EIPA Luxembourg
European Institute of Public Administration
European Centre for Judges and Lawyers

European Commission

ENM ÉCOLE NATIONALE de la MAGISTRATURE

DANMARKS DOMSTOLE

Seminar 2: The pre-Lisbon instruments: Special focus on the European Arrest Warrant

Krakow (PL), 15 – 16 February 2012

Specific Grant Agreement JUST/2010/JPEN/AG/FPA/001
Framework Partnership Agreement JLS/2007/JPEN-FPA/017

Improving Judicial Cooperation in Criminal Matters in the area of Freedom, Security and Justice. Institutional Processes and Topical Areas

The European Arrest Warrant: A current evaluation of the instrument

Presented by
Gábor MAGYAR
Defence Lawyer
Magyar György and Associates
Budapest

The European Arrest Warrant. A current evaluation of the instruments

presented by Gábor Magyar on 15 February 2012
at the seminar The pre-Lisbon instruments: Special focus on the European Arrest Warrant
organised by European Centre for Judges and Lawyers (European Institute of Public Administration)

This teaching material consists of

– the text of the Framework Decision with notes, page 1
– a summary of relevant cases, page 25
– information regarding the urgent preliminary ruling procedure (PPU) page 46
– a list of useful links. Page 48

Council Framework Decision 2002/584/JHA of 13 June 2002
on the European arrest warrant and the surrender procedures between Member States

CHAPTER 1
GENERAL PRINCIPLES

Article 1
Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Notes: *Article 6(3) TEU stipulates that fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention or ECHR) and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.*

In accordance with Article 51(1) of the Charter of Fundamental Rights of the European Union (the Charter), the provisions of the Charter are addressed, inter alia,

to the Member States when they are implementing Union law. According to Article 52(3) of the Charter, in so far as the Charter contains rights which correspond to rights guaranteed by the Convention, the meaning and scope of those rights shall be the same as those laid down by the Convention. Article 52(7) of the Charter adds that the explanations[1] drawn up as a way of providing guidance in the interpretation of the Charter shall be given due regard by the courts of the Union and of the Member States. Article 6(1) TEU provides that the Union recognises the rights, freedoms and principles set out in the Charter, which shall have the same legal value as the Treaties.

Article 6 of the Charter enshrines the ***right to liberty and security****. The rights in Article 6 are the rights guaranteed by Article 5 ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. The rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt legislative acts in the area of judicial cooperation in criminal matters, on the basis of Articles 82, 83 and 85 TFEU, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law. Article 5(1)(f) ECHR reads as follows:*

'Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: […]
the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.'

Under Article 7 of the Charter everyone has the ***right to respect for his or her private and family life****, home and communications. The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 ECHR. In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. 'The state does have an obligation to assist serving prisoners to maintain contact with their families[2], although only in exceptional circumstances will that duty extend to transferring a prisoner from one jail to another[3]. The duty may be more extensive between prisoners and their children than between prisoners and their spouses, who can ordinarily be expected to travel more easily to visit a prison[4].'[5]*

Under Article 24(3) of the Charter, every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests. Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, the legislation of the Union on civil matters having cross-border implications, for which Article 81 TFEU confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both of their parents.

---

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:en:PDF
[2] X v UK No 9054/80, 30 DR 113 (1982) and McCotter v UK No 18632/91, 15 EHRR CD 98 (1993)
[3] Campbell v UK No 7819/77, 14 DR 186 (1978) paras 30-32
[4] Ouinas v France No 13756/88, 65 DR 265 at 277 (1990).
[5] Source: Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights (2009, Second Edition, OUP: Oxford), p. 395

Article 19(2) of the Charter stipulates that no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. Paragraph 2 incorporates the relevant case-law from the European Court of Human Rights regarding Article 3 ECHR (see Ahmed v Austria, judgment of 17 December 1996, 1996-VI, p. 2206, and Soering, judgment of 7 July 1989). Conditions of detention have been found by the Strasbourg court to amount to inhuman or degrading treatment in a variety of contexts. When examining conditions in a place of detention, the Court gives weight to the conclusions of the Council of Europe anti-torture Committee (CPT) when the latter has reported on it[6]. Prison conditions have been found to amount to inhuman or degrading treatment in large numbers of cases in the Court's recent jurisprudence. Strip searches of prisoners may also amount to degrading treatment.[7]

Article 2
Scope of the European arrest warrant[8]

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- participation in a criminal organisation[9],
- terrorism[10],
- trafficking in human beings[11],
- sexual exploitation of children and child pornography[12],
- illicit trafficking in narcotic drugs and psychotropic substances[13],
- illicit trafficking in weapons, munitions and explosives,
- corruption[14],

[6] Dougoz v Greece 2001-II; 34 EHRR 1480. But see Peers v Greece 2001-III; 33 EHRR 1192. Compliance with the European Prison Rules 2006 is likely to mean compliance with Article 3 ECHR: see amirez Sanchez v France 2006-IX; 43 EHRR 1161 para 130 GC. On non-compliance with the Rules, see Eggs v Switzerland No 7341/76, 6 DR 170 (1976).
[7] Source: Harris, O'Boyle & Warbrick, ibid, pp. 93-94
[8] Footnotes added by the editor
[9] Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime
[10] Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism
[11] Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings
[12] Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography; Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA
[13] Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking

- **fraud**, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests[15],
- laundering of the proceeds of crime[16],
- counterfeiting currency, including of the euro[17],
- computer-related crime[18],
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties[19],
- facilitation of unauthorised entry and residence[20],
- **murder, grievous bodily injury**,
- illicit trade in human organs and tissue[21],
- **kidnapping, illegal restraint and hostage-taking**,
- racism and xenophobia[22],
- **organised or armed robbery**,
- illicit trafficking in cultural goods, including antiques and works of art[23],
- **swindling**,
- **racketeering and extortion**,
- counterfeiting and piracy of products[24],
- forgery of administrative documents and trafficking therein,

---

[14] Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector; Council Act of 26 May 1997 drawing up the Convention made on the basis of Article K.3 (2)(c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

[15] Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests

[16] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; Council Act of 19 June 1997 drawing up the Second Protocol of the Convention on the protection of the European Communities' financial interests

[17] 1929 International Convention for the Suppression of Counterfeiting Currency; Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro

[18] Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems; 2001 Council of Europe Convention on Cybercrime (Budapest Convention)

[19] Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law

[20] Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence; Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence

[21] The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (CETS No. 164); Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells

[22] Joint action 96/443/JHA of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia; Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

[23] Council Regulation (EC) No 116/2009, of 18 December 2008, on the export of cultural goods; UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970; UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Rome, 24 June 1995

[24] Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights; Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

- forgery of means of payment[25],
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- **rape**,
- **arson**,
- crimes within the jurisdiction of the International Criminal Court[26],
- unlawful seizure of aircraft/ships,
- **sabotage**.

Notes: *Even if the Member States reproduce word-for-word the list of the categories of offences set out in Article 2(2) of the FD for the purposes of its implementation, the actual definition of those offences and the penalties applicable are those which follow from the law of 'the issuing Member State'. The FD does not seek to harmonise the criminal offences in question in respect of their constituent elements or of the penalties which they attract. Accordingly, while Article 2(2) of the FD dispenses with verification of double criminality for the categories of offences mentioned therein, the definition of those offences and of the penalties applicable continue to be matters determined by the law of the issuing Member State, which, as is, moreover, stated in Article 1(3) of the FD, must respect fundamental rights and fundamental legal principles as enshrined in Article 6 EU, and, consequently, the principle of the legality of criminal offences and penalties. It follows that, in so far as it dispenses with verification of the requirement of double criminality in respect of the offences listed in that provision, Article 2(2) of the FD is not invalid on the ground that it infringes the principle of the legality of criminal offences and penalties. [see Case C-303/05 Advocaten voor de Wereld VZW v Leden van de Ministerraad, 3 May 2007, paragraphs 52-54]*

3. [not reproduced]

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3
Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

[25] Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment

[26] see the Rome Statute of the International Criminal Court and the Elements of Crimes http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

Notes: *Whether a person has been 'finally' judged for the purposes of Article 3(2) is determined by the law of the Member State in which judgment was delivered. [see Case C-261/09, Mantello, 16 November 2010, paragraph 46]*

