



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 January 2023 *

(Reference for a preliminary ruling – Area of freedom, security and justice – Police and judicial cooperation in criminal matters – Framework Decision 2008/675/JHA – Article 3(1) – Principle of assimilation of earlier convictions handed down in another Member State – Obligation to ensure that the effects attached to those convictions are equivalent to those attached to previous national convictions – National rules concerning subsequent formation of a cumulative sentence – Multiple offences – Determination of an aggregate sentence – Maximum of 15 years for non-life custodial sentences – Article 3(5) – Exception – Offence committed before the handing down or execution of sentences in another Member State)

In Case C-583/22 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 29 June 2022, received at the Court on 7 September 2022, in the criminal proceedings

MV

intervening parties:

Generalbundesanwalt beim Bundesgerichtshof,

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, M.L. Arastey Sahún, F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: M. Szpunar,

Registrar: S. Beer, Administrator,

having regard to the written procedure and further to the hearing on 14 November 2022,

after considering the observations submitted on behalf of:

- MV, by S. Akay, Rechtsanwalt,
- the Generalbundesanwalt beim Bundesgerichtshof, by C. Maslow and L. Otte, acting as Agents,

* Language of the case: German.

– the European Commission, by S. Grünheid and M. Wasmeier, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 8 December 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1) and (5) of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ 2008 L 220, p. 32).
- 2 The request has been made in the context of an appeal on a point of law brought by MV before the Bundesgerichtshof (Federal Court of Justice, Germany) against a judgment of the Landgericht Freiburg im Breisgau (Regional Court, Freiburg im Breisgau, Germany) which sentenced him to six years' imprisonment for aggravated rape.

Legal context

European Union law

- 3 Recitals 1 to 5, 8, 9 and 13 of Framework Decision 2008/675 state:
 - (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. This objective requires that it be possible for information on convictions handed down in the Member States to be taken into account outside the convicting Member State, both in order to prevent new offences and in the course of new criminal proceedings.
 - (2) On 29 November 2000 the Council [of the European Union], in accordance with the conclusions of the Tampere European Council, adopted the programme of measures to implement the principle of mutual recognition of decisions in criminal matters, which provides for the “adoption of one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender’s criminal record and establishing whether he has reoffended, and in order to determine the type of sentence applicable and the arrangements for enforcing it”.
 - (3) The purpose of this Framework Decision is to establish a minimum obligation for Member States to take into account convictions handed down in other Member States. ...
 - (4) Some Member States attach effects to convictions handed down in other Member States, whereas others take account only of convictions handed down by their own courts.

(5) The principle that the Member States should attach to a conviction handed down in other Member States effects equivalent to those attached to a conviction handed down by their own courts in accordance with national law should be affirmed, whether those effects be regarded by national law as matters of fact or of procedural or substantive law. However, this Framework Decision does not seek to harmonise the consequences attached by the different national legislations to the existence of previous convictions, and the obligation to take into account previous convictions handed down in other Member States exists only to the extent that previous national convictions are taken into account under national law.

...

(8) Where, in the course of criminal proceedings in a Member State, information is available on a previous conviction in another Member State, it should as far as possible be avoided that the person concerned is treated less favourably than if the previous conviction had been a national conviction.

(9) Article 3(5) should be interpreted, inter alia, in line with recital 8, in such a manner that if the national court in the new criminal proceedings, when taking into account a previously imposed sentence handed down in another Member State, is of the opinion that imposing a certain level of sentence within the limits of national law would be disproportionately harsh on the offender, considering his or her circumstances, and if the purpose of the punishment can be achieved by a lower sentence, it may reduce the level of sentence accordingly, if doing so would have been possible in purely domestic cases.

...

(13) This Framework Decision respects the variety of domestic solutions and procedures required for taking into account a previous conviction handed down in another Member State. ...'

4 Article 1(1) of that framework decision provides:

'The purpose of this Framework Decision is to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.'

