# JUDGMENT OF THE COURT (Third Chamber)

12 August 2008 *

In Case C-296/08 PPU,

REFERENCE for a preliminary ruling under Article 234 EC from the Chambre de l'instruction of the Cour d'appel de Montpellier (France), made by decision of 3 July 2008, received at the Court on the same day, in the extradition proceedings against

**Ignacio Pedro Santesteban Goicoechea,**

THE COURT (Third Chamber),

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

Advocate General: J. Kokott,
Registrar: M.-A. Gaudissart, head of unit,

* Language of the case: French.

having regard to the request of the referring court of 3 July 2008, 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,

having regard to the decision of the Third Chamber of 7 July 2008 granting that request,

having regard to the written procedure and further to the hearing on 6 August 2008,

after considering the observations submitted on behalf of:

— Mr Santesteban Goicoechea, by Y. Molina Ugarte, avocat,

— the French Government, by E. Belliard, G. de Bergues and A.-L. During, acting as Agents,

— the Spanish Government, by the Abogacía del Estado,

— the Commission of the European Communities, by S. Grünheid and R. Troosters, acting as Agents,

after hearing the Advocate General,

gives the following

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 31 and 32 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1, 'the Framework Decision').

2 The reference was made in the course of proceedings brought before the Chambre de l'instruction (Indictment Division) of the Cour d'appel de Montpellier (Court of Appeal, Montpellier) following an extradition request made on 2 June 2008 by the Spanish authorities.

## Legal context

*International law*

3 The European Convention on Extradition was signed at Paris on 13 December 1957. Article 10 of the convention, 'Lapse of time', provides:

'Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment.'

4 The European Convention on the Suppression of Terrorism was signed at Strasbourg on 27 January 1977.

*European Union law*

5 The Convention on simplified extradition procedure between the Member States of the European Union was drawn up on the basis of Article K.3 of the Treaty on European Union by Council Act of 10 March 1995 and signed on that date by all the Member States (OJ 1995 C 78, p. 1, 'the 1995 Convention').

6 According to Article 1(1) of the 1995 Convention:

'The aim of this Convention is to facilitate the application, between the Member States of the European Union, of the European Convention on Extradition [of 13 December 1957], by supplementing its provisions.'

7 The Convention relating to extradition between the Member States of the European Union, known as the Dublin Convention, was drawn up on the basis of Article K.3 of the Treaty on European Union by Council Act of 27 September 1996 and signed on that date by all the Member States (OJ 1996 C 313, p. 11, 'the 1996 Convention').

8 Article 1 of the 1996 Convention provides in particular:

'1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union:

— of the European Convention on Extradition of 13 December 1957 …

— the European Convention on the Suppression of Terrorism of 27 January 1977 …

— the Convention of 19 June 1990 applying 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 [OJ 2000 L 239, p. 19] in relations between the Member States which are party to that Convention …'

9 Article 8(1) of the 1996 Convention reads as follows:

'Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.'

10 It follows from Article 18(2) and (3) of the 1996 Convention that it is to enter into force 90 days after notification, by the last Member State to adopt it, that its constitutional procedures for adoption have been completed. As not all the Member States have adopted the Convention, it has not therefore entered into force in accordance with that provision.

11 Article 18(4) of the 1996 Convention states:

'Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States that have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.'

12 Article 18(5) of the 1996 Convention states that it is to apply only to requests submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

13 Recitals 3 to 5 in the preamble to the Framework Decision read as follows:

'(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders … (regarding relations between the Member States which are parties to that Convention), the [1995] Convention … and the [1996] Convention …

(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.'

14 Recital 11 in the preamble to the Framework Decision reads as follows:

'In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.'

15 Article 31 of the Framework Decision, 'Relation to other legal instruments', is worded as follows:

'1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

(b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the [1995] Convention …;

(d) the [1996] Convention …;

(e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

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

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

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Member States.'

16 Article 32 of the Framework Decision, '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.'

17 Pursuant to Article 32 of the Framework Decision, the French Republic made the following statement (OJ 2002 L 190, p. 19):

'Pursuant to Article 32 of the framework decision … France states that as executing Member State it will continue to deal with requests relating to acts committed before 1 November 1993, the date of entry into force of the Treaty on European Union

signed in Maastricht on 7 February 1992, in accordance with the extradition system applicable before 1 January 2004.'

