

JUDGMENT OF THE COURT (Grand Chamber)

29 January 2013 (\*)

(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 prosecution – Grounds for refusing execution)

In Case C-396/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curte de Apel Constanța (Romania), made by decision of 18 May 2011, received at the Court on 27 July 2011, in proceedings relating to the execution of European arrest warrants issued against

**Ciprian Vasile Radu,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, L. Bay Larsen, A. Rosas, M. Berger and E. Jarašiūnas, Presidents of Chambers, E. Juhász, A. Ó Caoimh (Rapporteur), J.-C. Bonichot, A. Prechal and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 10 July 2012,

after considering the observations submitted on behalf of:

- Mr Radu, by C. Cojocaru and T. Chiuariu, lawyers,
- Ministerul Public, Parchetul de pe lângă Curtea de Apel Constanța, by E.C. Grecu, Procurator-General,
- the Romanian Government, by R.-M. Giurescu, A. Voicu and R. Radu, acting as Agents,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the German Government, by J. Kemper and T. Henze, acting as Agents,
- the Lithuanian Government, by R. Mackevičienė and A. Svinkūnaitė, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Polish Government, by M. Szpunar, acting as Agent,
- the United Kingdom Government, by C. Murrel, acting as Agent,
- the European Commission, by L. Bouyon, W. Bogensberger and H. Krämer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 October 2012,

gives the following

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'), read in conjunction with Articles 6, 48 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter') and with Articles 5 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').
- 2 The request has been made in proceedings relating to the execution in Romania of four European arrest warrants issued by the German authorities against Mr Radu, a Romanian national, for the purposes of prosecution in respect of acts of aggravated robbery.

### Legal context

#### *European Union law*

- 3 Recitals 1, 5 to 8, 10, 12 and 13 in the preamble to Framework Decision 2002/584 read 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 [EU] and Article 5 [EC]. ...
  - (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.
  - ...
  - (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in

Article 6(1) [EU], determined by the Council pursuant to Article 7(1) [EU] with the consequences set out in Article 7(2) thereof.

...

- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [EU] and reflected in the [Charter], in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

- (13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.'

- 4 Article 1 of that framework decision defines the European arrest warrant and the obligation to execute it in the following terms:

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

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

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

- 5 Article 3 of the Framework Decision, entitled 'Grounds for mandatory non-execution of the European arrest warrant', provides as follows:

'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:

...

- (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;

...'

- 6 In accordance with Article 4 of that framework decision, entitled 'Grounds for optional non-execution of the European arrest warrant':

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

...

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;

...

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;

...’.

- 7 Article 4a of Framework Decision 2002/584, entitled ‘Decisions rendered following a trial at which the person did not appear in person’, allows the executing judicial authority, in certain circumstances, to refuse to execute a European arrest warrant issued for the purpose of executing a sentence if the person did not appear in person at the trial resulting in the decision.

- 8 Article 5 of that framework decision concerns guarantees to be given by the issuing Member State in particular cases.

- 9 Article 8 of Framework Decision 2002/584 relates to the content and form of the European arrest warrant. The following information is required under Article 8(1)(d) to (f):

- ‘(d) the nature and legal classification of the offence, particularly in respect of Article 2;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State’.

- 10 Article 11(1) of that framework decision, under the title ‘Rights of a requested person’, provides:

‘When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.’

- 11 Article 13(1) and (2) of Framework Decision 2002/584, entitled ‘Consent to surrender’, stipulates:

‘1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the “speciality rule”, referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.’

- 12 Article 14 of that framework decision, under the title ‘Hearing of the requested person’, provides that, where the arrested person does not consent to his or her surrender as referred to in Article 13 thereof, he or she is to be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

- 13 Under the title ‘Surrender decision’, Article 15(2) and (3) of that framework decision specifies:

‘2. 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.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.'

14 Article 19(1) and (2) of that framework decision, under the title 'Hearing the person pending the decision', provides:

'1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.'

#### *Romanian law*

15 Law No 302/2004 on international judicial cooperation in criminal matters (Legea nr. 302/2004 privind cooperarea judiciară internațională în materie penală, *Monitorul Oficial al României*, Part I, No 377 of 31 May 2011; 'Law No 302/2004') contains a Title III entitled 'Provisions on cooperation with the Member States of the European Union pursuant to [the Framework Decision]'. Chapter III of that title bears the heading 'Execution of a European arrest warrant by the Romanian authorities' and contains the following provision:

'Article 98 – Grounds for refusal of execution

(2) The executing judicial authority may refuse to execute the European arrest warrant in the following cases:

...

(b) where the person who is the subject of the European arrest warrant is being prosecuted in Romania for the same act as that on which the European arrest warrant is based.'

