

Case C-510/19**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

4 July 2019

Referring court:

Hof van beroep te Brussel (Court of Appeal, Brussels, Belgium)

Date of the decision to refer:

26 June 2019

Appellants:

Openbaar Ministerie

YU

ZV

Respondent:

AZ

Subject matter of the action in the main proceedings

The main proceedings concern the appeal brought by AZ against the ruling of 12 October 2018 of the rechtbank van eerste aanleg (Court of First Instance) in Leuven by which the accused, AZ, who had been surrendered by the Netherlands, was convicted of criminal offences, including forgery of documents, use of forged documents and fraud.

Subject matter and legal basis of the request for a preliminary ruling

Request pursuant to Article 267 TFEU.

The request concerns the interpretation of Framework Decision 2002/584/JHA ('the Framework Decision') on the European arrest warrant and the surrender procedures between Member States. The referring court is asking, in essence,

whether the Netherlands Overleveringswet (Law on the Surrender of Persons) is consonant with the Framework Decision and whether the Netherlands Openbaar Ministerie (Public Prosecution Service) is to be regarded as a ‘judicial authority’ within the meaning of the Framework Decision.

Questions referred

1.1. Does the term ‘judicial authority’ as referred to in Article 6(2) of the Framework Decision constitute an autonomous concept of EU law?

1.2. If the answer to Question 1.1 is in the affirmative: which criteria are to be applied for the purpose of determining whether an authority of the executing Member State is such a judicial authority and whether a European arrest warrant executed by that authority therefore constitutes such a judicial decision?

1.3. If the answer to Question 1.1 is in the affirmative: is the Netherlands Openbaar Ministerie (Public Prosecution Service), more specifically the Officier van Justitie (Public Prosecutor), covered by the concept of judicial authority, as referred to in Article 6(2) of the Framework Decision, and does the European arrest warrant executed by that authority thus constitute a judicial decision?

1.4. If the answer to Question 1.3 is in the affirmative: is it permissible for the initial surrender to be assessed by a judicial authority, more specifically, the Overleveringskamer (the court responsible for the surrender decision) in Amsterdam, in accordance with Article 15 of the Framework Decision, whereby, inter alia, the defendant’s right to be heard and right of access to the courts are respected, whereas the supplementary surrender in accordance with Article 27 of the Framework Decision is assigned to a different authority, namely the Officier van Justitie, whereby the defendant is not guaranteed the right to be heard or to have access to the courts, with the result that there is a manifest lack of coherence within the Framework Decision without any reasonable justification?

1.5. If the answer to Questions 1.3 and 1.4 is in the affirmative: should Articles 14, 19 and 27 of the Framework Decision be interpreted as meaning that a public prosecution service acting as the executing judicial authority should first of all respect the defendant’s right to be heard and right of access to the courts, before consent can be given for the prosecution, conviction or detention of a person with a view to the execution of a custodial sentence or measure for a criminal offence committed before his surrender under a European arrest warrant, that latter offence not being the criminal offence for which his surrender was requested?

2. Is the Officier van Justitie of the Openbaar Ministerie of the Amsterdam judicial district who acts in implementation of Article 14 of the Netherlands Wet van 29 april 2004 tot implementatie van het kaderbesluit van de Raad van de Europese Unie betreffende het Europees aanhoudingsbevel en de procedures van overlevering tussen de lidstaten van de Europese Unie (Overleveringswet), (Law

of 29 April 2004 implementing the Framework Decision of the Council of the European Union on the European arrest warrant and the surrender procedures between Member States of the European Union (Law on the surrender of persons)) the executing judicial authority within the meaning of Article 6(2) of the Framework Decision which surrendered the requested person and which can grant consent within the meaning of Article 27(3)(g) and 27(4) of the Framework Decision?

Provisions of EU law cited

Articles 6(2), 14, 19(2) and 27 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (Framework Decision).

Provisions of national law cited

The Netherlands: Articles 14 and 15 to 38 of the Wet van 29 april 2004 tot implementatie van het kaderbesluit van de Raad van de Europese Unie betreffende het Europees aanhoudingsbevel en de procedures van overlevering tussen de lidstaten van de Europese Unie (Overleveringswet).

