

Judgment of the Court (Third Chamber) of 1 December 2008 (reference for a preliminary ruling from the Korkein oikeus — Finland) — Criminal proceedings against Artur Leymann, Aleksei Pustovarov

(Case C-388/08 PPU) ⁽¹⁾

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — Article 27 — European arrest warrant and surrender procedures between Member States — Specialty principle — Consent procedure)

(2009/C 44/38)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Artur Leymann, Aleksei Pustovarov

Re:

Reference for a preliminary ruling — Korkein oikeus — Interpretation of Article 27(2), (3) and (4) 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) — Description of the offence on which the prosecution is based altered in relation to the description on which the arrest warrant was based — Concept of ‘offence other than that for which he or she was surrendered’ — Whether or not necessary to initiate the consent procedure

Operative part of the judgment

1. In order to establish whether the offence under consideration is an ‘offence other’ than that for which the person was surrendered within the meaning of Article 27(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4) of that Framework Decision, it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature

of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.

2. In circumstances such as those in the main proceedings, a modification of the description of the offence concerning the kind of narcotics concerned is not such, of itself, as to define an ‘offence other’ than that for which the person was surrendered within the meaning of Article 27(2) of Framework Decision 2002/584.
3. The exception provided for in Article 27(3)(c) of Framework Decision 2002/584 must be interpreted as meaning that, where there is an ‘offence other’ than that for which the person was surrendered, consent must be requested, in accordance with Article 27(4) of the Framework Decision, and obtained if a penalty or a measure involving the deprivation of liberty is to be executed. The person surrendered can be prosecuted and sentenced for such an offence before that consent has been obtained, provided that no measure restricting liberty is applied during the prosecution or when judgment is given for that offence. The exception in Article 27(3)(c) does not, however, preclude a measure restricting liberty from being imposed on the person surrendered before consent has been obtained, where that restriction is lawful on the basis of other charges which appear in the European arrest warrant.

⁽¹⁾ OJ C 272, 25.10.2008.

Order of the Court (Seventh Chamber) of 19 December 2008 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Deniz Sahin v Bundesminister für Inneres

(Case C-551/07) ⁽¹⁾

(Article 104(3) of the Rules of Procedure — Directive 2004/38/EC — Articles 18 EC and 39 EC — Right to respect for family life — Right of residence of a national of a non-member country who entered the territory of a Member State as an asylum seeker and subsequently married a national of another Member State)

(2009/C 44/39)

Language of the case: German

Referring court

Verwaltungsgerichtshof (Austria)