Polish Citizens and European Arrest Warrant: Analysis of Case-law of the Court of Justice of the European Union[1]

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DOI: https://doi.org/10.24040/sap.2021.8.1.2-43

Abstract:

KLIMEK, Libor – SZYMANIEC, Piotr – WEDEŁ-DOMARADZKA, Agnieszka: *Polish Citizens and European Arrest Warrant: Analysis of Case-law of the Court of Justice of the European Union*. The objective of the work is the assessment of case-law of the Court of Justice of the European Union as regards Polish citizens within European arrest warrant procedure. It is divided into seven sections. At the outset, the first section introduces general remarks on European arrest warrants issued in Poland. The second section analyses case C-66/08 – *Szymon Kozłowski*. The third section analyses case C-108/16 PPU – *Pawel Dworzecki*. The fourth section analyses case C-294/16 PPU – *JZ*. The fifth section analyses case C-452/16 PPU – *Krzystof Marek Poltorak*. The sixth section analyses case C-367/16 – *Dawid Piotrowski*. The seventh section analyses case C-579/15 – *Daniel Adam Popławski* ("*Popławski I*").

Key words:

European arrest warrant, Polish citizens, case-law, Court of Justice of the European Union, case C-66/08 – *Szymon Kozłowski*, case C-108/16 PPU – *Pawel Dworzecki*; case C-294/16 PPU – *JZ*; case C-452/16 PPU – *Krzystof Marek Poltorak*, case C-367/16 – *Dawid Piotrowski*, case C-579/15 – *Daniel Adam Popławski*

1 The contribution was elaborated as a part of the research project VEGA No. 1/0004/20 '*Implementation of Mutual Recognition of Judicial Decisions in Criminal Matters into the Legal Order of the Slovak Republic*' [Slovak: Zavedenie vzájomného uznávania justičných rozhodnutí v trestných veciach do právneho poriadku Slovenskej republiky], funded by the Scientific Grant Agency of the Ministry of Education, Science, Research and Sport of the Slovak Republic and the Slovak Academy of Sciences. The funding was awarded to the Matej Bel University in Banská Bystrica, Slovak Republic.

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Introduction

The legal basis of the European arrest warrant (hereinafter "EAW") at the level of the European Union is the Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States[2] (hereinafter "Framework Decision 2002/584/JHA on the EAW"). This legislative instrument has been supplemented by case-law of the Court of Justice of the European Union.

In the pre-Lisbon era, i.e. until November 2009, the Court of Justice of the European Union shall have jurisdiction to give preliminary rulings on the validity and *interpretation of framework decisions* [...].[3] The reference to the Court of Justice for a preliminary ruling shall be subjected to the condition that the *national court* considers that a decision on the question is necessary in order to enable it to give judgment.[4]

Nowadays, in the Lisbon era, i.e. from December 2009, with respect to acts of the European Union in the field of judicial co-operation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the framework decisions (among others), the powers of the Court of Justice shall remain the same.[5]

The objective of the work is the assessment of case-law of the Court of Justice of the European Union as regards Polish citizens within European arrest warrant procedure. Until time of writing of this work, eight decisions on the topic of the EAW – as regards Polish citizens – have been given by the Court of Justice.[6] In each fallowing section at the outset is emphasised the subject matter of the analysed case. As a starting point for further analysis, one may usefully look the dispute in the proceedings. There are introduced questions(s) referred to the Court of Justice. Further, there is examined the legal opinion of the Court of Justice. Each analysis is concluded by the Court's rulings.

2 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 the Framework Decision 2009/299/JHA. Official Journal of the European Communities, L 190/1 of 18 July 2002. See: KLIMEK, L. 2015. *European Arrest Warrant*. Cham – Heidelberg – New York – Dordrecht – London : Springer, 375 p. ISBN 978-3-319-07337-8; see also Chapter 5 in KLIMEK, L. 2017. *Mutual Recognition of Judicial Decisions in European Criminal Law*. Cham : Springer, 2017. 742 p. ISBN 978-3-319-44375-1.

3 Article 35(1) of the Treaty on European Union as amended by the Treaty of Amsterdam. Official Journal of the European Communities, C 340 of 10 November 1997; Article 35(1) of the Treaty on European Union as amended by the Treaty of Nice. Official Journal of the European Union, C 321/E/5 of 29 December 2006.

4 Judgment of the Court of Justice of the European Communities of 16 June 2005 – Case C-105/03, *Criminal proceedings against Maria Pupino*, para. 2.

5 Article 10(1) the Protocol (No 36) on transitional provisions, annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union. Official Journal of the European Union, C 83/322 of 30 March 2010.

6 The authors decided to focus on the most relevant case-law. Indeed, in this study are not included two cases, namely the Judgment of 10 August 2017 – Case C-271/17 PPU, *Sławomir Andrzej Zdziaszek* and the Judgment of 24 June 2019 – Case C-573/17, *Daniel Adam Popławski* ("Popławski II").

1. General Remarks

Since almost all (except one) cases analysed in detail in this work concern the EAWs issued by Polish authorities, it is worth starting with general remarks about application practice of EAW in Poland. The EAW was implemented into Polish legal system in 2004.[7] Since then this instrument has been used very extensively. Poland is listed among Member States of the European Union which have issued the greatest numbers of EAWs. Moreover, EAW has been used in very minor cases. This situation is connected with so-called principle of legalism (mandatory prosecution principle, *Legalitatsprinzip*, *legalité de poursuites*) which – being a distinct feature of continental legal systems – prevails also in Polish criminal procedure.[8] *Tomasz Ostropolski* rightly observes that EAW is overused in the jurisdictions where the mandatory prosecution principle is a domineering one. In these jurisdictions EAW is issued not only in transborder cases, but also in relation to minor crimes (shoplifting or possession of small amounts of drugs are frequent examples). Although the proportionality test is not mentioned in the Framework Decision 2002/584/JHA on the EAW, the principle of proportionality, being the general principle of the European Union law mentioned in Article 5(4) of the Treaty on European Union, has to be taken into consideration during the application of EAW.[9] The question of this principle in the context of EAW was also discussed by the Council of the European Union in December 2010. The revised version of the "*European handbook on how to issue a European Arrest Warrant*" was the outcome of these discussions. This document states – "*It is clear that the Framework Decision on the EAW does not include any obligation for an issuing Member State to conduct a proportionality check and that the legislation of the Member States plays a key role in that respect. Notwithstanding that ... the competent authorities should, before deciding to issue a warrant, consider proportionality by assessing a number of important factors. In particular these will include an assessment of the seriousness of the offence, the possibility of the suspect being detained, and the likely penalty imposed if the person sought is found guilty of the alleged offence*".[10]

7 The Act of 18 March 2004 amending the Penal Code, the Code of Criminal Procedure and the Code of Petty Offenses (Journal of Laws No. 69, item 626). We leave aside the constitutional-law controversies over EAW ended with the amendment of the Polish Constitution on 8 September 2006. See: HOFMAŃSKI, P. 2008. Konstytucyjne problemy europejskiego nakazu aresztowania. In HOFMAŃSKI, P. (ed.) *Europejski nakaz aresztowania w teorii i praktyce państw członkowskich Unii Europejskiej.* Warszawa : Wolters Kluwer. ISBN 978-83-7601-149-3. Pp. 56-80.

8 See: ROGACKA-RZEWNICKA, M. *Oportunizm i legalizm ścigania przestępstw w świetle współczesnych przeobrażeń procesu karne*go. Kraków – Warszawa : Wolters Kluwer. 2007. ISBN 978-83-7526-617-7. Pp. 293-312; KUCZYŃSKA, H. Selection of defendants before the ICC: between the principle of opportunism and legalism. In *Polish Yearbook of International Law*. ISSN 0554-498X, 2014, No. 34, pp. 188-190.

9 OSTROPOLSKI, T. Zasada proporcjonalności a europejski nakaz aresztowania. In *Europejski Przegląd Sądowy*. ISSN 1895-0396, 2013, No. 3, pp. 16-18.

10 Council of the European Union. 2010. *European Handbook on How to Issue a European Arrest Warrant*. Document No. 17195/1/10, REV 1, Brussels, p. 14.

Between 2005 and 2013 Poland issued the largest number of EAWs among Member States of the European Union: 31 thousand. It made 31% out of the total number of 99 841 EAWs issued in the European Union in this period (for comparison: authorities in the United Kingdom issued only 1,3% of the entire number of EAWs). Misusing the EAW was not only a legal problem, but also economic one, since the cost of a single EAW procedure was estimated at 25 000 euro.[11] Due to criticism concerning the application of EAW, Polish Criminal Proceedings Code (hereafter "CPC") was amended in 2013.[12] The provision was added in Article 607b of the CPC, stipulating that "[t]he issuing of a EAW is inadmissible unless required by the interest of the administration of justice (*interes wymiaru sprawiedliwości*)". The notion of "interest of the administration of justice" is a general clause and thus has to be interpreted *ad casu*. In the literature, while interpreting this term, it is proposed to take into account such factors as the seriousness of the crime and the penalty that may be imposed, the situation and personal circumstances of the accused, the type of evidence gathered in the case and economic cost of issuing an EAW in a given case.[13]

The insufficient emphasis on proportionality is still seen as the core problem of application of EAW in Poland. As *Beata Hlawacz* pointed out, "[t]he European arrest warrant is an unquestioned success story its effectiveness as compared to other instruments based on the principle of mutual recognition is unchallenged. Nevertheless new challenges have emerged, one of which, from the Polish perspective, is the fitting of the proportionality test into the principle of legalism, applicable in the Polish law, in the procedure of issuance of the European arrest warrant".[14] The available data show that the number of EAWs issued by the Polish authorities decreased after 2010. It still amounts, however, to over 2,000 EAWs per year. This number is dominated by EAWs issued at the stage of execution proceedings. EAWs issued at the prosecutor's request constitute less than 1/4 of the total number. According to the latest available data, 2 263 EAWs were issued in 2018, 477 of which were the result of prosecutor's request.[15] The report prepared by the Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*) shows low effectiveness of the realisation of EAWs issued by Poland. Only about 20% of EAWs is

11 CZOGALIK, R. Odmowa wydania europejskiego nakazu aresztowania ze względu na „interes wymiaru sprawiedliwości". In *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury*. ISSN 2083-7186, 2018, Vol 30, No. 2, pp. 83-84.

12 ct of 27 September 2013 amending the Criminal Procedure Code and Some Other Acts (Journal of Laws, item 1247, as amended by later legislation).

13 KOSONOGA, J. Dobro wymiaru sprawiedliwości jako przesłanka dokonywania czynności procesowych. In CIEŚLAK, W. – STEINBORN, S. (eds.) *Profesor Marian Cieślak – osoba, dzieło, kontynuacje*. Warszawa : Wolters Kluwer. 2013. ISBN 978-83-264-6423-2. Pp. 869-903; CZOGALIK, R. Odmowa wydania europejskiego nakazu aresztowania ze względu na „interes wymiaru sprawiedliwości". In *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury*. ISSN 2083-7186, 2018, Vol 30, No. 2, pp. 86-87.

14 HLAWACZ, B. Cooperation of the public prosecutor's offices of the EU Member States. In NOWAK, C. (ed.) *Cost of Non-Europe. Wartość współpracy w sprawach karnych w Unii Europejskiej*. Warsaw : The European Law Research Association, 2018. p. 126.

15 Data gathered by the Institute of Justice in Warsaw (*Instytut Wymiaru Sprawiedliwości*). Available online <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/> [Accessed: 2020.07.25].

successfully realised (in comparison: 38% of EAWs issued by German judicial authorities are effectively enforced, with half less EAWs issued in Germany than in Poland). The United Kingdom, Germany and The Netherlands were the addressees of vast majority of the EAWs issued by Poland between 2010 and 2017. At the same time, Poland received quite a small number of EAWs from other Member States of the European Union (358 in 2017, of this number, 253 were successfully realised). The research conducted by Helsinki Foundation is fragmentary, as it covers only 42 cases from the District Court for Warsaw and the District Court for Warsaw-Praga. It reveals, however, that the EAWs were issued after a long time from the court's sentence: on average it was 7 years. In one case, 19 years passed between the offense (burglary) and the transfer of the sentenced person from the territory of France. Moreover, the vast majority of analysed EAWs issued at the stage of execution proceedings (26 out of 28 cases) concerned sentences not exceeding three years of imprisonment, including suspended sentences.[16] These research results suggest that despite the provision of Article 607b the CPC, courts often issue EAWs in relatively minor cases. Definitive conclusions on this matter, however, would require further, more comprehensive and detailed research.