5 Article 3 of that framework decision, which is headed 'Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State', provides as follows:

'1. Each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law.

2. Paragraph 1 shall apply at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules of procedure, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

...

5. If the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed, paragraphs 1 and 2 shall not have the effect of requiring Member States to apply their national rules on imposing sentences, where the application of those rules to foreign convictions would limit the judge in imposing a sentence in the new proceedings.

However, the Member States shall ensure that in such cases their courts can otherwise take into account previous convictions handed down in other Member States.'

German law

6 The relevant provisions governing the formation of a cumulative sentence are contained in Paragraphs 53 to 55 of the German Strafgesetzbuch (Criminal Code) of 13 November 1998 (BGBl. 1998 I, p. 3322), in the version applicable to the case in the main proceedings ('the StGB').

7 Paragraph 53 of the StGB, which concerns multiple offences committed by multiple acts, provides as follows in subparagraph 1:

'Where a person has committed several offences which are tried together and has thereby incurred several custodial sentences or several fines, a cumulative sentence shall be imposed.'

8 Paragraph 54 of the StGB, which governs the formation of the cumulative sentence, provides as follows in subparagraphs 1 and 2:

'1. Where one of the individual sentences is life imprisonment, the cumulative sentence shall be life imprisonment. In all other cases, the cumulative sentence is formed by increasing the largest sentence imposed, and, in the case of sentences of different types, by increasing the sentence which is most severe by nature. The person of the perpetrator and each of the offences shall be considered in this respect as a whole.

2. The aggregate sentence may not amount to the sum of the individual sentences imposed. It may not exceed 15 years in the case of non-life custodial sentences and 720 daily fines in the case of a fine.'

9 Paragraph 55 of the StGB, which concerns subsequent formation of a cumulative sentence provides as follows in subparagraph 1:

'Paragraphs 53 and 54 shall also apply where a person who has already been finally sentenced to a penalty which has not been served, time-barred or remitted is sentenced for another offence committed before the first conviction. A previous conviction means the judgment in the previous proceedings where the underlying findings of facts were last examined.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 On 10 October 2003, MV, a French national, abducted a female student from a university campus in Germany and raped her.

- 11 Before that date MV had never been convicted of a criminal offence in Germany. By contrast, his criminal record in France contains 25 entries. In particular, MV was the subject of five convictions, all handed down by French courts after that date and relating to acts committed between August 2002 and September 2003.
- 12 On 30 September 2004, the tribunal de grande instance de Guéret (Regional Court, Guéret, France) imposed a custodial sentence of two years on MV.
- 13 On 29 February 2008, the cour d’assises du Loir-et-Cher à Blois (Assize Court, Loir-et-Cher, in Blois, France) imposed a custodial sentence of 15 years on MV. The further convictions of the person concerned, resulting in a custodial sentence of six years imposed by the cour d’assises de Loire-Atlantique à Nantes (Assize Court, Loire-Atlantique, in Nantes, France) on 16 May 2008, on the one hand, and a custodial sentence of one year and six months imposed by the cour d’appel de Grenoble (Court of Appeal, Grenoble, France) on 23 April 2012, on the other, were included in that sentence.
- 14 On 24 January 2013, the cour d’assises du Maine-et-Loire à Angers (Assize Court, Maine-et-Loire, in Angers, France) imposed a further custodial sentence of seven years on MV.
- 15 On 20 October 2003, MV was arrested in the Netherlands under an arrest warrant issued by the French authorities and placed in detention pending extradition. On 17 May 2004 he was surrendered to the French authorities. MV was imprisoned in France without interruption until 23 July 2021, so that, on that date, a total of 17 years and 9 months of the custodial sentences referred to in paragraphs 12 to 14 of the present judgment were executed.
- 16 On 23 July 2021, the French authorities surrendered MV to the German authorities. MV was remanded in custody in Germany under an arrest warrant issued by the Amtsgericht Freiburg im Breisgau (Local Court, Freiburg im Breisgau, Germany).
- 17 On 21 February 2022, the Landgericht Freiburg im Breisgau (Regional Court, Freiburg im Breisgau) tried MV for the offences committed on 10 October 2003 in Germany, convicted him of aggravated rape and sentenced him to six years’ imprisonment. That court held that the sentence ‘actually commensurate’ with the offences committed by MV in Germany was seven years’ imprisonment. However, since it was not possible to form a subsequent cumulative sentence which included the sentences imposed in France, that court reduced that sentence by one year ‘on a compensatory basis’.
- 18 MV lodged an appeal on a point of law against that judgment before the Bundesgerichtshof (Federal Court of Justice), the referring court.
- 19 On two separate grounds, the referring court asks whether the judgment delivered by the Landgericht Freiburg im Breisgau (Regional Court, Freiburg im Breisgau) is compatible with the provisions of Framework Decision 2008/675.
- 20 In the first place, the referring court points out that whether it is possible to impose an executory custodial sentence on MV, for the offence of aggravated rape which is the subject matter of the main proceedings, depends on the interpretation of the principle of equal treatment of criminal convictions handed down in other Member States, which is implemented in Article 3(1) of Framework Decision 2008/675, and of the exception to that principle, provided for in the first subparagraph of Article 3(5) of that framework decision.