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

16 On 25 May and 3 June 2009, the Curte de Apel Constanța (Court of Appeal, Constanța) (Romania), as the executing judicial authority, was seised of requests made by the German judicial authorities concerning the surrender of Mr Radu, a person requested on foot of four European arrest warrants issued by the Public Prosecutor's Offices in Münster, Coburg, Bielefeld and Verden (Germany) on 14 March 2007, 16 March 2007, 8 August 2007 and 26 February 2008 respectively, for the purposes of conducting criminal prosecutions in respect of acts corresponding to the offence of robbery within the terms of Article 211 of the Romanian Penal Code. Mr Radu did not consent to his surrender.

17 By decision of 5 June 2009, the Curte de Apel Constanța ordered the execution of three of the European arrest warrants, namely those issued by the Public Prosecutor's Offices in Münster, Coburg and Verden. By contrast, the referring court refused, pursuant to Article 98(2)(b) of Law No 302/2004, to execute the European arrest warrant issued on 8 August 2007 by the Public Prosecutor's Office in Bielefeld, on the ground that Mr Radu was being prosecuted in Romania before the Tribunal Bacău (Bacău Regional Court) for the same act as that on which that warrant is based. It therefore deferred the surrender of Mr Radu pending the conclusion of the proceedings in that case before the Romanian courts, while maintaining the pre-trial detention measure taken against Mr Radu for a period of 30 days.

18 By a judgment of 18 June 2009, the Înalta Curte de Casație și Justiție a României (High Court of Cassation and Justice, Romania) upheld the appeal and referred the case back to the Curte de Apel de Constanța. It also ordered the release of Mr Radu, subject to a preventative measure restricting his freedom of movement, that is to say, prohibiting him from leaving his commune of residence in the city of Bacău, without judicial permission, and placing him under a number of constraints.

19 At the hearing on 22 February 2011 before the Curte de Apel de Constanța, Mr Radu opposed the execution of the European arrest warrants issued against him. He argued in this connection, first of all, that, at the date on which Framework Decision 2002/584 was adopted, neither the fundamental rights laid down in the ECHR nor those set out in the Charter had been specifically incorporated into the founding Treaties of the European Union. Pursuant to Article 6 TEU, however, the provisions both of the Charter and of the ECHR have become provisions of primary European Union law and, therefore, Framework Decision 2002/584 should henceforth be interpreted and applied in accordance with the Charter and the ECHR. Secondly, Mr Radu pointed out that that framework decision had not been implemented consistently by the Member States. In particular, the German legislation which transposed that framework decision was declared unconstitutional and void by the Bundesverfassungsgericht (Federal Constitutional Court) (Germany) in its judgment of 18 July 2005, prior to the adoption of a new Law. However, he submitted, the execution of a European arrest warrant is subject to a requirement of reciprocity. Lastly, Mr Radu submitted that the judicial authorities of the executing Member State were obliged to ascertain whether the fundamental rights guaranteed by the Charter and the ECHR were being observed in the issuing Member State. If that was not the case, those authorities would be justified in refusing to execute the European arrest warrant concerned, even if that ground for non-execution is not expressly provided for by Framework Decision 2002/584.

20 In those circumstances, the Curte de Apel Constanța decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Are Articles 5(1) [of the ECHR] and 6 [of the Charter], read in conjunction with Articles 48 and 52 [of the Charter], with reference also to Article 5(3) and (4) and Article 6(2) and (3) of [the ECHR], provisions of primary [European Union] law, contained in the founding Treaties?
- (2) Does the action of the competent judicial authority of the State of execution of a European arrest warrant, entailing deprivation of liberty and forcible surrender, without the consent of the person in respect of whom the European arrest warrant has been issued (the person whose arrest and surrender are requested) constitute interference, on the part of the State executing the warrant, with the right to individual liberty of the person whose arrest and surrender are requested, which is authorised by European Union law, pursuant to Article 6 TEU, read in conjunction with Article 5(1) of the [ECHR], and pursuant to Article 6 of the [Charter], read in conjunction with Articles 48 and 52 thereof, with reference also to Article 5(3) and (4) and Article 6(2) and (3) of the [ECHR]?
- (3) Must the interference on the part of the State executing a European arrest warrant with the rights and guarantees laid down in Article 5(1) of the [ECHR] and in Article 6 of the [Charter], read in conjunction with Articles 48 and 52 thereof, with reference also to Article 5(3) and (4) and Article 6(2) and (3) of the [ECHR], satisfy the requirements of necessity in a democratic society and of proportionality in relation to the objective actually pursued?
- (4) Can the competent judicial authority of the State executing a European arrest warrant refuse the request for surrender without being in breach of the obligations authorised by the founding Treaties and the other provisions of [European Union] law, by reason of a failure to observe all the cumulative conditions under Article 5(1) of the [ECHR] and Article 6 of the [Charter], read in conjunction with Articles 48 and 52 thereof, with reference also to Article 5(3) and (4) and Article 6(2) and (3) of the [ECHR]?
- (5) Can the competent judicial authority of the State executing a European arrest warrant refuse the request for surrender without being in breach of the obligations authorised by the founding Treaties and the other provisions of [European Union] law, on the ground that the [Member] State issuing the European arrest warrant has failed to transpose or fully to transpose or has incorrectly transposed (in the sense that the condition of reciprocity has not been satisfied) [Framework Decision 2002/584]?
- (6) Is the domestic law of Romania, a Member State of the European Union – in particular Title III of Law No 302/2004 – incompatible with Article 5(1) of the [ECHR] and Article 6 of the [Charter], read in conjunction with Articles 48 and 52 thereof, with reference