For the purposes of the issue and execution of a EAW, the concept of 'same acts' in Article 3(2) constitutes an autonomous concept of European Union law. If, in response to a request for information within the meaning of Article 15(2) made by the executing judicial authority, the issuing judicial authority, applying its national law and in compliance with the requirements deriving from the concept of 'same acts' as enshrined in Article 3(2), expressly states that the earlier judgment delivered under its legal system did not constitute a final judgment covering the acts referred to in the EAW issued by it and therefore did not preclude the criminal proceedings referred to in that EAW, the executing judicial authority has no reason to apply, in connection with such a judgment, the ground for mandatory non-execution provided for in Article 3(2). [see Case C-261/09 Mantello, 16 November 2010, paragraph 51]

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4
Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;

2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;

3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

7. where the European arrest warrant relates to offences which:
(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Notes: *Article 4(6) of the Framework Decision is to be interpreted as meaning that:*

- *a requested person is 'resident' in the executing Member State when he has established his actual place of residence there and he is 'staying' there when, following a stable period of presence in that State, he has acquired connections with that State which are of a similar degree to those resulting from residence;*
- *in order to ascertain whether there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term 'staying' within the meaning of Article 4(6), it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State. [Case C-66/08 Kozłowski, 17 July 2008, paragraph 54]*

In the case of a citizen of the Union, the Member State of execution cannot, in addition to a condition as to the duration of residence in that State, make application of the ground for optional non-execution of a European arrest warrant laid down in Article 4(6) subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration. [Case C-123/08 Wolzenburg, 6 October 2009, paragraph 53]

Article 4(6) and 5(3) must be interpreted as meaning that, where the executing Member State has implemented Article 5(1) and Article 5(3) in its domestic legal system, the execution of a EAW issued for the purposes of execution of a sentence imposed in absentia within the meaning of Article 5(1), may be subject to the condition that the person concerned, who is a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his

presence in the issuing Member State. [Case C-306/09 I.B. 21 October 2010, paragraph 61]

Article 4a[27]

Decisions rendered following a trial at which the person did not appear in person

1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

(a) in due time:
(i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;
and
(ii) was informed that a decision may be handed down if he or she does not appear for the trial;

or
(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or
(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
(i) expressly stated that he or she does not contest the decision;
(ii) ordid not request a retrial or appeal within the applicable time frame;

or
(d) was not personally served with the decision but:
(i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;
and
(ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

2. In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal

[27] Introduced by Article 2(1) of Council Framework Decision 2009/299/JHA of 26 February 2009; transposition deadline: 28/03/2011

proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

Article 5
Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. [deleted][28];

2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Notes: *Article 4(6) and 5(3) must be interpreted as meaning that, where the executing Member State has implemented Article 5(1) and Article 5(3) in its domestic legal system, the execution of a EAW issued for the purposes of execution of a sentence imposed in absentia within the meaning of Article 5(1), may be subject to the condition that the person concerned, who is a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State. [Case C-306/09 I.B. 21 October 2010, paragraph 61]*

[28] Deleted by Article 2(2) of Council Framework Decision 2009/299/JHA of 26 February 2009

Article 6
Determination of the competent judicial authorities

[not reproduced]

Article 7
Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

[not reproduced]

Article 8
Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

[not reproduced]

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2
SURRENDER PROCEDURE

Article 9
Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10
Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network, in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11
Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12
Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13
Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the "speciality rule", referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Notes: ***Belgium****: The consent of the person concerned to his or her surrender may be revoked until the time of surrender.*

Denmark*: Consent to surrender and express renunciation of entitlement to the speciality rule may be revoked in accordance with the relevant rules applicable at any time under Danish law.*

In ***Ireland****, consent to surrender and, where appropriate, express renunciation of the entitlement to the "specialty" rule referred to in Article 27(2) may be revoked. Consent may be revoked in accordance with domestic law until surrender has been executed.*

In ***Finland****, consent to surrender and, where appropriate, express renunciation of entitlement to the "speciality rule" referred to in Article 27(2) may be revoked. Consent may be revoked in accordance with domestic law until surrender has been executed.*

Sweden*: Consent or renunciation within the meaning of Article 13(1) may be revoked by the party whose surrender has been requested. Revocation must take place before the decision on surrender is executed.*

Article 14
Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15
Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16
Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. [not reproduced]

Article 17
Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. [not reproduced]

Article 18
Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article 19;
(b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19
Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20
Privileges and immunities

[not reproduced]

Article 21
Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22
Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23
Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24
Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25
Transit

[not reproduced]

CHAPTER 3
EFFECTS OF THE SURRENDER

Article 26
Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27
Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

Notes: *We are not aware of the existence of such notification; therefore, the executing MS's consent to waiving the speciality rule cannot be presumed.*

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

Notes: *Article 27(2) lays down the specialty rule.*

3. Paragraph 2 does not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up

in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Notes: *The exception in Article 27(3)(c) 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), 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 EAW. [see Case C-388/08 PPU, Leymann & Pustovarov, 1 December 2008, paragraph 76]*

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), requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4), 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 EAW 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 EAW, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4. [see Case C-388/08 PPU, Leymann & Pustovarov, 1 December 2008, paragraph 59]

Article 28
Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is

presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

Notes: *We are not aware of the existence of such notification; therefore, the executing MS's consent to the forwarding of the surrendered person cannot be presumed.*

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

(a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

(c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

(a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);

(b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;

(c) the decision shall be taken no later than 30 days after receipt of the request;

(d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29
Handing over of property

[not reproduced]

Article 30
Expenses

[not reproduced]

CHAPTER 4
GENERAL AND FINAL PROVISIONS

Article 31
Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

(b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;

(d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;

(e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Notes: *In most respects, the uniform legislation in force between the Nordic States allows the prescriptions of the Framework Decision to be extended and enlarged and helps to simplify and facilitate further the procedures of surrender of persons who are the subject of EAWs.* ***Denmark, Finland and Sweden*** *will therefore continue to apply the uniform legislation in force between them [in Denmark: the Nordic Extradition Act (Act No 27 of 3 February 1960 as amended by Act No 251 of 12 June 1975, Act No 433 of 31 May 2000 and Act No 378 of 6 June 2002); in Finland: the Nordic Extradition Act (270/1960); in Sweden: the Act (1959:254) concerning extradition to Denmark, Finland, Iceland and Norway for criminal offences] in so far as it allows the prescriptions of the Framework Decision to be extended or enlarged and helps to simplify or facilitate further the procedures for surrender of persons who are the subject of EAWs.*

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Notes: *Article 31 must be interpreted as referring only to the situation in which the EAW system is applicable, which is not the case where a request for extradition relates to acts committed before a date specified by a Member State in a statement made pursuant to Article 32. [Case C-296/08 PPU, Santesteban Goicoechea, 12 August 2008, paragraph 63]*

Article 32
Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.

Notes: ***France*** *will continue to deal with requests relating to acts committed before 1 November 1993 (entry into force of the TEU), in accordance with the extradition system applicable before 1 January 2004.*

Italy *will continue to deal in accordance with the extradition rules in force with all requests relating to acts committed before 7 August 2002 (entry into force of the FD).*

Austria *will continue to deal with requests relating to punishable acts committed before 7 August 2002 (entry into force of the FD) in accordance with the extradition system applicable before that date.*

The ***Czech Republic*** *will continue to deal with requests relating to acts committed by Czech nationals before 1 November 2004 in accordance with the extradition system applicable before the date of accession of the Czech Republic to the European Union, i.e. in accordance with the European Convention on Extradition of 12 December 1957, its two Amending Protocols of 15 October 1975 and 17 March 1978, the Schengen Implementing Convention and the applicable bilateral agreements. The Czech Republic may surrender its national to another EU Member States only on the condition of reciprocity.*

Article 32 does not preclude the application by an executing Member State of the 1996 Convention, even where that convention became applicable in that Member State only after 1 January 2004. [Case C-296/08 PPU, Santesteban Goicoechea, 12 August 2008, paragraph 81]

Article 33
Provisions concerning Austria and Gibraltar

1. [not reproduced]

2. This Framework Decision shall apply to Gibraltar.

Summary of relevant cases

Joined cases C-187/01 and C-385/01 **Gözütok & Brügge** (judgment of 11 February 2003)

Law

Articles 54 to 58 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19; hereinafter the CISA), signed on 19 June 1990 at Schengen, make up Chapter 3, Application of the ne bis in idem principle, of Title III, Police and Security. In particular, Article 54 provides as follows:

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.'