- 21 The referring court notes that the sentences handed down in France against MV could in principle be cumulated, in accordance with Paragraph 55(1) of the StGB, if they were treated in the same way as sentences handed down in Germany.
- 22 The purpose pursued by Paragraph 55(1) of the StGB, which provides for the formation of a subsequent cumulative sentence, is to ensure that the offender is not treated differently according to whether those offences are the subject of a single set of proceedings, in which case such a person would benefit from the formation of a subsequent cumulative sentence under Paragraph 53(1) of the StGB, or of several sets of separate proceedings, in which case there would be the formation of a subsequent cumulative sentence referred to in Paragraph 55(1) of the StGB.
- 23 The referring court also states that, in the context of the formation of a subsequent cumulative sentence, account must be taken of the maximum custodial sentence of 15 years laid down in Paragraph 54(2) of the StGB in the case of non-life custodial sentences. Where there is equal treatment of convictions handed down in France against MV, that maximum would already have been reached with the custodial sentence of 15 years imposed on the person concerned on 29 February 2008 by the cour d'assises du Loir-et-Cher (Assize Court, Loir-et-Cher) in Blois.
- 24 Consequently, where convictions handed down in France are treated in the same way as convictions handed down in Germany, an individual sentence could indeed be imposed on MV for the offence of aggravated rape of which he was found guilty. However, under Paragraph 54(2) of the StGB, the aggregate sentence cannot exceed the maximum of 15 years' imprisonment, so that the sentence imposed could not in practice be executed against MV.
- 25 However, the referring court points out that the formation of a subsequent cumulative sentence imposed in another State cannot be ordered on the basis of Paragraph 55(1) of the StGB for reasons of public international law. The formation of a cumulative sentence, in such a cross-border context, would encroach both on the force of *res judicata* of the foreign conviction and on the sovereignty of that State as regards the execution of that conviction.
- 26 Given that it is impossible, on the basis of German law, to order the subsequent formation of a cumulative sentence with regard to sentences handed down in another Member State, the referring court is uncertain as to the interpretation to be given to Article 3 of Framework Decision 2008/675.
- 27 Referring to the case-law of the Court of Justice, the referring court notes that Article 3(1) of that framework decision requires Member States to ensure that previous convictions handed down in another Member State are recognised as having effects equivalent to those attaching to previous national convictions under national law.
- 28 The referring court is uncertain, however, about the scope of the exception laid down in the first subparagraph of Article 3(5) of that framework decision. It considers that an executory sentence against MV could only be imposed, in respect of the acts of aggravated rape that are the subject of the main proceedings, in the event that that provision must be interpreted as precluding the taking into account of convictions handed down in other Member States, provided for in Article 3(1) of that framework decision, where taking them into account would result in the 15-year maximum laid down in Paragraph 54(2) of the StGB being exceeded in respect of non-life custodial sentences.