also to Article 5(3) and (4) and Article 6(2) and (3) of the [ECHR], to which Article 6 TEU refers, and have the above provisions properly transposed into national law [Framework Decision 2002/584]?’

## **The questions referred for a preliminary ruling**

### *Admissibility*

- 21 The Romanian and Austrian Governments and the Commission submit that this request for a preliminary ruling is inadmissible on the ground that the decision making the request does not set out the reasons why the interpretation of the provisions of European Union law and of the Charter mentioned in the questions referred is necessary for the outcome of the dispute. In their opinion, those questions are abstract in nature and seek to obtain a theoretical interpretation of European Union law. Specifically, those interested parties, supported on this issue by the German Government, take the view that the decision making the request does not indicate what has led the court dealing with the dispute in the main proceedings to envisage refusing execution of the contested European arrest warrants on the ground of an infringement of the fundamental rights of the person concerned or, accordingly, to what extent the execution of those arrest warrants might endanger those rights.
- 22 It is settled case-law that questions on the interpretation of European Union law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667, paragraph 27 and the case-law cited).
- 23 In the present case, by its first four questions and by the sixth question, the referring court is essentially asking whether it is entitled to examine whether the issue of a European arrest warrant complies with fundamental rights with a view, if that is not the case, to refusing its execution, even if that ground for non-execution is provided for neither in Framework Decision 2002/584 nor in the national legislation which transposed that decision. By its fifth question, it also seeks to establish whether such a refusal is possible where that framework decision has not been transposed in the issuing Member State.
- 24 It must first of all be noted that that fifth question is hypothetical. The fact that the contested European arrest warrants were actually issued is sufficient to demonstrate that, as the German Government confirmed at the hearing, Framework Decision 2002/584 had indeed been transposed by the Federal Republic of Germany at the time when those arrest warrants were issued. That question is therefore inadmissible.
- 25 In respect of the other questions, it must be stated that they relate to, inter alia, the interpretation of Framework Decision 2002/584 and to certain provisions of the Charter in an actual dispute concerning the execution of several European arrest warrants issued by the German authorities for the purposes of prosecuting Mr Radu on criminal charges.
- 26 Furthermore, as regards the alleged infringement of Mr Radu’s fundamental rights, it is evident that, in the criminal proceedings before the referring court, Mr Radu claims, for the purpose of opposing his surrender, that the provisions of Framework Decision 2002/584 deprive the Romanian executing authorities of the possibility of ascertaining whether the rights to a fair trial, to the presumption of innocence and to liberty which he derives from the Charter and the ECHR have been observed, where the contested European arrest warrants were issued without his having been summoned or having had the possibility of hiring a lawyer or presenting his defence. Mr Radu essentially repeated those same claims at the hearing before the Court in the present proceedings.



- 27 In those circumstances, it must be held that the first four questions and the sixth question are admissible.