2. Judgment of 17 July 2008 – Case C-66/08, *Szymon Kozłowski*

2.1 Reference for a Preliminary Ruling

The reference for a preliminary ruling concerns the interpretation of Article 4(6) of the Framework Decision 2002/584/JHA on the EAW.

The reference was made in proceedings concerning the execution by the German executing judicial authority – the Attorney General Stuttgart (*Generalstaatsanwaltschaft Stuttgart*) – of a EAW issued on 18 April 2007 by the Polish issuing judicial authority – the Regional Court in Bydgoszcz (*Sąd Okręgowy w Bydgoszczy*) – against Mr Kozłowski, a Polish national.

2.2 Dispute in the Main Proceedings and the Questions Referred for a Preliminary Ruling

By judgment of 28 May 2002 of Polish Local Court of Tuchola (*Sąd Rejonowy w Tucholi*), Mr Kozłowski was sentenced to five months' imprisonment for destruction of another person's property. The sentence imposed by that judgment has become final, but it has not been executed.

Since 10 May 2006, Mr Kozłowski has been imprisoned in Stuttgart (Germany), where he is serving a custodial sentence of three years and six months, to which he was sentenced by two judgments of the District Court Stuttgart (*Amtsgericht Stuttgart*), dated 27 July 2006 and 25 January 2007, in respect of 61 fraud offences committed in Germany.

16 Helsińska Fundacja Praw Człowieka. *Praktyka stosowania europejskiego nakazu aresztowania w Polsce jako państwie wydającym. Raport krajowy*. Warsaw, 2018, pp. 15-16, 18, 24, 26 and 28. Available online <https://www.hfhr.pl/wp-content/uploads/2018/07/ENA_PL.pdf> [Accessed: 2020-07-25]; See: SŁAPCZYŃSKI, T. Analiza skuteczności procedury wykonywania europejskiego nakazu aresztowania. In *Studia Prawnoustrojowe.* ISSN 1644-0412, 2019, Vol. 46, p. 391.

The Polish issuing judicial authority requested the German executing judicial authority, by a EAW issued on 18 April 2007, to surrender Mr Kozłowski for the purposes of execution of the sentence of imprisonment of five months imposed on him by the Local Court of Tuchola (*Sąd Rejonowy w Tucholi*).

On 5 June 2007, Mr Kozłowski was heard on the matter by the District Court Stuttgart (*Amtsgericht Stuttgart*). He stated to the latter, in the course of that hearing, that he did not consent to his surrender to the Polish issuing judicial authority.

On 18 June 2007, the German executing judicial authority informed Mr Kozłowski that it did not intend to raise any ground for non-execution. According to that authority, there is no ground for non-execution within the meaning of Para. 83b of the Law on International Mutual Legal Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*) of 1982, as amended by the Law on the European Arrest Warrant (*Europäisches Haftbefehlsgesetz*) of 2006 and, in particular, Mr Kozłowski does not have his *habitual residence* in Germany. His successive periods of presence on German territory were characterised by the commission of several crimes, without any lawful activity.

Consequently, since it considered that it was not necessary to initiate enquiries in order to discover where, with whom and why Mr Kozłowski was staying in Germany, the executing judicial authority requested the Higher Regional Court Stuttgart (*Oberlandesgericht Stuttgart*) to authorise the execution of the EAW in question.

With regard to Mr Kozłowski's personal situation, the order for reference indicates that, according to the convictions against him in Germany, he is single and childless. He has little or even no command of the German language. He grew up, then worked, in Poland until the end of 2003. Thereafter, for approximately one year, he drew unemployment benefit in that Member State.

The national court proceeds on the assumption that from February 2005 until 10 May 2006, the date of his arrest in Germany, Mr Kozłowski lived predominantly in Germany. That stay was interrupted during the 2005 Christmas holidays, and possibly even in the month of June 2005 and the months of February and March 2006. He worked occasionally on building sites but earned his living essentially by committing crimes.

Finally, the national court explains that, in the course of the review which it is required to carry out under Para. 79(2) of the Law on International Mutual Legal Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*) of 1982, it is called upon to ascertain whether Mr Kozłowski's *habitual residence* within the meaning of Article 83b(2) of that law was, at the time of the request for surrender, in Germany, and whether it is still there. If that question is answered in the negative, the national court must according to German law authorise the execution of the EAW, since all the other conditions required under that law are fulfilled.

In those circumstances, the Higher Regional Court Stuttgart (*Oberlandesgericht Stuttgart*) decided to stay the proceedings and to refer to the Court of Justice the following questions for a preliminary ruling:[17]

17 Reference for a preliminary ruling from the Higher Regional Court Stuttgart (*Oberlandesgericht Stuttgart*) (Germany) lodged on 18 February 2008 – Extradition proceedings against Szymon Kozlowski (Case C-66/08).

1) Do the following facts preclude the assumption that a person is a *resident* of or is *staying* in a Member State in the sense of Article 4(6) of the Framework Decision 2002/584/JHA on the EAW:
   - his stay in the Member State of execution has not been uninterrupted;
   - his stay there does not comply with the national legislation on residence of foreign nationals;
   - he commits crimes there systematically for financial gain; and/or
   - he is in detention there serving a custodial sentence?
2) Is transposition of Article 4(6) of the Framework Decision 2002/584/JHA on the EAW in such a way that the extradition of a national of the executing Member State against his will for the purpose of execution of sentence is always impermissible, whereas extradition of nationals of other Member States against their will can be authorised at the discretion of the authorities, compatible with Union law, in particular with the principle of non-discrimination and with Union citizenship under Article 6(1) of the Treaty on European Union, read in conjunction with Articles 12 and 17 et seq. of the Treaty establishing the European Community, and if so, are those principles at least to be taken into account in the exercise of that discretion?

2.3 Consideration of the Questions by the Court of Justice[18]

The First Question

According to Article 1(2) of the Framework Decision 2002/584/JHA on the EAW, Member States are to execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of that Framework Decision.

In that regard, Article 4(6) of the Framework Decision sets out a ground for optional non-execution of the EAW pursuant to which the executing judicial authority may refuse to execute such a warrant issued for the purposes of execution of a sentence 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 that sentence in accordance with its domestic law.

Thus, according to Article 4(6) of the Framework Decision, the scope of that ground for optional non-execution is limited to persons who, if not nationals of the executing Member State, are *staying* or *resident* there. However, the meaning and scope of those two terms are not defined in the Framework Decision.

It is not sufficient to take into account only the term *resident* within the meaning of Article 4(6) of the Framework Decision, but it is also necessary to ascertain in what way the term *staying* may complement the meaning of the first of those two terms.

First, that reading of Article 4(6) of the Framework Decision cannot be affected by the fact that, according to the wording of Article 5(3) of the Framework Decision, which concerns a person who is the subject of a EAW for the purposes of prosecution, surrender may be made subject by the law of the executing Member State to the condition contained in that provision only if the person concerned is a national or resident of that Member State, no reference being made to his *staying* there.

18 See also: View of Advocate General Bot delivered on 28 April 2008 – Case C-66/08 – Criminal Proceedings Against Szymon Kozłowski.

Second, with regard to the interpretation of the terms *staying* and *resident*, it should be pointed out that the definition of those two terms cannot be left to the assessment of each Member State.

It follows from the need for uniform application of Community law and from the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Union, having regard to the context of the provision and the objective pursued by the legislation in question (see, by analogy, Case C-195/06, *Österreichischer Rundfunk*, para. 24).

Since the objective of the Framework Decision is to put in place a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, based on the principle of mutual recognition – a surrender which the executing judicial authority can oppose only on one of the grounds for refusal provided for by the Framework Decision – the terms *staying* and *resident*, which determine the scope of Article 4(6), must be defined uniformly, since they concern autonomous concepts of Union law. Therefore, in their national law transposing Article 4(6), the Member States are not entitled to give those terms a broader meaning than that which derives from such a uniform interpretation.

In order to establish whether, in a specific situation, the executing judicial authority may refuse to execute a EAW, it must, initially, ascertain only whether the requested person is a national of the executing Member State, a *resident* of that State or *staying* there within the meaning of Article 4(6) of the Framework Decision and thus covered by it. Second, and only if the executing judicial authority finds that that person is covered by one of those terms, it must assess whether there is a legitimate interest which would justify the sentence imposed in the issuing Member State being executed on the territory of the executing Member State.

The terms *resident* and *staying* cover, respectively, the situations in which the person who is the subject of a EAW has either established his actual place of residence in the executing Member State or has acquired, following a stable period of presence in that State, certain connections with that State which are of a similar degree to those resulting from residence.

In the light of the information contained in the order for reference, Mr Kozłowski is not *resident* in Germany within the meaning of Article 4(6) of the Framework Decision. Consequently, the interpretation which follows concerns only the term *staying* contained in that provision.

In order to determine whether, in a specific situation, there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term *staying* within the meaning of Article 4(6) of the Framework Decision, it is necessary to make an overall assessment of various objective factors characterising the situation of that person, which include, in particular, the length, nature and conditions of his presence and the family and economic connections which he has with the executing Member State.

Since it is for the executing judicial authority to make an overall assessment in order to determine, initially, whether the person concerned falls within Article 4(6) of

the Framework Decision, a single factor characterising the person concerned cannot, in principle, have a conclusive effect of itself.

With regard to circumstances such as those related by the national court in its first question, under points (a) to (d), the fact that, as explained under point (a), the requested person's stay in the executing Member State was not uninterrupted and the fact that, as described under point (b), his stay in that State does not comply with the national legislation on residence of foreign nationals, while not constituting factors which lead by themselves to the conclusion that he is not *staying* in that Member State within the meaning of Article 6(4) of the Framework Decision, can however be of relevance to the executing judicial authority when it is called upon to assess whether the person concerned is covered by that provision.

With regard to the fact that, as explained in point (c) of the first question, according to which that person systematically commits crimes in the executing Member State and the fact that, as described in point (d) of that question, he is in detention there serving a custodial sentence, it must be held that they are not relevant factors for the executing judicial authority when it initially has to ascertain whether the person concerned is *staying* within the meaning of Article 4(6) of the Framework Decision. By contrast, such factors may, supposing that the person concerned is *staying* in the executing Member State, be of some relevance for the assessment which the executing judicial authority is then called upon to carry out in order to decide whether there are grounds for not implementing a EAW.

It follows that, without being conclusive, two of the four circumstances related by the national courts in its first question, under points (a) and (b), can be of relevance for the executing judicial authority when it has to ascertain whether the situation of the person concerned falls within Article 4(6) of the Framework Decision.

The Second Question

According to the national court, it must authorise the execution of the EAW issued against Mr Kozłowski if it finds that he does not have his *habitual residence*, within the meaning of Article 83b(2)(b) of the Law on International Mutual Legal Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*) of 1982, in Germany.

It is no necessary in the present case to reply to the second question referred, since the requested person in the main proceedings is not covered by Article 4(6) of the Framework Decision.

2.4 Rulings

Article 4(6) of the Framework Decision 2002/584/JHA on the EAW, is to be interpreted to the effect that:

– a requested person is *resident* in the executing Member State when he has established his actual place of residence there and he is *staying* there when, following a stable period of presence in that State, he has acquired connections with that State which are of a similar degree to those resulting from residence;

– in order to ascertain whether there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term *staying* within the meaning of Article 4(6), it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State.

3. Judgment of 24 May 2016 – Case C-108/16 PPU, *Paweł Dworzecki*

3.1 Reference for a Preliminary Ruling

The request for a preliminary ruling concerns the interpretation of Article 4a(1) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA.

This request was submitted in the context of proceedings relating to the execution, in the Netherlands, of a EAW issued by Polish Regional Court in Zielona Góra (*Sąd Okręgowy w Zielonej Górze*) against Mr Paweł Dworzecki.

