

- by operation of law, that refusal gives rise to the willingness to take over the execution of the custodial sentence imposed on the national or resident,
- but the decision to take over execution of the sentence is taken only after refusal of surrender for purposes of executing the sentence, and a positive decision is dependent on (1) a basis for the decision in a treaty or convention which is in force between the issuing Member State and the executing Member State, (2) the conditions set by that treaty or convention, and (3) the cooperation of the issuing Member State by, for example, making a request to that effect,

with the result that there is a risk that, following refusal of surrender for purposes of executing the sentence, the executing Member State cannot take over execution of that sentence, while that risk does not affect the obligation to refuse surrender for purposes of executing the sentence?

2. If the answer to Question 1 is in the negative:

- (a) Can the national courts apply the provisions of Framework Decision 2002/584/JHA directly even though, under Article 9 of Protocol (No 36) on transitional provisions, the legal effects of that Framework Decision are preserved after the entry into force of the Treaty of Lisbon until that Framework Decision is repealed, annulled or amended?
- (b) If so, is Article 4(6) of Framework Decision 2002/584/JHA sufficiently precise and unconditional to be applied by the national courts?

3. If the answers to Questions 1 and 2(b) are in the negative: may a Member State whose national law requires that the taking-over of the execution of the foreign custodial sentence must be based on an appropriate treaty or convention transpose Article 4(6) of Framework Decision 2002/584/JHA in its national law in such a way that Article 4(6) of Framework Decision 2002/584/JHA itself provides the required conventional basis, in order to avoid the risk of impunity associated with the national requirement of a conventional basis (see Question 1)?

4. If the answers to Questions 1 and 2(b) are in the negative: may a Member State transpose Article 4(6) of Framework Decision 2002/584/JHA in its national law in such a way that:

for refusal of surrender for purposes of executing a sentence in respect of a resident of the executing Member State who is a national of another Member State, it sets the condition that the executing Member State must have jurisdiction in respect of the offences cited in the EAW [European arrest warrant] and that there must be no actual obstacles in the way of a (possible) criminal prosecution in the executing Member State of that resident in respect of those offences (such as the refusal by the issuing Member State to hand over the case-file to the executing Member State),

whereas it does not set such a condition for refusal of surrender for purposes of executing a sentence in respect of a national of the executing Member State?

⁽¹⁾ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1).

Action brought on 10 November 2015 — European Commission v Czech Republic

(Case C-581/15)

(2016/C 027/19)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: Z. Malůšková, J. Hottiaux, acting as Agents)

Defendant: Czech Republic

Form of order sought

- declare that, by failing to set up a national electronic register of road transport undertakings and failing to connect it to the national electronic registers of the other Member States, the Czech Republic has failed to fulfil its obligations under Article 16(1) and (5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;
- order the Czech Republic to pay the costs.

Pleas in law and main arguments

In support of its application, the Commission puts forward the following arguments:

The Czech Republic did not, by 30 June 2015, when the period laid down in the reasoned opinion expired, set up a national electronic register of road transport undertakings and did not connect it to the national electronic registers of the other Member States, as it should have done in accordance with Article 16(1) and (5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC⁽¹⁾.

⁽¹⁾ OJ 2009 L 300, p. 51.

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 11 November 2015 — Openbaar Ministerie v Gerrit van Vemde

(Case C-582/15)

(2016/C 027/20)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: Gerrit van Vemde

Question referred

Must the first sentence of Article 28(2) of Framework Decision 2008/909/JHA⁽¹⁾ be understood as meaning that the declaration referred to therein may relate only to judgments issued before 5 December 2011, irrespective of when those judgments became final, or must that provision be understood as meaning that the declaration may relate only to judgments which became final before 5 December 2011?

⁽¹⁾ Council Framework Decision of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).