

## JUDGMENT OF THE COURT (First Chamber)

19 September 2018 (\*)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Grounds for non-execution — Article 50 TEU — Warrant issued by the judicial authorities of a Member State that has initiated the procedure for withdrawal from the European Union — Uncertainty as to the law applicable to the relationship between that State and the Union following withdrawal)

In Case C-327/18 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 17 May 2018, received at the Court on 18 May 2018, in proceedings relating to the execution of European arrest warrants issued with respect to

**RO,**

THE COURT (First Chamber),

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

Advocate General: M. Szpunar,

Registrar: L. Hewlett, Principal Administrator,

having regard to the referring court's request of 17 May 2018, received at the Court on 18 May 2018, that the reference for a preliminary ruling be dealt with under the urgent procedure, pursuant to Article 107 of the Rules of Procedure of the Court,

having regard to the decision of the First Chamber of 11 June 2018 granting that request,

having regard to the written procedure and further to the hearing on 12 July 2018,

after considering the observations submitted on behalf of:

- RO, by E. Martin-Vignerte and J. MacGuill, Solicitors, C. Cumming, Barrister-at-law, and P. McGrath, Senior Counsel,
- the Minister for Justice and Equality, by M. Browne, G. Hodge, A. Joyce and G. Lynch, acting as Agents, and by E. Duffy, Barrister-at-law, and R. Barron, Senior Counsel,
- the Romanian Government, by L. Lițu and C. Canțăr, acting as Agents,
- the United Kingdom Government, by S. Brandon and C. Brodie, acting as Agents, and by J. Holmes QC and D. Blundell, Barrister,
- the European Commission, by S. Grünheid, R. Troosters and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 August 2018,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 50 TEU and of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('the Framework Decision').

2 The request has been made in connection with the execution, in Ireland, of two European arrest warrants issued by the courts of the United Kingdom of Great Britain and Northern Ireland with respect to RO.

### Legal context

#### *The EU Treaty*

3 Article 50(1) to (3) TEU provide:

'1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union is to negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) [TFEU]. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.'

#### *The Framework Decision*

4 Recitals 10 and 12 of the Framework Decision are worded as follows:

'(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in [Article 2 TEU], determined by the Council pursuant to [Article 7(2) TEU] with the consequences set out in [Article 7(3) TEU].

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by [Articles 2 and 6 TEU] and reflected in the Charter of Fundamental Rights of the European Union ... in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.'

5 Article 1(2) and (3) of the Framework Decision, that article being headed 'Definition of the European arrest warrant and obligation to execute it', provide:

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

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

6 Article 26(1) of the Framework Decision, that article being headed ‘Deduction of the period of detention served in the executing Member State’, provides:

‘The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.’

7 Article 27(2) of the Framework Decision, that article being headed ‘Possible prosecution for other offences’, provides:

‘... a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.’

8 Article 28 of the Framework Decision governs surrender or subsequent extradition to a State other than the executing Member State.

### *Irish law*

9 The Framework Decision was transposed into Irish law by the European Arrest Warrant Act, 2003.

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

10 RO is the subject of two European arrest warrants issued by the courts of the United Kingdom and sent to Ireland.

11 The first, issued on 27 January 2016, relates to crimes of murder and arson alleged to have been committed on 2 August 2015. The second, issued on 4 May 2016, relates to a crime of rape alleged to have been committed on 30 December 2003. Those crimes each carry potential sentences of life imprisonment.

12 RO was arrested and remanded in custody in Ireland on 3 February 2016. Since that date he has remained on remand in custody within that Member State, by virtue of the two European arrest warrants to which he is subject.

13 RO raised objections to his surrender to the United Kingdom on the basis of, inter alia, the withdrawal of that Member State from the European Union and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the ECHR’), claiming that he could suffer inhuman and degrading treatment if he were to be imprisoned in Maghaberry prison in Northern Ireland.

14 Due to his state of health, RO’s case could not be heard until 27 July 2017.

15 By a decision of 2 November 2017, the High Court (Ireland), after examining RO’s claims in relation to the treatment that he might suffer in Northern Ireland, held that, on the basis of specific and updated information on the conditions of detention in Maghaberry prison, there was a real risk that, because of his vulnerability, RO might suffer inhuman and degrading treatment. The High Court considered it necessary, in the light of the judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198), to ask for further information from the United Kingdom authorities on the conditions of RO’s detention in the event of his being surrendered.