Facts

Mr Gözütok, a Turkish citizen resident in the Netherlands, was prosecuted there for unlawfully dealing in narcotics. Criminal proceedings against him were discontinued when he paid the sums stipulated in a settlement with the Netherlands Public Prosecutor's Office. Alerted by a bank which had noticed that large sums of money were passing through Mr Gözütok's account, the German police and prosecuting authorities arrested him and charged him on the same facts as those in respect of which he had been prosecuted in the Netherlands. A court in Aachen sentenced him to a term of imprisonment (a decision subsequently overturned on appeal).

Mr Brügge, a German national resident in Germany, was indicted before the Belgian courts for the assault and wounding in Belgium of a Belgian woman. Whilst the Bonn Public Prosecutor's Office was investigating the same facts, Mr Brügge was given a chance to put an end to the proceedings in Germany by paying a fine.

The questions in both these cases arose in criminal proceedings for offences committed by the two accused, even though prosecutions brought on the same facts in other Member States had been definitively discontinued following payment of a specific sum determined by the Public Prosecutor's Office.

Ratio decidendi

[30] […] where, following such a procedure, further prosecution is definitively barred, the person concerned must be regarded as someone whose case has been finally disposed of for the purposes of Article 54 of the CISA in relation to the acts which he is alleged to have committed. In addition, once the accused has complied with his obligations, the penalty entailed in the procedure whereby further prosecution is barred must be regarded as having been enforced for the purposes of Article 54.

[32] […] nowhere in Title VI of the Treaty on European Union relating to police and judicial cooperation in criminal matters (Articles 34 and 31 of which were stated to be the legal basis

for Articles 54 to 58 of the CISA), or in the Schengen Agreement or the CISA itself, is the application of Article 54 of the CISA made conditional upon harmonisation, or at the least approximation, of the criminal laws of the Member States relating to procedures whereby further prosecution is barred.

[33] In those circumstances, whether the *ne bis in idem* principle enshrined in Article 54 of the CISA is applied to procedures whereby further prosecution is barred (regardless of whether a court is involved) or to judicial decisions, there is a necessary implication that the Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied.

[38] Article 54 of the CISA, the objective of which is to ensure that no one is prosecuted on the same facts in several Member States on account of his having exercised his right to freedom of movement, cannot play a useful role in bringing about the full attainment of that objective unless it also applies to decisions definitively discontinuing prosecutions in a Member State, even where such decisions are adopted without the involvement of a court and do not take the form of a judicial decision.

[48] […] the *ne bis in idem* principle laid down in Article 54 of the CISA also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor in a Member State discontinues, without the involvement of a court, a prosecution brought in that State once the accused has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor.

Case C-105/03, **Pupino** (judgment of 16 June 2005)

Facts

In Italy evidence may be established early, at the preliminary enquiries stage, in respect of sexual offences where the victims are aged less than sixteen years. In such cases, the testimony given at that stage does not need to be repeated at the trial in order to acquire full evidential value. Those derogations are aimed at protecting the dignity, modesty and character of the witness, where the victim is a minor.

In criminal proceedings currently at the preliminary enquiries stage, a nursery school teacher is charged with a number of offences of abusing disciplinary procedures against a number of her pupils, who, at the time of the facts, were aged less than five years. She is accused of hitting them regularly, threatening to give them tranquillisers, putting sticking plasters over their mouths and preventing them from going to the toilet.

The Public Prosecutor's Office asked the judge in charge of preliminary enquiries to take the testimony of eight children, who were witnesses and victims, before the trial and in accordance with a special procedure, in accordance with arrangements to protect their dignity, privacy and tranquillity. The prosecution argued that evidence could not be delayed until the trial by reason of the extreme youth of the victims, inevitable changes in their psychological state and a possible process of psychological repression. The defendant argues

that that application does not fall under any of the scenarios envisaged by the Code of Criminal Procedure.

The Italian court hearing the dispute has asked the Court of Justice of the European Communities whether, in view of the Council Framework Decision on the standing of victims in criminal proceedings, a national court must have the ability to authorise young children, who claim to be victims of maltreatment, to give their testimony under appropriate protective arrangements, outside the trial and before it is held.

Ratio decidendi

[42] It would be difficult for the Union to carry out its task effectively if the principle of loyal cooperation, requiring in particular that Member States take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial cooperation in criminal matters, which is moreover entirely based on cooperation between the Member States and the institutions […]

[43] […] the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2)(b) EU.

[47] The obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law ceases when the latter cannot receive an application which would lead to a result compatible with that envisaged by that framework decision. In other words, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law contra legem. That principle does, however, require that, where necessary, the national court consider the whole of national law in order to assess how far it can be applied in such a way as not to produce a result contrary to that envisaged by the framework decision.

Case C-436/04 **Van Esbroeck** (judgment of 9 March 2006)

Law

Under Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19; 'the CISA'), signed on 19 June 1990 in Schengen (Luxembourg), which forms part of Chapter 3 ('Application of the ne bis in idem principle') of Title III ('Police and security'):

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.'

Under Article 36 of the United Nations' 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol ('the Single Convention'):

'Penal provisions

1. (a) Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty. […]

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(a)(i) Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence;'

Facts

Mr Van Esbroeck, a Belgian national, was sentenced, by judgment of 2 October 2000 of the Court of First Instance of Bergen (Norway), to five years' imprisonment for illegally importing, on 1 June 1999, narcotic drugs (amphetamines, cannabis, MDMA and diazepam) into Norway. After having served part of his sentence, Mr Van Esbroeck was released conditionally on 8 February 2002 and escorted back to Belgium.

On 27 November 2002, a prosecution was brought against Mr Van Esbroeck in Belgium, as a result of which he was sentenced, by judgment of 19 March 2003 of the Correctionele Rechtbank te Antwerpen (Antwerp Criminal Court, Belgium), to one year's imprisonment, in particular for illegally exporting the above listed products from Belgium on 31 May 1999. That judgment was upheld by judgment of 9 January 2004 of the Hof van Beroep te Antwerpen (Antwerp Court of Appeal). Both of those courts applied Article 36(2)(a) of the Single Convention, according to which each of the offences enumerated in that article, which include the import and export of narcotic drugs, are to be regarded as a distinct offence if committed in different countries.

Ratio decidendi

[27] […] the wording of Article 54 of the CISA, 'the same acts', shows that that provision refers only to the nature of the acts in dispute and not to their legal classification.

[29] […] as the Court found in Joined Cases C-187/01 and C-385/01 Gözütok and Brügge [2003] ECR I-1345, paragraph 32, nowhere in Title VI of the Treaty on European Union relating to police and judicial cooperation in criminal matters (Articles 34 and 31 of which were stated to be the legal basis for Articles 54 to 58 of the CISA), or in the Schengen Agreement or the CISA itself, is the application of Article 54 of the CISA made conditional upon harmonisation, or at the least approximation, of the criminal laws of the Member States.

[30] There is a necessary implication in the ne bis in idem principle, enshrined in that article, that the Contracting States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied (Gözütok and Brügge, paragraph 33).

[31] It follows that the possibility of divergent legal classifications of the same acts in two different Contracting States is no obstacle to the application of Article 54 of the CISA.

[32] For the same reasons, the criterion of the identity of the protected legal interest cannot be applicable since that criterion is likely to vary from one Contracting State to another.

[33] The above findings are further reinforced by the objective of Article 54 of the CISA, which is to ensure that no one is prosecuted for the same acts in several Contracting States on account of his having exercised his right to freedom of movement (Gözütok and Brügge, paragraph 38, and Case C-469/03 Miraglia [2005] ECR I-2009, paragraph 32).

[34] […] that right to freedom of movement is effectively guaranteed only if the perpetrator of an act knows that, once he has been found guilty and served his sentence, or, where applicable, been acquitted by a final judgment in a Member State, he may travel within the Schengen territory without fear of prosecution in another Member State on the basis that the legal system of that Member State treats the act concerned as a separate offence.

[35] Because there is no harmonisation of national criminal laws, a criterion based on the legal classification of the acts or on the protected legal interest might create as many barriers to freedom of movement within the Schengen territory as there are penal systems in the Contracting States.

[36] […] the only relevant criterion for the application of Article 54 of the CISA is identity of the material acts, understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together.