- 29 In the second place, in the event that the first subparagraph of Article 3(5) of Framework Decision 2008/675 must be interpreted as meaning that the principle of equal treatment of criminal convictions handed down in other Member States, laid down in Article 3(1) of that framework decision, is not applicable in the circumstances of the main proceedings, the referring court raises the question of the interpretation to be given to the second subparagraph of Article 3(5) of that framework decision.
- 30 It asks, in that regard, whether the taking into account of the sentence imposed in another Member State, pursuant to the second subparagraph of Article 3(5) of Framework Decision 2008/675, means that the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence, provided for in Paragraph 55(1) of the StGB, is to be ‘specifically demonstrated and justified’ in the sentencing for the offence committed in Germany.
- 31 The referring court explains that, when transposing Framework Decision 2008/675 into German law, the German legislature did not consider it necessary to adopt a measure transposing Article 3 of that framework decision. The idea that convictions handed down in another State cannot formally be subject to a subsequent cumulative sentence, but that the convicted person must not, as far as possible, be placed at a disadvantage as a result, corresponds to the reduction which the German courts apply ‘on a compensatory basis’ where the previous convictions were handed down abroad.
- 32 The referring court states that, according to its own case-law on this point, the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence, as regards convictions handed down in another Member State, is normally taken into account in the determination of the sentence by granting an unquantified reduction, ‘on a compensatory basis’, which is at the discretion of the court ruling on the substance. It is sufficient, in that regard, for that court to take into account the impossibility of imposing a subsequent cumulative sentence as a factor in favour of the convicted person.
- 33 That court considers, however, that only a clearly reasoned and quantified compensation for the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence is consistent with the rules in Article 3(1) and (5) of Framework Decision 2008/675.
- 34 It follows from the Court’s case-law on the application of that framework decision that the way in which previous convictions handed down in another Member State are taken into account must be as close as possible to the way in which previous national convictions are taken into account. In order to align itself as far as possible with the system of formation of cumulative sentences as established in Paragraphs 53 to 55 of the StGB, which requires the quantified calculation of an aggregate sentence, the referring court considers that it is necessary, for the court ruling on the substance, to establish specifically the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence and to deduct it from the new aggregate sentence to be imposed.
- 35 That court adds that a reasoned and quantified compensation for the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence is essential not only for reasons of transparency but also to enable the court hearing the appeal on a point of law to review the determination of the sentence imposed.

36 The referring court notes that, in the main proceedings, the Landgericht Freiburg im Breisgau (Regional Court, Freiburg im Breisgau) determined the sentence imposed without taking into account the fact that a custodial sentence of six years would lead to the 15-year maximum laid down in Paragraph 54(2) of the StGB for non-life custodial sentences being exceeded. Furthermore, that court did not refer to a precise criterion guiding the manner in which it took into account the convictions handed down in France, in accordance with the second subparagraph of Article 3(5) of Framework Decision 2008/675.

37 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) In view of the principle of equal treatment under Article 3(1) of Framework Decision 2008/675, and against the background of Article 3(5) of that framework decision, in the case of a cumulative sentence involving convictions handed down in Germany and in another Member State, can a sentence be imposed for the offence committed in Germany even where a notional inclusion of the sentence imposed in the other Member State would mean that the maximum permissible level under German law for a cumulative sentence for non-life custodial sentences is exceeded?’

(2) If the first question is answered in the affirmative:

Must the taking into account of the sentence imposed in another Member State, as provided for under the second sentence of Article 3(5) of Framework Decision 2008/675, take place in such a way that the disadvantage resulting from the impossibility to impose a subsequent cumulative sentence is specifically demonstrated and justified in the sentencing for the offence committed in Germany, in accordance with the principles governing the formation of cumulative sentences under German law?’

