



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

12 February 2019*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 12 — Keeping a person in detention — Article 17 — Time limits for adoption of the decision to execute the European arrest warrant — National legislation providing for automatic suspension of detention 90 days after arrest — Interpretation in conformity with EU law — Suspension of time limits — Charter of Fundamental Rights of the European Union — Article 6 — Right to liberty and security — Differing interpretations of national legislation — Clarity and predictability)

In Case C-492/18 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 27 July 2018, received at the Court on 27 July 2018, in the proceedings relating to the execution of the European arrest warrant issued in respect of

TC,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President of the Court, acting as President of the First Chamber, A. Arabadjiev (Rapporteur), E. Regan, C.G. Fernlund and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

having regard to the request of the referring court of 27 July 2018, received at the Court on 27 July 2018, that the reference for a preliminary ruling be dealt with under the urgent procedure, in accordance with Article 107 of the Rules of Procedure of the Court of Justice,

having regard to the written procedure and further to the hearing on 4 October 2018,

after considering the observations submitted on behalf of:

- TC, by T.J. Kodrzycki and T.O.M. Dieben, advocaten,
- the Openbaar Ministerie, by R. Vorrink, J. Asbroek and K. van der Schaft, Officieren van Justitie,
- the Netherlands Government, by M.K. Bulterman, M.A.M. de Ree and J.M. Hoogveld, acting as Agents,
- the Czech Government, by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,

* Language of the case: Dutch.

- Ireland, by A. Joyce and G. Mullan, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by S. Faraci, avvocato dello Stato,
- the European Commission, by R. Troosters, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 6 November 2018,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 6 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in connection with the execution, in the Netherlands, of a European arrest warrant issued on 12 June 2017 in respect of TC by the competent United Kingdom authorities ('the European arrest warrant at issue').

Legal context

EU law

The Charter

- 3 As provided in Article 6 of the Charter, entitled 'Right to liberty and security':

'Everyone has the right to liberty and security of person.'

Framework Decision 2002/584/JHA

- 4 Recital 12 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) states:

'This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter ...'

- 5 Article 1 of that framework decision, entitled 'Definition of the European arrest warrant and obligation to execute it', provides, in paragraph 3:

'This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.'

- 6 Under Article 12 of that framework decision, entitled 'Keeping the person in detention':

'When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in

conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.’

7 Article 15 of that framework decision, entitled ‘Surrender decision’, provides in paragraph 1:

‘The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.’

8 Article 17 of Framework Decision 2002/584, entitled ‘Time limits and procedures for the decision to execute the European arrest warrant’, provides:

‘1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

...

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraph 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

...

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform [the European Union’s Judicial Cooperation Unit (Eurojust)], giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.’

Netherlands law

9 Under Article 22 of the Overleveringswet (Law on the surrender of sentenced persons) (Stb. 2004, No 195; ‘the OLW’), which transposes Framework Decision 2002/584:

‘1. The judgment concerning the decision on the surrender must be delivered by the rechtbank (District Court) no later than 60 days following the arrest of the requested person, within the meaning of Article 21.

...

3. In exceptional cases, and subject to the obligation to give reasons to the issuing judicial authority, the rechtbank (District Court) may extend the 60-day period by a maximum of 30 days.

4. If the rechtbank (District Court) has not yet delivered its judgment within the period referred to in paragraph 3, it can once again extend the period, indefinitely and subject to simultaneous suspension, subject to conditions being set, of the deprivation of liberty of the requested person and notification of the issuing judicial authority.'

10 Under Article 64 of the OLW:

'1. In cases in which, pursuant to this Law, a decision relating to the deprivation of liberty can or must be taken, it can be ordered that that deprivation of liberty be conditionally stayed or suspended until the time of the rechtbank's (District Court's) judgment authorising surrender. The conditions to be set may be aimed solely at preventing absconding.