[42] […] Article 54 of the CISA must be interpreted as meaning that:

– the relevant criterion for the purposes of the application of that article of the CISA is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;

– punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the CISA are, in principle, to be regarded as ‘the same acts’ for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.

Case C-150/05, **Van Straaten** (judgment of 28 September 2006)

Facts

Mr Van Straaten was prosecuted in the Netherlands for (i) importing a quantity of approximately 5 500 grams of heroin from Italy into the Netherlands on or about 26 March 1983, (ii) having a quantity of approximately 1 000 grams of heroin at his disposal in the Netherlands during or around the period from 27 to 30 March 1983 and (iii) possessing firearms and ammunition in the Netherlands in March 1983. By judgment of 23 June 1983, the Rechtbank 's-Hertogenbosch ('s-Hertogenbosch District Court, Netherlands) acquitted Mr Van Straaten on the charge of importing heroin, finding it not to have been legally and satisfactorily proved, and convicted him on the other two charges, sentencing him to a term of imprisonment of 20 months.

In Italy, Mr Van Straaten was prosecuted for possessing on or about 27 March 1983, and exporting to the Netherlands on several occasions, a significant quantity of heroin, totalling approximately 5 kilograms. By judgment delivered *in absentia* on 22 November 1999 by the Tribunale ordinario di Milano (District Court, Milan, Italy), Mr Van Straaten was, upon conviction on the charges, sentenced to a term of imprisonment of 10 years, fined ITL 50 000 000 and ordered to pay the costs.

Mr Van Straaten brought an action before a Dutch court against the Italian Republic claiming that, by virtue of Article 54 of the CISA, he should not have been prosecuted by or on behalf of the Italian State and that all acts connected with that prosecution were unlawful. According to the Italian Republic, no decision was given on Mr Van Straaten's guilt by the judgment of 23 June 1983, in so far as it concerns the charge of importing heroin, since he was acquitted on that charge. Mr Van Straaten's trial had not been disposed of, within the meaning of Article 54 of the CISA, as regards that charge.

Ratio decidendi

[41] The Court held in Case C-436/04 Van Esbroeck [2006] ECR I-2333, at paragraph 27, that the wording of Article 54 of the CISA, 'the same acts', shows that that provision refers only to the nature of the acts in dispute and not to their legal classification.

[46] That right to freedom of movement is effectively guaranteed only if the perpetrator of an act knows that, once he has been found guilty and served his sentence, or, where applicable, been acquitted by a final judgment in a Contracting State, he may travel within the Schengen area without fear of prosecution in another Contracting State on the basis that the legal system of that Member State treats the act concerned as a separate offence (see Van Esbroeck, paragraph 34).

[47] Because there is no harmonisation of national criminal law, a criterion based on the legal classification of the acts or on the legal interest protected might create as many barriers to freedom of movement within the Schengen area as there are penal systems in the Contracting States (Van Esbroeck, paragraph 35).

[48] In those circumstances, the only relevant criterion for the application of Article 54 of the CISA is identity of the material acts, understood as the existence of a set of concrete circumstances which are inextricably linked together (Van Esbroeck, paragraph 36).

[61] […] the *ne bis in idem* principle, enshrined in Article 54 of the CISA, falls to be applied in respect of a decision of the judicial authorities of a Contracting State by which the accused is acquitted finally for lack of evidence.

Case C-303/05 **Advocaten voor de Wereld** (judgment of 3 May 2007)

Facts

In 2004 the association 'Advocaten voor de Wereld' brought an action before the Arbitragehof (Court of Arbitration) (Belgium) in which it sought the annulment, in whole or in part, of the Belgian Law transposing the provisions of the Framework Decision into national law. The Arbitragehof referred for a preliminary ruling to the ECJ several questions concerning the validity of the Framework Decision.

First, 'Advocaten voor de Wereld' submits that the subject-matter of the EAW ought to have been regulated by means of a convention.

Second, 'Advocaten voor de Wereld' contends that the removal of verification of double criminality for certain offences mentioned in the Framework Decision is contrary to the principle of legality in criminal matters. This principle implies that legislation must define clearly offences and the penalties which they attract. That condition is satisfied where the individual concerned is in a position to know which acts or omissions render him criminally liable.

Third, 'Advocaten voor de Wereld' submits, the principle of equality and non-discrimination is infringed by the Framework Decision inasmuch as, for offences other than those which it covers, surrender may be made subject to the condition that the facts in respect of which the EAW was issued constitute an offence under the law of the Member State of execution. That distinction, it argues, is not objectively justified. The removal of verification of double criminality, it continues, is all the more open to question as the Framework Decision contains no detailed definition of the facts in respect of which surrender may be requested.

Ratio decidendi

[28] 'As is clear in particular from Article 1(1) and (2) of the Framework Decision and recitals (5), (6), (7) and (11) in its preamble, the purpose of the Framework Decision is to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings based on the principle of mutual recognition.'

While the Court accepts that the EAW could equally have been the subject of a convention, the Court takes the view that it is within the Council's discretion to give preference to the legal instrument of the framework decision in the case where, as in the present, the conditions governing the adoption of such a measure are satisfied.

As to the removal of double criminality in case of listed offences, the Court finds that the Framework Decision does not seek to harmonise the criminal offences in question in respect of their constituent elements or of the penalties which they attract. Consequently, while it dispenses with verification of double criminality for certain categories of offences, the definition of those offences and of the penalties applicable continues to be determined by the law of the issuing Member State, which must respect fundamental rights and fundamental legal principles, including the principle of the legality of criminal offences and penalties. It follows that the removal of verification of double criminality for certain offences is in conformity with the principle of legality.

As to the principle of equality, the Court points out that, with regard, first, to the choice of the 32 categories of offences listed in the Framework Decision, the Council was able to form the view, on the basis of the principle of mutual recognition and in the light of the high degree of trust and solidarity between the Member States, that, whether by reason of their inherent nature or by reason of the punishment incurred of a maximum of at least three years, the categories of offences in question feature among those the seriousness of which in terms of adversely affecting public order and public safety justifies dispensing with the verification of double criminality.

With regard, second, to the fact that the lack of precision in the definition of the categories of offences in question risks giving rise to disparate implementation of the Framework Decision within the various national legal orders, it is sufficient to point out that it is not the objective of the Framework Decision to harmonise the substantive criminal law of the Member States.

The Court concludes that the examination of the questions submitted has revealed no factor capable of affecting the validity of the Framework Decision.

Case C-66/08 **Kozłowski** (judgment of 17 July 2008)

Facts

By judgment of 28 May 2002 of the Sąd Rejonowy w Tucholi (Local Court of Tuchola, Poland), Mr Kozłowski was sentenced to five months' imprisonment for destruction of another person's property. The sentence imposed by that judgment has become final, but has not yet been executed.

Mr Kozłowski is single and childless. He has little or even no command of the German language. He grew up, then worked, in Poland until the end of 2003. Thereafter, for approximately one year, he drew unemployment benefit in that Member State. From February 2005 until 10 May 2006, the date of his arrest in Germany, he lived predominantly in Germany. That stay was interrupted during the 2005 Christmas holidays, and possibly even in the month of June 2005 and the months of February and March 2006. He worked occasionally on building sites but earned his living essentially by committing crimes.

Since 10 May 2006, Mr Kozłowski has been imprisoned in Stuttgart (Germany), where he is serving a custodial sentence of three years and six months, to which he was sentenced by two judgments of the Amtsgericht Stuttgart, dated 27 July 2006 and 25 January 2007, in respect of 61 fraud offences committed in Germany.

The Polish issuing judicial authority requested the German executing judicial authority, by a EAW issued on 18 April 2007, to surrender Mr Kozłowski for the purposes of execution of the sentence of imprisonment of five months imposed on him by the Sąd Rejonowy w Tucholi. On 5 June 2007, Mr Kozłowski was heard on the matter by the Amtsgericht Stuttgart. He did not consent to his surrender to the Polish issuing judicial authority.

On 18 June 2007, the German executing judicial authority informed Mr Kozłowski that it did not intend to raise any ground for non-execution. According to that authority, there is no ground for non-execution, in particular Mr Kozłowski does not have his habitual residence in Germany. His successive periods of presence on German territory were characterised by the commission of several crimes, without any lawful activity. Consequently, since it considered that it was not necessary to initiate enquiries in order to discover where, with whom and why Mr Kozłowski was staying in Germany, the executing judicial authority requested the Oberlandesgericht Stuttgart to authorise the execution of the EAW.