*National legislation*

18 Loi nº 2004-204 portant adaptation de la justice aux évolutions de la criminalité (Law No 2004-204 adapting the legal system to developments in criminality) of 9 March 2004 (JORF, 10 March 2004, p. 4567) implemented the Framework Decision by inserting into the Code de procedure pénale (Code of Criminal Procedure) Articles 695-11 to 695-51.

19 That law also included provisions implementing the 1995 and 1996 Conventions.

20 Law No 2004-1345 of 9 December 2004 authorised ratification of the 1996 Convention (JORF, 10 December 2004, p. 20876).

21 Decree No 2005-770 of 8 July 2005 published the 1996 Convention (JORF, 10 July 2005, p. 11358). It was stated to be applicable from 1 July 2005.

## The main proceedings and the reference for a preliminary ruling

22 On 11 October 2000 the Spanish Government, on the basis of the European Convention on Extradition of 13 December 1957, requested the extradition of Mr Santesteban Goicoechea for offences allegedly committed on Spanish territory in February and March 1992, described as the storing of weapons, the illegal possession of explosives, the offence of unlawful use of a motor vehicle belonging to another, the offence of changing car registration plates, and the offence of belonging to a terrorist organisation. That request was the subject of an unfavourable opinion of the Chambre de l'instruction (Indictment Division) of the Cour d'appel de Versailles (Court of Appeal, Versailles), by judgment of 19 June 2001, on the ground that the offences for which extradition was sought were statute-barred under French law.

23 On 31 March 2004 a European arrest warrant referring to the same acts as the extradition request of 11 October 2000 was issued by the Spanish judicial authorities against Mr Santesteban Goicoechea. In its written observations, the French Government stated that it had not enforced the warrant. In view of the date of the acts and the statement made pursuant to Article 32 of the Framework Decision, the warrant could be regarded only as a mere request for a provisional arrest, to be dealt with under the system of extradition applicable before 1 January 2004, that is, the European Convention on Extradition of 13 December 1957. However, the offences were statute-barred under French law. In any event, Mr Santesteban Goicoechea was serving a sentence of imprisonment in France, so that no surrender to the requesting Member State could have been carried out until after that sentence had been served.

24 Mr Santesteban Goicoechea was to be released on 6 June 2008. As stated at the hearing by the Spanish Government, since the impossibility of making use of a European arrest warrant in view of the date of the acts and the statement made pursuant to Article 32 of the Framework Decision had been pointed out by the French judicial authorities, a request for provisional arrest was made on 27 May 2008 by the Juzgado Central de Instrucción (Central Court of Investigation) of the Audiencia Nacional (National High Court, Spain) in respect of the same acts, with a view to a request for extradition based on the 1996 Convention. On 28 May 2008 Mr Santesteban Goicoechea was detained for the purpose of extradition by the Procureur de la République (Public Prosecutor).

25 On 2 June 2008 the Spanish authorities requested the extradition of Mr Santesteban Goicoechea under the 1996 Convention.

26 The Procureur Général (Principal Public Prosecutor) asks the Chambre de l'instruction of the Cour d'appel de Montpellier to issue a favourable opinion on the Spanish authorities' request.

27 Mr Santesteban Goicoechea refuses to be surrendered to the Spanish authorities, taking the view in particular that the Kingdom of Spain cannot make use of the provisions of the 1996 Convention.

28 The referring court notes that the Framework Decision provides in Article 31 that from 1 January 2004 it is to replace the corresponding provisions of the conventions — which it then mentions — applicable in the field of extradition in relations between the Member States. The 1996 Convention is mentioned in Article 31(1)(d) of the Framework Decision.

29 That court states that Article 31(2) of the Framework Decision provides for the possibility of some Member States continuing to apply certain bilateral or multilateral agreements in force at the time of adoption of the Framework Decision. They must, however, notify those agreements within three months from the entry into force of the Framework Decision. The Kingdom of Spain has not made any notification to that effect.

30 The referring court is also uncertain as to the interpretation of Article 32 of the Framework Decision, since the application is sought in the main proceedings of a convention that has been applicable in France since 1 July 2005.

31 In those circumstances, the Chambre de l'instruction of the Cour d'appel de Montpellier decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Does the failure of a Member State (in this case [the Kingdom of] Spain) to notify under Article 31(2) of the Framework Decision … its intention to continue to apply bilateral or multilateral agreements preclude, by reason of the word "replace" in Article 31 of that Framework Decision, that Member State from using with another Member State (in this case [the French Republic]), which has made a statement under Article 32 of the Framework Decision, procedures other than that of the European arrest warrant?