3.2 Dispute in the Main Proceedings and the Questions Referred for a Preliminary Ruling

On 30 November 2015, the District Court Amsterdam (*Rechtbank Amsterdam*) was requested by the public prosecutor attached to that court to execute a EAW issued on 4 February 2015 by the Regional Court in Zielona Góra (*Sąd Okręgowy w Zielonej Górze*).

That EAW seeks the arrest and surrender or Mr Dworzecki, a Polish national residing in The Hague (Netherlands), for the purpose of executing in Poland three custodial sentences of two years, eight months and six months respectively. The latter two sentences must still be executed in full, whereas, as regards the first sentence, seven months and twelve days remain to be served by Mr Dworzecki. The present request for a preliminary ruling concerns only surrender for the purpose of executing the second custodial sentence.

As regards the latter sentence, point D of the EAW states that Mr Dworzecki did not appear in person at the trial leading to the judgment in which the sentence was imposed. The issuing judicial authority therefore ticked point 1(b) in point D of the arrest warrant form, corresponding to point 3.1.b of the form annexed to the Framework Decision 2002/584/JHA on the EAW, applicable where "*the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial*".

By way of information about how the relevant condition has been satisfied, which must be stated under point 4 of point D of that form, the EAW states the following, in English: "*The summons was sent to the address which Mr Paweł Dworzecki had indicated for service of process and it was collected by an adult occupant at this address,*

Mr Paweł Dworzecki's grandfather – pursuant to Article 132 of the Code of Criminal Procedure, which states that 'in the event of the addressee's absence from home, the process is to be served on an adult resident of the addressee's household – if also absent, the process can be served on the landlord or the caretaker or the village chief – on condition they undertake to pass the process on to the addressee'. A copy of the judgment was also sent to the same address and collected by an adult occupant. Besides, Mr Paweł Dworzecki had pleaded guilty and accepted in advance the punishment suggested by the prosecutor."

The referring court observes that it has already interpreted the Netherlands law transposing Article 4a(1) of the Framework Decision 2002/584/JHA on the EAW as meaning that examination of compliance with the conditions laid down in points (a) to (d) of that provision must take account of the law of the issuing Member State. Thus, in particular, where the summons was handed to a member of the household of the requested person, the referring court did not apply the ground for non-execution provided for in Article 12 of the Law on Surrender (*L'Overleveringswet*).

The referring court is uncertain, however, whether such an interpretation of national law is consistent with Article 4a(1) of the Framework Decision 2002/584/JHA on the EAW. It considers that the European Union legislature, by the expression "*in accordance with further procedural requirements defined in the national law of the issuing Member State*", which precedes the list of parts (a) to (d) of Article 4a(1) of the Framework Decision, intended, in particular by the qualifier "further", to make clear that Framework Decision 2009/299/JHA were not designed to harmonise the laws of the Member States on criminal proceedings as regards judgments delivered in absentia in general, and the method of issuing a summons in particular, but only to lay down common grounds for refusal as regards judgments delivered in absentia in criminal matters. It follows that the expressions in points (a) to (d) of Article 4a(1) of the Framework Decision 2002/584/JHA on the EAW constitute autonomous concepts of European Union law.

As regards the interpretation of those concepts, the referring court is of the view that the conditions set out in point (a) of Article 4a(1) of the Framework Decision 2002/584/JHA on the EAW are not satisfied in the present case, since it is not established that official information relating to the date and place of the trial was actually received by Mr Dworzecki.

In addition, the referring court states that the interpretation of Article 4a(1) of the Framework Decision 2002/584/JHA on the EAW which it proposes may be stricter than is required under the case-law of the European Court of Human Rights on Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950. That Court, in particular in §§ 99 and 101 of its judgment of 1 March 2006 in *Sejdovic versus Italy*, requires only that the accused had "*sufficient knowledge of his prosecution and of the charges against him*".

It was in those circumstances that the District Court Amsterdam (*Rechtbank Amsterdam*) decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:[19]

19 Request for a preliminary ruling from the *Rechtbank Amsterdam* (Netherlands) lodged on 24 February 2016 – Public Prosecutor (*Openbaar Ministerie*) versus Paweł Dworzecki (Case C-108/16).

1) Are the following concepts, used in Article 4a(1)(a) of the Framework Decision 2002/584/JHA on the EAW,
   - "in due time … was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision"

   And
   - "in due time … by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial"

   autonomous concepts of European Union law?
2) If so:
   a) how should those autonomous concepts generally be interpreted; and
   b) does a case such as the present, which is characterised by the facts that:
   - according to the EAW, the summons was served, at the address of the requested person, on an adult resident of the household, who undertook to hand the summons over to the requested person;
   - it is not clear from the EAW whether and when that resident actually handed the summons over to the requested person;
   - it cannot be inferred from the statement which the requested person made at the hearing before the referring court that he was – in due time – aware of the date and place of the scheduled trial,

fall under one of the two autonomous concepts referred to in the first question?

3.3 Consideration of the Questions by the Court of Justice[20]

The First Question

The Framework Decision 2002/584/JHA on the EAW 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 co-operation 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 (joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, para. 76).

The Court has consistently held that it follows from the need for a uniform application of European Union law, and from the principle of equality, that the terms of a provision of European Union law, which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question (case C-66/08, *Kozłowski*, para. 42, and case C-494/14, *Axa Belgium*, para. 21).

In that regard, although the Framework Decision 2002/584/JHA on the EAW, and in particular Article 4a(1) thereof, contains several express references to the national law of the Member States, none of those references concerns the concepts set out in Article 4a(1)(a)(i).

20 See also: Opinion of Advocate General Bobek delivered on 11 May 2016 – Case C-108/16 PPU – Public Prosecutor (*Openbaar Ministerie*) versus Paweł Dworzecki.

In those circumstances, as all the interested parties who have submitted observations to the Court maintained, the expressions forming the subject-matter of the first question must be taken to be autonomous concepts of European Union law and be interpreted uniformly throughout the territory of the European Union.

The Second Question

Under Article 4a(1) of the Framework Decision 2002/584/JHA on the EAW, the executing judicial authority may refuse to execute a EAW issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the EAW states that the conditions set out in subparagraph (a), (b), (c) or (d) of paragraph 1 are satisfied.

It follows that the executing judicial authority is in principle required to execute a EAW, notwithstanding the person's failure to appear in person at the trial resulting in the decision, if the conditions set out in Article 4a(1)(a), (b), (c) or (d) of the Framework Decision 2002/584/JHA on the EAW are satisfied.

As regards, more particularly, Article 4a(1)(a)(i) of that framework decision, the executing judicial authority is under such an obligation where the person either "*was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision*" or "*by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial*".

In the light of the objectives pursued by the Framework Decision 2009/299/JHA it must be considered that the methods of effecting service of the summons provided for in Article 4a(1)(a)(i) of the Framework Decision 2002/584/JHA on the EAW, by their precise and common nature, are designed to ensure a high level of protection and to allow the executing authority to surrender the person concerned notwithstanding his failure to attend the trial which led to his conviction, while fully respecting the rights of the defence.

In fact, compliance with the conditions for a summons referred to in Article 4a(1)(a)(i) of the Framework Decision 2002/584/JHA on the EAW is apt to ensure that the person concerned was informed in good time of the date and place of his trial and thus allows the executing authority to conclude that the rights of the defence were respected.

It is in the light of those considerations that the conditions laid down in that Article 4a(1)(a)(i) of the Framework Decision should be interpreted.

The right to a fair trial enjoyed by a person summoned to appear before a criminal court thus requires that he has been informed in such a way as to allow him to organise his defence effectively. Article 4a(1)(a)(i) of the Framework Decision is designed to achieve that objective, but it does not constitute an exhaustive list of the means that can be used to that end. In fact, in addition to a summons in person, the conditions set out in that provision are satisfied if the person concerned was actually given official information of the date and place fixed for his trial by "other means".

In that regard, as stated in recital 4 of the Framework Decision 2009/299/JHA, that framework decision is not designed to regulate, at European Union level, the forms and methods that are used by the competent authorities in the context of the

surrender procedure, including the procedural requirements applicable according to the law of the Member State concerned.

The purpose of Article 4a(1)(a)(i) of the Framework Decision 2002/584/JHA on the EAW is necessarily achieved by a summons *in person*, as referred to in the first part of that provision, as such a method of service ensures that the person concerned has himself received the summons and, accordingly, has been informed of the date and place of his trial.

As regards the conditions set out in the second part of that provision, they are designed to achieve the same high level of protection of the person summoned, by ensuring that he has the information relating to the date and place of his trial.

Regard being had, in particular, to the wording of Article 4a(1)(a)(i) of the Framework Decision 2002/584/JHA on the EAW, which states that it must be unequivocally established that the person concerned *was aware of the scheduled trial*, the fact that the summons was handed over to a third party who undertook to pass it on to the person concerned, whether or not that third party belonged to the household of the person concerned, cannot in itself satisfy those requirements. Such a method of service does not allow it to be unequivocally established either that the person concerned *actually* received the information relating to the date and place of his trial or, where appropriate, the precise time when that information was received.

In any event, the executing judicial authority has the option, pursuant to Article 15(2) of the Framework Decision 2002/584/JHA on the EAW, of requesting supplementary information, as a matter of urgency, if it finds that the information communicated by the issuing Member State is insufficient to allow it to decide on surrender.

3.4 Rulings

1. Article 4a(1)(a)(i) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA, must be interpreted as meaning that the expressions "*summoned in person*" and "*by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial*" in that provision constitute autonomous concepts of European Union law and must be interpreted uniformly throughout the European Union.

2. Article 4a(1)(a)(i) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA, must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter's address, to an adult belonging to that household who undertook to pass it on to him, when it cannot be ascertained from the EAW whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions set out in that provision.

4. Judgment of 28 July 2016 – Case C-294/16 PPU, *JZ*

4.1 Reference for a Preliminary Ruling

The request for a preliminary ruling concerns the interpretation of Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA.

The request has been made in proceedings between JZ and Polish Prosecutor for the District of Łódź (*Prokuratura Rejonowa Łódź-Śródmieście*) concerning the request by JZ for the deduction, from the total period of the custodial sentence imposed on him in Poland, of the period during which he was made subject, by the Member State which executed the EAW, namely the United Kingdom of Great Britain and Northern Ireland, to the electronic monitoring of his place of residence, in conjunction with a curfew.

4.2 Dispute in the Main Proceedings and the Question Referred for a Preliminary Ruling

By judgment of 27 March 2007, Polish District Court for Central Łódź (*Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi*) imposed a custodial sentence of three years and two months on JZ.

JZ absconded and a EAW was therefore issued for him. On 18 June 2014, JZ was arrested by the United Kingdom authorities under that EAW and was held in custody until 19 June 2014. By a decision of 25 June 2015, the Polish court credited that period towards the custodial sentence which JZ was required to serve in Poland.

From 19 June 2014 to 14 May 2015, JZ, who was released on bail of GBP 2 000, was required to stay at the address he had given, between the hours of 22.00 and 7.00, and his compliance with that requirement was subject to electronic monitoring. In addition, JZ was obliged to report to a police station between the hours of 10.00 and 12.00, initially daily, then, after three months, three times a week, was prohibited from applying for foreign travel documents and was required to keep his mobile telephone switched on and charged at all times. Those measures were applied until 14 May 2015, the date on which he was surrendered to the Polish authorities.

In the referring court, JZ has requested that the period during which he was subject to a curfew in the United Kingdom and to electronic monitoring be credited towards his custodial sentence. He submits, in particular, that, under Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, the decision on giving credit for the detention order in the sentence passed must be taken on the basis of the provisions in force in the United Kingdom, under which a detention order consisting in the person concerned being made subject to electronic monitoring for eight or more hours a day must, in his opinion, be regarded as a custodial sentence.

The referring court indicates in that regard that it is possible under United Kingdom law to deduct curfew periods in conjunction with electronic monitoring of the place of residence from the sentence passed only where the curfew is applied for not less than nine hours a day, and that, as a general rule, half of the period during which the measure is applied, rounded up to a full day, can be credited.

