



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

6 July 2023*

(Reference for a preliminary ruling – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 27 – Prosecution for an offence committed prior to the person’s surrender other than that for which he or she was surrendered – Request for consent sent to the executing judicial authority – European arrest warrant issued by the public prosecutor of a Member State which is not an issuing judicial authority – Consequences for the request for consent)

In Case C-142/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 25 February 2022, received at the Court on 2 March 2022, in the proceedings

OE

v

Minister for Justice and Equality,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún, F. Biltgen, N. Wahl and J. Passer (Rapporteur), Judges,

Advocate General: J. Richard de la Tour,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 14 December 2022,

after considering the observations submitted on behalf of:

- OE, by J. Byrne, R. Farrell, Senior Counsel, and B. O’Donoghue, Solicitor,
- the Minister for Justice and Equality and Ireland, by M. Browne, C. Hanselmann, A. Joyce and M. Lane, acting as Agents, and by R. Kennedy, Senior Counsel, and D. Breen, Barrister-at-Law,
- the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,

* Language of the case: English.

- the Netherlands Government, by K. Bulterman, A. Hanje and P. Huurnink, acting as Agents,
 - the Polish Government, by B. Majczyna, acting as Agent,
 - the European Commission, by S. Grünheid and J. Tomkin, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 9 March 2023,
- gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 27 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).
- 2 The request has been made in proceedings between OE and the Minister for Justice and Equality (Ireland) concerning a request for consent sent to the Irish judicial authorities by the Netherlands judicial authorities so that OE can be prosecuted in the Netherlands for an offence committed before he was surrendered to the latter authorities other than that for which he was surrendered.

Legal context

European Union law

- 3 Article 1 of Framework Decision 2002/584, headed ‘Definition of the European arrest warrant and obligation to execute it’, provides, in paragraphs 1 and 2:

‘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.’
- 4 Article 3 of that framework decision, headed ‘Grounds for mandatory non-execution of the European arrest warrant’, provides:

‘The judicial authority of the Member State of execution (hereinafter “executing judicial authority”) shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;
 3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.’
- 5 Article 4 of the framework decision, headed ‘Grounds for optional non-execution of the European arrest warrant’, provides:

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

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
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;
7. where the European arrest warrant relates to offences which:
 - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
 - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.’

6 Article 6 of the framework decision, headed ‘Determination of the competent judicial authorities’, provides, in paragraphs 1 and 2 thereof:

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

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

7 Article 8 of Framework Decision 2002/584, headed ‘Content and form of the European arrest warrant’, refers to the information which the European arrest warrant must contain and the language into which it must be translated.

8 Chapter 3 of that framework decision, relating to the ‘effects of surrender’, contains, inter alia, Article 27, headed ‘Possible prosecution for other offences’ and is worded as follows:

‘1. Each Member State may notify the General Secretariat of the Council [of the European Union] 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:

...

(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 referred to in Article 5, the issuing Member State must give the guarantees provided for therein.’

Irish law

9 The European Arrest Warrant Act 2003 transposed Framework Decision 2002/584 into Irish law.

- 10 Subsection (1) of section 2 of that act, in the version applicable to the facts in the main proceedings ('the 2003 Act'), provides:

'In this Act ...,

...

"issuing judicial authority" means, in relation to a European arrest warrant, the judicial authority in the issuing state that issued the European arrest warrant concerned;

"issuing state" means, in relation to a European arrest warrant, a Member State ... a judicial authority of which has issued that European arrest warrant;

"judicial authority" means the judge, magistrate or other person authorised under the law of the Member State concerned to perform functions the same as or similar to those performed under section 33 by a court in the State;

...'

- 11 Subsection (7) of section 22 of the 2003 Act is worded as follows:

'The High Court [(Ireland)] may, in relation to a person who has been surrendered to an issuing state under this Act, consent to:

- (a) proceedings being brought against the person in the issuing state for an offence,
- (b) the imposition in the issuing state of a penalty, including a penalty consisting of a restriction of the person's liberty, in respect of an offence, or
- (c) proceedings being brought against, or the detention of, the person in the issuing state for the purpose of executing a sentence or order of detention in respect of an offence,

upon receiving a request in writing from the issuing state in that behalf.'