If the answer to the above question is in the negative, an answer to the following question is requested:

(2) Do the provisos made by the executing Member State permit that State to apply [the 1996] Convention … which was thus prior to 1 January 2004, but entered into force in that executing State after that date of 1 January 2004 referred to in Article 32 of the Framework Decision?'

**Urgent procedure**

32 By letter of 3 July 2008, lodged at the Court Registry on the same day, the Chambre de l'instruction of the Cour d'appel de Montpellier asked for the reference for a preliminary ruling to be dealt with under an urgent procedure pursuant to Article 104b of the Rules of Procedure.

33 The referring court stated as grounds for that request that Mr Santesteban Goicoechea was being detained, after serving a sentence of imprisonment, on the sole basis of detention for the purpose of extradition ordered in the extradition proceedings in which the reference was made.

34 The Third Chamber of the Court, after hearing the Advocate General, decided on 7 July 2008 to grant the referring court's request for the reference for a preliminary ruling to be dealt with under an urgent procedure.

**Jurisdiction of the Court**

35 According to the order for reference, the reference for a preliminary ruling is based on Article 234 EC, although the interpretation sought concerns the Framework Decision, an act adopted under Title VI of the EU Treaty.

36 It should be noted, however, that, in accordance with Article 46(b) EU, the provisions of the EC and EAEC Treaties concerning the powers of the Court of Justice and the exercise of those powers, including the provisions of Article 234 EC, apply to the provisions of Title VI of the EU Treaty under the conditions laid down by Article 35 EU. It follows that the system under Article 234 EC applies to the Court's jurisdiction to give preliminary rulings under Article 35 EU, subject to the conditions laid down by that provision (see, to that effect, Case C-105/03 *Pupino* [2005] ECR I-5285, paragraphs 19 and 28, and Case C-467/05 *Dell'Orto* [2007] ECR I-5557, paragraph 34).

37 The French Republic stated, by a declaration of 14 March 2000 taking effect from 11 July 2000, that it accepted the jurisdiction of the Court to rule on the validity

and interpretation of the acts referred to in Article 35 EU in accordance with the arrangements laid down in Article 35(3)(b) EU (OJ 2005 L 327, p. 19).

38 In those circumstances, the fact that the order for reference does not mention Article 35 EU but refers to Article 234 EC cannot of itself make the reference for a preliminary ruling inadmissible. This conclusion is reinforced by the fact that the EU Treaty neither expressly nor by implication lays down the form in which the national court must present its reference for a preliminary ruling (see *Dell'Orto*, paragraph 36).

39 Moreover, as the French Government states in its observations, while it follows from the case-law of the French Conseil d'État (Council of State) that when indictment divisions give opinions on requests for extradition they exercise administrative powers, that does not lead to the conclusion that those bodies are not courts or tribunals within the meaning of Article 234 EC.

40 According to settled case-law, in order to determine whether a body making a reference is such a court or tribunal, which is a question governed by Community law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent (see inter alia Case C-53/03 *Syfait and Others* [2005] ECR I-4609, paragraph 29 and the case-law cited). Moreover, a national court may refer a question to the Court only if there is a case pending before it and if it is called on to give judgment in proceedings intended to lead to a decision of a judicial nature (see inter alia *Syfait and Others*, paragraph 29, and Case C-96/04 *Standesamt Stadt Niebüll* [2006] ECR I-3561, paragraph 13).

41 It is not disputed that the indictment divisions of courts of appeal satisfy the above conditions of establishment by law, permanence and independence. Their involvement is compulsory in extradition matters and they give decisions in proceedings

of a judicial nature in the course of which the person concerned is heard, as is the public prosecutor's office, at a hearing inter partes. They review the conditions of lawfulness of extradition and give a reasoned opinion. If the opinion is unfavourable, once it has become final it puts an end to the extradition procedure and automatically entails the release of a requested person who has been detained pending extradition. In addition, as the French Government explains in its observations, the Cour de cassation (Court of Cassation) has since 1984 accepted that an opinion of an indictment division can be the subject of an appeal in cassation based on errors of form and procedure. That possibility of an appeal on a point of law is now laid down in Article 696-15 of the Code de procedure pénale. Finally, where an appeal in the interests of the law is brought before the Cour de cassation against an opinion of an indictment division, the court rules on the substantive conditions of extradition.