Ratio decidendi

[31] '[…] it should be recalled that the objective of the Framework Decision, as made clear in particular by Article 1(1) and (2) and by recitals 5 and 7 in its preamble, is to replace the multilateral system of extradition between Member States by a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, that system of surrender being based on the principle of mutual recognition (see C-303/05 Advocaten voor de Wereld [2007] ECR I-3633, paragraph 28).'

[33] 'In that regard, Article 4(6) of the Framework Decision sets out a ground for optional non-execution of the European arrest warrant pursuant to which the executing judicial authority may refuse to execute such a warrant issued for the purposes of execution of a sentence where the requested person 'is staying in, or is a national or a resident of, the executing Member State', and that State undertakes to execute that sentence in accordance with its domestic law.'

[34] 'Thus, according to Article 4(6) of the Framework Decision, the scope of that ground for optional non-execution is limited to persons who, if not nationals of the executing Member State, are 'staying' or 'resident' there. However, the meaning and scope of those two terms are not defined in the Framework Decision.'

[41] '[…] with regard to the interpretation of the terms 'staying' and 'resident', it should be pointed out that […] the definition of those two terms cannot be left to the assessment of each Member State.'

[42] 'It follows from the need for uniform application of Community law and from the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Union, having regard to the context of the provision and the objective pursued by the legislation in question (see, by analogy, Case C-195/06 Österreichischer Rundfunk [2007] ECR I-8817, paragraph 24 and case-law cited).'

[45] '[…] the ground for optional non-execution stated in Article 4(6) of the Framework Decision has in particular the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him expires.'

[49] 'Since it is for the executing judicial authority to make an overall assessment in order to determine, initially, whether the person concerned falls within Article 4(6) of the Framework Decision, a single factor characterising the person concerned cannot, in principle, have a conclusive effect of itself.'

[54] 'Having regard to all of the foregoing considerations, the answer to the first question must be that Article 4(6) of the Framework Decision is to be interpreted as meaning that:
– a requested person is 'resident' in the executing Member State when he has established his actual place of residence there and he is 'staying' there when, following a stable period of presence in that State, he has acquired connections with that State which are of a similar degree to those resulting from residence;
– in order to ascertain whether there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term 'staying' within the meaning of Article 4(6), it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State.'

Case C-296/08 PPU, **Santesteban Goicoechea** (judgment of 12 August 2008)

Law

The European Convention on Extradition was signed at Paris on 13 December 1957. Article 10 of the convention, 'Lapse of time', provides: 'Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment.'

The Convention relating to extradition between the Member States of the European Union, known as the Dublin Convention, was drawn up on the basis of Article K.3 of the Treaty on European Union by Council Act of 27 September 1996 and signed on that date by all the Member States (OJ 1996 C 313, p. 11, 'the 1996 Convention'). Article 8(1) of the 1996 Convention reads as follows: 'Extradition may not be refused on the ground that the prosecution or punishment of the person would be statute-barred according to the law of the requested Member State.'

Facts

On 11 October 2000 the Spanish Government, on the basis of the European Convention on Extradition of 13 December 1957, requested the extradition of Mr Santesteban Goicoechea for offences allegedly committed on Spanish territory in February and March 1992, described as the storing of weapons, the illegal possession of explosives, the offence of unlawful use of a motor vehicle belonging to another, the offence of changing car registration plates, and the offence of belonging to a terrorist organisation. That request was the subject of an unfavourable opinion of the Chambre de l'instruction (Indictment Division) of the Cour

d'appel de Versailles (Court of Appeal, Versailles), by judgment of 19 June 2001, on the ground that the offences for which extradition was sought were statute-barred under French law.

On 31 March 2004 a EAW referring to the same acts as the extradition request of 11 October 2000 was issued by the Spanish judicial authorities against Mr Santesteban Goicoechea. The French Government did not enforce the EAW. In view of the date of the acts and the statement made pursuant to Article 32 of the Framework Decision, the EAW could be regarded only as a mere request for a provisional arrest, to be dealt with under the system of extradition applicable before 1 January 2004, that is, the European Convention on Extradition of 13 December 1957. However, the offences were statute-barred under French law. In any event, Mr Santesteban Goicoechea was serving a sentence of imprisonment in France, so that no surrender to the requesting Member State could have been carried out until after that sentence had been served.

Mr Santesteban Goicoechea was to be released on 6 June 2008. Since the impossibility of making use of a EAW warrant in view of the date of the acts and the statement made pursuant to Article 32 of the Framework Decision had been pointed out by the French judicial authorities, a request for provisional arrest was made on 27 May 2008 by the Juzgado Central de Instrucción (Central Court of Investigation) of the Audiencia Nacional (National High Court, Spain) in respect of the same acts, with a view to a request for extradition based on the 1996 Convention. On 28 May 2008 Mr Santesteban Goicoechea was detained for the purpose of extradition by the Procureur de la République (Public Prosecutor).

On 2 June 2008 the Spanish authorities requested the extradition of Mr Santesteban Goicoechea under the 1996 Convention. The Procureur Général (Principal Public Prosecutor) asked the Chambre de l'instruction of the Cour d'appel de Montpellier to issue a favourable opinion on the Spanish authorities' request. Mr Santesteban Goicoechea refused to be surrendered to the Spanish authorities, taking the view in particular that Spain cannot make use of the provisions of the 1996 Convention.

Ratio decidendi

[63] 'Article 31 of the Framework Decision must be interpreted as referring only to the situation in which the European arrest warrant system is applicable, which is not the case where a request for extradition relates to acts committed before a date specified by a Member State in a statement made pursuant to Article 32 of the Framework Decision.'

[81] 'Article 32 of the Framework Decision must be interpreted as not precluding the application by an executing Member State of the 1996 Convention, even where that convention became applicable in that Member State only after 1 January 2004.'

Case C-388/08 PPU **Leymann & Pustovarov** (judgment of 1 December 2008)

Facts

Mr Leymann and Mr Pustovarov were suspected of illegally importing drugs into Finland with a view to selling them. The Finnish authorities sent a EAW to the Polish authorities in the case of Mr Leymann and the Spanish authorities in the case of Mr Pustovarov. The EAWs

stated that they were suspected of committing a serious drug trafficking offence, between 1 January 2005 and 31 March 2006 in the case of Mr Leymann and between 19 and 25 February 2006 in the case of Mr Pustovarov. According to the arrest warrants, the offence related to a large quantity of amphetamines. The arrest warrant for Mr Pustovarov also mentioned two separate offences.

Mr Leymann and Mr Pustovarov were surrendered to the Finnish authorities on the basis of those EAWs and were remanded in custody.

Some months later, the indictment against Mr Leymann and Mr Pustovarov stated that the serious drug trafficking offence concerned not amphetamines but hashish and had been committed between 15 and 26 February 2006. A EAW with those alterations was sent to the Spanish authorities, but they did not give their consent until much later. Mr Leymann and Mr Pustovarov were meanwhile both convicted at first instance and sentenced to imprisonment for that offence and, in the case of Mr Pustovarov, also for the two separate offences.

Before the appeal court and then the Korkein oikeus (Supreme Court) Mr Leymann and Mr Pustovarov argued that they had been convicted for an offence other than that for which they had been surrendered, contrary to Article 27(2), the 'specialty rule' in the Framework Decision. The Supreme Court found it necessary to put questions to the Court of Justice on the scope of that rule and of one of the exceptions to it.

Ratio decidendi

[51] 'The principle of mutual recognition, which underpins the Framework Decision, also means that, in accordance with Article 1(2) of the Framework Decision, the Member States are in principle obliged to act upon a European arrest warrant. They must or may refuse to execute a warrant only in the cases listed in Articles 3 and 4.'

[52] 'In order to decide on surrender of the person requested for the purposes of prosecution of an offence defined by the national law applicable in the issuing Member State, the judicial authority of the executing Member State, acting on the basis of Article 2 of the Framework Decision, will examine the description of the offence in the European arrest warrant. That description must, in accordance with the form in the annex to the Framework Decision, contain the information referred to in Article 8 of the Framework Decision, that is, inter alia, the nature and legal classification of the offence, a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person, and the prescribed scale of penalties for the offence.'

[59] '[…] 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 the Framework Decision, requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4), 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.'