On the initiation of the urgent preliminary ruling procedure

38 Exercising the power conferred on him by Article 107(3) of the Rules of Procedure of the Court of Justice, the President of the Court of Justice invited the Second Chamber to examine the need to submit the present case to the urgent preliminary ruling procedure, as referred to in the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union.

39 It must be held that the conditions laid down for initiating that procedure are satisfied in the present case.

40 In the first place, it should be borne in mind that, under Article 107(1) of the Rules of Procedure, only requests for a preliminary ruling which raise one or more questions relating to one of the areas referred to in Title V of Part Three of the TFEU, Title V being devoted to the area of freedom, security and justice, are capable of being dealt with under the urgent procedure.

41 The areas referred to in Title V include, inter alia, judicial cooperation in criminal matters.

42 In this case, the reference for a preliminary ruling concerns the interpretation of Framework Decision 2008/675, which governs the taking into account, in the course of new criminal proceedings, of criminal convictions handed down in other Member States for different facts.

- 43 In addition, that framework decision was adopted on the basis of Article 31 TEU, which was replaced by Articles 82, 83 and 85 TFEU. These articles of the TFEU formally fall under the chapter on judicial cooperation in criminal matters.
- 44 It follows from the foregoing that the reference for a preliminary ruling raises a number of questions concerning one of the areas referred to in Title V of Part Three of the TFEU, namely judicial cooperation in criminal matters, and may therefore be dealt with under the urgent procedure.
- 45 In the second place, as regards the criterion relating to urgency, it follows from settled case-law that that criterion is satisfied when the person concerned in the case in the main proceedings is, as at the date when the request for a preliminary ruling is made, deprived of his or her liberty and the question as to whether he or she may continue to be held in custody depends on the outcome of the dispute in the main proceedings (see, most recently, judgment of 28 April 2022, *C and CD (Legal obstacles to the execution of a decision on surrender)*, C-804/21 PPU, EU:C:2022:307, paragraph 39 and the case-law cited).
- 46 In the present case, it is apparent from the request for a preliminary ruling that MV is in fact deprived of his liberty and that the outcome of the dispute in the main proceedings is likely to have an impact on the question of his continued detention.
- 47 The referring court explained that, if Article 3(1) and (5) of Framework Decision 2008/675 were to be interpreted as meaning that previous convictions handed down in France must be recognised as having effects equivalent to those attached to national convictions, it would no longer be possible to impose a sentence that could be executed against MV because the maximum non-life custodial sentence of 15 years laid down in Paragraph 54(2) of the StGB was exceeded.
- 48 In those circumstances, the Second Chamber of the Court decided, on 27 September 2022, on a proposal from the Judge-Rapporteur, after hearing the Advocate General, to refer the matter for a preliminary ruling under the urgent procedure.

Consideration of the questions referred

The first question

- 49 By its first question, the referring court asks, in essence, whether Article 3(1) and (5) of Framework Decision 2008/675 must be interpreted as meaning that a Member State is required, in criminal proceedings brought against a person, to attach to previous convictions handed down in another Member State, against that person and in respect of different facts, effects equivalent to those attached to previous national convictions in accordance with the rules of the national law concerned relating to the formation of a cumulative sentence where, first, the offence giving rise to those previous proceedings was committed before the previous convictions were handed down and, secondly, taking account of the previous convictions in accordance with those rules of national law would prevent the national court hearing the proceedings from handing down a sentence that could be executed against the person concerned.