42 It follows from all those elements that the Court has jurisdiction to answer the questions referred.

**The questions referred for a preliminary ruling**

43 As a preliminary point, Mr Santesteban Goicoechea asks the Court to hold that it would be contrary to the general principles of law applicable within the Union, in particular the principles of legal certainty, legality and non-retroactivity of the more severe criminal law, to apply the 1996 Convention to him in respect of acts which the Chambre de l'instruction of the Cour d'appel de Versailles, by judgment of 19 June 2001, declared to be statute-barred under French law, giving an opinion unfavourable to extradition.

44 He submits that, although the conventions on extradition apply to acts which took place before their entry into force, a new convention on extradition cannot have the effect of reopening situations that have been definitively settled.

45 On this point, it must be stated that, in so far as the preliminary point raised by the defendant in the main proceedings concerns the problems arising from the successive temporal application of the European Convention on Extradition of 13 December 1957 and the 1996 Convention, it is extraneous to the answer to the questions referred for a preliminary ruling and the interpretation of Articles 31 and 32 of the Framework Decision.

46 It must be recalled that, under Article 35 EU, it is for the national court or tribunal, not the parties to the main proceedings, to bring a matter before the Court of Justice. The right to determine the questions to be put to the Court thus devolves on the national court alone and the parties may not change their tenor (see inter alia, with reference to Article 234 EC, Case 44/65 *Singer* [1965] ECR 965, at p. 970, and Case C-412/96 *Kainuun Liikenne and Pohjolan Liikenne* [1998] ECR I-5141, paragraph 23).

47 Moreover, to answer the question formulated by the defendant in the main proceedings referred to in paragraph 43 above would be incompatible with the function given to the Court by Article 35 EU and with its duty to ensure that the governments of the Member States and the parties concerned are given the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice, bearing in mind that under that provision only the order of the referring court is notified to the interested parties (see inter alia, with reference to Article 234 EC, Case C-352/95 *Phytheron International* [1997] ECR I-1729, paragraph 14, and *Kainuun Liikenne and Pohjolan Liikenne*, paragraph 24).

*The first question*

48 By its first question the referring court asks essentially whether Article 31 of the Framework Decision must be interpreted as meaning that, having regard to the word 'replace' in paragraph 1 of that article, the failure of a Member State, such as the Kingdom of Spain, to notify that it intends to apply bilateral or multilateral

agreements in accordance with Article 31(2) of the Framework Decision has the consequence that that Member State cannot make use of extradition procedures other than the European arrest warrant procedure with another Member State, such as the French Republic, which has made a statement pursuant to Article 32 of the Framework Decision.

49 Mr Santesteban Goicoechea submits that the term 'replace' is unambiguous and that, in the absence of notification by the Kingdom of Spain of its wish to continue to apply the 1996 Convention, that convention cannot be applied between the Kingdom of Spain and the French Republic. The interpretations put forward in their written observations by the French Government and the Commission are mere extrapolations.

50 The French and Spanish Governments and the Commission, on the other hand, take the view that Article 31 of the Framework Decision is not applicable to the main proceedings.

51 On this point, it is apparent from recitals 5, 7 and 11 in the preamble to the Framework Decision that, in order to eliminate the complexity and potential for delay inherent in the extradition procedures then applicable, it aims to replace the system of multilateral extradition between Member States based on the European Convention on Extradition of 13 December 1957 by a system of surrender between judicial authorities. Recital 11 thus states that '[i]n relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition'.

52 Recitals 3 and 4 in the preamble to the Framework Decision mention the conventions applicable between all or some of the Member States, and the conventions approved by the Member States which form part of the Union acquis, including the 1996 Convention.

53 In accordance with the aim stated in the preamble to the Framework Decision, Article 31(1) provides, between Member States, for the replacement of the conventions it mentions by the European arrest warrant system established by the decision. Those conventions include the ones referred to in recitals 3 and 4 in the preamble to the decision, thus including the 1996 Convention.

54 Article 31(2) of the Framework Decision allows the Member States to continue to apply bilateral or multilateral agreements or arrangements in force at the time of adoption of the decision, or to conclude such bilateral or multilateral agreements or arrangements after the entry into force of the decision in so far as they allow the prescriptions of the decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

55 However, that provision cannot refer to the conventions mentioned in Article 31(1) of the Framework Decision, since the objective of the decision is precisely to replace them by a simpler and more effective system. As the Commission noted in its observations and the Spanish Government pointed out at the hearing, Article 31(2) of the Framework Decision refers to other conventions by which the Member States go beyond the Framework Decision in the direction of facilitating and simplifying procedures for surrender, while remaining within the framework of the European arrest warrant.