2. Article 80, with the exception of paragraph 2, and Articles 81 to 88 of the Code of Criminal Procedure shall apply *mutatis mutandis* to orders made pursuant to paragraph 1 by the rechtbank (District Court) or by the investigating judge.'

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

11 TC, the subject of the European arrest warrant at issue, is a British national living in Spain who is suspected of having been involved, as a senior member of an organised crime group, in the importation, supply and sale of hard drugs, including 300 kg of cocaine. Under United Kingdom law, the maximum sentence for that offence is life imprisonment.

12 TC was arrested in the Netherlands on 4 April 2018. The 60-day period for adoption of the decision to execute the European arrest warrant at issue, provided for in Article 22(1) of the OLW and in Article 17(3) of Framework Decision 2002/584, started to run from that date.

13 The referring court, the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), examined the European arrest warrant at issue at the hearing on 31 May 2018. At the end of that hearing, it ordered that TC be kept in detention and extended the time limit for taking a decision on the execution of the European arrest warrant at issue by 30 days. By interim decision of 14 June 2018, the referring court reopened the investigation, stayed the proceedings pending the reply by the Court of Justice to the request for a preliminary ruling made on 17 May 2018 in the case that has since resulted in the judgment of 19 September 2018, *RO* (C-327/18 PPU, EU:C:2018:733), and stated that the decision period was to be suspended from 14 June 2018 until delivery of the judgment in that case.

14 TC applied for his detention to be suspended as from 4 July 2018, that being the date on which 90 days had elapsed since his arrest.

15 The referring court states that, under Article 22(4) of the OLW, it must, in principle, suspend the detention pending surrender of the requested person once the period of 90 days for adopting a final decision on the execution of the European arrest warrant has expired. In adopting that provision, the Netherlands legislature proceeded on the basis that Framework Decision 2002/584 imposes such a suspension.

16 However, the referring court notes that it is apparent from the judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474), that that premiss is incorrect and does not sufficiently take into account the obligations, under EU primary law, of the court seised of an application for execution of a European arrest warrant, including in particular the obligation, as a court of last instance in that type of case, to refer a question to the Court of Justice for a preliminary ruling, if the reply to that question is necessary for its decision, and to stay the proceedings with regard to surrender if there is a

real risk that the requested person will be subjected to inhuman or degrading treatment in the issuing Member State, within the meaning of the judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198).