- 12 Under subsection (8) of section 22 of that act, the consent under subsection (7) of section 22 thereof must be refused if the offence concerned is an offence for which a person could not by virtue of Part 3 be surrendered under that act. Part 3 of that act contains provisions concerning fundamental rights, the correspondence between offences, double jeopardy, proceedings against the requested person within the State based on the same alleged acts, the age of criminal liability, the commission of offences outside the issuing state, and trials in absentia.

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

- 13 The High Court, in its capacity as executing judicial authority, received a request for the execution of three European arrest warrants issued against OE in 2016 in the Netherlands, two of which had been issued by the Amsterdam public prosecutor's office and the third by the Netherlands national prosecutor's office ('the initial European arrest warrants').

- 14 By an order against which no appeal was brought, the High Court decided to surrender OE after rejecting the objections raised by OE ('the 2017 surrender order'). It is common ground that none of those objections related to the fact that the initial European arrest warrants had been issued by public prosecutors. Once OE was surrendered, he was sentenced to 18 years' imprisonment, a sentence which he is currently serving in the Netherlands.
- 15 In 2019, an investigating judge in Amsterdam submitted to the High Court a request for consent under Article 27(3)(g) and (4) of Framework Decision 2002/584 and Article 22(7) of the 2003 Act, seeking permission for OE to be prosecuted for offences committed prior to his surrender other than those which provided the justification for the initial European arrest warrants.
- 16 OE opposed that request, claiming that the initial European arrest warrants had not been validly issued since they had been issued by prosecutors, that is to say by authorities which could not be regarded as 'judicial authorities' within the meaning of Framework Decision 2002/584. According to OE, that fact precluded the request for consent from being granted.
- 17 By order of 27 July 2020, the High Court granted the consent sought. In particular, as regards the argument that the initial European arrest warrants had not been validly issued, it pointed out that the 2017 surrender order had the force of *res judicata*. OE brought an appeal against that order before the Court of Appeal (Ireland).
- 18 On 27 May 2021, the Court of Appeal dismissed that appeal, holding that it was necessary to apply the national procedural rule of estoppel, which precluded a challenge to the 2017 surrender order. In that regard, the Court of Appeal referred in particular to the case-law of the Court of Justice from which it follows that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided to exercise those rights cannot, in principle, be called into question.
- 19 The application lodged by OE on 6 July 2021 seeking leave to bring an appeal against that decision of the Court of Appeal was granted by decision of the referring court of 22 September 2021, in view of the fact that the main proceedings raised questions of general public importance.
- 20 Before the referring court, OE has acknowledged that the 2017 surrender order has, under Irish law, the force of *res judicata* and that EU law does not require that order to be reopened. However, as regards the statutory terms governing the consent procedure, which is a standalone matter, OE observes that, under subsection (7) of section 22 of the 2003 Act, the request for consent must come from the 'issuing State', which is defined as being the State the 'judicial authority' of which issued the original European arrest warrant. Since it follows from the judgments of 27 May 2019, *OG and PI (Public Prosecutor's Offices, Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456) and of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953) that the prosecutors who issued the initial European arrest warrants did not constitute 'judicial authorities' within the meaning of Framework Decision 2002/584, the Kingdom of the Netherlands cannot be regarded as an 'issuing State' for the purpose of the consent procedure.
- 21 In her defence, the Minister for Justice and Equality argues that any issue that might have arisen concerning the Netherlands prosecutors' ability to act as issuing judicial authorities for the initial European arrest warrants must be regarded as having been definitively determined by the High Court in its surrender order of 2017 and that the principle of estoppel applies to that definitive order, with the result that it can no longer be reopened on that point.

