

(Case C-123/08) (1)

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Article 4(6) — Ground for optional non-execution of the European arrest warrant — Implementation in national law — Person arrested a national of the issuing Member State — Non-execution of the European arrest warrant by the executing Member State conditional upon the person having spent a period of five years in its territory — Article 12 EC)

(2009/C 282/14)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Dominic Wolzenburg

Re:

Reference for a preliminary ruling — Interpretation of Article 4(6) 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) — Possibility for the executing judicial authority to refuse to execute a European arrest warrant issued for the purposes of execution of a custodial sentence against a person who is staying in or a resident of the executing Member State — Concepts of ‘resident’ and ‘staying in’ — Interpretation of Articles 12 EC, 17 EC and 18 EC — National legislation allowing different treatment by the executing judicial authority of the requested person if he refuses to be surrendered, depending on whether he is a national of the executing Member State or of another Member State

Operative part of the judgment

1. *A national of one Member State who is lawfully resident in another Member State is entitled to rely on the first paragraph of Article 12 EC against national legislation, such as the Law on the surrender of persons (Overleveringswet), of 29 April 2004, which lays down the conditions under which the competent judicial authority can refuse to execute a European arrest warrant issued with a view to the enforcement of a custodial sentence.*

2. *Article 4(6) of 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 meaning that, in the case of a citizen of the Union, the Member State of execution cannot, in addition to a condition as to the duration* EN C 282/8 Official Journal of the European Union

21.11.2009

of residence in that State, make application of the ground for optional non-execution of a European arrest warrant laid down in that provision subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration.

3. Article 12 EC is to be interpreted as not precluding the legislation of a Member State of execution under which the competent judicial authority of that State is to refuse to execute a European arrest warrant issued against one of its nationals with a view to the enforcement of a custodial sentence, whilst such a refusal is, in the case of a national of another Member State having a right of residence on the basis of Article 18(1) EC, subject to the condition that that person has lawfully resided for a continuous period of five years in that Member State of execution.

(1) OJ C 116, 9.5.2008.