- 17 Therefore, the referring court indicates that it has developed case-law which enables it to interpret Article 22(4) of the OLW in conformity both with Framework Decision 2002/584 and with the OLW, in that proceedings with regard to surrender are to be stayed in the circumstances referred to in the previous paragraph. That interpretation does not mean that Article 22(4) of the OLW is disapplied, given that the period for ruling on the surrender is suspended.
- 18 That interpretation is without prejudice to the fact that the detention pending surrender can be suspended, which the referring court would generally order, notably if the risk of absconding can be brought within acceptable levels through the setting of conditions. In the present case, however, the referring court considers that there is a very serious risk of absconding which cannot be reduced to acceptable levels.
- 19 As it points out, however, the Gerechtshof Amsterdam (Amsterdam Court of Appeal, Netherlands) has already ruled that the interpretation of Article 22(4) of the OLW referred to in paragraph 17 of the present judgment is incorrect, and is also of the view that the strict application of that provision of national law could undermine the effectiveness of EU law. The Gerechtshof Amsterdam (Amsterdam Court of Appeal) thus struck a balance *in abstracto* between the interests of the EU legal order, linked to the obligations to request a preliminary ruling from the Court of Justice and to await its reply or to postpone the decision on surrender if there is a real risk that the requested person will suffer inhuman or degrading detention conditions in the issuing Member State, and those of upholding the national legal order and legal certainty. The outcome of that balancing of interests means that the period for taking a decision on surrender must be deemed to be suspended from the point at which the rechtbank (District Court) has decided to request a preliminary ruling from the Court of Justice or from the point at which it stays proceedings with regard to surrender, unless the continuation of the detention pending surrender is contrary to Article 6 of the Charter.
- 20 Nevertheless, the referring court subsequently maintained its interpretation of Article 22(4) of the OLW, which it considers to be compatible with Framework Decision 2002/584, an interpretation which has not yet led to any outcome other than the abstract balancing of interests by the Gerechtshof Amsterdam (Amsterdam Court of Appeal).
- 21 In the present case, TC had argued, *inter alia*, that that interpretation of Article 22(4) of the OLW is contrary to the principle of legal certainty, and thus that keeping him in detention pending surrender infringes Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), and Article 6 of the Charter. In support of that view, TC had stated that, in an earlier, similar case, the requested person had lodged an application with the European Court of Human Rights against the Kingdom of the Netherlands for infringement of Article 5 ECHR (*Cernea v. Netherlands*, No 62318/16) and that, in that case, the Member State concerned had filed a unilateral declaration stating that Article 5 ECHR had been infringed. The European Court of Human Rights had not yet, however, given its ruling in that case.
- 22 In that regard, according to the referring court, it is apparent from paragraph 32 of the judgment of 29 June 2017, *Popławski* (C-579/15, EU:C:2017:503), that one of the limitations of the obligation to interpret national legislation in conformity with a framework decision is indeed the principle of legal certainty. Moreover, the detention pending surrender should be compatible with Article 6 of the Charter.
- 23 The referring court thus raises the question as to whether keeping a person in detention pending surrender in a case such as that of TC is contrary to Article 6 of the Charter, in particular to the principle of legal certainty enshrined therein.

- 24 It makes clear, in that regard, that its own case-law on suspension of the decision period is limited to two types of situation, that it is clear and consistent, and that it is in the public domain. The same is true of the case-law of the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal). The referring court thus considers that TC could foresee, if necessary after consulting his legal adviser, that his detention pending surrender might continue beyond the period of 90 days from his arrest.
- 25 Should the Court of Justice find that the detention pending surrender in a case such as that of TC is contrary to Article 6 of the Charter, the referring court raises the further question as to whether it must disapply Article 22(4) of the OLW, in so far as the application of that provision leads to a result at variance with EU law and interpreting that provision in conformity with EU law is thus not possible, and whether such an approach is not itself contrary to the principle of legal certainty.
- 26 In those circumstances, the *rechtbank Amsterdam* (District Court, Amsterdam) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘In a case in which:

- the executing Member State has transposed Article 17 of [Framework Decision 2002/584] in such a way that the detention pending surrender of the requested person must in all cases be suspended once the 90-day period for taking a final decision on the execution of the European arrest warrant has expired and
- the courts of that Member State have interpreted domestic law as meaning that the decision period is suspended as soon as the executing judicial authority decides to refer a question to the Court of Justice for a preliminary ruling or to await the reply to a question referred for a preliminary ruling by another executing judicial authority or to postpone the decision on surrender owing to a real danger of inhuman or degrading detention conditions in the issuing Member State,

does the maintenance of the detention pending surrender of a requested person who represents a flight risk once that detention has continued for more than 90 days after that person’s arrest contravene Article 6 of the [Charter]?’

The urgent preliminary ruling procedure

- 27 The referring court requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.
- 28 In support of its request, that court stated that TC was being held in custody in the Netherlands solely on the basis of the European arrest warrant at issue, which was issued by the United Kingdom of Great Britain and Northern Ireland for the purpose of conducting a criminal prosecution against him. According to the referring court, it cannot determine the application for suspension of TC’s detention until the Court of Justice has ruled on its request for a preliminary ruling. In its view, therefore, the timing of this Court’s reply would have a direct and decisive bearing on the duration of TC’s detention.
- 29 In that regard, it should be stated, in the first place, that this request for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which falls within the fields covered by Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice. Consequently, this reference is capable of being dealt with under the urgent preliminary ruling procedure.