- 22 In the view of the referring court, the answer to the question whether OE can be permitted, in the context of a request for consent under Article 27(3)(g) and Article 27(4) of Framework Decision 2002/584, to raise an argument based on the fact that the initial European arrest warrants were not issued by an ‘issuing judicial authority’, within the meaning of Article 6(1) of that framework decision, depends on the legal classification of the relationship between the surrender procedure and the consent procedure.
- 23 If those two procedures were to be regarded as separate and standalone, the principle of estoppel could not apply, with the result that any objection raised by the person concerned in the context of the request for surrender could be raised again in the context of the request for consent.
- 24 On the other hand, if those procedures should be regarded as being so closely linked that an issue determined in the surrender decision could no longer be debated for the purposes of the consent decision, OE would then not be permitted to rely at the consent-decision stage on an argument concerning the status of the issuing judicial authority.
- 25 In those circumstances, the Supreme Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Should Article 27 of [Framework Decision 2002/584] be interpreted as meaning that a decision to surrender a person creates a legal relationship between him, the executing State and the requesting State such that any issue taken to have been finally determined in that decision must also be taken to have been determined for the purposes of the procedure for obtaining consent to further prosecution or punishment for other offences?
- (2) If the answer to Question 1 is that Article 27 does not require that interpretation, does a national procedural rule breach the principle of effectiveness if it operates so as to prevent the person concerned from relying, in the context of the consent application, upon a relevant judgment of the [Court of Justice] delivered in the period of time after the order for surrender?’

Procedure before the Court

- 26 The referring court requested that the case be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice or, in the alternative, under the expedited procedure pursuant to Article 105(1) of those Rules of Procedure. In support of those requests, it relied, *inter alia*, on the fact that OE was deprived of liberty in the Netherlands on the date on which the request for a preliminary ruling was lodged and that the Netherlands authorities sought to clarify, as a matter of urgency, his legal status.
- 27 On 15 March 2022, the Court decided, on the proposal of the Judge-Rapporteur and after hearing the Advocate General, that it would not be appropriate to grant the request for the present case to be dealt with under the urgent preliminary ruling procedure, as the conditions of urgency laid down in Article 107 of the Rules of Procedure were not satisfied.
- 28 On 23 March 2022, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to refuse to grant the request that the present case be determined pursuant to the expedited procedure.

- 29 First, in the present case, although OE is currently deprived of his liberty, his continued detention does not depend on the Court's answer to the questions referred for a preliminary ruling, since he is serving a sentence after having been convicted of an offence by a final judgment.
- 30 Second, the fact that the referring court or national authorities are required to do everything possible to ensure that the case in the main proceedings is resolved swiftly is not in itself sufficient to justify the use of the expedited procedure (see, to that effect, order of the President of the Court of 23 December 2015, *Vilkas*, C-640/15, not published, EU:C:2015:862, paragraph 8).

Consideration of the questions referred

Question 1

- 31 By Question 1, the referring court seeks to ascertain, in essence, whether Article 27(3)(g) and (4) of Framework Decision 2002/584 must be interpreted as meaning that the fact that a European arrest warrant on the basis of which a person has been the subject of a surrender decision has been issued by an authority which did not constitute an 'issuing judicial authority' within the meaning of Article 6(1) of that framework decision, precludes the executing judicial authority, to which a request to that effect has been made by an issuing judicial authority within the meaning of Article 6(1), from subsequently giving its consent to that person being 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.
- 32 In the first place, it should be recalled that, according to settled case-law, the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 267 TFEU, the Court gives to a rule of EU law clarifies and defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may and must be applied by the courts to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing before the courts having jurisdiction an action relating to the application of that rule are satisfied (judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 51 and the case-law cited).
- 33 In paragraph 70 of its judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953), the Court held, referring in that regard to the guidance provided in the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices, Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), that the public prosecutor of a Member State who, although he or she participates in the administration of justice, may receive in exercising his or her decision-making power an instruction in a specific case from the executive, does not constitute an 'executing judicial authority' within the meaning of Article 6(2) and Article 27(3)(g) and (4) of Framework Decision 2002/584. In addition, in paragraph 47 of that judgment, the Court stated that the status and the nature of the judicial authorities referred to in Article 6(1) and 6(2) of Framework Decision 2002/584 respectively are identical, although those judicial authorities exercise separate functions connected with, first, issuing a European arrest warrant and, second, executing such a warrant.