56 It follows that the 1996 Convention is not among the bilateral or multilateral agreements or arrangements mentioned in Article 31(2) of the Framework Decision for which notification could be possible.

57 Moreover, the European arrest warrant system applies only under the conditions laid down in the Framework Decision, in particular, in accordance with Article 32, for requests received after 1 January 2004, provided that the executing Member State has not made a statement pursuant to that provision in order to place a temporal limitation on the application of that system.

58 Therefore, as the Commission has observed, the replacement under Article 31(1) of the Framework Decision of the conventions mentioned in that provision does not entail the abolition of those conventions, which retain their relevance in cases covered by a statement made by a Member State pursuant to Article 32 of the Framework Decision, and also in other situations in which the European arrest warrant system is not applicable.

59 It follows that Articles 31 and 32 of the Framework Decision refer to distinct situations which are mutually exclusive. While Article 31, headed 'Relation to other legal instruments', deals with the consequences of the application of the European arrest warrant system for international conventions in the field of extradition, Article 32, headed 'Transitional provision', envisages a situation in which that system does not apply.

60 In the present case, the French Republic has made a statement in accordance with Article 32 of the Framework Decision, declaring that, as executing State, it will continue to deal with requests relating to acts committed before 1 November 1993, the date of entry into force of the Maastricht Treaty, in accordance with the extradition system applicable before 1 January 2004.

61 The request made by the Spanish authorities concerning Mr Santesteban Goicoechea is such a request, since the acts allegedly committed by him took place in February and March 1992.

62 Since the European arrest warrant system provided for by the Framework Decision does not apply to that request, Article 31 of the Framework Decision is not relevant.

63 The answer to the first question must therefore be that Article 31 of the Framework Decision must be interpreted as referring only to the situation in which the European

arrest warrant system is applicable, which is not the case where a request for extradition relates to acts committed before a date specified by a Member State in a statement made pursuant to Article 32 of the Framework Decision.

*The second question*

64 By its second question the referring court asks essentially whether Article 32 of the Framework Decision must be interpreted as precluding the application by an executing Member State of the 1996 Convention where that convention became applicable in that Member State only after 1 January 2004.

65 Mr Santesteban Goicoechea submits that to allow the expression 'extradition system applicable before 1 January 2004' in Article 32 of the Framework Decision to cover that convention, applicable between the Kingdom of Spain and the French Republic only from 1 July 2005, would be contrary to the letter and the spirit of the statement made by the French Republic pursuant to Article 32.

66 The French and Spanish Governments and the Commission consider that the expression 'extradition system applicable before 1 January 2004' is used in the Framework Decision in order to distinguish between, on the one hand, the extradition system constituted by the conventions existing at the time of adoption of the Framework Decision, referred to in the preamble and in Article 31(1), and, on the other hand, the European arrest warrant system created by the Framework Decision, which according to that decision was to apply to requests made after 1 January 2004. The use of that expression is not intended to 'fix' the state of the conventions referred to in Article 31(1) or to prevent improvements to the extradition system based on the European Convention on Extradition of 13 December 1957.

67 The French and Spanish Governments and the Commission further submit that the 1995 and 1996 Conventions were not yet in force on 1 January 2004, that they are still not in force today, and that they would lose all effectiveness if the Member States could not continue to adopt the procedures required by their national laws for them to apply. Yet those conventions are Union acquis which the Member States are obliged to incorporate, and they remain relevant in cases in which the European arrest warrant system does not apply, as well as in extradition relations with the non-member countries associated within the framework of the Schengen Agreement of 14 June 1985. The Member States were, moreover, encouraged within the Council to continue to ratify them despite the existence of the Framework Decision.

68 The Commission observes, finally, that the French Republic could at any time withdraw the statement it made pursuant to Article 32 of the Framework Decision, which would have the consequence that the European arrest warrant system would be applicable immediately. It is therefore difficult to see why it should be forbidden to move partially in the direction of the European arrest warrant by applying the 1996 Convention, subsequently to the introduction of the system laid down by the Framework Decision.

69 On this point, it follows both from the preamble to the Framework Decision and from Articles 31 and 32 of the decision that by the expression 'extradition system applicable before 1 January 2004' Article 32 of the Framework Decision refers in particular to all the conventions mentioned in recitals 3 and 4 and in Article 31(1) of the decision. Those conventions are based on the European Convention on Extradition of 13 December 1957, in that they amend or supplement that convention. Thus the 1996 Convention states in Article 1 that its purpose is to supplement the provisions and facilitate the application between the Member States of the Union of inter alia the European Convention on Extradition of 13 December 1957.