- 30 In the second place, as regards the criterion relating to urgency, it is necessary, in accordance with the Court's settled case-law, to take into account the fact that the person concerned was deprived of his liberty and that the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings. In addition, the situation of the person concerned must be assessed as it stands at the time when consideration is given to the request that the reference be dealt with under the urgent procedure (judgment of 19 September 2018, *RO*, C-327/18 PPU, EU:C:2018:733, paragraph 30 and the case-law cited).
- 31 In the present case, at that time, it was undisputed that TC was being held in detention and, moreover, that keeping him in that situation depended on the decision to be taken on his application for suspension of that detention, an application in respect of which it had been decided that proceedings would be stayed pending the reply of the Court of Justice, in particular, in that case.
- 32 In those circumstances, on 9 August 2018 the First Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.
- 33 In the third place, on 9 October 2018, the referring court informed the Court of Justice that it had on the previous day ordered the suspension, subject to conditions, of TC's detention, from 8 October 2018 until delivery of the decision on his surrender to the United Kingdom. The referring court had calculated that the decision period of 90 days had expired, taking into account the period during which that 90-day period would have been suspended, on 8 October 2018.
- 34 In addition, the Openbaar Ministerie (Public Prosecutor's Office, Netherlands) having lodged an appeal against the decision of the referring court of 8 October 2018, the Gerechtshof Amsterdam (Amsterdam Court of Appeal) informed the Court of Justice on 12 November 2018 that it had stayed those appeal proceedings pending delivery of the present judgment.
- 35 In those circumstances, the First Chamber of the Court of Justice considered that the urgency in this case had ceased to apply as from 8 October 2018, and that, accordingly, it was no longer necessary that the case be dealt with in accordance with the urgent preliminary ruling procedure.

Consideration of the question referred

- 36 As a preliminary point, it must be noted that the question raised is based on the premisses that, first, a surrender procedure, such as that at issue in the main proceedings, may last more than 90 days, notably in one of the situations to which the question referred relates; second, the obligation to suspend the detention of the requested person, in all cases, once a period of 90 days has elapsed since that person's arrest, as required by Article 22(4) of the OLW, is incompatible with Framework Decision 2002/584; third, both the referring court's interpretation of that national provision and the case-law of the Gerechtshof Amsterdam (Amsterdam Court of Appeal) are intended to restore the conformity of the national legal framework with that framework decision; and, fourth, those interpretations have not, to date, notwithstanding their separate legal bases, resulted in divergent decisions. In addition, as has been noted in paragraph 25 of the present judgment, the referring court raises the question as to whether it must, in certain circumstances, disapply that national provision.
- 37 According to the settled case-law of the Court, in the procedure laid down by Article 267 TFEU, which provides for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may, where necessary, have to reformulate the questions referred to it. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national

court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court of Justice to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, paragraph 36 and the case-law cited).