[63] '[…] 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 the Framework Decision.'

[76] '[…] the exception in Article 27(3)(c) of the Framework Decision 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.'

Case C-491/07, **Turanský** (judgment of 22 December 2008)

Law

Title III of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19), signed in Schengen (Luxembourg) on 19 June 1990 ('the CISA') ('Police and Security') contains a Chapter 3 ('Application of the *ne bis in idem* principle'). According to Article 54 of Chapter 3:

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.'

Article 21(1) and (2) of the European Convention on Mutual Assistance in Criminal Matters (ETS No 30), signed at Strasbourg on 20 April 1959, concerning the laying of information in connection with proceedings, provides:

'1. Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice …

2. The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.'

Facts

Mr Turanský, Slovak national, is suspected of having carried out, along with others, a serious robbery on an Austrian national in the territory of the Republic of Austria. On 23 November

2000, the Staatsanwaltschaft Wien (Public Prosecutor in Vienna) requested the investigating judge to open a preliminary investigation concerning Mr Turanský and to issue an arrest warrant and an alert for his arrest. On 15 April 2003, having been informed that Mr Turanský could be found in his country of origin, Austria, in accordance with Article 21 of the European Convention on Mutual Assistance in Criminal Matters, requested the Slovak Republic to reopen proceedings against him. Since the Slovak authorities approved that request, the Austrian investigating judge stayed the criminal proceedings pending the final decision of those authorities.

On 26 July 2004, the police officer in Prievidza (Slovakia) in charge of the investigation opened criminal proceedings into the reported acts without however at the same time charging a specific person. In the course of that investigation, Mr Turanský was heard as a witness. By letter of 20 December 2006, the Prosecutor General of the Slovak Republic notified the Austrian authorities of a decision of the Prievidza District Police Headquarters of 14 September 2006, ordering the suspension of the criminal proceedings relating to the alleged robbery, 'since the act does not constitute a crime and there is no reason to continue the case.'

The Landesgericht für Strafsachen in Vienna has doubts whether the decision to suspend the criminal proceedings, taken by a Slovak police authority in an investigation into the same acts as those on which the proceedings pending before it are based, can give rise to the application of Article 54 of the CISA and, therefore, preclude the continuation of the pending proceedings.

Ratio decidendi

[32] With regard to the concept of 'finally disposed of', the Court has already declared, first, in paragraph 30 of Joined Cases C-187/01 and C-385/01 Gözütok and Brügge [2003] ECR I-1345 that when, following criminal proceedings, further prosecution is definitively barred, the person concerned must be regarded as someone whose trial has been 'finally disposed of' for the purposes of Article 54 of the CISA in relation to the acts which he is alleged to have committed.

[33] Second, it has held in paragraph 61 of Case C-150/05 Van Straaten [2006] ECR I-9327, that Article 54 of the CISA applies to a decision of the judicial authorities of a Contracting State by which the accused is finally acquitted for lack of evidence.

[40] […] a decision of a police authority such as that in question in the main proceedings which, while suspending the criminal proceedings, does not under the national law concerned definitively bring the prosecution to an end, cannot constitute a decision which would make it possible to conclude that the trial of that person has been 'finally disposed of' within the meaning of Article 54 of the CISA.

[41] That interpretation of Article 54 of the CISA is compatible with the objective of the article, which is to ensure that a person whose trial has been finally disposed of is not prosecuted for the same acts in the territory of several Contracting States on account of his having exercised his right to freedom of movement (see, to that effect, Gözütok and Brügge, paragraph 38).

[44] It should be added that, while the goal of Article 54 of the CISA is to ensure that a person, once he has been found guilty and served his sentence, or, where applicable, been acquitted by a final judgment in a Member State, may travel within the Schengen territory without fear of being prosecuted for the same acts in another contracting State (see, to that effect, Case C-436/04 Van Esbroeck [2006] ECR I-2333, paragraph 34), it is not intended to protect the suspect from having to submit to possible subsequent investigations, in respect of the same acts, in several Contracting States.

[45] […] the *ne bis in idem* principle enshrined in Article 54 of the CISA does not fall to be applied to a decision by which an authority of a Contracting State, after examining the merits of the case brought before it, makes an order, at a stage before the charging of a person suspected of a crime, suspending the criminal proceedings, where the suspension decision does not, under the national law of that State, definitively bar further prosecution and therefore does not preclude new criminal proceedings, in respect of the same acts, in that State.

Case C-123/08 **Wolzenburg** (judgment of 6 October 2009)

The Court was asked to give a ruling on the issue of the compatibility with European Union law of national legislation providing for differential treatment of nationals of one Member State and those from other Member States in relation to the refusal to execute a EAW.

Law

The Netherlands legislation implementing the Framework Decision provides that the surrender of a Netherlands national for the purposes of execution of a custodial sentence imposed by final judicial decision will be refused. However, for nationals of other Member States, such a refusal is subject to the condition that they have lawfully resided in the Netherlands for a continuous period of five years and that they are in possession of a residence permit of indefinite duration.

Facts

By judgments delivered in 2002, two German courts handed down two suspended custodial sentences to Mr Wolzenburg for a number of offences committed during 2001, in particular the importation of marijuana into Germany. By a judgment of 27 March 2003, the Amtsgericht Aachen (Germany) converted those suspended sentences into one combined suspended sentence (‘Gesamtstrafenbeschluss’) of one year and nine months.

Mr Wolzenburg entered the Netherlands at the beginning of June 2005. He resides there in an apartment in Venlo, under a letting agreement concluded in his name and in that of his wife. On 20 September 2006 Mr Wolzenburg reported to the Netherlands Immigration and Naturalisation Department to register in the Netherlands as a citizen of the Union. Before beginning an apprenticeship in September 2008, Mr Wolzenburg had been employed in the Netherlands from the last trimester of 2005.

By an order of 5 July 2005, the Amtsgericht Plettenberg (Germany) revoked the conditional suspension granted in 2003 in respect of the combined sentence on the ground that Mr Wolzenburg had infringed the conditions under which he benefited from that suspension. On 13 July 2006 the German issuing judicial authority issued a EAW against Mr Wolzenburg. On 17 July 2006 that authority issued an alert in the Schengen Information System (SIS) in respect of Mr Wolzenburg with a view to the enforcement of the final custodial sentence.

On 1 August 2006 Mr Wolzenburg was arrested and provisionally detained in the Netherlands on the basis of that alert. On 3 August 2006 the German issuing judicial authority forwarded the EAW, issued on 13 July 2006, to the Netherlands judicial authority, requesting the surrender of Mr Wolzenburg for the purpose of enforcing the sentence of one year and nine months imposed on him. Mr Wolzenburg did not consent to his surrender by the Netherlands judicial authority to the German issuing judicial authority. The facts behind the issue of the EAW against Mr Wolzenburg are punishable under Netherlands law; he could not lose his right to residence in the Netherlands as a result of offences for which he had been sentenced in Germany.

Mr Wolzenburg did not meet the conditions for grant of a residence permit of indefinite duration for the Netherlands since he had not yet resided in the Netherlands for a continuous period of five years. Citizens of the Union who reside lawfully in a Member State by virtue of Community law do not always choose to apply for such a permit.

Ratio decidendi

The Court began by noting that the first paragraph of Article 12 EC is applicable since the Member States cannot, in the context of the implementation of a framework decision adopted on the basis of the EU Treaty, infringe Community law, in particular the provisions of the EC Treaty relating to the freedom accorded to every citizen of the Union to move and reside freely within the territory of the Member States.

[53] 'Article 4(6) of Framework Decision 2002/584 is to be interpreted as meaning that, in the case of a citizen of the Union, the Member State of execution cannot, in addition to a condition as to the duration of residence in that State, make application of the ground for optional non-execution of a European arrest warrant laid down in that provision subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration.'

[56] 'It is clear, in particular, from Article 1(1) and (2) of the Framework Decision and from recitals 5 and 11 in the preamble thereto that the purpose of the decision is to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, that system of surrender being based on the principle of mutual recognition (Case C-66/08 Kozłowski [2008] ECR I 6041, paragraph 31).'