- 34 It follows from that case-law that European arrest warrants which, like those at issue in the main proceedings, have been issued by the public prosecutor of a Member State which may, in exercising its decision-making power, receive an instruction in a specific case from the executive are not issued in accordance with the requirements arising from Framework Decision 2002/584.
- 35 That said, in the second place, attention should be drawn to the importance, both for the EU legal order and for the national legal systems, of the principle of *res judicata*. Indeed, the Court has already had occasion to observe that, in order to ensure stability of the law and legal relations, as well as the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided to exercise those rights can no longer be called into question (judgment of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 46 and the case-law cited).
- 36 In the present case, it is apparent from the order for reference that OE did not bring an appeal against the 2017 surrender order and that, once he had been surrendered, he was sentenced to a term of imprisonment in the Netherlands by virtue of a judgment which has become definitive. However, without calling into question the force of *res judicata* of the 2017 surrender order any more than that of the conviction handed down following that surrender referred to in paragraph 14 of the present judgment, OE merely claims that the consent requested pursuant to Article 27(3)(g) and (4) of Framework Decision 2002/584 cannot be given where, as in the case in the main proceedings, the European arrest warrants which gave rise to the surrender were not issued in accordance with that framework decision. In that context, nor does OE call into question the status of the judicial authority which made that request for consent.
- 37 In the third place, the Court has held previously that, where the requested person has been arrested and then surrendered to the issuing Member State, the European arrest warrant has, in principle, exhausted its legal effects, with the exception of the effects of the surrender expressly provided for in Chapter 3 of Framework Decision 2002/584 (judgment of 13 January 2021, *MM*, C-414/20 PPU, EU:C:2021:4, paragraph 77).
- 38 Among the effects of the surrender provided for in Chapter 3 is the possible prosecution for other offences, the conditions and detailed rules for the implementation of which are laid down in Article 27 of that framework decision.
- 39 Article 27(2) lays down the speciality rule according to which, 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 (see, to that effect, judgment of 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)*, C-195/20 PPU, EU:C:2020:749, paragraph 36).
- 40 That rule requires the issuing Member State that wishes to prosecute or sentence a person for an offence committed before he or she was surrendered under a European arrest warrant other than that for which he or she was surrendered to obtain the consent of the executing Member State, in order to prevent the first Member State from encroaching upon the competences which the executing Member State might exercise and exceeding its powers in relation to the person concerned (see, to that effect, judgment of 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)*, C-195/20 PPU, EU:C:2020:749, paragraph 40).