- 16 On 16 April 2018 the judicial authority that had issued the European arrest warrants concerned, Laganside Court in Belfast (United Kingdom), provided information as to how the Northern Irish Prison Service would address the risks to RO of being subjected to inhuman or degrading treatment in Northern Ireland.
- 17 The High Court states that it has rejected all the objections raised by RO to his surrender with the exception of those relating to the withdrawal of the United Kingdom from the European Union and the objection in relation to Article 3 of the ECHR, considering that it could not make a decision on those objections before obtaining from the Court an answer to a number of questions referred for a preliminary ruling.
- 18 The High Court states that on 29 March 2017 the United Kingdom notified the President of the European Council of its intention to withdraw from the European Union, on the basis of Article 50 TEU, and that that notification should lead to the withdrawal of the United Kingdom from the European Union as from 29 March 2019.
- 19 The High Court states that if RO is surrendered, it is highly probable that he will remain in prison in the United Kingdom after 29 March 2019.
- 20 The High Court also observes that agreements may perhaps be entered into by the European Union and the United Kingdom to regulate the relationship of those parties immediately after that withdrawal or in the longer term, in areas such as those covered by the Framework Decision.
- 21 Nonetheless, currently, that possibility remains uncertain and the nature of the measures which will be adopted, particularly with respect to the jurisdiction of the Court to give preliminary rulings, is not known.
- 22 The High Court states that, in the view of the Minister for Justice and Equality (Ireland), the law should be applied as it stands today and not as it might become in the future after the withdrawal of the United Kingdom from the European Union. The referring court considers that the Minister is correct to conclude that the surrender of RO is mandatory on the basis of national law that gives effect to the Framework Decision.
- 23 The High Court sets out the contrary position of RO, who argues that, given the uncertainty as to the law which will be in place in United Kingdom after the withdrawal of that Member State from the European Union, it cannot be guaranteed that the rights which he enjoys under EU law will, in practice, be capable of enforcement as such, so that he ought not to be surrendered.
- 24 The referring court states that RO has identified four aspects of EU law which might theoretically be engaged, namely:
- the right to a deduction of a period spent in custody in the executing Member State, provided for in Article 26 of the Framework Decision;
  - the so-called ‘specialty’ rule, the subject of Article 27 of the Framework Decision;
  - the right limiting further surrender or extradition, the subject of Article 28 of the Framework Decision, and
  - respect for the fundamental rights of the person surrendered under the Charter of Fundamental Rights of the European Union (‘the Charter’).
- 25 In the view of the referring court, the question arises whether, in the event of a dispute concerning one of those four aspects and in the absence of measures conferring on the Court jurisdiction to give preliminary rulings with respect to them, the surrender of an individual, such as RO, gives rise to a significant risk, rather than a merely theoretical possibility, of injustice, with the consequence that the request for surrender ought not to be accepted.

26 In those circumstances, the High Court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Having regard to:

- (a) the giving by the United Kingdom of notice under Article 50 [TEU];
- (b) the uncertainty as to the arrangements which will be put in place between the European Union and the United Kingdom to govern relations after the departure of the United Kingdom; and
- (c) the consequential uncertainty as to the extent to which [RO] would, in practice, be able to enjoy rights under the Treaties, the Charter or relevant legislation, should he be surrendered to the United Kingdom and remain incarcerated after the departure of the United Kingdom,

Is a requested Member State required by European Union Law to decline to surrender to the United Kingdom a person the subject of a European arrest warrant, whose surrender would otherwise be required under the national law of the Member State,

- (i) in all cases?
  - (ii) in some cases, having regard to the particular circumstances of the case?
  - (iii) in no cases?
- (2) If the answer to Question 1 is that set out at (ii) what are the criteria or considerations which a court in the requested Member State must assess to determine whether surrender is prohibited?
- (3) In the context of Question 2 is the court of the requested Member State required to postpone the final decision on the execution of the European arrest warrant to await greater clarity about the relevant legal regime which is to be put in place after the withdrawal of the relevant requesting Member State from the Union
- (i) in all cases?
  - (ii) in some cases, having regard to the particular circumstances of the case?
  - (iii) in no cases?
- (4) If the answer to Question 3 is that set out at (ii) what are the criteria or considerations which a court in the requested Member State must assess to determine whether it is required to postpone the final decision on the execution of the European arrest warrant?’

### **The urgent procedure**

27 The referring court requested that this 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 has stated that the person concerned is currently remanded in custody in Ireland solely on the basis of the European arrest warrants issued by the United Kingdom for the purposes of conducting criminal prosecutions and that his surrender to that Member State is dependent on the Court’s answer. The referring court has stated that the ordinary procedure would significantly extend the duration of that person’s detention, while he is presumed to be innocent.

