ECLI:EU:C:2022:852

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

28 October 2022 (*)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – Charter of Fundamental Rights of the European Union – Article 50 – Convention implementing the Schengen Agreement – Article 54 – Principle ne bis in idem – Extradition agreement between the European Union and the United States of America – Extradition of a third-country national to the United States under a bilateral treaty concluded by a Member State – National who has been convicted by final judgment for the same acts and has served his sentence in full in another Member State)

In Case C-435/22 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht München (Higher Regional Court, Munich, Germany), made by decision of 21 June 2022, received at the Court on 1 July 2022, in the criminal proceedings against

HF,

intervening party:

Generalstaatsanwaltschaft München,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan, P.G. Xuereb, L.S. Rossi, D. Gratsias, M.L. Arastey Sahún (Rapporteur), Presidents of Chambers, S. Rodin, F. Biltgen, N. Piçarra, N. Wahl, I. Ziemele and J. Passer, Judges,

Advocate General: A.M. Collins,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 13 September 2022,

after considering the observations submitted on behalf of:

– HF, by S. Schomburg and M. Weber, Rechtsanwälte,

– the Generalstaatsanwaltschaft München, by F. Halabi, acting as Agent,

– the German Government, by J. Möller, P. Busche, M. Hellmann and U. Kühne, acting as Agents,

– the European Commission, by L. Baumgart and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 October 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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), signed in Schengen on 19 June 1990 and entered into force on 26 March 1995 ('the CISA'), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1), as well as of Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in the context of an extradition request made by the authorities of the United States of America to the authorities of the Federal Republic of Germany with a view to criminal proceedings against HF, a Serbian national.

Legal context

European Union law

The CISA

3 The CISA was concluded in order to ensure the application of the Agreement 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, signed in Schengen on 14 June 1985 (OJ 2000 L 239, p. 13).

4 Article 20 of the CISA, which is included in Chapter 4, entitled 'Conditions governing the movement of aliens', of Title II thereof, provides in paragraph 1:

'Aliens not subject to a visa requirement may move freely within the territories of the Contracting Parties for a maximum period of 90 days in any 180-day period, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e).'

5 Article 54 of the CISA, which is in Chapter 3, headed 'Application of the *ne bis in idem* principle', of Title III thereof, provides as follows:

'A person whose trial has been finally disposed of in one [c]ontracting [p]arty may not be prosecuted in another [c]ontracting [p]arty 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 [c]ontracting [p]arty.'

The Protocol integrating the Schengen acquis into the framework of the European Union

6 The CISA was integrated into EU law by the Protocol integrating the Schengen acquis into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty establishing the European Community by the treaty of Amsterdam (OJ 1997 C 340, p. 93), as part of 'the Schengen acquis', as defined in the annex to that protocol.

7 Under the second subparagraph of Article 2(1) of that protocol:

'The Council [of the European Union] … shall determine, in conformity with the relevant provisions of the Treaties, the legal basis for each of the provisions or decisions which constitute the Schengen acquis.'

8 Pursuant to that provision, on 20 May 1999 the Council adopted Decision 1999/436/EC determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis (OJ 1999 L 176, p. 17). It can be seen from Article 2 of that decision and from Annex A thereto that the Council designated Article 34 EU and Article 31 EU as the legal bases for Article 54 of the CISA.

The EU-USA Agreement

9 Article 1 of the Agreement on extradition between the European Union and the United States of America of 25 June 2003 (OJ 2003 L 181, p. 27; 'the EU-USA Agreement') reads as follows:

'The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation in the context of applicable extradition relations between the Member States and the United States of America governing extradition of offenders.'

10 Article 3 of the EU-USA Agreement, entitled 'Scope of application of this Agreement in relation to bilateral extradition treaties with Member States', provides the conditions and methods according to which the provisions in Articles 4 to 14 of that agreement replace or supplement the provisions of the bilateral extradition treaties concluded by the Member States with the United States.

11 Article 16 of that agreement, entitled 'Temporal application', provides:

'1. This Agreement shall apply to offences committed before as well as after its entry into force.

2. This Agreement shall apply to requests for extradition made after its entry into force. …'

12 Article 17 of that agreement, headed 'Non-derogation', states:

'1. This Agreement is without prejudice to the invocation by the requested State of grounds for refusal relating to a matter not governed by this Agreement that is available pursuant to a bilateral extradition treaty in force between a Member State and the United States of America.

2. Where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfilment of its obligation to extradite, and resolution of the matter is not provided for in this Agreement or the applicable bilateral treaty, consultations shall take place between the requested and requesting States.'

The Schengen Borders Code

13 The first subparagraph of Article 6(1) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1), as amended by Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 on the establishment of a European Information and Authorisation System in respect of travel (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ 2018 L 236, p. 1) ('the Schengen Borders Code'), provides:

'For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria:

(i) its validity shall extend at least three months after the intended date of departure from the territory of the Member States. In a justified case of emergency, this obligation may be waived;

(ii) it shall have been issued within the previous 10 years;

(b) they are in possession of a valid visa, if required pursuant to [Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2018 L 303, p. 39)] or a valid travel authorisation if required pursuant to [Regulation 2018/1240], except where they hold a valid residence permit or a valid long-stay visa;

…'

14 That provision replaced Article 5(1) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1), which itself replaced Article 5(1) of the CISA. Accordingly, Article 20(1) of the CISA must be understood as now referring to Article 6(1) of the Schengen Borders Code.

Regulation 2018/1806

15 Under Article 3(1) of Regulation 2018/1806:

'Nationals of third countries listed in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.'

16 Article 4(1) of that regulation is worded as follows:

‘Nationals of third countries listed in Annex II shall be exempt from the requirement set out in Article 3(1) for stays of no more than 90 days in any 180-day period.’

