework Decision. In addition, the second subparagraph of Article 28(3) provides that the issuing Member State must give the guarantees provided for in Article 5 of that Framework Decision.

66 However, the interpretation of the concept of 'executing Member State' resulting from the present judgment does not undermine the competences of the first executing Member State under Article 28(2) of the Framework Decision. Both when executing the first European arrest warrant and when requested to consent to the execution of the second European arrest warrant, that first executing Member State could, in accordance with Article 28(3) of the Framework Decision, rely on the provisions set out in Articles 3 to 5 thereof. However in the case in the main proceedings, both at the time of the first and second surrenders of the person concerned, the first executing Member State consented to execution of the European arrest warrant concerned without relying on either of those provisions.

67 It cannot be excluded that, by reason of factual or legal circumstances associated with the issue of the European arrest warrant pursuant to which the third surrender is to be carried out, it may be possible to rely on a particular provision laid down in Articles 3 to 5 of the Framework Decision for the first time only when that third surrender occurs.

68 In such a situation, in the light of the high degree of confidence between the Member States on which the Framework Decision is based, it is in principle for both the second and the third executing Member States to rely, if appropriate, on a particular provision laid down in the said Articles 3 to 5, where the conditions for application stated therein are satisfied in relation to the person who is subject to that subsequent surrender.

69 The Finnish and French Governments consider however that such an interpretation ignores the fact that certain grounds for non-execution of a European arrest warrant cannot be relied upon by every executing Member State. In a case such as that in the main proceedings, if the consent of the first executing Member State were not required, that Member State would be deprived of the possibility of relying, for the benefit of a person who is a national or resident of that State, on Articles 4(6) and 5(3) of the Framework Decision. Thus, those provisions could not be invoked for the benefit of that person either by the first or the second executing Member State.

70 It should be noted that Articles 4(6) and 5(3) of the Framework Decision allow the executing judicial authority, first, where the person concerned is subject to a European arrest warrant issued for the purposes of execution of a custodial sentence and where he 'is staying in, or is a national or a resident

of the executing Member State', to refuse to execute such a warrant by undertaking to have that sentence executed in accordance with its national law and, second, where that person is subject to a European arrest warrant for the purposes of prosecution and is 'a national or resident of the executing Member State', to make the surrender subject to the condition that that person is returned to the executing Member State in order to serve there the custodial sentence passed against him in the issuing Member State. Those provisions have 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 (see *Kozłowski*, paragraph 45; *Wolzenburg*, paragraphs 62 and 67; and *B.*, paragraph 52).

71 According to the interpretation resulting from the present judgment, the second executing Member State, no more in fact than the third executing Member State, may not, in the case in the main proceedings, rely on those provisions in order to oppose, under Article 28(3)(d) of the Framework Decision, the subsequent surrender of the requested person, because that person is neither a national nor resident of those Member States and also does not stay on the territory of those Member States but is a national and resident of the first executing Member State.

72 However, that fact cannot influence the interpretation of Article 28(2) of the Framework Decision, since that provision, in so far as it requires the prior consent of the executing Member State for a subsequent surrender, establishes a general rule which is intended to apply regardless of the special features of each case.

73 In a European Union founded on the principle of the free movement of persons which confers in Article 21(1) TFEU the right on every citizen to move and reside freely within the territory of a Member State other than that of which he is a national or resident, it cannot be assumed that there must in any event be a particular connection between the first executing Member State and the requested person, it also being possible for that person to be a national and/or resident of the second or third executing Member States, or even of another Member State which was not involved in the chain of European arrest warrants issued in respect of that person. The requested person could therefore find himself temporarily on the territory of the first executing Member State without having any noteworthy connection with it which would show some degree of integration within the society of that State (*Kozłowski*, paragraphs 36, 37, 48 and 53).

74 In each of those situations, to require the consent of the first executing Member State would also not enable that Member State to rely on Articles 4(6) and 5(3) of the Framework Decision. It thus appears that the fact that it may be impossible for a requested person to serve his sentence in the Member State of which he is a national or resident, or even in which he is staying, is inherent in the very wording of those provisions.

75 Moreover, it should be recalled that where, as in the case in the main proceedings, the requested person is a national or resident of the first executing Member State, that Member State may still rely on Articles 4(6) and 5(3) of the Framework Decision when taking a position both on the first and second request for surrender of that person. In such a case, the person concerned must, as the case may be, remain in the first executing Member State or be sent back, in accordance with the condition referred to in Article 5(3) of the Framework Decision, to that State or remain in the second executing Member State.

76 Finally, with regard to the argument of the Finnish and French Governments, put forward at the hearing, according to which the rules established by Articles 27 and 28 of the Framework Decision are of fundamental importance — as shown both by the fact that those provisions do not appear in the Commission's initial proposal (Proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States (COM(2001) 522 final/2)) and by the content of the first paragraph of each of those articles, which provides that, even where the Member States have initially renounced those rules, the executing judicial authorities may state otherwise in their decisions on surrender — it also cannot call the foregoing analysis into question.

77 If, as stated in paragraphs 64 to 65 above, Articles 27 and 28 of the Framework Decision confer on the Member States certain precise powers in relation to the execution of a European arrest warrant, those provisions, where they lay down rules derogating from the principle of mutual recognition stated in Article 1(2) of that Framework Decision, cannot be interpreted in a way which would frustrate the objective pursued by that Framework Decision, which is to facilitate and accelerate surrenders between the judicial authorities of the Member States in the light of the mutual confidence which must exist between them. In that regard, it should be noted that, as Article 28(3) of the Framework Decision makes clear, the executing judicial authorities must in principle consent to a subsequent surrender. It is only if the conditions set out in Articles 3 to 5 of the Framework Decision are satisfied that the authorities may or must, as the case may be, refuse such consent.

78 Furthermore, the consent of the executing Member State required by Article 28(2) of the Framework Decision cannot bear the significance the Finnish and French Governments wish to attribute to it since, pursuant to Article 28(2)(a) of the Framework Decision, the implicit consent alone of the person concerned to his subsequent surrender is sufficient to set aside the obligation to obtain the consent of the executing Member State.

79 It follows that, in a case such as that in the main proceedings, the consent to the surrender of a person in the situation of Mr West, required by Article 28(2) of the Framework Decision, must be given only by the second executing Member State, that is to say, Hungary. That consent having been, in the present case, requested and obtained by the third executing Member State, it is for the judicial authorities of that last State to carry out the surrender of the person concerned, unless those authorities consider it necessary to rely on one of the provisions stated in Articles 3 to 5 of the Framework Decision, which is for them to assess in the light of the circumstances in the main proceedings.

80 In the light of all of the foregoing considerations, the answer to the question referred is that Article 28(2) of the Framework Decision must be interpreted as meaning that, where a person has been subject to more than one surrender between Member States pursuant to successive European arrest warrants, the subsequent surrender of that person to a Member State other than the Member State having last surrendered him is subject to the consent only of the Member State which carried out that last surrender.

Costs

81 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:

Article 28(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where a person has been subject to more than one surrender between Member States pursuant to successive European arrest warrants, the subsequent surrender of that person to a Member State other than the Member State having last surrendered him is subject to the consent only of the Member State which carried out that last surrender.

[Signatures]