Belgium: Article 37 of the Wet van 19 december 2003 betreffende het Europees aanhoudingsbevel (Law of 19 December 2003 on the European arrest warrant).

Brief summary of the facts and the procedure in the main proceedings

- 1 An appeal is pending before the referring court against a ruling of the rechtbank van eerste aanleg in Leuven of 12 October 2018 in which the accused was convicted of a series of criminal offences and in which the claims of the civil parties were partially upheld. The questions referred for a preliminary ruling concern only the criminal part of the case.
- 2 After it had set aside the ruling given at first instance due to infringement of the rights of defence, the referring court itself assessed the criminal proceedings brought against the accused. Some of the offences are considered proven and the accused was convicted of those offences. As far as some of the others are concerned, it is necessary, according to the referring court, to refer certain questions to the Court of Justice for a preliminary ruling before judgment is delivered.
- 3 A European arrest warrant (EAW) for the accused was issued by the onderzoeksrechter (investigating judge) at the rechtbank van eerste aanleg in Leuven on 26 September 2017, with a request for surrender in relation to a number of criminal offences. The accused, AZ, was arrested in the Netherlands under the Netherlands Overleveringswet and was surrendered to Belgium on

13 December 2017 in execution of the decision of the competent rechtbank in Amsterdam.

- 4 Subsequently, on 26 October 2017, 24 November 2017 and 19 and 25 January 2018, the Procureur des Konings (Public Prosecutor) in Leuven requested the investigating judge in Leuven to extend the judicial investigation in order to cover an additional set of offences ('additional offences'). On 26 January 2018, the investigating judge issued a supplementary European arrest warrant against the accused in relation to those additional offences, with an additional request for surrender.
- 5 By letter of 13 February 2018 to the investigating judge in the rechtbank van eerste aanleg in Leuven, the Officier van Justitie of the Openbaar Ministerie of the Amsterdam district communicated the following: *'With reference to your European arrest warrant (EAW) dated 26 January 2018, relating to [...] AZ [...], I can inform you that I hereby give you additional consent to prosecute the offences as set out in the abovementioned EAW. I trust that I have hereby provided you with sufficient information.'*

Main submissions of the parties to the main proceedings

- 6 In a general sense, the accused raises the question as to whether Article 14 of the Netherlands Overleveringswet, on the basis of which the Officier van Justitie has given consent to prosecute the additional offences of which AZ is accused, is indeed in accordance with the Framework Decision. The relevant Article 14 reads as follows:

'1. Surrender shall be allowed only on the general condition that the requested person shall not be prosecuted, punished or have his personal freedom otherwise curtailed because of offences committed before the time of his surrender and for which he has not been surrendered, unless:

[...]

f. the prior consent of the Officier van Justitie was requested and obtained.

[...]

3. At the request of the issuing judicial authority, and on the basis of the submitted European arrest warrant and the accompanying translation, the Officier van Justitie shall give the consent referred to in paragraph 1(f), [...] relating to offences for which surrender could have been granted under this Law. The decision on a request shall, in any event, be made within thirty days of receipt thereof.'

Brief summary of the reasons for the referral

- 7 It follows from Article 27(3)(g) and 27(4) of the Framework Decision that a person may be prosecuted, sentenced or deprived of his liberty for offences other than those for which he was surrendered in the case where the executing judicial authority in the relevant Member State which surrendered the person at the request of another Member State gives its consent thereto.
- 8 Apart from the general question raised by the accused as to the compatibility of Article 14 of the Overleveringswet with the Framework Decision, the referring court also asks, in particular, whether, in the present case, the Officier van Justitie of the Openbaar Ministerie of the Amsterdam District is the executing judicial authority within the meaning of Article 6(2) of the Framework Decision, who surrendered the requested person and who can give consent within the meaning of the aforementioned Article 27(3)(g) and 27(4) of the Framework Decision.

WORKING DOCUMENT