The referring court notes that the requirement that JZ remain at home at night had resulted in his losing his job, since it was a temporary job and his employer was not obliged to adjust his working hours to suit his availability. Moreover, during the first three months of the curfew period, JZ had been obliged to report every day, between 10.00 and 12.00, to a police station approximately 16 km from his place of residence. It was only after those three months that the frequency of those appearances was reduced to three times a week and JZ was able to report to a police station closer to his place of residence. During that period, JZ was unable to find a job that was suited to his availability. He therefore stayed at home with his children and only his wife worked.

The referring court considers that the interpretation of the term *detention* in Article 26(1) of the Framework Decision 2002/584/JHA on the EAW is crucial to the correct interpretation and application of the provisions of national law governing the reduction of the term of a custodial sentence, including Article 607f of the Code of Criminal Procedure, which was introduced into Polish law for the purpose of transposing the Framework Decision.

The referring court notes in that regard that the interpretation of the concept of *deprivation of liberty*, in Article 607f of the Code of Criminal Procedure, gives rise to differences in the case-law of the courts and in the legal literature.

The referring court considers that, in the light of recital 12 of the Framework Decision 2002/584/JHA on the EAW and Article 6 Treaty on European Union, Article 26(1) of that framework decision must be interpreted in the light of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the interpretation of that Article by the European Court of Human Rights.

It follows, according to the referring court, that the national court should have the opportunity of assessing whether, in the case before it, all the measures applied to the person sentenced and the duration of those measures permit the inference that those measures constitute deprivation of liberty, and, accordingly, on the basis of all the legal rules concerned and applying the principle that national law is to be interpreted in conformity with European Union law, possibly of deducting from the length of the custodial sentence passed the period during which those measures were applied.

Furthermore, adopting a strict interpretation of *detention*, thereby restricting the application of Article 26(1) of the Framework Decision 2002/584/JHA on the EAW to conventional forms of deprivation of liberty, such as imprisonment or pre-trial detention, could, according to the referring court, lead to a breach of the principle of proportionality laid down in Article 49(3) of the Charter of Fundamental Rights of the European Union.

The referring court states that the case in the main proceedings is characterised by the application of a series of different measures which, taken together, could be regarded as a deprivation of liberty. The application of those measures over several months could ultimately be regarded as an additional penalty for the same offence as that for which the person sentenced has already been given a long custodial sentence. The referring court notes in that regard that, during the curfew period, JZ was unable to find gainful employment compatible with the time constraints to which he was subject and that his wife bore the entire burden of maintaining the household.

In those circumstances, the District Court for Central Łódź (*Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi*) decided to stay the proceedings and to refer the following

question to the Court of Justice for a preliminary ruling – Must Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, in conjunction with Article 6(1) and (3) Treaty on European Union and Article 49(3) of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the term *detention* also covers measures applied by the executing Member State consisting in the electronic monitoring of the place of residence of the person to whom the arrest warrant applies, in conjunction with a curfew?[21]

4.3 Consideration of the Question by the Court of Justice[22]

The obligation to interpret national law in conformity with European Union law is limited by general principles of law and cannot serve as the basis for an interpretation of national law *contra legem*. The fact remains, however, that the principle that national law must be interpreted in conformity with European Union law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the framework decision in question is fully effective and to achieving an outcome consistent with the objective pursued by it (see, to that effect, case C-42/11, *Lopes Da Silva Jorge*, para. 55 and 56).

Under Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, the issuing Member State is to deduct all periods of detention arising from the execution of a EAW from the total period of detention to be served in that Member State as a result of a custodial sentence or detention order being passed.

The Court has consistently held that it follows from the need for a uniform application of European Union law, and from the principle of equality, that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (see, to that effect, case C-66/08, *Kozłowski*, para. 42, and case C-108/16 PPU, *Dworzecki*, para. 28).

However, that provision makes no express reference to the law of the Member States for the purpose of determining its meaning and scope.

Accordingly, it must be held that the concept of *detention*, which features in Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, is an autonomous concept of European Union law that must be given an autonomous and uniform interpretation throughout the European Union, which must take into account the terms of that provision, its context and the objectives of the legislation of which it forms part (see, to that effect, case C-174/14, *Saudaçor*, para. 52).

As regards, in the first place, the wording of Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, it must be borne in mind that the wording used in one

21 Request for a preliminary ruling from the District Court for Central Łódź (*Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi*) (Poland) lodged on 25 May 2016 – Criminal proceedings against J. Z. (Case C-294/16).

22 See also: Opinion of Advocate General Campos Sánchez-Bordona delivered on 19 July 2016 – Case C-294/16 PPU – JZ.

language version of a provision of European Union law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions in that regard. Provisions of European Union law must be interpreted and applied uniformly in the light of the versions existing in all European Union languages (see, to that effect, case C-528/13, *Léger*, para. 35).

It must be noted in that regard that the various language versions of Article 26(1) of the Framework Decision 2002/584/JHA on the EAW differ. For example, whereas the German-, Greek- and French-language versions use the terms 'Freiheitsentzug', 'στέρηση της ελευθερίας' and 'privation de liberté' to refer to the treatment of the person concerned in the issuing Member State, and the words 'Haft', 'κράτηση' and 'détention' in relation to the period to be deducted from the sentence passed, the English- and Polish-language versions use only the word 'detention' and 'zatrzymania' in Article 26(1). On the other hand, the Dutch-language version of that provision uses only the word 'vrijheidsbeneming', which corresponds to the expression *deprivation of liberty*.

It must be noted that the terms *detention* and *deprivation of liberty* are used interchangeably in the various language versions of Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, and, moreover, that these are similar concepts, the ordinary meaning of which evokes a situation of confinement or imprisonment, and not merely a restriction of the freedom of movement.

As regards, in the second place, the context of Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, it must be noted that Article 12 of that framework decision provides that when a person is arrested on the basis of a EAW, the executing judicial authority is to take a decision, in accordance with the law of the executing Member State, on whether the requested person should remain in detention, while making clear that, at any time in conformity with the law of that Member State, it may be decided that the person concerned may be released provisionally, provided that the competent authority takes all the measures it deems necessary to prevent that person absconding. That provision thus envisages an alternative to *detention*, namely provisional release in conjunction with measures to prevent the person concerned from absconding.

As regards, in the third place, the objective pursued by Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, it must be stated that the obligation under that Article to deduct the period of detention arising from the execution of the EAW from the total period of detention which the person concerned would be required to serve in the issuing Member State is designed to meet the general objective of respecting fundamental rights, as referred to in recital 12, and recalled in Article 1(3), of the Framework Decision 2002/584/JHA on the EAW, by preserving the right to liberty of the person concerned, enshrined in Article 6 of the Charter of Fundamental Rights of the European Union, and the practical effect of the principle of proportionality in the application of penalties, as provided for in Article 49(3) of the Charter.

In so far as it requires account to be taken of any period during which the person sentenced was detained in the executing Member State, Article 26(1) of the Framework Decision 2002/584/JHA on the EAW ensures that that person is not required to serve a period of detention the total length of which – both in the executing Member State and in the issuing Member State – would ultimately exceed the length of the custodial sentence imposed on him in the issuing Member State.

It should be noted in that regard that the case-law of the European Court of Human Rights in relation to the *right to liberty* provided for in Article 5(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, which corresponds to Article 6 of the Charter of Fundamental Rights of the European Union, supports that interpretation.

It is clear from the explanations relating to Article 52(3) of the Charter, which, in accordance with the third subparagraph of Article 6(1) Treaty on European Union and Article 52(7) of the Charter, have to be taken into consideration for the purpose of interpreting it (see, to that effect, case C-617/10, *Åkerberg Fransson*, para. 20, and case C-129/14 PPU, *Spasic*, para. 54), that Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, without thereby adversely affecting the autonomy of European Union law and that of the Court of Justice of the European Union (see, to that effect, case C-601/15 PPU, *N.*, para. 47).

According to the European Court of Human Rights, the *right to liberty* enshrined in Article 5(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms is not concerned with mere restrictions on liberty of movement, since only measures involving deprivation of liberty are covered by that Article. In order to determine whether someone has been *deprived of his liberty* within the meaning of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights has ruled that the starting point must be his concrete situation and that account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see, to that effect, European Court of Human Rights case *Guzzardi versus Italy*, § 92, and *Buzadji versus Republic of Moldova*, § 103).

In its judgment *Villa versus Italy* (§ 43 and 44), the European Court of Human Rights held that measures requiring the person concerned to report once a month to the monitoring police authority, to maintain contact with the psychiatric centre of the relevant hospital, to live in a specified place, not to leave the district in which he was residing, and to stay at home between the hours of 22.00 and 7.00, did not constitute deprivation of liberty within the meaning of Article 5(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

When applying Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, the judicial authority of the Member State which issued the EAW is required to consider whether the measures taken against the person concerned in the executing Member State are to be treated in the same way as a deprivation of liberty, as referred to in para. 47 of the present judgment, and therefore constitute detention within the meaning of Article 26(1). If, in carrying out that examination, the judicial authority comes to the conclusion that that is the case, Article 26(1) of the Framework Decision requires that the whole of the period during which those measures were applied be deducted from the period of detention which that person would be required to serve in the Member State which issued the EAW.

It must be pointed out in that regard that, while measures such as a nine-hour night-time curfew, together with the monitoring of the person concerned by means of

an electronic tag, an obligation to report to a police station at fixed times on a daily basis or several times a week, and a ban on applying for foreign travel documents, certainly restrict that person's liberty of movement, they are not, in principle, so restrictive as to have the effect of depriving him of his liberty and thus to be classified as *detention* within the meaning of Article 26(1) of the Framework Decision.

4.4 Rulings

Article 26(1) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA, must be interpreted as meaning that measures such as a nine-hour night-time curfew, in conjunction with the monitoring of the person concerned by means of an electronic tag, an obligation to report to a police station at fixed times on a daily basis or several times a week, and a ban on applying for foreign travel documents, are not, in principle, having regard to the type, duration, effects and manner of implementation of all those measures, so restrictive as to give rise to a deprivation of liberty comparable to that arising from imprisonment and thus to be classified as *detention* within the meaning of that provision, which it is nevertheless for the referring court to ascertain.

5. Judgment of 10 November 2016 – Case C-452/16 PPU, *Krzystof Marek Poltorak*

5.1 Reference for a Preliminary Ruling

The request for a preliminary ruling concerns the interpretation of Article 1(1) and Article 6(1) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA.

The request has been made in connection with the execution in the Netherlands of a EAW issued by Swedish National Police Board (*Rikspolisstyrelsen*) against Mr Krzysztof Marek Poltorak with a view to executing a custodial sentence of one year and three months in Sweden.

5.2 Dispute in the Main Proceedings and the Questions Referred for a Preliminary Ruling

On 21 December 2012 Swedish District Court Gothenburg (*Göteborgs Tingsrätt*) imposed on Mr Poltorak, a Polish national, a custodial sentence of one year and three months, for acts involving infliction of grievous bodily injury. On 30 June 2014 the Swedish police board issued a EAW against Mr Poltorak, with a view to executing that sentence in Sweden.

The matter came before the District Court Amsterdam (*Rechtbank Amsterdam*), as the executing judicial authority of that EAW, with a view to arresting and surrendering Mr Poltorak to the Swedish authorities.

Following a request for information addressed to the Swedish authorities concerning the issuing authority of the same EAW, the District Court Amsterdam (*Rechtbank Amsterdam*) received information, among others, on the structure, independence, fun-

ctioning and powers of that authority, as well as on the procedure and criteria on the basis of which that authority decided to issue EAWs for the execution of a custodial sentence or detention order.

In the light of that information, as well as the information in the evaluation report of the Council of 21 October 2008 concerning national practices relating to the EAW [Evaluation report on the fourth round of mutual evaluations – "The practical application of the EAW and corresponding surrender procedures between Member States": Report on Sweden (9927/1/08 REV 2)], the referring court harbours doubts as to whether the EAW issued by a police service, such as the Swedish police board, is to be regarded as having been issued by a *judicial authority*, within the meaning of Article 6(1) of the Framework Decision 2002/584/JHA on the EAW, and whether, consequently, that EAW constitutes a *judicial decision*, within the meaning of Article 1(1) of the Framework Decision.