- 29 In that regard, it should be stated, in the first place, that the present reference for a preliminary ruling concerns the interpretation of the Framework Decision, 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 can be 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 is currently 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 10 August 2017, *Zdziaszek*, C-271/17 PPU, EU:C:2017:629, paragraph 72 and the case-law cited).
- 31 In this case, it is undisputed, first, that at that time, RO was remanded in custody in Ireland and, second, that whether he continues to be so remanded is dependent on the decision that will be taken on his surrender to the United Kingdom, a decision that has been stayed pending the Court's answer in the present case.
- 32 In those circumstances, on 11 June 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 be dealt with under the urgent preliminary ruling procedure.

### Consideration of the questions referred

- 33 By its questions, which can be examined together, the referring court seeks, in essence, to ascertain whether Article 50 TEU must be interpreted as meaning that a consequence of the notification by a Member State of its intention to withdraw from the European Union in accordance with that article is that, in the event that that Member State issues a European arrest warrant with respect to an individual, the executing Member State must refuse to execute that European arrest warrant or postpone its execution pending clarification as to the law that will apply in the issuing Member State after its withdrawal from the European Union.
- 34 In that regard, it must be borne in mind that, as follows from Article 2 TEU, EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore, that EU law implementing them will be respected (judgments of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 34, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 35).
- 35 The principle of mutual trust between the Member States requires, particularly as regards 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 EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, 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 36).
- 36 The purpose of the Framework Decision, as is apparent, in particular, from Article 1(1) and (2) and recitals 5 and 7 thereof, is to replace the multilateral system of extradition based on the European Convention on Extradition of 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. The Framework Decision thus seeks, by the establishment of that simplified and more effective system, 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, paragraphs 39 and 40).

37 The principle of mutual recognition is applied in Article 1(2) of the Framework Decision, which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the Framework Decision. Executing judicial authorities may therefore, in principle, refuse to execute such a warrant only on the grounds for non-execution exhaustively listed in the Framework Decision. Accordingly, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, paragraph 41).

38 Accordingly, the Framework Decision explicitly states the grounds for mandatory non-execution of a European arrest warrant (Article 3), the grounds for optional non-execution (Articles 4 and 4a), and the guarantees to be given by the issuing Member State in particular cases (Article 5) (judgments of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 51, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 42).

39 Nonetheless, the Court has recognised that limitations may be placed on the principles of mutual recognition and mutual trust between Member States ‘in exceptional circumstances’ (judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 82, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 43).

40 The Court has thus acknowledged that, subject to certain conditions, the executing judicial authority has the power to bring the surrender procedure established by the Framework Decision to an end where that surrender may result in the requested person being subject to inhuman or degrading treatment within the meaning of Article 4 of the Charter (judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 104, and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the System of Justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 44).

41 For that purpose, the Court has relied, first, on Article 1(3) of the Framework Decision, which provides that that decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Articles 2 and 6 TEU and, second, on the absolute nature of the fundamental right guaranteed by Article 4 of the Charter (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 45).

42 In order to assess whether there is a real risk that a person who is the subject of a European arrest warrant may suffer inhuman or degrading treatment, the executing judicial authority must, in particular, as the referring court has done in the main proceedings, pursuant to Article 15(2) of the Framework Decision, request from the issuing judicial authority any supplementary information that it considers necessary for assessing whether there is such a risk (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 76).

43 However, RO argues that, because of the notification by the United Kingdom of its intention to withdraw from the European Union pursuant to Article 50 TEU, he is exposed to the risk that a number of the rights he enjoys under the Charter and the Framework Decision may no longer be respected after the withdrawal of the United Kingdom from the European Union. According to RO, the principle of mutual trust, which is at the basis of mutual recognition, has been irreparably eroded by that notification, and consequently the surrender provided for by the Framework Decision ought not to be executed.

44 In that regard, the question arises whether mere notification by a Member State of its intention to withdraw from the European Union in accordance with Article 50 TEU is such as to justify, under EU law,

a refusal to execute a European arrest warrant issued by that Member State on the ground that the person surrendered would not be able, after that withdrawal, to rely in the issuing Member State on the rights that he derives from the Framework Decision and to have the conformity with EU law of implementation of those rights by that Member State reviewed by the Court.