*Substance*

- 28 As indicated in paragraph 16 above, the request for a preliminary ruling concerns the execution of European arrest warrants issued for the purposes, not of giving effect to a custodial sentence, but of conducting criminal prosecutions.
- 29 According to the evidence submitted to the Court, as set out in paragraph 26 above, it appears that, in the dispute in the main proceedings, the requested person, Mr Radu, argues, in order to oppose his surrender, that the European arrest warrants were issued by the issuing judicial authorities without his having been heard beforehand, in breach of Articles 47 and 48 of the Charter and of Article 6 of the ECHR.
- 30 Admittedly, in its questions, the referring court also mentions Article 6 of the Charter and Article 5 of the ECHR. However, the decision making the request does not contain any explanation in that regard. The documents attached as an annex to the decision making the request show at most that, before the referring court, Mr Radu claimed that that court should refuse to execute the European arrest warrants 'by which [he] was deprived of his liberty' in so far as they were issued in breach of his rights of defence. Those arguments submitted by Mr Radu concerning the alleged infringement of Article 6 of the Charter and of Article 5 of the ECHR in the issuing Member State are thus indissociable from his arguments relating to the infringement of his rights of defence in that Member State.
- 31 The view must therefore be taken that, by its first four questions and its sixth question, which it is appropriate to examine together, the referring court is essentially asking whether Framework Decision 2002/584, read in the light of Articles 47 and 48 of the Charter and of Article 6 of the ECHR, must be interpreted as meaning that the executing judicial authorities can refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the issuing judicial authorities did not hear the requested person before that arrest warrant was issued.
- 32 In that regard, it must first of all be noted that the right to be heard, which is guaranteed by Article 6 of the ECHR and mentioned by the referring court in its questions, is today laid down in Articles 47 and 48 of the Charter. It is therefore necessary to refer to those provisions of the Charter (see, to that effect, judgment of 6 November 2012 in Case C-199/11 *Otis and Others*, paragraphs 46 and 47 and the case-law cited).
- 33 It should also be recalled that, as is apparent in particular from Article 1(1) and (2) of Framework Decision 2002/584 and from recitals 5 and 7 in the preamble thereto, the purpose of that 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 conducting prosecutions, that system of surrender being based on the principle of mutual recognition (see judgment of 5 September 2012 in Case C-42/11 *Lopes Da Silva Jorge*, paragraph 28 and the case-law cited).
- 34 Framework Decision 2002/584 thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing 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 (see, to that effect, judgment of 28 June 2012 in Case C-192/12 *PPU West*, paragraph 53 and the case-law cited).
- 35 Under Article 1(2) of Framework Decision 2002/584, the Member States are in principle obliged to act upon a European arrest warrant.
- 36 As the Court has already held, according to the provisions of Framework Decision 2002/584, the Member States may refuse to execute such a warrant only in the cases of mandatory non-execution provided for in Article 3 thereof and in the cases of optional non-execution listed in



Articles 4 and 4a (see, to that effect, Case C-388/08 PPU *Leymann and Pustovarov* [2008] ECR I-8993, paragraph 51, and Case C-261/09 *Mantello* [2010] ECR I-11477, paragraph 37). Furthermore, the executing judicial authority may make the execution of a European arrest warrant subject solely to the conditions set out in Article 5 of that framework decision.

- 37 Admittedly, under Article 4a of Framework Decision 2002/584, the infringement of the rights of the defence during a trial which has led to the imposition of a criminal sentence *in absentia* may, under certain conditions, constitute a ground for non-execution of a European arrest warrant issued for the purposes of giving effect to a custodial sentence.
- 38 By contrast, the fact that the European arrest warrant has been issued for the purposes of conducting a criminal prosecution, without the requested person having been heard by the issuing judicial authorities, does not feature among the grounds for non-execution of such a warrant as provided for by the provisions of Framework Decision 2002/584.
- 39 Contrary to what Mr Radu argues, the observance of Articles 47 and 48 of the Charter does not require that a judicial authority of a Member State should be able to refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard by the issuing judicial authorities before that arrest warrant was issued.
- 40 It must be stated that an obligation for the issuing judicial authorities to hear the requested person before such a European arrest warrant is issued would inevitably lead to the failure of the very system of surrender provided for by Framework Decision 2002/584 and, consequently, prevent the achievement of the area of freedom, security and justice, in so far as such an arrest warrant must have a certain element of surprise, in particular in order to stop the person concerned from taking flight.
- 41 In any event, the European legislature has ensured that the right to be heard will be observed in the executing Member State in such a way as not to compromise the effectiveness of the European arrest warrant system.
- 42 Thus, it is apparent from Articles 8 and 15 of Framework Decision 2002/584 that, before deciding on the surrender of the requested person for the purposes of prosecution, the executing judicial authority must subject the European arrest warrant to a degree of scrutiny. In addition, Article 13 of that framework decision provides that the requested person has the right to legal counsel in the case where he consents to his surrender and, where appropriate, renounces his entitlement to the speciality rule. Furthermore, under Articles 14 and 19 of Framework Decision 2002/584, the requested person, where he does not consent to his surrender and is the subject of a European arrest warrant issued for the purposes of conducting a criminal prosecution, is entitled to be heard by the executing judicial authority, under the conditions determined by mutual agreement with the issuing judicial authorities.
- 43 Having regard to the foregoing, the answer to the first four questions and the sixth question is that Framework Decision 2002/584 must be interpreted as meaning that the executing judicial authorities cannot refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard in the issuing Member State before that arrest warrant was issued.

### **Costs**

- 44 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 (Grand Chamber) hereby rules:

**Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the executing judicial authorities cannot refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard in the issuing Member State before that arrest warrant was issued.**