In that regard, that court questions whether the terms *judicial decision* and *judicial authority*, within the meaning of the Framework Decision 2002/584/JHA on the EAW, are to be interpreted as autonomous concepts of European Union law or whether Member States are free to define their meaning and scope.

If those terms are to be regarded as autonomous concepts of European Union law, the referring court considers that they would imply that the EAW is issued by an authority with a status and powers enabling it to offer sufficient judicial protection at the stage of the issue of the EAW. In the light of the principle of mutual recognition on which the Framework Decision 2002/584/JHA on the EAW is based, it takes the view that such an authority must be a judge or prosecutor, thereby ruling out the possibility that the EAW can be issued by a police service.

If those terms fall within the scope of the national law of the Member States, the referring court takes the view that they would still be required to observe European Union law in exercising their discretion. It thereby refers to the principles set forth by the Court of Justice, regarding the right to an effective remedy in the context of the surrender procedure, in case C-168/13 PPU, *F.*, para. 46 and 4, and, regarding the judicial protection that must be guaranteed at the stage of the issue of the EAW, in case C-241/15, *Bob-Dogi*, para. 56.

In those circumstances, the District Court Amsterdam (*Rechtbank Amsterdam*) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:[23]

1) Are the expressions *judicial authority*, within the meaning of Article 6(1) of the Framework Decision 2002/584/JHA on the EAW, and *judicial decision*, within the meaning of Article 1(1) of the Framework Decision, autonomous terms of European Union law?
2) If the answer to Question 1 is in the affirmative: what are the criteria for determining whether an authority of the issuing Member State is such a *judicial authority* and whether the EAW issued by it is consequently such a *judicial decision*?

23 Request for a preliminary ruling from the District Court Amsterdam (*Rechtbank Amsterdam*) (Netherlands) lodged on 16 August 2016 – Public Prosecutor (*Openbaar Ministerie*) versus Krzystof Marek Poltorak (Case C-452/16).

3) If the answer to Question 1 is in the affirmative: is the Swedish police board covered by the term *judicial authority*, within the meaning of Article 6(1) of the Framework Decision 2002/584/JHA on the EAW, and is the EAW issued by that authority consequently a *judicial decision* within the meaning of Article 1(1) of the Framework Decision?
4) If the answer to Question 1 is in the negative: is the designation of a national police authority, such as the Swedish police board, as the issuing judicial authority in conformity with European Union law?

5.3 Consideration of the Questions by the Court of Justice[24]

The Framework Decision 2002/584/JHA on the EAW 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 co-operation with a view to contributing to the attainment of the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States (joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, para. 76).

Both the principle of mutual trust between the Member States and the principle of mutual recognition are, in European Union law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with European Union law and particularly with the fundamental rights recognised by European Union law (joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, para. 78).

The principle of mutual recognition, which is the *cornerstone* of judicial co-operation, means that, pursuant to Article 1(2) of the Framework Decision 2002/584/JHA on the EAW, Member States are in principle obliged to give effect to a EAW. The executing judicial authority may refuse to execute such a warrant only in the cases, exhaustively listed, of obligatory non-execution, laid down in Article 3 of the Framework Decision, or of optional non-execution, laid down in Articles 4 and 4a of the Framework Decision. Moreover, the execution of the EAW may be made subject only to one of the conditions exhaustively laid down in Article 5 of the Framework Decision (joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, para. 79 and 80).

However, only EAWs, within the meaning of Article 1(1) of the Framework Decision, must be executed in accordance with the provisions of that decision. It follows from Article 1(1) of the Framework Decision that the EAW constitutes a *judicial decision*, which requires that it be issued by a *judicial authority*, within the meaning of Article 6(1) thereof.

According to that provision, the issuing judicial authority is to be the judicial authority of the issuing Member State which is competent to issue a EAW by virtue of the law of that State.

24 See also: Opinion of Advocate General Campos Sánchez-Bordona delivered on 19 October 2016 – Case C-452/16 PPU – Public Prosecutor (*Openbaar Ministerie*) versus Krzysztof Marek Poltorak.

Although Article 6(1) of the Framework Decision does refer, in accordance with the principle of the procedural autonomy of the Member States, to the law of those States, it must be held that that reference is limited to designating the judicial authority with the competence to issue the EAW. Accordingly, that reference does not concern the definition of the term *judicial authority* in itself.

In those circumstances, the meaning and scope of the term *judicial authority*, within the meaning of Article 6(1) of the Framework Decision, cannot be left to the assessment of each Member State (see, by analogy, case C-66/08, *Kozłowski*, para. 43, and C-261/09, *Mantello*, para. 38).

It follows that the term *judicial authority*, contained in Article 6(1) of the Framework Decision, requires, throughout the Union, an autonomous and uniform interpretation, which, in accordance with the settled case-law of the Court, must take into account the terms of that provision, its context and the objective of the Framework Decision (see, by analogy, case C-294/16 PPU, *JZ*, para. 37).

Thus, as regards the wording of Article 6(1) of the Framework Decision, it should be noted that the words *judicial authority*, contained in that provision, are not limited to designating only the judges or courts of a Member State, but may extend, more broadly, to the authorities required to participate in administering justice in the legal system concerned.

It must, however, be held that the term *judicial authority*, referred to in that provision, cannot be interpreted as also covering the police services of a Member State.

In the first place, it is generally accepted that the term *judiciary* does not cover police services. That term refers to the judiciary, which must be distinguished, in accordance with the principle of the separation of powers which characterises the operation of the rule of law, from the executive. Thus, judicial authorities are traditionally construed as the authorities that administer justice, unlike, among others, administrative authorities or police authorities, which are within the province of the executive.

In the second place, that interpretation of the terms of Article 6(1) of the Framework Decision is supported by the background to that provision.

On the one hand, judicial co-operation in criminal matters, as laid down in Article 31 of the Treaty on European Union, must be distinguished from police co-operation, as laid down in Article 30 of the Treaty on European Union.

On the other hand, it is necessary to interpret the term *judicial authority*, in the context of the Framework Decision, as covering the Member State authorities that administer criminal justice, but not police services.

In that regard, the Court has held that the entire surrender procedure between Member States provided for by the Framework Decision is, in accordance with that decision, carried out under judicial supervision, ensuring that decisions relating to EAWs are attended by all the guarantees appropriate for decisions of such a kind (see, to that effect, case C-168/13 PPU, *F.*, para. 39 and 46).

In particular, it is stated in recital 8 of the Framework Decision that decisions on the execution of the EAW must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested has to take a decision on his surrender. Moreover, Article 6 of the Framework Decision provides that not only that decision but also the decision on issuing the war-

rant must be taken by a judicial authority. Action by a judicial authority is likewise required at other stages of the surrender procedure, such as hearing the requested person, deciding to keep him in detention, or deciding on his temporary transfer (see, to that effect, case C-168/13 PPU, *F.*, para. 45).

In that context, Article 7 of the Framework Decision authorises Member States, subject to the conditions set out in that provision and if necessary as a result of the organisation of their internal judicial systems, to have recourse to a non-judicial authority, namely a central authority, as regards the transmission and reception of EAWs.

However, while the central police services of a Member State may be covered by the term *central authority*, within the meaning of that Article, it is nevertheless apparent from that same Article, read in the light of recital 9 of the Framework Decision, that action by such an authority is limited to practical and administrative assistance for the competent judicial authorities.

In the third place, it is appropriate to hold that interpreting Article 6(1) of the Framework Decision as meaning that it also covers police services would run counter to the objectives pursued by it.

Therefore, the principle of mutual recognition, enshrined in Article 1(2) of the Framework Decision, pursuant to which the executing judicial authority is required to execute the arrest warrant issued by the issuing judicial authority, is founded on the premiss that a judicial authority has intervened prior to the execution of the EAW, for the purposes of exercising its review.

However, the issue of an arrest warrant by a non-judicial authority, such as a police service, does not provide the executing judicial authority with an assurance that the issue of that EAW has undergone such judicial approval and cannot, therefore, suffice to justify the high level of confidence between the Member States, which forms the very basis of the Framework Decision. In that regard, the specific organisation of police services within the executive and the degree of autonomy they might have is irrelevant.

5.4 Rulings

The term *judicial authority*, within the meaning of Article 6(1) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA, is an autonomous concept of European Union law and that provision must be interpreted as meaning that a police service, such as Swedish National Police Board (*Rikspolisstyrelsen*), is not covered by the term *issuing judicial authority*, within the meaning of the same Article 6(1), meaning that the EAW issued by that police service with a view to executing a judgment imposing a custodial sentence cannot be regarded as a *judicial decision*, within the meaning of Article 1(1) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA.

6. Judgment of 23 January 2018 – Case C-367/16, *Dawid Piotrowski*

6.1 Reference for a Preliminary Ruling

The request for a preliminary ruling concerns the interpretation of Article 3(3) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA.

The request has been made in proceedings in Belgium for the execution of a EAW issued on 17 July 2014 by Polish Regional Court in Bialystok (*Sąd Okręgowy w Białymstoku*) against Mr Dawid Piotrowski.

6.2 Dispute in the Main Proceedings and the Questions Referred for a Preliminary Ruling

Mr Piotrowski is a Polish national who was born on 11 August 1993 in Lapy (Poland). On 17 July 2014, the Regional Court in Bialystok (*Sąd Okręgowy w Białymstoku*) issued a EAW against Mr Piotrowski with a view to his surrender to the Polish authorities for the execution of the sentences imposed by two judgments of that court. The first judgment, handed down on 15 September 2011, imposed a six-month custodial sentence on Mr Piotrowski for the theft of a bicycle. The second judgment, handed down on 10 September 2012, imposed a custodial sentence of two years and six months for giving false information in connection with a serious attack.

By order of 6 June 2016, Belgian investigating judge of the Dutch-language Court of First Instance of Brussels ordered that Mr Piotrowski be detained with a view to his surrender to the issuing Member State, the Republic of Poland, for the purpose of the execution of the judgment of 10 September 2012.

On the other hand, in that order the investigating judge took the view that, in the light of Article 4(3) of the Law on the European Arrest Warrant, the warrant issued by the Regional Court in Bialystok (*Sąd Okręgowy w Białymstoku*) could not be executed in so far as the judgment of 15 September 2011 was concerned because Mr Piotrowski was 17 when he committed the offence with which he had been charged and, in those circumstances, the conditions laid down in Belgian law for the prosecution of a minor who had reached the age of 16 when the offence was committed were not satisfied.

On 7 June 2016, Belgian Public Prosecutor (*procureur des Konings*) appealed against that order, in so far as it refused in part to execute the EAW at issue, before the Court of Appeal in Brussels (*Hof van beroep te Brussel*).

In that regard, the Public Prosecutor (*procureur des Konings*) argued that, under the Law on Youth Protection, while the age of criminal responsibility is 18, a minor over the age of 16 may nonetheless be held criminally responsible if he commits road traffic offences or if the Juvenile Court (*Jeugdrechtbank*) declines to hear the case against him in the cases specified and under the conditions laid down in that law. In that context, in order to apply the ground for refusing execution set out in Article 4(3) of the Law on the European Arrest Warrant, it is sufficient to carry out an assessment *in abstracto* of the criterion of the age from which the minor concerned may be regarded as criminally responsible. There is therefore no need to carry out an assessment *in concreto* of the additional conditions to be met under Belgian law in order for criminal

proceedings to be instituted in respect of such a minor.

Following that appeal, the case relating to the execution of the EAW at issue was separated into two parts.

On 21 June 2016, analysing that part of the arrest warrant relating to the judgment of 10 September 2012, the pre-trial chamber of the Dutch-language Court of First Instance of Brussels gave a favourable decision on the request for surrender of Mr Piotrowski to the Republic of Poland for the execution of that judgment.

