

# Case C-388/08 PPU

## **Criminal proceedings against Artur Leymann and Aleksei Pustovarov**

(Reference for a preliminary ruling  
from the Korkein oikeus)

(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)

Judgment of the Court (Third Chamber), 1 December 2008 . . . . . I - 8987

### Summary of the Judgment

- 1. Preliminary rulings — Urgent preliminary ruling procedure — Conditions  
(Rules of Procedure of the Court, Art. 104b)*
- 2. European Union — Police and judicial cooperation in criminal matters — Framework  
Decision on the European arrest warrant and the surrender procedures between Member  
States — Specialty rule  
(Council Framework Decision 2002/584, Arts 3, 4 and 27(2), (3)(g) and (4))*

3. *European Union — Police and judicial cooperation in criminal matters — Framework Decision on the European arrest warrant and the surrender procedures between Member States — Specialty rule*  
(Council Framework Decision 2002/584, Art. 27(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 — Specialty rule*  
(Council Framework Decision 2002/584, Art. 27(3)(c) and (4))

1. A request for a reference for a preliminary ruling concerning the interpretation of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States to be dealt with under an urgent procedure can be granted on the basis of an indication by the referring court that if prosecution for the offence is ruled out, the length of the sentence imposed on the person concerned would be reduced and his release brought forward.

(see paras 38, 39)

2. Article 27(2) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States lays down the specialty rule, according to which a person who has been surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered. The surrender request is based on information which reflects the state of investigations at the time of issue of the European arrest warrant. It is therefore possible that, in

the course of the proceedings, the description of the offence no longer corresponds in all respects to the original description. The evidence which has been gathered can lead to a clarification or even a modification of the constituent elements of the offence which initially justified the issue of the European arrest warrant.

The terms ‘prosecuted’, ‘sentenced’ or ‘deprived of liberty’ in Article 27(2) indicate that the concept of an ‘offence other’ than that for which the person was surrendered must be assessed with regard to the different stages of the proceedings and in the light of any procedural document capable of altering the legal classification of the offence. In order to assess, in the light of the consent requirement contained in Article 27(3)(g) of the Framework Decision, whether it is possible to infer from a procedural document an ‘offence other’ than that referred to in the European arrest warrant, the description of the offence in the European arrest warrant must be compared with that in the later procedural document. To require the consent of the executing Member State for every modification of the description of the offence would go beyond what is

implied by the specialty rule and interfere with the objective of speeding up and simplifying judicial cooperation of the kind referred to in the Framework Decision between the Member States.

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 Framework Decision 2002/584, 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.

(see paras 43, 53-56, 59, operative part 1)

3. A modification of the description of the offence, concerning only the kind of narcotics in question and not changing the legal classification of the offence, 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 on the European arrest warrant and the surrender procedures between Member States, since it is an offence still punishable according to the same scale of penalties and comes under the rubric ‘illegal trafficking in narcotic drugs’ in Article 2(2) of that Framework Decision.

(see paras 62, 63, operative part 2)

4. The exception in Article 27(3)(c) of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, according to which the specialty rule provided for in Article 27(2) does not apply where the criminal proceedings do not give rise to the application of a measure restricting personal liberty, 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.

(see para. 76, operative part 3)