- 41 It is only in the cases provided for in Article 27(3) of Framework Decision 2002/584, *inter alia* where consent has been given in accordance with Article 27(3)(g) and Article 27(4) thereof, that the judicial authorities of the issuing Member State are authorised to prosecute or sentence that person for an offence other than that for which he or she was surrendered (see, to that effect, judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 63).
- 42 However, despite the link between the implementation of Article 27 of Framework Decision 2002/584 and the existence of a European arrest warrant that has already been executed, the Court has stated that the decision to grant the consent provided for in Article 27(4) of Framework Decision 2002/584 is distinct from that relating to the execution of a European arrest warrant and leads, for the person concerned, to effects distinct from those of the latter decision (judgments of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 60, and of 26 October 2021, *Openbaar Ministerie (Right to be heard by the executing judicial authority)*, C-428/21 PPU and C-429/21 PPU, EU:C:2021:876, paragraph 49).
- 43 As the Advocate General observed in point 46 of his Opinion, the consent decision has a subject matter specific to it and must, for that reason, be taken by the executing judicial authority following an examination separate from and independent of the examination prompted by the European arrest warrant.
- 44 In accordance with Article 27(4) of Framework Decision 2002/584, the executing judicial authority must verify whether the request for consent submitted to it is accompanied by the information referred to in Article 8(1) of that framework decision and a translation, as referred to in Article 8(2) of that framework decision. That authority must also ascertain whether the offence for which consent is requested is itself subject to the surrender obligation under Framework Decision 2002/584. Lastly, it must assess, in the light of the grounds for mandatory or optional non-execution referred to in Articles 3 and 4 of that framework decision, whether the extension of the prosecution to offences other than those for which the person concerned was surrendered may be authorised.
- 45 It is not apparent from the wording of those provisions that a defect affecting an initial European arrest warrant would be such as to prevent the executing judicial authority from giving the consent sought.
- 46 Furthermore, as the Advocate General observed in point 51 of his Opinion, any other interpretation of those provisions would jeopardise the stated objectives of Framework Decision 2002/584.
- 47 The Court has previously held that, although Articles 27 and 28 of that 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 (judgment of 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)*, C-195/20 PPU, EU:C:2020:749, paragraph 35 and the case-law cited).

- 48 To accept that the conditions under which the surrender was carried out may be the subject of a review in the context of a request for consent made under Article 27(3)(g) and (4) of Framework Decision 2002/584 would result in a delay to the consent decision, on grounds unrelated to those provided for in paragraph 4, which would run counter to the need for speed which underlies that framework decision.
- 49 Furthermore, such a review would be incompatible with the principle of legal certainty since it could call into question the definitiveness of the judicial decision which ordered the execution of the European arrest warrant at issue, in breach of the principle of *res judicata* referred to in paragraph 35 of the present judgment.
- 50 Furthermore, since it is common ground, as is apparent from paragraphs 13, 14 and 32 to 34 of the present judgment, that the 2017 surrender order has become definitive despite the fact that it was adopted following European arrest warrants sharing the characteristic that they were all issued by authorities which cannot be classified as ‘competent judicial authorities’ within the meaning of Article 6 of Framework Decision 2002/584, it would be paradoxical to call into question, on the basis of that fact, the consent at the origin of the case in the main proceedings, which, for its part, follows a request issued by such a competent judicial authority.
- 51 Lastly, the interpretation of Article 27 of Framework Decision 2002/584, as set out in paragraph 45 of the present judgment, is such as to promote the attainment of the objective of combating impunity, which is also pursued by that framework decision (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 141). Accepting that an executing judicial authority may refuse to give the consent requested of it pursuant to Article 27(3)(g) and Article 27(4) of that framework decision on grounds unrelated to those provided for in paragraph 4 would undermine that objective by preventing the judicial authorities of the issuing Member State from prosecuting, sentencing or otherwise depriving a person 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.
- 52 In the light of the foregoing, the answer to Question 1 is that Article 27(3)(g) and (4) of Framework Decision 2002/584 must be interpreted as meaning that the fact that a European arrest warrant on the basis of which a person has been the subject of a surrender decision has been issued by an authority which did not constitute an ‘issuing judicial authority’ within the meaning of Article 6(1) of that framework decision, does not preclude the executing judicial authority, to which a request to that effect has been made by an issuing judicial authority within the meaning of Article 6(1), from subsequently giving its consent to that person being 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.

Question 2

- 53 Given the answer provided in respect of Question 1, there is no need to answer Question 2.

Costs

- 54 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 27(3)(g) and (4) 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 meaning that the fact that a European arrest warrant on the basis of which a person has been the subject of a surrender decision has been issued by an authority which did not constitute an ‘issuing judicial authority’ within the meaning of Article 6(1) of that framework decision, does not preclude the executing judicial authority, to which a request to that effect has been made by an issuing judicial authority within the meaning of Article 6(1), from subsequently giving its consent to that person being 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.

[Signatures]