On the other hand, in the appeal proceedings relating to the execution of the judgment of 15 September 2011, the Court of Appeal in Brussels (*Hof van beroep te Brussel*) took the view, shared by the Public Prosecutor (*procurer des Konings*), that, under Belgian law, outside cases involving the commission of road traffic offences, a minor over the age of 16 may be held criminally responsible only if the Juvenile Court (*Jeugdrechtbank*) declines to hear the matter and refers the case to the public prosecution service with a view to prosecution, either before a special chamber within that court or before an Assize Court, depending on the offence committed.

Under Article 57bis(1) of the Law on Youth Protection, the Juvenile Court (*Jeugdrechtbank*) may, however, decline to hear the matter only if one of the following conditions is met: if the person concerned has already been the subject of one or more care, protection or education measures or of an offer of restorative justice, mediation or settlement, or if the case involves the commission or the attempted commission of one of the serious offences referred to in certain expressly identified Articles of the Criminal Code. Moreover, that provision states that the grounds adopted in the decision by the court declining to hear the matter must relate to the individual characteristics of the person concerned and of his family and associates, and to his level of maturity. In accordance with Article 57bis(2) of that law, that court may, in principle, decline to hear the case only after it has carried out social and medico/psychological enquiries in respect of the person concerned.

Against that legislative background, the Court of Appeal in Brussels (*Hof van beroep te Brussel*) observes that the case-law of the Court of Cassation (*Hof van Cassatie*) is not unequivocal as regards the interpretation of Article 4(3) of the Law on the European Arrest Warrant.

As regards the application of the ground for refusal under that provision, by judgment of 6 February 2013, the second chamber, French-speaking division, of the Court of Cassation (*Hof van Cassatie*) held, in essence, that since the procedure for declining jurisdiction is not applicable to a person who is being prosecuted by the authorities of a State other than the Kingdom of Belgium, the surrender of a minor under a EAW calls for an assessment *in concreto* of the conditions to be met in order to prosecute and convict such a person in Belgium, as Member State of execution. On the other hand, by judgment of 11 June 2013, the Court of Cassation (*Hof van Cassatie*), in plenary session, held, in essence, that the principle of mutual recognition means that the courts of the executing Member State may not make the surrender of a minor who is the subject of a EAW subject to a specific decision to decline jurisdiction and those courts must, for the purposes of any such surrender, simply carry out an assessment *in abstracto* of the criterion of the age at which such a minor may be regarded as criminally responsible.

In the light of that uncertainty in the case-law and the fact that the ground for refusal laid down in Article 4(3) of the Law on the European Arrest Warrant transposes the ground for mandatory non-execution provided for in Article 3(3) of the Framework Decision 2002/584/JHA on the EAW, the Court of Appeal in Brussels (*Hof van beroep te Brussel*) considers it necessary to seek clarification from the Court of Justice regarding the scope of that provision of European Union law, in order to ensure that Belgian law is interpreted in a manner consistent with the wording and purpose of European Union law.

In those circumstances, the Court of Appeal in Brussels (*Hof van beroep te Brussel*) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:[25]

1) Should Article 3(3) of the Framework Decision 2002/584/JHA on the EAW be interpreted as meaning that surrender can be granted only in respect of persons who are regarded as having attained the age of majority under the law of the executing Member State, or does that provision allow the executing Member State also to grant the surrender of minors who, on the basis of national rules, can be held criminally responsible from a certain age (assessing, if necessary, whether there has been compliance with various conditions)?
2) On the hypothesis that the surrender of minors is not prohibited by Article 3(3) of the Framework Decision 2002/584/JHA on the EAW, should that provision then be interpreted:
   - as meaning that the existence of a (theoretical) possibility of being able to punish minors from a certain age in accordance with national law suffices as a criterion for granting the surrender (in other words, by carrying out an assessment *in abstracto* on the basis of the criterion of the age from which someone can be regarded as criminally responsible, without taking into account any possible further conditions)? Or
   - as meaning that neither the principle of mutual recognition, as referred to in Article 1(2) of the Framework Decision 2002/584/JHA on the EAW, nor the text of Article 3(3) of that Framework Decision, precludes the executing Member State from carrying out an assessment *in concreto* on a case-by-case basis, where it may be required that, so far as concerns the person whose surrender is sought, the same conditions for criminal responsibility must be met as those that apply to the nationals of the executing Member State, having regard to their age at the time of the acts, having regard to the nature of the alleged offence and possibly even having regard to the preceding judicial interventions in the issuing Member State which led to a measure of an educational nature, even if those conditions did not exist in the issuing Member State?
3) If the executing Member State may carry out an assessment *in concreto*, is then, in order to avoid impunity, no distinction to be made between a surrender for the purposes of a criminal prosecution and a surrender for the purposes of the enforcement of a sentence?

25 Request for a preliminary ruling from the Court of Appeal in Brussels (*Hof van beroep te Brussel*) (Belgium) lodged on 5 July 2016 – Public Prosecutor (*Openbaar Ministerie*) versus Dawid Piotrowski (Case C-367/16).

6.3 Consideration of the Questions by the Court of Justice[26]

The First Question

Article 3(3) of the Framework Decision 2002/584/JHA on the EAW requires the executing judicial authority to refuse to execute a EAW if the person who is the subject of the 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*".

It is therefore apparent from the wording of Article 3(3) of the Framework Decision 2002/584/JHA on the EAW that the ground for non-execution laid down in that provision does not cover minors in general but refers only to those who have not reached the age required, under the law of the executing Member State, to be regarded as criminally responsible for the acts on which the warrant issued against them is based.

The European Union legislature therefore intended to exclude from surrender not all minors but only those persons who, on account of their age, cannot be the subject of any criminal prosecution or conviction in the executing Member State in respect of the acts in question, giving that Member State, in the absence of harmonisation in this field, the discretion to determine the minimum age from which a person satisfies the requirements to be regarded as criminally responsible for such acts.

Lastly, the interpretation of Article 3(3) of the Framework Decision 2002/584/JHA on the EAW is also borne out by the legislative context of the framework decision.

Indeed, it should be noted in that regard that, in order in particular to promote respect for the fundamental rights of minors guaranteed by the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, the Directive 2016/800 lays down, as is apparent from Article 1(b) thereof, common minimum rules concerning, among others, the protection of the procedural rights of children, that is persons under 18 years of age, who are subject to EAW proceedings pursuant to the Framework Decision 2002/584/JHA on the EAW. In particular, Article 17 of that directive provides that various rights enjoyed by children who are suspects or accused persons in national criminal proceedings must apply mutatis mutandis in respect of children who are the subject of such an arrest warrant upon their arrest in the executing Member State.

Those provisions of the Directive 2016/800 confirm that European Union law, in particular Framework Decision 2002/584/JHA on the EAW, does not, in principle, prohibit the executing judicial authorities from surrendering minors who have reached the age of criminal responsibility in the executing Member State. Nevertheless, that directive requires such authorities to satisfy themselves, when implementing the framework decision, that such minors have the benefit of certain specific procedural rights guaranteed in national criminal proceedings, in order to ensure that, as stated in recital 8 of that directive, the best interests of a child who is the subject of a EAW are always a primary consideration, in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union.

26 See also: Opinion of Advocate General Bot delivered on 6 September 2017 – Case C-367/16 – Criminal Proceedings versus Dawid Piotrowski.

The Second Question

The Court has consistently held that, in interpreting a provision of European Union law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, among others, case C-289/15, *Grundza*, para. 32, and case C-640/15, *Vilkas*, para. 30).

As regards the wording of Article 3(3) of the Framework Decision 2002/584/JHA on the EAW, it is formulated in such a way that the executing judicial authority must refuse to execute the EAW if the person concerned "*may not, owing to his age, be held criminally responsible*" under the law of the executing Member State "*for the acts on which the arrest warrant is based*".

It is therefore clear from the terms of that provision that, in order to refuse to surrender a minor who is the subject of a EAW, the executing judicial authority must simply satisfy itself that that person has not reached the minimum age at which he may be prosecuted and convicted under the law of the executing Member State for the same acts as those on which the EAW is based.

Therefore, it is not possible under Article 3(3) of the Framework Decision 2002/584/JHA on the EAW for the executing judicial authority also to consider, when deciding whether to surrender the person concerned, the additional conditions relating to an assessment based on the circumstances of the individual to which the law of its Member State specifically makes the prosecution and conviction of a minor subject, such as those laid down in the present case in Article 57bis(1) and (2) of the Law on Youth Protection. It is for the issuing judicial authority to apply the specific rules governing criminal-law penalties for offences committed by minors in its Member State.

In those circumstances, in the absence of any express reference to that effect, the wording of Article 3(3) of the Framework Decision 2002/584/JHA on the EAW does not support an interpretation to the effect that the executing judicial authority must refuse to surrender a minor who is the subject of a EAW on the basis of an assessment of that person's specific circumstances and of the acts on which the warrant issued against that person is based, in the light of the additional conditions relating to an assessment based on the circumstances of the individual to which the criminal responsibility of a minor for such acts is specifically subject in the executing Member State.

That conclusion is supported by the context and overall scheme of that provision, as well as by the objectives pursued by the Framework Decision 2002/584/JHA on the EAW.

As regards the context and overall scheme of Article 3(3) of the Framework Decision 2002/584/JHA on the EAW, it should be noted that, as is apparent in particular from Article 1(1) and (2) and recitals 5 and 7 thereof, the purpose of the framework decision is to replace the multilateral system of extradition based on the European Convention on Extradition of 13 December 1957 with a system of surrender, as between judicial authorities, of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, the system of surrender being based on the principle of mutual recognition (case C-261/09, *Mantello*, para. 35; joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, para. 75; and case C-477/16 PPU, *Kovalkovas*, para. 25).

Accordingly, in the area governed by the Framework Decision 2002/584/JHA on the EAW, the principle of mutual recognition, which constitutes, as is stated in particular in recital 6 thereof, the *cornerstone* of judicial co-operation in criminal matters,

is given effect in Article 1(2) of that decision, pursuant to which Member States are, in principle, obliged to give effect to a EAW (joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, para. 79).

It follows that executing judicial authorities may, in principle, refuse to execute such a warrant only in the cases of obligatory non-execution, laid down in Article 3 of the Framework Decision 2002/584/JHA on the EAW, or of optional non-execution, laid down in Articles 4 and 4a of that decision. Accordingly, while the execution of the EAW constitutes the rule, the refusal to execute such a warrant is intended to be an exception which must be interpreted strictly (see, to that effect, case C-579/15, *Popławski*, para. 19, and case C-270/17 PPU, *Tupikas*, para. 50 and 51).

Admittedly, the Court has previously accepted that exceptions may be made to the principles of mutual recognition and mutual trust between Member States in exceptional circumstances. Moreover, as is apparent from Article 1(3) of the Framework Decision 2002/584/JHA on the EAW, that decision cannot have the effect of modifying the obligation to respect fundamental rights, as enshrined in, among others, the Charter of Fundamental Rights of the European Union (see, to that effect, joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, para. 82 and 83), and, in the present case, in particular, in Article 24 of the Charter, concerning the rights of children, which Member States are required to observe when implementing the framework decision.

It is common ground that that framework decision established a simplified and more efficient system for the surrender of persons who have been convicted or are suspected of having infringed criminal law (see, to that effect, case C-192/12 PPU, *West*, para. 53, and case C-237/15 PPU, *Lanigan*, para. 40), which makes it possible to remove, as stated in recital 5 of the framework decision, the complexity and potential for delay inherent in the extradition procedures that existed before the adoption of that decision (case C-168/13 PPU, *F.*, para. 57).

That objective underlies, among others, the treatment of the time limits for adopting decisions relating to a EAW (case C-168/13 PPU, *F.*, para. 58), with which Member States are required to comply (case C-640/15, *Vilkas*, para. 32) and the importance of which is stated in a number of provisions of the Framework Decision 2002/584/JHA on the EAW (case C-237/15 PPU, *Lanigan*, para. 29).

