

# Case C-303/05

## Advocaten voor de Wereld VZW

v

## Leden van de Ministerraad

(Reference for a preliminary ruling from the Arbitragehof)

(Police and judicial cooperation in criminal matters — Articles 6(2) EU and 34(2)(b) EU — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Approximation of national laws — Removal of verification of double criminality — Validity)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 12 September 2006 . . . . .	I - 3638
Judgment of the Court (Grand Chamber), 3 May 2007 . . . . .	I - 3672

### Summary of the Judgment

- Preliminary rulings — Jurisdiction of the Court — Police and judicial cooperation in criminal matters*  
(Arts 34(2)(b) EU and 35(1) EU)

2. *European Union — Police and judicial cooperation in criminal matters — Approximation of the laws and regulations of the Member States with regard to judicial cooperation in criminal matters*  
(Art. 34(2) EU; Council Framework Decision 2002/584, Art. 31(1))
3. *European Union — Police and judicial cooperation in criminal matters — Framework Decision on the European arrest warrant and the surrender procedures between Member States*  
(Council Framework Decision 2002/584, Arts 1(3) and 2(2))
4. *European Union — Police and judicial cooperation in criminal matters — Framework Decision on the European arrest warrant and the surrender procedures between Member States*  
(Council Framework Decision 2002/584, Art. 2(2))

1. Under Article 35(1) EU, the Court has jurisdiction, subject to the conditions laid down in that article, to give preliminary rulings on the interpretation and validity of, inter alia, framework decisions, which necessarily implies that it can, even if there is no express power to that effect, be called upon to interpret provisions of primary law, such as Article 34(2)(b) EU where the Court is being asked to examine whether a framework decision has been properly adopted on the basis of that latter provision.

der procedures between Member States, which provides for the approximation of the laws and regulations of the Member States with regard to judicial cooperation in criminal matters and, more specifically, of the rules relating to the conditions, procedures and effects of surrender as between national authorities convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, was not adopted in breach of Article 34(2)(b) EU.

(see para. 18)

2. Framework Decision 2002/584 on the European arrest warrant and the surren-

In so far as it lists and defines, in general terms, the different types of legal instruments which may be used in the pursuit of the objectives of the Union set out in Title VI of the EU Treaty, Article 34(2) EU cannot be construed as meaning that the approximation of the laws and regulations of the Member States by

the adoption of a framework decision under Article 34(2)(b) EU cannot relate to areas other than those mentioned in Article 31(1)(e) EU and, in particular, the matter of the European arrest warrant.

provision of the EU Treaty would risk depriving of its essential effectiveness the Council's recognised power to adopt framework decisions in fields previously governed by international conventions.

(see paras 28, 29, 37, 38, 41-43)

Furthermore, Article 34(2) EU also does not establish any order of priority between the different instruments listed in that provision. While it is true that the European arrest warrant could equally have been the subject of a convention, it is within the Council's discretion to give preference to the legal instrument of the framework decision in the case where the conditions governing the adoption of such a measure are satisfied.

3. The principle of the legality of criminal offences and penalties (*nullum crimen, nulla poena sine lege*), which is one of the general legal principles underlying the constitutional traditions common to the Member States, has also been enshrined in various international treaties, in particular in Article 7(1) of the European Convention on Human Rights. This principle implies that legislation must define clearly offences and the penalties which they attract. That condition is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable.

This latter conclusion is not invalidated by the fact that, in accordance with Article 31(1) of the Framework Decision, the latter was to replace from 1 January 2004, only in relations between Member States, the corresponding provisions of the earlier conventions on extradition set out in that provision. Any other interpretation unsupported by either Article 34(2) EU or by any other

In so far as it dispenses with verification of the requirement of double criminality in respect of the offences listed in that provision, Article 2(2) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States is not invalid on the ground that it infringes

the principle of the legality of criminal offences and penalties. The Framework Decision does not seek to harmonise the criminal offences in question in respect of their constituent elements or of the penalties which they attract. While Article 2(2) of the Framework Decision dispenses with verification of double criminality for the categories of offences mentioned therein, the definition of those offences and of the penalties applicable continue to be matters determined by the law of the issuing Member State, which, as is, moreover, stated in Article 1(3) of the Framework Decision, must respect fundamental rights and fundamental legal principles as enshrined in Article 6 EU, and, consequently, the principle of the legality of criminal offences and penalties.

(see paras 49, 50, 52-54)

4. In so far as it dispenses with verification of double criminality in respect of the offences listed therein, Article 2(2) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States

is not invalid inasmuch as it does not breach the principle of equality and non-discrimination.

With regard, first, to the choice of the 32 categories of offences listed in that provision, the Council was able to form the view, on the basis of the principle of mutual recognition and in the light of the high degree of trust and solidarity between the Member States, that, whether by reason of their inherent nature or by reason of the punishment incurred of a maximum of at least three years, the categories of offences in question feature among those the seriousness of which in terms of adversely affecting public order and public safety justifies dispensing with the verification of double criminality. Consequently, even if one were to assume that the situation of persons suspected of having committed offences featuring on the list set out in Article 2(2) of the Framework Decision or convicted of having committed such offences is comparable to the situation of persons suspected of having committed, or convicted of having committed, offences other than those listed in that provision, the distinction is, in any event, objectively justified.

With regard, second, to the fact that the lack of precision in the definition of the categories of offences in question risks giving rise to disparate implementation of the Framework Decision within the various national legal orders, suffice it to point out that it is not the objective of

the Framework Decision to harmonise the substantive criminal law of the Member States and that nothing in Title VI of the EU Treaty makes the application of the European arrest warrant conditional on harmonisation of the

criminal laws of the Member States within the area of the offences in question.

(see paras 57-60)