

Other party: 'BMF Port Burgas' EAD

Operative part of the judgment

1. Article 2(3) and (5) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC must be interpreted as:
 - not precluding national legislation such as that at issue in the main proceedings, which provides that the transformation of the voltage to enable the transition from high to medium voltage falls within the remit of the activities of an electricity transmission system;
 - precluding, by contrast, such a legislation which defines the concepts of electricity transmission system and electricity distribution system based on criteria relating not only to the voltage but also to the ownership of the assets used to exercise transmission and distribution activities, respectively.
 - That interpretation is without prejudice, however, first, to the application of Article 17(1)(a) of the directive, according to which the transmission system must be owned by an independent transmission operator and, secondly, to the Member States' right to require that the distribution system operator own that system, in so far as that requirement does not jeopardise the achievement of the objectives sought by the directive, in particular by making such a system fall outside the scope of the obligation to comply with the rules applicable to it under the directive — which is a matter for the referring court to determine.
2. Directive 2009/72, in particular Article 2(3) to (6) and Article 32(1) thereof, must be interpreted as meaning that a user connected to the electricity network at a medium-voltage plant must not necessarily be considered to be a customer of the electricity distribution system operator holding an exclusive licence for electricity distribution for the area concerned, irrespective of the contractual relations between that user and the electricity transmission system operator, since such a user may be considered to be a customer of the electricity transmission system when it is connected to a medium-voltage plant forming part of an electrical substation whose activity of transforming the voltage to enable the transition from high to medium voltage falls within the remit of the activities of that system — which is a matter for the referring court to determine.

(¹) OJ C 123, 9.4.2018.

Judgment of the Court (Grand Chamber) of 15 October 2019 (request for a preliminary ruling from the Hanseatisches Oberlandesgericht Hamburg — Germany) — Execution of a European arrest warrant issued for Dumitru-Tudor Dorobantu

(Case C-128/18) (¹)

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Grounds for refusal of execution — Article 4 of the Charter of Fundamental Rights of the European Union — Prohibition of inhuman or degrading treatment — Conditions of detention in the issuing Member State — Assessment by the executing judicial authority — Criteria)

(2019/C 423/07)

Language of the case: German

Referring court

Hanseatisches Oberlandesgericht Hamburg

Party to the main proceedings

Dumitru-Tudor Dorobantu

Operative part of the judgment

Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in conjunction with Article 4 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that when the executing judicial authority has objective, reliable, specific and properly updated information showing there to be systemic or generalised deficiencies in the conditions of detention in the prisons of the issuing Member State, it must, for the purpose of assessing whether there are substantial grounds for believing that, following the surrender to the issuing Member State of the person subject to a European arrest warrant, that person will run a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, take account of all the relevant physical aspects of the conditions of detention in the prison in which it is actually intended that that person will be detained, such as the personal space available to each detainee in a cell in that prison, sanitary conditions and the extent of the detainee's freedom of movement within the prison. That assessment is not limited to the review of obvious inadequacies. For the purposes of that assessment, the executing judicial authority must request from the issuing judicial authority the information that it deems necessary and must rely, in principle, on the assurances given by the issuing judicial authority, in the absence of any specific indications that the conditions of detention infringe Article 4 of the Charter of Fundamental Rights.

As regards, in particular, the personal space available to each detainee, the executing judicial authority must, in the absence, currently, of minimum standards in that respect under EU law, take account of the minimum requirements under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, as interpreted by the European Court of Human Rights. Although, in calculating that available space, the area occupied by sanitary facilities should not be taken into account, the calculation should include space occupied by furniture. Detainees must, however, still have the possibility of moving around normally within the cell.

The executing judicial authority cannot rule out the existence of a real risk of inhuman or degrading treatment merely because the person concerned has, in the issuing Member State, a legal remedy enabling that person to challenge the conditions of his detention or because there are, in the issuing Member State, legislative or structural measures that are intended to reinforce the monitoring of detention conditions.

A finding, by the executing judicial authority, that there are substantial grounds for believing that, following the surrender of the person concerned to the issuing Member State, that person will run such a risk, because of the conditions of detention prevailing in the prison in which it is actually intended that he will be detained, cannot be weighed, for the purposes of deciding on that surrender, against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition.

(¹) OJ C 268, 30.7.2018.

Judgment of the Court (Grand Chamber) of 7 October 2019 (request for a preliminary ruling from the Court of Appeal — United Kingdom) — Safeway Ltd v Andrew Richard Newton, Safeway Pension Trustees Ltd

(Case C-171/18) (¹)

(Reference for a preliminary ruling — Social policy — Article 119 of the EC Treaty (now, after amendment, Article 141 EC) — Male and female workers — Equal pay — Private occupational retirement pension scheme — Normal pension age differentiated by gender — Date of adoption of measures reinstating equal treatment — Retroactive equalisation of that age to the normal pension age of the persons previously disadvantaged)

(2019/C 423/08)

Language of the case: English

Referring court

Court of Appeal