- 38 In the present case, since the referring court decided, on 8 October 2018, to suspend TC's detention and the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal) did not reverse that decision, it is not necessary to address the question raised in the grounds of the order for reference, concerning the possible disapplication of Article 22(4) of the OLW. However, in order to provide the referring court with interpretative guidance that will assist it in resolving the dispute before it, it is appropriate to reformulate the question referred and to answer it taking the premisses set out in paragraph 36 of the present judgment into account.
- 39 Accordingly it must be concluded that, by its question, the referring court asks, in essence, first, whether Framework Decision 2002/584 must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which lays down a general and unconditional obligation to release a requested person arrested pursuant to a European arrest warrant as soon as a period of 90 days from that person's arrest has elapsed, where there is a very serious risk of that person absconding and that risk cannot be reduced to an acceptable level by the imposition of appropriate measures; and, second, whether Article 6 of the Charter must be interpreted as precluding national case-law which allows the requested person to be kept in detention beyond that 90-day period, on the basis of an interpretation of that national provision according to which that period is suspended when the executing judicial authority decides to refer a question to the Court of Justice for a preliminary ruling, or to await the reply to a request for a preliminary ruling made by another executing judicial authority, or to postpone the decision on surrender on the ground that there could be, in the issuing Member State, a real risk of inhuman or degrading detention conditions.
- 40 In that regard, in the first, place, it should be noted that the purpose of Framework Decision 2002/584, as is apparent in particular from Article 1(1) and (2), read in the light of recitals 5 and 7 thereof, is to replace the multilateral system of extradition based on the European Convention on Extradition, signed in Paris on 13 December 1957, with a system of surrender 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 (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 39 and the case-law cited).
- 41 Framework Decision 2002/584 thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 40 and the case-law cited).
- 42 That objective of accelerating judicial cooperation is present, *inter alia*, in the time limits for adopting decisions relating to a European arrest warrant. In that regard, as is apparent from the case-law of the Court, Articles 15 and 17 of Framework Decision 2002/584 must be interpreted as requiring the final decision on the execution of the European arrest warrant to be taken, in principle, within those time limits, the importance of which is, moreover, expressed in a number of provisions of that framework decision (see, to that effect, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraphs 29 and 32 and the case-law cited).

- 43 However, the assessment, by the executing judicial authority that must decide on the surrender of the person in respect of whom the European arrest warrant has been issued, as to whether there is a real risk that that person will, if surrendered to the issuing judicial authority, suffer inhuman or degrading treatment, within the meaning of Article 4 of the Charter, or a breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial, a right guaranteed by the second paragraph of Article 47 of the Charter, in accordance with Article 1(3) of Framework Decision 2002/584 (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 83 and 88 and the case-law cited, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 59 and 60 and the case-law cited), may result in the surrender procedure lasting more than 90 days, as the referring court rightly points out. That might also be the case as regards the additional time involved when proceedings are stayed pending a decision of the Court of Justice in response to a request for a preliminary ruling made by an executing judicial authority, on the basis of Article 267 TFEU.
- 44 In the second place, it should be borne in mind that, under Article 12 of Framework Decision 2002/584, the executing judicial authority is to take a decision on whether a person arrested on the basis of a European arrest warrant is to remain in detention, in accordance with the law of the executing Member State. That article also makes clear that that person may be released provisionally at any time in conformity with the domestic law of that State, provided that the competent authority of that State takes all the measures it deems necessary to prevent the person absconding.
- 45 However, it should be noted that that article does not provide, in a general manner, that the holding of the requested person in custody is envisageable only within the temporal limits specified nor, in particular, that such a possibility is to be ruled out after expiry of the time limits stipulated in Article 17 of that framework decision (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 44).
- 46 Similarly, although Article 12 of Framework Decision 2002/584 allows for the possibility, under certain conditions, of the person arrested on the basis of a European arrest warrant being provisionally released, neither that provision nor any other provision of that framework decision provides that, following the expiry of the time limits stipulated in Article 17 of the framework decision, the executing judicial authority is required to release that person provisionally or, a fortiori, to release him purely and simply (see, to that effect, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraphs 45 and 46).
- 47 Indeed, given that the execution procedure for the European arrest warrant must continue also after expiry of the time limits stipulated in Article 17 of Framework Decision 2002/584, a general and unconditional obligation to release the requested person provisionally or, a fortiori, to release that person purely and simply upon expiry of those time limits or where the total duration of the period that the person has spent in custody exceeds those time limits could limit the effectiveness of the surrender system put in place by that framework decision and, consequently, obstruct the attainment of the objectives pursued by it (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 50).
- 48 Consequently, if the executing judicial authority decides to bring the requested person's detention to an end, it is then required, pursuant to Article 12 and Article 17(5) of Framework Decision 2002/584, to attach to the provisional release of that person any measures it deems necessary so as to prevent him from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the European arrest warrant has been taken (see, to that effect, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 61).

