

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)

Parties to the main proceedings

Applicant: Deniz Sahin

Defendant: Bundesminister für Inneres

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof (Austria) — Interpretation of Articles 18 EC and 39 EC, as well as Articles 3(1), 6(2), 7(1)(d) and (2), 9(1) and 10(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — 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

Operative part of the order

1. Articles 3(1), 6(2) and 7(1)(d) and (2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as applying also to family members who arrived in the host Member State independently of the Union citizen and acquired the status of family member or started to lead a family life with that Union citizen only after arriving in that State. In that regard, the fact that, at the time the family member acquires that status or starts to lead a family life, he resides temporarily in the host Member State pursuant to that State's asylum laws has no bearing.
2. Articles 9(1) and 10 of Directive 2004/38 preclude a national provision under which family members of a Union citizen who are not nationals of a Member State and who, in accordance with Community law, and in particular Article 7(2) of the directive, have a right of residence, cannot be issued with a residence card of a family member of a Union citizen solely because they are entitled temporarily to reside in the host Member State under that State's asylum laws.

⁽¹⁾ OJ C 64, 8.3.2008.

Order of the Court of 13 November 2008 — Giuseppe Gargani v European Parliament

(Case C-25/08 P) ⁽¹⁾

(Appeal — Action brought by the Chairman of the Committee on Legal Affairs of the Parliament against the 'action' of the President of the Parliament which led to the submission of observations in the name of the Parliament in a matter which related to a reference for a preliminary ruling — Time-limit for initiating proceedings)

(2009/C 44/40)

Language of the case: German

Parties

Appellant: Giuseppe Gargani (represented by: W. Rothley, Rechtsanwalt)

Other party to the proceedings: European Parliament (represented by: J. Schoo and H. Krück, agents)

Re:

Appeal brought against the Order of the Court of First Instance (Third Chamber) of 21 November 2007, Gargani v Parliament (T-94/06), in which the Court of First Instance dismissed as manifestly inadmissible the action brought by the Chairman of the Committee on Legal Affairs of the European Parliament, seeking a declaration of unlawfulness in relation to the decision of the President of the European Parliament to submit written observations in the name of the Parliament, in accordance with the second paragraph of Article 23 of the Statute of the Court, in the context of a reference for a preliminary ruling, contrary to the advice of the Commission of Legal Affairs, and his refusal to submit the issue to plenary

Operative part of the order

1. The appeal is dismissed.
2. Mr Gargani is ordered to pay the costs.

⁽¹⁾ OJ C 79, 29.3.2008.