As regards, in particular, the adoption of the decision on the execution of a EAW, Article 17(1) of the Framework Decision 2002/584/JHA on the EAW provides that such a warrant is to be dealt with and executed as a matter of urgency. Article 17(2) and (3) prescribes precise time limits of 10 and 60 days respectively for taking the final decision on the execution of the warrant, depending on whether or not the requested person consents to his surrender. Only in specific cases in which the EAW cannot be executed within those time limits does Article 17(4) of the framework decision allow them to be extended by a further 30 days, the executing judicial authority being obliged immediately to inform the issuing judicial authority, giving the reasons for the delay. Outside such specific cases, only exceptional circumstances can allow a Member State, in accordance with Article 17(7) of the Framework Decision 2002/584/JHA on the EAW, not to observe those time limits, that Member State similarly having to inform Eurojust, giving the reasons for the delay.

In order to simplify and accelerate the surrender procedure in accordance within the time limits laid down by Article 17 of the Framework Decision 2002/584/JHA on the EAW, the annex to the decision provides a specific form which the issuing judicial authorities are required to complete, furnishing the specific information requested.

According to Article 8 of the Framework Decision 2002/584/JHA on the EAW, that information relates, among others, to the identity and nationality of the requested person, evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2 of the framework decision, the nature and legal classification of the offence, 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, the penalty imposed or the prescribed scale of penalties for the offence under the law of the issuing Member State and, if possible, any other consequences of the offence.

It is thus clear that the purpose of that information is to provide the minimum official information required to enable the executing judicial authorities to give effect to the EAW swiftly by adopting their decision on the surrender as a matter of urgency. The form provided in the Annex to Framework Decision 2002/584/JHA on the EAW does not contain any specific information that would enable the executing judicial authorities to assess, where appropriate, the specific circumstances of the minor concerned by reference to objective or subjective conditions, such as those referred to in Article 57bis(1) and (2) of the Law on Youth Protection, to which the possibility of prosecuting or convicting a minor is specifically subject under the criminal law of their Member State.

The Third Question

In view of the answer given to the second question, there is no need to answer the third question.

6.4 Rulings

1. Article 3(3) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA, is to be interpreted as meaning that the judicial authority of the executing Member State must refuse to surrender only those minors who are the subject of a EAW and who, under the law of the executing Member State, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based.

2. Article 3(3) of the Framework Decision 2002/584/JHA on the EAW, as amended by the Framework Decision 2009/299/JHA, is to be interpreted as meaning that, in order to decide whether a minor who is the subject of a EAW is to be surrendered, the judicial authority of the executing Member State must simply verify whether the person concerned has reached the minimum age required to be regarded as criminally responsible in the executing Member State for the acts on which such a warrant is based, without having to consider any additional conditions, relating to an assessment based on the circumstances of the individual, to which the prosecution and conviction of a minor for such acts are specifically subject under the law of that Member State.

7. Judgment of 29 June 2017 – Case C-579/15, *Daniel Adam Popławski* ("Popławski I")

7.1 Reference for a Preliminary Ruling

This request for a preliminary ruling concerns the interpretation of Article 4(6) of the Framework Decision 2002/584/JHA on the EAW.

The request has been made in connection with the execution in the Netherlands of a EAW issued by Polish District Court in Poznań (*Sąd Rejonowy w Poznaniu*) against Mr Daniel Adam Popławski with a view to enforcing a custodial sentence in Poland.

6.2 Dispute in the Main Proceedings and the Questions Referred for a Preliminary Ruling

By judgment of 5 February 2007, which became final on 13 July 2007, the District Court in Poznań (*Sąd Rejonowy w Poznaniu*) gave Mr Popławski, a Polish national, a one-year suspended prison sentence. By decision of 15 April 2010, that court ordered the enforcement of that custodial sentence.

On 7 October 2013, that court issued an EAW against Mr Popławski with a view to enforcement of that sentence.

In the main proceedings relating to the execution of that EAW, the District Court Amsterdam (*Rechtbank Amsterdam*) asks whether it must apply Article 6(2) and (5) of the Law on Surrender (*L'Overleveringswet*) which provides an optional ground for non-execution of an EAW in favour of, among others, persons residing in the Netherlands, as is the case with Mr Popławski.

The referring court observes that, under Article 6(3) of the Law on Surrender (*L'Overleveringswet*), where the Netherlands refuses to execute an EAW, it must state that it is "willing" to take over the execution of the sentence on the basis of a convention in force between it and the issuing Member State. It states that taking over that execution in the main proceedings requires Poland to make a request to that end. However, Polish legislation precludes such a request in a situation where the person concerned is a Polish national.

The referring court makes it clear that, in such a situation, a refusal to surrender could lead to the impunity of the person to whom the EAW applies. After pronouncement of the judgment refusing the surrender, it may prove impossible to take over execution of the sentence, in particular because there has been no request to that end from the issuing Member State, and that fact would have no bearing on the judgment refusing to surrender the requested person.

In those circumstances, given its doubts as to whether Article 6(2) to (4) of the Law on Surrender (*L'Overleveringswet*) is compatible with Article 4(6) of the Framework Decision 2002/584/JHA on the EAW which permits a refusal to surrender only if the executing Member State *undertakes* to execute the sentence in accordance with its domestic law, the District Court Amsterdam (*Rechtbank Amsterdam*) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1) May a Member State transpose Article 4(6) of the Framework Decision 2002/584/JHA on the EAW in its national law in such a way that:[27]
   - its executing judicial authority is, without more, obliged to refuse surrender, for purposes of executing a sentence, of a national or resident of the executing Member State,
   - by operation of law, that refusal gives rise to the willingness to take over the execution of the custodial sentence imposed on the national or resident,
- but the decision to take over execution of the sentence is taken only after refusal of surrender for purposes of executing the sentence, and a positive decision is dependent on (1) a basis for the decision in a treaty or convention which is in force between the issuing Member State and the executing Member State, (2) the conditions set by that treaty or convention, and (3) the co-operation of the issuing Member State by, for example, making a request to that effect,

with the result that there is a risk that, following refusal of surrender for purposes of executing the sentence, the executing Member State cannot take over execution of that sentence, while that risk does not affect the obligation to refuse surrender for purposes of executing the sentence?

2) If Question 1 is answered in the negative:
   a) can the national courts apply the provisions of the Framework Decision 2002/584/JHA on the EAW directly even though, under Article 9 of Protocol (No 36) on transitional provisions, the legal effects of that Framework Decision are preserved after the entry into force of the Treaty of Lisbon until that framework decision is repealed, annulled or amended?
   b) if so, is Article 4(6) of the Framework Decision 2002/584/JHA on the EAW sufficiently precise and unconditional to be applied by the national courts?
3) If the answers to Questions 1 and 2(b) are in the negative, may a Member State, whose national law requires that the taking-over of the execution of the foreign custodial sentence must be based on an appropriate treaty or convention, transpose Article 4(6) of that framework decision in its national law in such a way that that provision itself provides the required conventional basis, in order to avoid the risk of impunity associated with the national requirement of a conventional basis?
4) If the answers to Questions 1 and 2(b) are in the negative, may a Member State transpose Article 4(6) of that framework decision in its national law in such a way that, for refusal of surrender for purposes of executing a sentence in respect of a resident of the executing Member State who is a national of another Member State, it sets the condition that the executing Member State must have jurisdiction in respect of the offences cited in the EAW and that there must be no actual obstacles in the way of a criminal prosecution in the executing Member State of that resident in respect of those offences, such as the refusal by the issuing Member State to hand over the case-file to the executing Member State, whereas it does not set such a condition for refusal of surrender for purposes of executing a sentence in respect of a national of the executing Member State?

27 Request for a preliminary ruling from the *District Court Amsterdam* (Rechtbank Amsterdam) (Netherlands) lodged on 6 November 2015 – Public Prosecutor (*Openbaar Ministerie*) versus Daniel Adam Popławski (Case C-579/15).

7.3 Consideration of the Questions by the Court of Justice[28]

The First Question

It is apparent, first of all, from Article 1(2) of the Framework Decision 2002/584/JHA on the EAW that that decision lays down the principle that Member States must execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision. Save in exceptional circumstances, the executing judicial authorities, as the Court has already held, may refuse to execute such a warrant only in the cases of non-execution, exhaustively listed and laid down by the framework decision, and the execution of the EAW may be made subject only to one of the conditions exhaustively laid down by that framework decision (see, to that effect, joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, para. 80 and 82). Accordingly, while the execution of the EAW constitutes the rule, the refusal to execute is intended to be an exception which must be interpreted strictly.

Next, it must be recalled that Article 4(6) of the Framework Decision 2002/584/JHA on the EAW sets out a ground for optional non-execution of the EAW under which the executing judicial authority *may* refuse to execute an EAW for the purposes of enforcing a custodial sentence where, in particular, the requested person is a resident of the executing Member State, as is the case in the main proceedings, and that State *undertakes* to enforce that sentence in accordance with its domestic law.

It is clear from the actual wording of Article 4(6) of the Framework Decision 2002/584/JHA on the EAW that, where a Member State chose to transpose that provision into domestic law, the executing judicial authority must, nevertheless, have a margin of discretion as to whether or not it is appropriate to refuse to execute the EAW. In that regard, that authority must take into consideration the objective of the ground for optional non-execution set out in that provision, which, according to the Court's settled case-law, means enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him expires (see, to that effect, case C-42/11, *Lopes Da Silva Jorge*, para. 32).

It also follows from the wording of Article 4(6) of the Framework Decision that any refusal to execute an EAW presupposes an actual undertaking on the part of the executing Member State to execute the custodial sentence imposed on the requested person, even though, in any event, the mere fact that that Member State declares itself *willing* to execute the sentence could not be regarded as justifying such a refusal. This indicates that any refusal to execute an EAW must be preceded by the executing judicial authority's examination of whether it is actually possible to execute the sentence in accordance with its domestic law.

Accordingly, legislation of a Member State which implements Article 4(6) of the Framework Decision 2002/584/JHA on the EAW by providing that its judicial authorities are, in any event, obliged to refuse to execute an EAW in the event that the requested person resides in that Member State, without those authorities having any margin of discretion, and without that Member State actually undertaking to execute

28 See also: Opinion of Advocate General Bot delivered on 15 February 2017 – Case C-579/15 – Public Prosecutor (*Openbaar Ministerie*) versus Daniel Adam Popławski.

the custodial sentence pronounced against that requested person, thereby creating a risk of impunity of that requested person, cannot be regarded as compatible with that framework decision.

The Second and the Third Questions

By its second and third questions, which must be examined together, the referring court asks, in essence, whether the provisions of the Framework Decision 2002/584/JHA on the EAW have direct effect, and if not, whether Netherlands law may be interpreted in a manner consistent with European Union law, so that, where a Member State makes the act of taking over execution of the custodial sentence conditional upon there being a legal basis in an international convention, Article 4(6) of that framework decision itself constitutes the formal basis required under domestic law.

In that regard, it must be pointed out that Framework Decision does not have direct effect. That is because that framework decision was adopted on the basis of the former third pillar of the European Union, in particular, under Article 34(2)(b)of the Treaty on European Union (in the version prior to the Lisbon Treaty). That provision stated that framework decisions are not to entail direct effect (see, by analogy, case C-554/14, *Ognyanov*, para. 56).

It must be added that, under Article 9 of the Protocol (No 36) on transitional provisions, the legal effects of the acts of the institutions, bodies, offices and agencies of the European Union adopted on the basis of the Treaty on European Union before the entry into force of the Treaty of Lisbon are to be preserved only until those acts are repealed, annulled or amended in implementation of the Treaties. The Framework Decision 2002/584/JHA on the EAW was not repealed, annulled or amended after the Treaty of Lisbon entered into force.

Although the provisions of the Framework Decision 2002/584/JHA on the EAW may not, therefore, entail direct effect, in accordance with Article 34(2)(b) of the Treaty on European Union, that framework decision is still binding on the Member States as to the result to be achieved, but leaves to the national authorities the choice of form and methods (see, by analogy, case C-554/14, *Ognyanov*, para. 56).

Where the conditions laid down in Article 4(6) of the Framework Decision 2002/584/JHA on the EAW have not been satisfied, Article 1(2) of that framework decision requires Member States to execute any EAW on the basis of the principle of mutual recognition.

In that context, it must be recalled that, in accordance with the Court's settled case-law, Member States must take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under a framework decision (see, to that effect, by analogy, case C-105/03, *Pupino*, para. 42).