- 45 In that context, it must be observed that such a notification does not have the effect of suspending the application of EU law in the Member State that has given notice of its intention to withdraw from the European Union and, consequently, EU law, which encompasses the provisions of the Framework Decision and the principles of mutual trust and mutual recognition inherent in that decision, continues in full force and effect in that State until the time of its actual withdrawal from the European Union.
- 46 As is apparent from Article 50(2) and (3) TEU, that article lays down a procedure for withdrawal that consists of, first, notification to the European Council of the intention to withdraw, second, negotiation and conclusion of an agreement setting out the arrangements for withdrawal, taking into account the future relationship between the State concerned and the European Union and, third, the actual withdrawal from the Union on the date of entry into force of that agreement or failing that, two years after the notification given to the European Council, unless the latter, in agreement with the Member State concerned, unanimously decides to extend that period.
- 47 Such a refusal to execute a European arrest warrant would, as the Advocate General stated in point 55 of his Opinion, be the equivalent of unilateral suspension of the provisions of the Framework Decision and would, moreover, run counter to the wording of recital 10 of that decision, which states that it is for the European Council to determine a breach in the issuing Member State of the principles set out in Article 2 TEU, with a view to application of the European arrest warrant mechanism being suspended in respect of that Member State (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 71).
- 48 Consequently, mere notification by a Member State of its intention to withdraw from the European Union in accordance with Article 50 TEU cannot be regarded, as such, as constituting an exceptional circumstance, within the meaning of the case-law cited in paragraphs 39 and 40 of the present judgment, capable of justifying a refusal to execute a European arrest warrant issued by that Member State.
- 49 However, it remains the task of the executing judicial authority to examine, after carrying out a specific and precise assessment of the particular case, whether there are substantial grounds for believing that, after withdrawal from the European Union of the issuing Member State, the person who is the subject of that arrest warrant is at risk of being deprived of his fundamental rights and the rights derived, in essence, from Articles 26 to 28 of the Framework Decision, as relied on by RO and referred to in paragraph 24 of the present judgment (see, by analogy, 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 73).
- 50 As regards the fundamental rights enshrined in Article 4 of the Charter, which correspond to those stated in Article 3 of the ECHR (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 86), in a situation where the referring court were to consider, as appears to be the case, given the wording of the questions referred for a preliminary ruling and the documents sent to the Court, that the information received enables it to discount the existence of a real risk that RO will suffer, in the issuing Member State, inhuman or degrading treatment, within the meaning of Article 4 of the Charter, it would not be appropriate, as a general rule, to refuse to surrender him on that basis, without prejudice to RO's opportunity, after surrender, to have recourse, within the legal system of the issuing Member State, to legal remedies that may enable him to challenge, where appropriate, the lawfulness of the conditions of his detention in a prison of that Member State (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 103).
- 51 However, the Court must also examine whether the referring court might contest that finding on the ground that the rights enjoyed by an individual following his surrender pursuant to the Framework



Decision would no longer be safeguarded after the withdrawal from the European Union of the issuing Member State.