- 49 It follows that, where there is, as the referring court in this case indicates, a very serious risk of absconding which cannot be reduced to an acceptable level by the imposition of appropriate measures that could ensure that the material conditions necessary for the effective surrender of the requested person remain fulfilled, that person's provisional release could undermine the effectiveness of the surrender system put in place by Framework Decision 2002/584 and, therefore, obstruct the attainment of the objectives pursued by it, given that it would no longer be guaranteed that those material conditions remain fulfilled.
- 50 Accordingly, the obligation under Article 22(4) of the OLV in all cases to suspend the requested person's detention pending his surrender, once a period of 90 days from his arrest has expired, is incompatible with the provisions of Framework Decision 2002/584, as the referring court moreover observes in its request for a preliminary ruling.
- 51 In the third place, it should be noted, first of all, that the referring court's interpretation of that national provision does not seem to resolve that incompatibility in all circumstances, since, as is apparent from paragraph 33 of the present judgment, in this instance, despite the fact that the referring court expressly concluded, in its request for a preliminary ruling, that there was a very serious risk of TC's absconding which could not be reduced to an acceptable level by the imposition of appropriate measures that could ensure that the material conditions necessary for his effective surrender remained fulfilled, the referring court ordered the conditional suspension of TC's detention with effect from 8 October 2018, as, according to its calculations, the 90-day decision period had expired on that date, taking into account the suspension of that period.
- 52 Next, while the case-law of the Gerechtshof Amsterdam (Amsterdam Court of Appeal) could also result in the provisional release of a requested person, notwithstanding a very serious risk of that person absconding which cannot be reduced to an acceptable level by the imposition of appropriate measures that could ensure that the material conditions necessary for that person's effective surrender remain fulfilled, that case-law also fails to provide a means of reading Article 22(4) of the OLV in a way that is compatible with the provisions of Framework Decision 2002/584.
- 53 Last, it must be pointed out that, in any event, any suspension of the period for taking a final decision on the execution of the European arrest warrant is permissible only if the duty to provide information, imposed on the executing judicial authority notably by Article 17(4) and (7) of that framework decision, is complied with.
- 54 In the fourth place, it must be recalled that Article 1(3) of Framework Decision 2002/584 expressly provides that the decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 EU and reflected in the Charter, an obligation which moreover concerns all the Member States, in particular both the issuing and the executing Member States (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 53 and the case-law cited).
- 55 Article 12 of that framework decision must, therefore, be interpreted in conformity with Article 6 of the Charter, which provides that everyone has the right to liberty and security of person (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 54).
- 56 It should be recalled in that regard that Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of that right, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (judgments of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 55 and the case-law cited, and of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 37).