- 50 The aim of Framework Decision 2008/675, as is apparent from recitals 5 to 8 thereof, is that each Member State should ensure that previous criminal convictions handed down in another Member State are given equivalent legal effect to previous national convictions under its national law (judgment of 15 April 2021, *AV (Aggregate sentence)* C-221/19, EU:C:2021:278, paragraph 49).
- 51 In accordance with that objective, Article 3(1) of that framework decision, read in the light of recital 5, obliges Member States to ensure that, where new criminal proceedings are brought against a given person, previous convictions handed down in other Member States against him or her for different facts, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent that previous national convictions are taken into account under national law, and that the legal effects attached to them are equivalent to those attached to previous national convictions, in accordance with national law, whether in relation to questions of fact or questions of substantive or procedural law.
- 52 Article 3(2) of that framework decision states that that obligation applies at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the rules relating to the type and level of the sentence and those governing the execution of the decision.
- 53 The Court has held that Framework Decision 2008/675 is applicable to a set of national proceedings that are concerned with the imposition, for the purposes of execution, of an overall custodial sentence that takes into account the sentence imposed on that person by a national court and also that imposed following a previous conviction handed down by a court of another Member State against the same person for different facts (judgment of 15 April 2021, *AV (Aggregate sentence)*, C-221/19, EU:C:2021:278, paragraph 52 and the case-law cited).
- 54 In the present case, it is apparent from the explanations provided by the referring court, summarised in paragraphs 21 to 24 above, that if, in the circumstances of the dispute in the main proceedings, previous convictions handed down by French courts against MV were treated in the same way as convictions handed down by German courts in accordance with Article 3(1) of that framework decision, the court ruling on the substance would be required to form a cumulative sentence in accordance with the rules laid down in Paragraphs 53 to 55 of the StGB. In that case, it would not be possible to impose a sentence that could be executed against MV because the maximum non-life custodial sentence of 15 years laid down in Paragraph 54(2) of the StGB would be exceeded.
- 55 However, it should be noted that, under the first subparagraph of Article 3(5) of Framework Decision 2008/675, if the offence giving rise to the new proceedings was committed before the previous conviction was handed down or fully executed, Article 3(1) and (2) of that framework decision does not require Member States to apply their national sentencing rules where the application of those rules to foreign convictions would have the effect of limiting the power of the court to impose a sentence in the new proceedings.
- 56 In the present case, it is apparent from the request for a preliminary ruling that, in the criminal proceedings before the German courts, MV was found guilty of an offence of aggravated rape for offences committed on 10 October 2003. Moreover, the convictions to be taken into account in those proceedings were handed down by French courts after that date. It must therefore be found that the time-related condition set out in the first subparagraph of Article 3(5) of Framework Decision 2008/675 is satisfied in the circumstances of the main proceedings.

- 57 Consequently, the circumstances of the main proceedings may fall within the exception laid down in that provision.
- 58 As regards the scope of that exception, the first subparagraph of Article 3(5) of that framework decision exempts Member States from the obligation to apply their ‘national rules on imposing sentences’ to previous convictions handed down in another Member State, where the application of those rules would ‘limit the judge in imposing a sentence in the new proceedings’.
- 59 In the present case, it must be held, first, that the rules of German law relating to the cumulation of sentences laid down in Paragraphs 53 to 55 of the StGB, relied on in the main proceedings, constitute ‘national rules on imposing sentences’ within the meaning of the first subparagraph of Article 3(5) of that framework decision. Those rules of German law limit the power of the criminal court to hand down a sentence where there are multiple offences, whether those offences are the subject of a single set of proceedings or of several separate sets of proceedings.
- 60 Second, as has been pointed out in paragraph 54 of the present judgment, the application of those rules with regard to previous convictions handed down in France would prevent the national court from handing down a sentence that could be executed in the main proceedings.
- 61 Accordingly, in the circumstances of the dispute in the main proceedings, attaching effects equivalent to those of previous national convictions handed down in France would ‘limit the judge in imposing a sentence in the new proceedings’ within the meaning of the first subparagraph of Article 3(5) of Framework Decision 2008/675.
- 62 It follows from the foregoing that the exception laid down in that provision is indeed applicable in the circumstances of the main proceedings and has the effect of releasing the national court from the obligation to attach to previous convictions handed down in France effects equivalent to those attaching to national convictions in accordance with the rules on the formation of cumulative sentences laid down in Paragraphs 53 to 55 of the StGB.
- 63 Such an interpretation is, moreover, supported both by the context of Article 3 of Framework Decision 2008/675 and by the objectives pursued by Article 3(5) of that framework decision.
- 64 As regards the context of Article 3 of Framework Decision 2008/675, it must be borne in mind that, according to recital 5 thereof, that framework decision is not intended to harmonise the consequences attached by the various national legislations to the existence of previous convictions. It is also apparent from recital 3 thereof that that framework decision merely establishes a minimum obligation for Member States to take account, in new criminal proceedings, of convictions handed down in other Member States.
- 65 In addition, according to recital 13 thereof, Framework Decision 2008/675 respects the variety of domestic solutions and procedures required for taking into account a previous conviction handed down in another Member State. Thus, that framework decision contributes to the constitution of an area of freedom, security and justice within the European Union while respecting the different legal systems and traditions of the Member States, in accordance with Article 67(1) TFEU.
- 66 Therefore, the principle laid down in Article 3(1) of that framework decision, that previous convictions handed down in another Member State are to be treated in the same way, must be reconciled with the need to respect the diversity of the traditions and criminal justice systems of