- 52 In that regard, it must be observed that, in this case, the issuing Member State, namely the United Kingdom, is party to the ECHR and, as stated by that Member State at the hearing before the Court, it has incorporated the provisions of Article 3 of the ECHR into its national law. Since its continuing participation in that convention is in no way linked to its being a member of the European Union, the decision of that Member State to withdraw from the Union has no effect on its obligation to have due regard to Article 3 of the ECHR, to which Article 4 of the Charter corresponds, and, consequently, cannot justify the refusal to execute a European arrest warrant on the ground that the person surrendered would run the risk of suffering inhuman or degrading treatment within the meaning of those provisions.
- 53 As regards the other rights relied on by RO, and, first, the rule of specialty which is the subject of Article 27 of the Framework Decision, it must be recalled that that rule is linked to the sovereignty of the executing Member State and confers on the person requested the right not to be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence other than that for which he or she was surrendered (judgment of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, EU:C:2008:669, paragraph 44).
- 54 As is apparent from that judgment, it is necessary that an individual should be able to challenge an alleged infringement of that rule before the courts or tribunals of the issuing Member State after his or her surrender.
- 55 It must, however, be observed that the order for reference and the observations submitted by RO to the Court do not mention any ongoing legal proceedings concerning that rule and further that they do not present any concrete evidence to suggest that legal proceedings on that subject are contemplated.
- 56 The same is true of the right that is the subject of Article 28 of the Framework Decision relating to the limits on subsequent surrender or extradition to a State other than the executing Member State, no evidence on that subject having been produced in the order for reference.
- 57 In addition, it must be emphasised that Articles 27 and 28 of the Framework Decision respectively reflect Articles 14 and 15 of the European Convention on Extradition of 13 December 1957. As was stated at the hearing before the Court, the United Kingdom has ratified that convention and has transposed the latter articles into its national law. It follows that the rights relied on by RO in those areas are, in essence, covered by the national legislation of the issuing Member State, irrespective of the withdrawal of that Member State from the European Union.
- 58 As regards the deduction by the issuing Member State of any period of custody served in the executing Member State, in accordance with Article 26 of the Framework Decision, the United Kingdom has stated that it has also incorporated that obligation into its national law and that it applies that obligation, irrespective of EU law, to any person who is extradited into the United Kingdom.
- 59 Since the rights resulting from Articles 26 to 28 of the Framework Decision and the fundamental rights laid down in Article 4 of the Charter are protected by provisions of national law in cases not only of surrender, but also of extradition, those rights are not dependent on the application of the Framework Decision in the issuing Member State. It therefore appears, though subject to verification by the referring court, that there is no concrete evidence to suggest that RO will be deprived of the opportunity to assert those rights before the courts and tribunals of that Member State after its withdrawal from the European Union.
- 60 The fact that it will undoubtedly not be possible, in the absence of a relevant agreement between the Union and the United Kingdom, for those rights to be the subject of a reference to the Court for a preliminary ruling, after the withdrawal of that Member State from the European Union, cannot alter that analysis. First, as follows from the preceding paragraph, the person surrendered should be able to rely on all those rights before a court or tribunal of that Member State. Second, it must be recalled that recourse to

the mechanism of a preliminary ruling procedure before the Court has not always been available to the courts and tribunals responsible for the application of the European arrest warrant. In particular, as the Advocate General stated in point 76 of his Opinion, only on 1 December 2014, that is, five years after the entry into force of the Treaty of Lisbon, did the Court obtain full jurisdiction to interpret the Framework Decision, which was to be implemented in the Member States as from 1 January 2004.

- 61 Consequently, as the Advocate General stated in point 70 of his Opinion, in a case such as that in the main proceedings, in order to decide whether a European arrest warrant should be executed, it is essential that, when that decision is to be taken, the executing judicial authority is able to presume that, with respect to the person who is to be surrendered, the issuing Member State will apply the substantive content of the rights derived from the Framework Decision that are applicable in the period subsequent to the surrender, after the withdrawal of that Member State from the European Union. Such a presumption can be made if the national law of the issuing Member State incorporates the substantive content of those rights, particularly because of the continuing participation of that Member State in international conventions, such as the European Convention on Extradition of 13 December 1957 and the ECHR, even after the withdrawal of that Member State from the European Union. Only if there is concrete evidence to the contrary can the judicial authorities of a Member State refuse to execute the European arrest warrant.
- 62 The answer to the questions referred is, therefore, that Article 50 TEU must be interpreted as meaning that mere notification by a Member State of its intention to withdraw from the European Union in accordance with that article does not have the consequence that, in the event that that Member State issues a European arrest warrant with respect to an individual, the executing Member State must refuse to execute that European arrest warrant or postpone its execution pending clarification of the law that will be applicable in the issuing Member State after its withdrawal from the European Union. In the absence of substantial grounds to believe that the person who is the subject of that European arrest warrant is at risk of being deprived of rights recognised by the Charter and the Framework Decision following the withdrawal from the European Union of the issuing Member State, the executing Member State cannot refuse to execute that European arrest warrant while the issuing Member State remains a member of the European Union.

### Costs

- 63 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:

**Article 50 TEU must be interpreted as meaning that mere notification by a Member State of its intention to withdraw from the European Union in accordance with that article does not have the consequence that, in the event that that Member State issues a European arrest warrant with respect to an individual, the executing Member State must refuse to execute that European arrest warrant or postpone its execution pending clarification of the law that will be applicable in the issuing Member State after its withdrawal from the European Union. In the absence of substantial grounds to believe that the person who is the subject of that European arrest warrant is at risk of being deprived of rights recognised by the Charter of Fundamental Rights of the European Union and Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, following the withdrawal from the European Union of the issuing Member State, the executing Member State cannot refuse to execute that European arrest warrant while the issuing Member State remains a member of the European Union.**

Rodin

Regan

Delivered in open court in Luxembourg on 19 September 2018.

A. Calot Escobar

R. Silva de Lapuerta

Registrar    President of the First Chamber

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\* Language of the case: English.