- 57 In so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, Article 52(3) of the Charter seeks to ensure the necessary consistency between the rights contained in it and the corresponding rights guaranteed by the ECHR, without thereby adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union. Account must therefore be taken of Article 5(1) ECHR for the purpose of interpreting Article 6 of the Charter, as the minimum threshold of protection (see, to that effect, judgments of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 37, and of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 50 and the case-law cited).
- 58 It is clear from the case-law of the European Court of Human Rights relating to Article 5 ECHR that the fact that any deprivation of liberty must be lawful means not only that it must have a basis in national law, but also that that law must be sufficiently accessible, precise and predictable in its application in order to avoid all risk of arbitrariness (see, to that effect, judgment of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 38 and the case-law cited).
- 59 Furthermore, according to the case-law of the Court of Justice in that regard, it must be noted that the objective of the safeguards relating to liberty, such as those enshrined in both Article 6 of the Charter and Article 5 ECHR, consists in particular in the protection of the individual against arbitrariness. Thus, if the execution of a measure depriving a person of liberty is to be in keeping with the objective of protecting the individual from arbitrariness, this means, in particular, that there can be no element of bad faith or deception on the part of the authorities (judgment of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 39 and the case-law cited).
- 60 It follows from the foregoing that, since keeping a requested person in detention for more than 90 days represents a serious interference with that person's right to liberty, it is subject to compliance with strict safeguards, namely the existence of a legal basis which justifies that continued detention and which must meet the requirements of clarity, predictability and accessibility in order to avoid any risk of arbitrariness, as paragraph 58 of the present judgment makes clear (see, to that effect, judgment of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 40 and the case-law cited).
- 61 In the present case, it is common ground that the OLW constitutes the legal basis, in the Netherlands legal order, of the detention referred to in Article 12 of Framework Decision 2002/584, that that national legislation, the EU legislation and the relevant case-law are freely accessible and that there is nothing to suggest that that national legislation would be applied arbitrarily. Therefore, the Court needs only to consider whether that national legislation has the requisite clarity and predictability with regard to the rules relating to the duration of the detention in the Netherlands of a person, such as TC, pending his surrender in the context of the execution of a European arrest warrant.
- 62 In that regard, first of all, it should be noted that, under Article 12 of Framework Decision 2002/584, when a person is arrested on the basis of a European arrest warrant, the executing judicial authority is to take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State, and that that person may be released provisionally only if the competent authority of that Member State takes all the measures it deems necessary to prevent that person absconding.
- 63 As is apparent from paragraphs 49 and 50 of the present judgment, it follows from the case-law of the Court, recalled in paragraphs 54 and 55 above, that where there is a very serious risk of absconding which cannot be reduced to an acceptable level by the imposition of appropriate measures that could ensure that the material conditions necessary for the requested person's effective surrender remain fulfilled, as the referring court has found in the present case, that person's release — even if only provisional — merely because a period of 90 days has elapsed since the date of his arrest is not compatible with the obligations arising under Framework Decision 2002/584.

- 64 Furthermore, the Court has also specified, in paragraphs 57 to 59 of the judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474), the conditions that must be met by the extension of the requested person's detention beyond the time limits set out in Article 17 of Framework Decision 2002/584 and until that person's effective surrender.
- 65 It follows that EU law, as interpreted by that judgment of the Court, imposes clear and predictable rules on the duration of the detention of a requested person.
- 66 Next, it is common ground that Article 22(4) of the OLW also lays down a clear and predictable rule, in that it provides that the detention of the requested person is, in principle, suspended automatically merely as a result of the expiry of a period of 90 days from his arrest. However, it has been found, in paragraphs 49 and 50 of the present judgment, that, in circumstances such as those at issue in the main proceedings, Framework Decision 2002/584 precludes such an arrangement.
- 67 In that regard, 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 EU 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 EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they rule on the disputes before them (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 31 and the case-law cited).
- 68 In particular, the principle that national law must be interpreted in conformity with EU 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 (judgment of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraph 34 and the case-law cited).
- 69 It follows that, in the present case, it was also clear and predictable, long before the main proceedings were initiated, that the referring court and the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal) were required to do whatever lay within their jurisdiction with a view to ensuring that Framework Decision 2002/584 is fully effective, by interpreting Article 22(4) of the OLW, and the obligation to release the requested person provisionally that is laid down therein, in a manner consistent with the objective pursued by that framework decision.
- 70 However, it has been found in paragraphs 51 and 52 of the present judgment that the interpretations of that national provision adopted by the referring court and the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal) with a view to ensuring its conformity with that framework decision do not fully satisfy the latter's requirements. In particular, the referring court's interpretation did not ensure, in the present case, that Article 22(4) of the OLW was interpreted in conformity with Framework Decision 2002/584.
- 71 Last, as regards the circumstances outlined by the referring court in its request for a preliminary ruling, according to which both its interpretation of Article 22(4) of the OLW and the case-law of the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal) are, first of all, clear and predictable, second, based on divergent legal reasoning and, last, although it has not yet happened, capable of resulting in diverging decisions, it must be concluded as follows.