In particular, it is clear from the Court's settled case-law, that the binding character of a framework decision places on national authorities, including national courts, an obligation to interpret national law in conformity with European Union law. When those courts apply domestic law, they are therefore bound to interpret it, so far as possible, in the light of the wording and the purpose of the framework decision concerned in order to achieve the result sought by it. This obligation to interpret national law in conformity with European Union law is inherent in the system of the Treaty on the

Functioning of the European Union, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of European Union law when they rule on the disputes before them (case C-554/14, *Ognyanov*, para. 58 and 59).

It is true that the principle of interpreting national law in conformity with European Union law has certain limitations. Thus, the obligation on the national court to refer to the content of a framework decision when interpreting and applying the relevant rules of its national law is limited by general principles of law, particularly those of legal certainty and non-retroactivity. In particular, those principles preclude that obligation from leading to the criminal liability of individuals being determined or aggravated, on the basis of a framework decision alone, absent any legislation implementing its provisions, where they are in breach of those provisions (case C-554/14, *Ognyanov*, para. 62 to 64).

Moreover, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem* (judgment case C-294/16 PPU, *JZ*, para. 33).

However, the fact remains that the principle that national law must be interpreted in conformity with European Union law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the framework decision in question is fully effective and to achieving an outcome consistent with the objective pursued by it (case C-42/11, *Lopes Da Silva Jorge*, para. 56).

In that connection, the Court has already held that the obligation to interpret domestic law in conformity with European Union law requires national courts to change established case-law, where necessary, if it is based on an interpretation of domestic law that is incompatible with the objectives of a framework decision (case C-554/14, *Ognyanov*, para. 67).

The Court has also held that, in a situation where a national court claims that it is impossible for it to interpret a provision of domestic law in a manner that is compatible with a framework decision, on the ground that it is bound by the interpretation given to that national provision by the national Supreme Court in an interpretative judgment, it is for that national court to ensure that the framework decision is given full effect, and if necessary to disapply, on its own authority, the interpretation adopted by the national Supreme Court, since that interpretation is not compatible with European Union law (see, to that effect, case C-554/14, *Ognyanov*, para. 69 and 70).

Having made those preliminary points, it must be made clear that, in the present case, although the national court's obligation to ensure the complete effectiveness of the Framework Decision 2002/584/JHA on the EAW brings with it the obligation for the Netherlands State to execute the EAW in question or, in the event of a refusal, the obligation to ensure that the sentence pronounced in Poland is actually executed, it has no bearing on the determination of Mr Popławski's criminal liability which stems from the judgment pronounced against him on 5 February 2007 by the District Court in Poznań (*Sąd Rejonowy w Poznaniu*) and, *a fortiori*, cannot be regarded as aggravating that liability.

It should also be noted that the referring court considers that, contrary to what Dutch Public Prosecutor (*Openbaar Ministerie*) suggested at the hearing, the declaration in which the latter informed the issuing judicial authority that, pursuant to Article 6(3) of the Law on Surrender (*L'Overleveringswet*), it is willing to take over

the execution of the sentence on the basis of the EAW concerned cannot be interpreted as constituting an actual undertaking on the part of the Netherlands State to execute that sentence, unless Article 4(6) of the Framework Decision 2002/584/JHA on the EAW constitutes a formal legal basis, for the purposes of Article 6(3) of the Law on Surrender (*L'Overleveringswet*), for the actual execution of such a sentence in the Netherlands.

The Court, which is called on to provide answers that are of use to the national court in context of a reference for a preliminary ruling, may provide guidance, based on the file in the main proceedings and on the written and oral observations which have been submitted to it, in order to enable the national court to give judgment (see, to that effect, case C-173/13, *Leone*, para. 56).

With that in mind, it must be stated, first, that, in accordance with recital 11 of the Framework Decision 2002/584/JHA on the EAW, in relations between Member States, the EAW must replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement, referred to in para. 3 above, relating to extradition. Given that the framework decision has thus replaced all conventions which existed between Member States and that it coexists, whilst having its own legal arrangements defined by European Union law, with the extradition conventions in force between the various Member States and third States, it is not inconceivable that that framework decision could be placed on the same footing as such a convention.

Secondly, the Framework Decision 2002/584/JHA on the EAW does not contain any provision which leads to the conclusion that it precludes the term *another applicable convention*, in Article 6(3) of the Law on Surrender (*L'Overleveringswet*), from being interpreted to the effect that it also covers Article 4(6) of that framework decision, provided that such an interpretation would ensure that the discretionary power of the executing judicial authority to refuse to execute the EAW is exercised only on condition that the sentence pronounced against Mr Popławski is in fact executed in the Netherlands and a solution that is compatible with the purpose of that framework decision is thus achieved.

The Fourth Question

By its fourth question, the referring court, asks, in essence, whether Article 4(6) of the Framework Decision 2002/584/JHA on the EAW must be interpreted to the effect that it authorises a Member State to refuse to execute an EAW issued with a view to the surrender of a person who is a national of another Member State and who has been finally judged and given a custodial sentence, on the sole ground that the first Member State intends to prosecute that person in relation to the same acts as those for which that judgment was pronounced, whereas that Member State, as a matter of course, refuses to surrender its own nationals for the purposes of executing judgments which impose custodial sentences on them.

In that regard it must be stated that there is nothing in Article 4(6) of the Framework Decision 2002/584/JHA on the EAW that makes it possible to interpret that provision as authorising the judicial authority of a Member State to refuse to execute an EAW in the event that a fresh prosecution, for the same acts as those which form

the subject matter of the final criminal judgment pronounced against the requested person, may be brought against that person on his own territory.

Apart from the fact that Article 4(6) of the Framework Decision 2002/584/JHA on the EAW makes no mention whatsoever of that possibility, it must be pointed out that such an interpretation would be inconsistent with Article 50 of the Charter of Fundamental Rights of the European Union, which provides, among others, that no one may be liable to be tried again in criminal proceedings for an offence for which he has already been finally acquitted or convicted within the Union in accordance with the law.

In those circumstances, since that interpretation is not, in any event, compatible with European Union law, there is no need to take a view on the question whether it would lead to possible discrimination between nationals of the Netherlands and nationals of other Member States, which is also incompatible with European Union law.

7.4 Rulings

1. Article 4(6) of the Framework Decision 2002/584/JHA on the EAW must be interpreted to the effect that it precludes legislation of a Member State implementing that provision which, in a situation where the surrender of a foreign national in possession of a residence permit of indefinite duration in the territory of that Member State is sought by another Member State in order to execute a custodial sentence imposed on that national by a decision which has become final, first, does not authorise such a surrender, and secondly, merely lays down the obligation for the judicial authorities of the first Member State to inform the judicial authorities of the second Member State that they are willing to take over the enforcement of the judgment, where, on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged.

2. The provisions of the Framework Decision 2002/584/JHA on the EAW do not have direct effect. However, the competent national court, by taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, is obliged to interpret the provisions of national law at issue in the main proceeding, so far as is possible, in the light of the wording and the purpose of that framework decision, which in the present case means that, in the event of a refusal to execute a EAW issued with a view to the surrender of a person who has been finally judged in the issuing Member State and given a custodial sentence, the judicial authorities of the executing Member State are themselves required to ensure that the sentence pronounced against that person is actually executed.

3. Article 4(6) of the Framework Decision 2002/584/JHA on the EAW must be interpreted to the effect that it does not authorise a Member State to refuse to execute a EAW issued with a view to the surrender of a person who has been finally judged and given a custodial sentence, on the sole ground that that Member State intends to prosecute that person in relation to the same acts as those for which that judgment was pronounced.

Conclusion

The principle of proportionality issue, seen by many as the main problem of implementation of EAW in Poland, is not reflected in the Court of Justice of the European Union's rulings, since it is in scope of competence of a executing judicial authority to analyse whether a EAW was issued properly. The courts, being executing judicial authorities in EAW proceedings, sometimes assume that they are entitled to assess whether the principle of proportionality was respected when issuing the EAW.[29] However, this is a controversial matter, since there is a clear tension between the principle of mutual recognition which is the basis of EAW procedure and the assessment of proportionality. To use only one example concerning a Polish citizen, Irish High Court, in its ruling of 8 February 2012, refused to surrender Jarosław Ostrowski against whom the District Court in Jelenia Góra issued a EAW on 15 April 2010 in order that he might be persecuted for alleged possession of 0.72 grams of marijuana in 2006. In the High Court's view, the examination of the principle of proportionality should take place on two stages: during the issuing an EAW and when deciding about the surrender. Therefore, the High Court refused to issue an order for the surrender Ostrowski, founding it inconsistent with the principle of proportionality and with Article 8 of the European Convention of Human Rights (right to respect one's family life).[30] This decision was changed, however, by Irish Supreme Court which found inadmissible for the High Court to exercise a proportionality test in this case.[31]

The task of the Court of Justice of the European Union is to ensure a uniform interpretation of provisions of the Framework Decision 2002/584/JHA on the EAW. The Court emphasised repeatedly that national courts are obliged to interpret national law through the prism of mentioned Framework Directive. Judicial authorities of the Member States are required to interpret national law as far as possible in accordance with European Union law (including the provisions of the Framework Decision 2002/584/JHA on the EAW, which does not have direct effect) and will achieve a result consistent with the objective set out in the Framework Decision 2002/584/JHA on the EAW. In the *Popławski I* judgment, the Court emphasised that if a judicial authority of a Member State of the European Union refuses to surrender a person who is to serve a sentence of imprisonment, this Member State is obliged to ensure the actual execution of the sentence that has been imposed. Only such an interpretation of national law that will ensure the actual enforcement of this sentence is consistent

29 See two decisions of the Higher Regional Stuttgart: Decision of 18 November 2009, 1 Ausl. 1302/09 and Decision of 25 February 2010, 1 Ausl (24) 1246/09; see: BÖSE, M. Human Rights Violations and Mutual Trust: Recent Case Law on the European Arrest Warrant. In RUGGERI, S. (ed.) *Human Rights in European Criminal Law: New Developments in European Legislation and Case Law after the Lisbon Treaty*. Cham : Springer. 2015. ISBN 978-3-319-12041-6. Pp. 143-144.

30 High Court of Ireland, MJLR v Ostrowski [2012] IEHC 57, 8 February 2012. Available online <https://www.casemine.com/judgement/uk/5da056f14653d07dedfd5d77> [Accessed: 2020.07.26]. OSTROPOLSKI, T. 2013. Zasada proporcjonalności a europejski nakaz aresztowania. In *Europejski Przegląd Sądowy*. ISSN 1895-0396, 2013, No. 3, pp. 19-20.

31 Irish Supreme Court, Ostrowski [2013] IESC 24, Appellate No. 097/2012, 15 May 2013 [2013]. Available online <https://www.casemine.com/judgement/uk/5da02a954653d058440f9808> [Accessed: 2020.07.26].

with the objectives of the Framework Decision 2002/584/JHA on the EAW. One of the issues analysed in judgments concerning Polish citizens is the interpretation of the term *resident* within the meaning of the Framework Decision. It is significant, since after 2004 a large number of Polish citizens reside for a shorter or longer period in other Member States of the European Union.

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Summary: Polish Citizens and European Arrest Warrant: Analysis of Case-law of the Court of Justice of the European Union
The legal basis of the European arrest warrant is the Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States. This legislative instrument has been supplemented by case-law of the Court of Justice of the European Union. The objective of the work is the assessment of case-law of the Court of Justice of the European Union as regards Polish citizens within European arrest warrant procedure, namely case C-66/08, *Szymon Kozłowski*; case C-108/16 PPU, *Paweł Dworzecki*; case C-294/16 PPU, *JZ*; case C-452/16 PPU, *Krzystof Marek Poltorak*; case C-367/16, *Dawid Piotrowski*; case C-579/15, *Daniel Adam Popławski* ("Popławski I"). In each fallowing section at the outset is emphasised the subject matter of the analysed case. As a starting point for further analysis, one may usefully look the dispute in the proceedings. There are introduced questions(s) referred to the Court of Justice. Further, there is examined the legal opinion of the Court of Justice. Each analysis is concluded by the Court's rulings.

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