[57] 'The principle of mutual recognition, which underpins Framework Decision 2002/584, means that, in accordance with Article 1(2) thereof, the Member States are in principle obliged to act upon a European arrest warrant. Apart from the cases of mandatory non-execution laid down in Article 3 of the Framework Decision, the Member States may refuse to execute such a warrant only in the cases listed in Article 4 thereof (Case C-388/08 PPU Leymann and Pustovarov [2008] ECR I-8993, paragraph 51).'

[58] ‘It follows that a national legislature which, by virtue of the options afforded it by Article 4 of the Framework Decision, chooses to limit the situations in which its executing judicial authority may refuse to surrender a requested person merely reinforces the system of surrender introduced by that Framework Decision to the advantage of an area of freedom, security and justice.’

[59] ‘Indeed, by limiting the situations in which the executing judicial authority may refuse to execute a European arrest warrant, such legislation only facilitates the surrender of requested persons, in accordance with the principle of mutual recognition set out in Article 1(2) of Framework Decision 2002/584, which constitutes the essential rule introduced by that decision.’

[60] ‘In the light of that essential rule, Article 4 of the Framework Decision sets out the grounds for optional non-execution of a European arrest warrant, on the basis of which the competent authority in the Member State of execution may justify its refusal to execute such a warrant.’

[61] ‘When implementing Article 4 of Framework Decision 2004/584 and in particular paragraph 6 thereof, referred to in the decision for reference, the Member States have, of necessity, a certain margin of discretion.’

[62] ‘In that regard, it must be emphasised that, although the ground for optional non-execution set out in Article 4(6) of the Framework Decision has, just like Article 5(3) thereof, in particular the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person’s chances of reintegrating into society when the sentence imposed on him expires (Kozłowski, paragraph 45), such an objective, while important, cannot prevent the Member States, when implementing that Framework Decision, from limiting, in a manner consistent with the essential rule stated in Article 1(2) thereof, the situations in which it is possible to refuse to surrender a person who falls within the scope of Article 4(6) thereof.’

[67] ‘It is necessary to point out, as has already been stated in paragraph 62 of the present judgment, that the ground for optional non-execution set out in Article 4(6) of Framework Decision 2002/584 has in particular the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person’s chances of reintegrating into society when the sentence imposed on him expires. The Member State of execution is therefore entitled to pursue such an objective only in respect of persons who have demonstrated a certain degree of integration in the society of that Member State.’

[76] ‘It must be borne in mind that, where a Member State has implemented Article 4(6) of that decision without, however, laying down specific conditions relating to the application of that provision, it is for the executing judicial authority to make an overall assessment in order to determine, initially, whether the person concerned falls within the scope of the provision. A single factor characterising the requested person, such as the length of time that person has resided in the Member State concerned, cannot, in principle, have a conclusive effect of itself (see, to that effect, Kozłowski, paragraph 49).’

The Court came to the conclusion that the principle of non-discrimination laid down in Article 12 EC does not preclude legislation of a Member State of execution under which the

competent judicial authority of that State is to refuse to execute a European arrest warrant issued against one of its nationals with a view to the enforcement of a custodial sentence, whilst such a refusal is, in the case of a national of another Member State having a right of residence as a citizen of the Union, subject to the condition that that person has lawfully resided for a continuous period of five years in that Member State of execution. The Court justified that solution by stating that that condition, first, aims to ensure that nationals of another Member State are sufficiently integrated in the Member State of execution and, second, does not go beyond what is necessary to attain that objective.'

Case C-306/09 **I.B.** (judgment of 21 October 2010)

Facts

By judgment of 16 June 2000, the Tribunalul Bucureşti (Regional Court of Bucharest)

(Romania) ('the Romanian issuing judicial authority'), confirmed by the Curtea de apel Bucureşti (Court of Appeal, Bucharest) on 3 April 2001, sentenced I.B. to four years' imprisonment for the offence of trafficking in nuclear and radioactive substances. Those two courts had authorised I.B. to serve his sentence at his workplace rather than in custody. By decision of 15 January 2002, the Curtea Supremă de Justiție (Supreme Court of Justice) (Romania), ruling in absentia, and without I.B. having been informed in person of the date or place of the hearing, quashed the earlier judgments in so far as they authorised I.B. to serve his four-year prison sentence at his workplace, and ordered that it be served in custody.

In February 2002, I.B. decided to go to Belgium. His wife and two children then joined him as from October 2002.

On 11 December 2007, I.B. was taken into custody in Belgium, following the entry by the Romanian authorities, on 10 February 2006, of an alert in the Schengen Information System (SIS) seeking his arrest and surrender to those authorities for the purposes of execution of the custodial sentence that had been imposed on him. Considering that that alert was equivalent to a EAW, the Belgian Public Prosecutor referred the case to the investigating judge who decided, by order of 12 December 2007, to release I.B. conditionally pending a final decision

on his surrender. On 13 December 2007, the Tribunalul Bucureşti issued a EAW in respect of

I.B. for the purposes of executing the sentence of four years' imprisonment passed against him in Romania. On 29 February 2008, the Public Prosecutor requested the Tribunal de première instance de Nivelles (Court of First Instance, Nivelles) (Belgium) ('the executing judicial authority') to rule that the EAW issued by the Romanian issuing judicial authority was enforceable. By order of 22 July 2008, the Tribunal de première instance de Nivelles, when checking the conditions with which the EAW must comply before it can be executed, held that it fulfilled all the conditions laid down by Belgian national law. In particular, it considered that there was no valid ground for believing that the execution of the EAW would

have the effect of infringing I.B.'s fundamental rights. In that regard, that court observes that, while the EAW concerns the execution of a judicial decision rendered in absentia, the Romanian issuing judicial authority has nevertheless given certain assurances, since the EAW refers to the fact that, under the Romanian Code of Criminal Procedure, the case may, on application by the person sentenced in absentia, be retried by the court which heard the case at first instance.

Ratio decidendi

[50] 'While the system established by Framework Decision 2002/584 is based on the principle of mutual recognition, that recognition does not [...] mean that there is an absolute obligation to execute the arrest warrant that has been issued.'

[51] 'The system established by the framework decision [...] makes it possible for the Member States to allow the competent judicial authorities, in specific situations, to decide that a sentence must be executed on the territory of the executing Member State.'

[52] 'That is the case, in particular, under Articles 4(6) and 5(3) of Framework Decision 2002/584. For both types of European arrest warrant envisaged by the framework decision, those provisions have, in particular, the objective of enabling particular weight to be given to the possibility of increasing the requested person's chances of reintegrating into society (see, in particular, Case C-123/08 Wolzenburg [2009] ECR I-9621, paragraph 62).'

[61] 'Article 4(6) and 5(3) of Framework Decision 2002/584 must be interpreted as meaning that, where the executing Member State has implemented Article 5(1) and Article 5(3) of that framework decision in its domestic legal system, the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed in absentia within the meaning of Article 5(1) of the framework decision, may be subject to the condition that the person concerned, who is a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State.'

Case C-261/09 **Mantello** (judgment of 16 November 2010)

Facts

In 2005 Mr Gaetano Mantello was convicted by the Tribunale di Catania (Catania District Court, Italy) of unlawful possession of cocaine intended for onward sale. He subsequently served a prison sentence of 10 months and 20 days.

In 2008, that court issued a European arrest warrant in respect of Mr Mantello, alleging that between 2004 and 2005 he had participated in organised drug trafficking in a number of Italian towns and in Germany.

Having become aware, towards the end of 2008, of the arrest warrant on the Schengen Information System (SIS), the German authorities had Mr Mantello arrested. The Tribunale di Catania — in its capacity as the judicial authority which issued the arrest warrant —

informed the Oberlandesgericht (Higher Regional Court) Stuttgart that the judgment delivered in 2005 was not a bar to executing the warrant.

The Oberlandesgericht nevertheless made a reference to the Court of Justice, asking whether it may oppose execution of the arrest warrant in application of the ne bis in idem principle, since, at the time of the investigation which led to Mr Mantello's conviction for possession of cocaine, the Italian investigators already had enough evidence to prosecute him for participating in the organised trafficking of narcotic drugs. In the interests of their investigation, the investigators did not pass on to the investigating judge all the information and evidence in their possession and did not, at that time, request the prosecution of those acts.

Ratio decidendi

[35] '[…] as is apparent in particular from Article 1(1) and (2) of the Framework Decision and from recitals 5 and 7 in the preamble thereto, the purpose of the Framework Decision is to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, that system of surrender being based on the principle of mutual recognition (Case C-123/08 Wolzenburg [2009] ECR I-9621, paragraph 56).'