70 However, as the Commission stated at the hearing, the use of the term 'applicable' cannot have the consequence that the conventions mentioned become applicable solely by reason of the entry into force of the Framework Decision. For a convention to be applicable between two Member States, they must be bound by that convention.

71 That term cannot be understood as designating solely the conventions which would actually be applicable between the Member States on 1 January 2004.

72 The system of statements provided for in the second and third sentences of Article 32 of the Framework Decision is intended to make it possible, on an exceptional basis, to extend the system provided for in the first sentence of that article to certain requests received after 1 January 2004. Just as there is nothing to prevent existing instruments in the field of extradition from being made applicable in certain Member States between the date of adoption of the Framework Directive and 1 January 2004, nothing precludes a Member State from making applicable, after 1 January 2004, a convention which forms part of the extradition arrangements replaced by the European arrest warrant system, for situations in which that system does not apply.

73 As the French and Spanish Governments and the Commission rightly submit, the purpose of indicating the date 1 January 2004 is essentially to draw the line between the scope of the extradition system provided for by the conventions and that of the European arrest warrant system laid down in the Framework Decision, with the latter system being applicable as a general rule to all requests made after 1 January 2004.

74 Making conventions such as the 1996 Convention applicable does not interfere with the European arrest warrant system laid down by the Framework Decision, since, in accordance with Article 31(1) of the decision, such a convention can be used only where the European arrest warrant system does not apply.

75 The purpose of making conventions in the field of extradition applicable after 1 January 2004 can therefore only be to improve the extradition system in circumstances in which the European arrest warrant system does not apply. As noted in paragraph 58 above, conventions in the field of extradition continue to be of relevance in cases covered by a statement made by a Member State pursuant to Article 32 of the Framework Decision, and also in other situations in which the European arrest warrant system is not applicable.

76 Such a purpose is certainly not contrary to the objectives of the Framework Decision, since, as is apparent from recital 5 in the preamble, it aims by the introduction of a new simplified system of surrender of sentenced or suspected persons to remove the complexity and potential for delay inherent in the extradition procedures existing at the time of adoption of the Framework Decision.

77 The application between two Member States of the 1996 Convention is moreover consistent with the objectives of the Union. It should be recalled that that convention is part of the Union acquis and that, by act of 27 September 1996, the Council recommended that it be adopted by the Member States in accordance with their respective constitutional rules.

78 Finally, as the Commission has pointed out, Article 32 of the Framework Decision expressly provides that a statement made by a Member State pursuant to that provision may be withdrawn at any time, which would, in the absence of more specific provisions, entail the immediate application of the European arrest warrant system even to acts prior to the date specified in the statement thus withdrawn.

79 Having regard to the power thus granted to withdraw a statement made in accordance with Article 32 of the Framework Decision, it cannot successfully be argued that a Member State which has made such a statement is not entitled to make the 1996 Convention applicable after 1 January 2004 so that that convention may cover inter alia situations in which the European arrest warrant system does not apply,

given that, as the Commission points out, that convention is an element of progress in the direction of the European arrest warrant with a view to facilitating extradition between Member States.

80 According to settled case-law, procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying to situations existing before their entry into force (*Dell'Orto*, paragraph 48). Article 18(5) of the 1996 Convention provides that that convention is to apply to requests submitted after the date on which it is applied as between the requested Member State and the requesting Member State. Article 32 of the Framework Decision for its part provides that requests received after 1 January 2004 will be governed by the European arrest warrant rules. While in both cases the new rules apply not to pending requests but to those made after a specified date, they have in common that they apply to requests relating to acts prior to the date of application of the new rules.

81 In the light of those factors, the answer to the second question must be that Article 32 of the Framework Decision must be interpreted as not precluding the application by an executing Member State of the 1996 Convention, even where that convention became applicable in that Member State only after 1 January 2004.

**Costs**

82 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 (Third Chamber) hereby rules:

1. **Article 31 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as referring only to the situation in which the European arrest warrant system is applicable, which is not the case where a request for extradition relates to acts committed before a date specified by a Member State in a statement made pursuant to Article 32 of that Framework Decision.**

2. **Article 32 of Framework Decision 2002/584 must be interpreted as not precluding the application by an executing Member State of the Convention relating to extradition between the Member States of the European Union drawn up by Council Act of 27 September 1996 and signed on that date by all the Member States, even where that convention became applicable in that Member State only after 1 January 2004.**

[Signatures]