the Member States. As stated in recital 8 of that framework decision, it is only ‘as far as possible’ that the person concerned should not be treated less favourably than if the previous conviction had been a national conviction.

- 67 As regards the objective pursued by Article 3(5) of Framework Decision 2008/675, it is clear from its wording that that provision seeks to safeguard ‘[the power of] the judge in imposing a sentence’ in order to penalise an offence committed in national territory before convictions in another Member State have been handed down or executed.
- 68 As the Generalbundesanwalt beim Bundesgerichtshof (Public Prosecutor General at the Federal Court of Justice) and the European Commission argue, in essence, in a context characterised by the diversity of the traditions and criminal justice systems of the Member States, in particular as regards the scales of sentences and their methods of execution, it cannot be ruled out that the taking into account of convictions handed down in another Member State may prevent the imposition of a sentence that can be executed, with a view to penalising an offence committed in the territory of the Member State concerned even before those convictions have been handed down or executed.
- 69 In the present case, it is apparent from the explanations provided by the referring court that, in the context of the dispute in the main proceedings, recognising the effects of previous convictions handed down in France as equivalent to those attached to national convictions in the context of the subsequent formation of a cumulative sentence, provided for in Paragraph 55(1) of the StGB, would preclude the imposition of a sentence that could be executed for aggravated rape committed in Germany before those convictions were handed down.
- 70 The objective pursued by the first subparagraph of Article 3(5) of Framework Decision 2008/675 is precisely to preserve the power of national courts to impose a sentence in such a case, while respecting the diversity of traditions and criminal justice systems of the Member States, by releasing Member States from the obligation to treat previous convictions handed down in another Member State in the same way as previous national convictions laid down in Article 3(1) of that framework decision.
- 71 It should also be noted, however, that there is nothing to prevent Member States recognising the effects of convictions handed down in another Member State as equivalent to those attached to national convictions in the situation referred to in the first subparagraph of Article 3(5) of Framework Decision 2008/675. As stated in recital 3 thereof, that framework decision seeks to establish a minimum obligation to have convictions handed down in another Member State taken into account, so that Member States remain free to take such convictions into account in cases where they are not required to do so under that framework decision.
- 72 In the light of the foregoing, the answer to the first question is that Article 3(1) and (5) of Framework Decision 2008/675 must be interpreted as meaning that a Member State is not required, in criminal proceedings brought against a person, to attach to previous convictions handed down in another Member State, against that person and in respect of different facts, effects equivalent to those attached to previous national convictions in accordance with the rules of the national law concerned relating to the formation of a cumulative sentence where, first, the offence giving rise to those previous proceedings was committed before the previous convictions were handed down and, secondly, taking account of the previous convictions in accordance with those rules of national law would prevent the national court hearing the proceedings from imposing a sentence that could be executed against the person concerned.