[36] 'The principle of mutual recognition, which underpins the Framework Decision, means that, in accordance with Article 1(2) of the Framework Decision, the Member States are in principle obliged to act upon a European arrest warrant (Case C-388/08 PPU Leymann and Pustovarov [2008] ECR I-8983, paragraph 51).'

[37] 'The Member States may refuse to execute such a warrant only in the cases of mandatory non-execution laid down in Article 3 of the Framework Decision or in the cases listed in Article 4 thereof (see, to that effect, Leymann and Pustarov, paragraph 51).'

[38] 'In that regard, the concept of 'same acts' in Article 3(2) of the Framework Decision cannot be left to the discretion of the judicial authorities of each Member State on the basis of their national law. It follows from the need for uniform application of European Union law that, since that provision makes no reference to the law of the Member States with regard to that concept, the latter must be given an autonomous and uniform interpretation throughout the European Union (see, by analogy, Case C-66/08 Kozłowski [2008] ECR I-6041, paragraphs 41 and 42). It is therefore an autonomous concept of European Union law which, as such, may be the subject of a reference for a preliminary ruling by any court before which a relevant action has been brought, under the conditions laid down in Title VII of Protocol No 36 to the Treaty on the Functioning of the European Union on transitional provisions.'

[39] 'It should be recalled that that concept of the 'same acts' also appears in Article 54 of the CISA. In that context, the concept has been interpreted as referring only to the nature of the acts, encompassing a set of concrete circumstances which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected (see Case C-436/04 Van Esbroeck [2006] ECR I-2333, paragraphs 27, 32 and 36, and Case C-150/05 Van Straaten [2006] ECR I-9327, paragraphs 41, 47 and 48).'

[40] ‘In view of the shared objective of Article 54 of the CISA and Article 3(2) of the Framework Decision, which is to ensure that a person is not prosecuted or tried more than once in respect of the same acts, it must be accepted that an interpretation of that concept given in the context of the CISA is equally valid for the purposes of the Framework Decision.’

[45] ‘[…] a requested person is considered to have been finally judged in respect of the same acts within the meaning of Article 3(2) of the Framework Decision where, following criminal proceedings, further prosecution is definitively barred (see, by analogy, Joined Cases C-187/01 and C-385/01 Gözütok and Brügge [2003] ECR I-1345, paragraph 30, and Case C-491/07 Turanský [2008] ECR I-11039, paragraph 32) or where the judicial authorities of a Member State have adopted a decision by which the accused is finally acquitted in respect of the alleged acts (see, by analogy, Van Straaten, paragraph 61, and Turanský, paragraph 33).’

[46] ‘Whether a person has been ‘finally’ judged for the purposes of Article 3(2) of the Framework Decision is determined by the law of the Member State in which judgment was delivered.’

[51] ‘For the purposes of the issue and execution of a European arrest warrant, the concept of ‘same acts’ in Article 3(2) of the Framework Decision constitutes an autonomous concept of European Union law. In circumstances such as those at issue in the main proceedings where, in response to a request for information within the meaning of Article 15(2) of that Framework Decision made by the executing judicial authority, the issuing judicial authority, applying its national law and in compliance with the requirements deriving from the concept of ‘same acts’ as enshrined in Article 3(2) of the Framework Decision, expressly stated that the earlier judgment delivered under its legal system did not constitute a final judgment covering the acts referred to in the arrest warrant issued by it and therefore did not preclude the criminal proceedings referred to in that arrest warrant, the executing judicial authority has no reason to apply, in connection with such a judgment, the ground for mandatory non-execution provided for in Article 3(2) of the Framework Decision.’

The urgent preliminary ruling procedure

The Court introduced a new urgent preliminary ruling procedure from 1 March 2008. Two cases concerning the interpretation of Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States gave rise to that procedure: Case C-296/08 PPU Santesteban Goicoechea (judgment of 12 August 2008) and Case C-388/08 PPU Leymann and Pustovarov (judgment of 1 December 2008).

INFORMATION NOTE
on references from national courts for a preliminary ruling
(2011/C 160/01)

Extract

II – The Urgent preliminary ruling procedure (PPU)

33. This part of the note provides practical information on the urgent preliminary ruling procedure applicable to references relating to the area of freedom, security and justice. The procedure is governed by Article 23a of Protocol (No 3) on the Statute of the Court of Justice of the European Union (OJEU 2008 C 115, p. 210) and Article 104b of the Rules of Procedure of the Court of Justice. National courts may request that this procedure be applied or request the application of the accelerated procedure under the conditions laid down in Article 23a of the Protocol and Article 104a of the Rules of Procedure.

Conditions for the application of the urgent preliminary ruling procedure

34. The urgent preliminary ruling procedure is applicable only in the areas covered by Title V of Part Three of the TFEU, which relates to the area of freedom, security and justice.

35. The Court of Justice decides whether this procedure is to be applied. Such a decision is generally taken only on a reasoned request from the referring court. Exceptionally, the Court may decide of its own motion to deal with a reference under the urgent preliminary ruling procedure, where that appears to be required.

36. The urgent preliminary ruling procedure simplifies the various stages of the proceedings before the Court, but its application entails significant constraints for the Court and for the parties and other interested persons participating in the procedure, particularly the Member States.

37. It should therefore be requested only where it is absolutely necessary for the Court to give its ruling on the reference as quickly as possible. Although it is not possible to provide an exhaustive list of such situations, particularly because of the varied and evolving nature of the rules of European Union law governing the area of freedom, security and justice, a national court or tribunal might, for example, consider submitting a request for the urgent preliminary ruling procedure to be applied in the following situations: in the case, referred to in the fourth paragraph of Article 267 TFEU, of a person in custody or deprived of his liberty,

where the answer to the question raised is decisive as to the assessment of that person's legal situation or, in proceedings concerning parental authority or custody of children, where the identity of the court having jurisdiction under European Union law depends on the answer to the question referred for a preliminary ruling.

The request for application of the urgent preliminary ruling procedure

38. To enable the Court to decide quickly whether the urgent preliminary ruling procedure should be applied, the request must set out the matters of fact and law which establish the urgency and, in particular, the risks involved in following the normal preliminary ruling procedure.

39. In so far as it is able to do so, the referring court should briefly state its view on the answer to be given to the question(s) referred. Such a statement makes it easier for the parties and other interested persons participating in the procedure to define their positions and facilitates the Court's decision, thereby contributing to the rapidity of the procedure.

40. The request for the urgent preliminary ruling procedure must be submitted in an unambiguous form that enables the Court Registry to establish immediately that the file must be dealt with in a particular way. Accordingly, the referring court is asked to couple its request with a mention of Article 104b of the Rules of Procedure and to include that mention in a clearly identifiable place in its reference (for example at the head of the page or in a separate judicial document). Where appropriate, a covering letter from the referring court can usefully refer to that request.

41. As regards the order for reference itself, it is particularly important that it should be succinct where the matter is urgent, as this will help to ensure the rapidity of the procedure.

Communication between the Court of Justice, the national court and the parties

42. As regards communication with the national court or tribunal and the parties before it, national courts or tribunals which submit a request for an urgent preliminary ruling procedure are requested to state the e-mail address or any fax number which may be used by the Court of Justice, together with the e-mail addresses or any fax numbers of the representatives of the parties to the proceedings.

43. A copy of the signed order for reference together with a request for the urgent preliminary ruling procedure can initially be sent to the Court by e-mail (ECJ-Registry@curia.europa.eu) or by fax (+352 43 37 66). Processing of the reference and of the request can then begin upon receipt of the e-mailed or faxed copy. The originals of those documents must, however, be sent to the Court Registry as soon as possible.

Useful links

Revised version of the European handbook on how to issue a European Arrest Warrant

http://www.statewatch.org/news/2011/jan/eu-council-revised-eaw-handbook-17195-rev1-10.pdf

The European Judicial Network

http://www.ejn-crimjust.europa.eu/ejn/EJN_StaticPage.aspx?Bread=12

Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision on the EAW, 11 April 2011

http://ec.europa.eu/justice/policies/criminal/extradition/docs/com_2011_175_en.pdf

Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

https://wcd.coe.int/ViewDoc.jsp?id=955747

Council of Europe anti-torture Committee's reports

http://www.cpt.coe.int/en/