- 72 As the Advocate General noted in point 60 of his Opinion, in so far as the referring court and the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal) notably did not proceed from the same starting point in calculating the suspension of the period within which those courts are required to rule on the surrender of the requested person, the expiry of the 90-day period may vary depending on the court concerned and, therefore, result in different periods of continued detention.
- 73 While, in the present case, the referring court authorised the suspension of the 90-day period with effect from 14 June 2018, as is apparent from paragraph 13 of the present judgment, according to the approach taken by the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal), that suspension would have taken effect on 17 May 2018, since that court considered that the suspension is triggered as soon as a request for a preliminary ruling that is relevant for the case in the main proceedings is made to the Court of Justice.
- 74 It must also be pointed out that those divergent approaches fall within a legal context characterised by a national provision that is incompatible with Framework Decision 2002/584, in so far as, first, it could result in a requested person's release, notwithstanding a risk of his absconding which cannot be reduced to an acceptable level by the imposition of appropriate measures that could ensure that the material conditions necessary for that person's effective surrender remain fulfilled, and, second, the differing interpretations of that national provision adopted by national courts in order to ensure that it is interpreted in conformity with that framework decision do not fully satisfy the requirements of that decision.
- 75 It follows from this that, in a case such as that of the main proceedings, individuals arrested in the Netherlands with a view to their surrender, such as TC, are faced with provisions of national law, namely Article 22(4) of the *OLW*, and EU law, namely Articles 12 and 17 of Framework Decision 2002/584, which are incompatible with each other, and with variations in the case-law of the national courts concerning that provision of national law and its interpretation in conformity with EU law.
- 76 In those circumstances, it must be held that the variation that exists between the interpretation adopted by the referring court and the case-law of the *Gerechtshof Amsterdam* (Amsterdam Court of Appeal) does not make it possible to determine with the clarity and predictability required by the case-law of the Court of Justice, as recalled in paragraphs 59 and 60 of the present judgment, the period for which a requested person, in the context of a European arrest warrant issued for him, is to be kept in detention in the Netherlands.
- 77 Having regard to all of the above considerations, the answer to the question referred is that
- Framework Decision 2002/584 must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which lays down a general and unconditional obligation to release a requested person arrested pursuant to a European arrest warrant as soon as a period of 90 days from that person's arrest has elapsed, where there is a very serious risk of that person absconding and that risk cannot be reduced to an acceptable level by the imposition of appropriate measures, and that
 - Article 6 of the Charter must be interpreted as precluding national case-law which allows the requested person to be kept in detention beyond that 90-day period, on the basis of an interpretation of that national provision according to which that period is suspended when the executing judicial authority decides to refer a question to the Court of Justice for a preliminary ruling, or to await the reply to a request for a preliminary ruling made by another executing judicial authority, or to postpone the decision on surrender on the ground that there could be, in the issuing Member State, a real risk of inhuman or degrading detention conditions, in so far as that case-law does not ensure that that national provision is interpreted in conformity with Framework Decision 2002/584 and entails variations that could result in different periods of continued detention.

Costs

⁷⁸ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which lays down a general and unconditional obligation to release a requested person arrested pursuant to a European arrest warrant as soon as a period of 90 days from that person's arrest has elapsed, where there is a very serious risk of that person absconding and that risk cannot be reduced to an acceptable level by the imposition of appropriate measures.

Article 6 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national case-law which allows the requested person to be kept in detention beyond that 90-day period, on the basis of an interpretation of that national provision according to which that period is suspended when the executing judicial authority decides to refer a question to the Court of Justice of the European Union for a preliminary ruling, or to await the reply to a request for a preliminary ruling made by another executing judicial authority, or to postpone the decision on surrender on the ground that there could be, in the issuing Member State, a real risk of inhuman or degrading detention conditions, in so far as that case-law does not ensure that that national provision is interpreted in conformity with Framework Decision 2002/584 and entails variations that could result in different periods of continued detention.

[Signatures]