The second question

- 73 By its second question, the referring court asks, in essence, whether the second subparagraph of Article 3(5) of Framework Decision 2008/675 must be interpreted as meaning that the taking into account of previous convictions handed down in another Member State, within the meaning of that provision, requires the national court to establish and give specific reasons for the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence which is laid down for earlier national convictions.
- 74 It follows from the wording of that provision that, in any criminal proceedings covered by the exception laid down in the first subparagraph of Article 3(5) of that framework decision, the Member States must ensure that ‘their courts can otherwise take into account previous convictions handed down in other Member States’.
- 75 In order to satisfy that obligation, it is sufficient that the Member States provide, in compliance with EU law and with the objectives pursued by that framework decision, for their national courts to take into account, in another manner, previous convictions handed down in other Member States.
- 76 However, no obligation can be inferred from that provision as regards the specific substantive or procedural arrangements which should be observed by national courts when they actually take into account previous convictions handed down in other Member States.
- 77 In the absence of further detail in the actual provisions of Framework Decision 2008/675, it must be noted that that framework decision leaves the Member States a margin of discretion as to the specific manner of implementation as regards the possibility for national courts to take into account previous convictions handed down in other Member States pursuant to the second subparagraph of Article 3(5) of that framework decision.
- 78 Consequently, it cannot be inferred from the second subparagraph of Article 3(5) of Framework Decision 2008/675 that the court ruling on the substance of the case is under an obligation, in the circumstances of the main proceedings, to calculate the disadvantage resulting from the fact that it is impossible to apply the national rules on cumulative sentences laid down for national convictions and subsequently to grant a reduction in sentence based on that calculation.
- 79 As the Advocate General stated in points 85 and 86 of his Opinion, the only requirement which may be inferred from that provision concerns the existence of a possibility for national courts to take into account previous convictions handed down in other Member States, although the specific procedure for taking such convictions into account has not been laid down by the EU legislature.
- 80 In the present case, it is apparent from the request for a preliminary ruling that the Landgericht Freiburg im Breisgau (Regional Court, Freiburg im Breisgau) did indeed take account of the previous convictions handed down in France. In its judgment of 21 February 2022, that court granted a one-year reduction of the sentence ‘on a compensatory basis’ on an initial custodial sentence of seven years, in order to take account of the impossibility of forming a subsequent cumulative sentence together with convictions handed down in France.

- 81 In the light of the foregoing, the answer to the second question is that the second subparagraph of Article 3(5) of Framework Decision 2008/675 must be interpreted as meaning that the taking into account of previous convictions handed down in another Member State, within the meaning of that provision, does not require the national court to establish and give specific reasons for the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence which is laid down for earlier national convictions.

Costs

- 82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

- 1. Article 3(1) and (5) of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings**

must be interpreted as meaning that a Member State is not required, in criminal proceedings brought against a person, to attach to previous convictions handed down in another Member State, against that person and in respect of different facts, effects equivalent to those attached to previous national convictions in accordance with the rules of the national law concerned relating to the formation of a cumulative sentence where, first, the offence giving rise to those previous proceedings was committed before the previous convictions were handed down and, secondly, taking account of the previous convictions in accordance with those rules of national law would prevent the national court hearing the proceedings from imposing a sentence that could be executed against the person concerned.

- 2. The second subparagraph of Article 3(5) of Framework Decision 2008/675**

must be interpreted as meaning that the taking into account of previous convictions handed down in another Member State, within the meaning of that provision, does not require the national court to establish and give specific reasons for the disadvantage resulting from the impossibility of imposing a subsequent cumulative sentence which is laid down for earlier national convictions.

[Signatures]