17 The Republic of Serbia is one of the third countries listed in Annex II.

German law

18 Article 1 of the Auslieferungsvertrag zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika (Extradition Treaty between the Federal Republic of Germany and the United States of America) of 20 June 1978 (BGBl. 1980 II, p. 647; ‘the Germany-USA Extradition Treaty’), headed ‘Obligation to extradite’, provides in paragraph 1:

‘The Contracting Parties agree to extradite to each other subject to the provisions described in this Treaty persons found in the territory of one of the Contracting Parties who have been charged with an offense or are wanted by the other Contracting Party for the enforcement of a judicially pronounced penalty or detention order for an offense committed within the territory of the Requesting State.’

19 Article 2 of that treaty, entitled ‘Extraditable offenses’, as amended by the Zusatzvertrag zum Auslieferungsvertrag zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika (Supplementary Treaty to the Treaty between the Federal Republic of Germany and the United States of America concerning extradition) of 21 October 1986 (BGBl. 1988 II, p. 1087), provides:

‘(1) Extraditable offenses under this Treaty are offenses which are punishable under the laws of both Contracting Parties. …

(2) Extradition shall be granted in respect of an extraditable offense

(a) for prosecution, if the offense is punishable under the laws of both Contracting Parties by deprivation of liberty for a maximum period exceeding one year …

…’

20 Article 8 of that treaty, entitled ‘Prior Jeopardy for the Same Offence’, reads as follows:

‘Extradition shall not be granted when the person whose extradition is requested has been tried and discharged or punished with final and binding effect by the competent authorities of the Requested State for the offense for which his extradition is requested.’

21 According to the referring court, the Germany-USA Extradition Treaty was adapted to the EU-USA Agreement by the Zweiter Zusatzvertrag zum Auslieferungsvertrag zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika (Second Supplementary Treaty to the Treaty between the Federal Republic of Germany and the United States of America concerning extradition) of 18 April 2006 (BGBl. 2007 II, p. 1634; ‘the Second Supplementary Treaty’).

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

22 On 20 January 2022, HF, a Serbian national, was remanded in custody in Germany pursuant to a red notice issued by the International Criminal Police Organisation (Interpol) at the request of

the authorities of the United States of America, seeking the extradition of HF in order to prosecute him for offences committed between September 2008 and December 2013. That red notice had been published on the basis of an arrest warrant issued on 4 December 2018 by the United States District Court for the District of Columbia.

23 HF has thus been detained in Germany since 20 January 2022 for the purposes of that extradition procedure.

24 The offences referred to in the extradition request consist of a conspiracy to participate in racketeer-influenced corrupt organisations and conspiracy to commit bank fraud and fraud by means of telecommunication, in accordance with Title 18, US Code, section 1962(d) and section 1349.

25 By letter of 25 January 2022, the United States authorities forwarded to the German authorities the arrest warrant of 4 December 2018, together with the indictment of the Grand Jury of the United States Court of Appeals for the District of Columbia of the same day.

26 When he was arrested, HF stated that he was resident in Slovenia and produced a Serbian passport issued on 11 July 2016 and valid until 11 July 2026, a Slovenian residence permit issued on 3 November 2017 and which had expired on 3 November 2019 and a Kosovan identity card. According to the order for reference, in 2020, the Slovenian authorities rejected HF's application to renew that residence permit.

27 At the request of the Oberlandesgericht München (Higher Regional Court, Munich, Germany), the referring court, called upon to rule on the request for HF's extradition to the United States, and the Generalstaatsanwaltschaft München (Public Prosecutor's Office, Munich, Germany), the Slovenian authorities provided the following information.

28 In the first place, HF was sentenced by judgment of the Okrožno sodišče v Mariboru (District Court, Maribor, Slovenia), of 6 July 2012, which became final on 19 October 2012, to one year and three months' imprisonment for the offence of 'attacking information systems', within the meaning of Article 221.IV, read in conjunction with paragraph II, of the Kazenski zakonik (Slovenian Criminal Code), committed between December 2009 and June 2010.

29 In the second place, that custodial sentence was commuted to 480 hours' community service, which HF served in full by 25 June 2015.

30 In the third place, by decision of 23 September 2020, the Okrožno sodišče v Kopru (District Court, Koper, Slovenia) refused a request made to the Slovenian authorities by the United States authorities seeking HF's extradition for the purposes of prosecution on the ground that the acts prior to July 2010 referred to in that request were the subject of the judgment of the Okrožno sodišče v Mariboru (District Court, Maribor) referred to in paragraph 28 of the present judgment. As regards the other acts described in that extradition request, which took place after June 2010, there was no suspicion of an offence.

31 In the fourth and last place, that judgment of the Okrožno sodišče v Kopru (District Court, Koper) was upheld by judgment of the Višje sodišče v Kopru (Court of Appeal, Koper, Slovenia), of 8 October 2020, and became final.

32 The referring court states, first, that the extradition request previously sent to the Slovenian authorities and the extradition request at issue in the main proceedings concern the same offences

and, second, that the acts which the Okrožno sodišče v Mariboru (District Court, Maribor), in its judgment referred to in paragraph 28 of the present judgment, adjudicated on are identical to those referred to in the latter extradition request, with regard to offences committed up to and including June 2010.

33 Thus, according to the referring court, the lawfulness of the extradition request, in so far as it concerns acts prior to July 2010, depends on whether the principle *ne bis in idem*, such as enshrined in Article 54 of the CISA, read in conjunction with Article 50 of the Charter, applies to the dispute in the main proceedings.

34 The referring court observes that the case-law established by the judgment of 12 May 2021, *Bundesrepublik Deutschland (Interpol red notice*) (C-505/19, EU:C:2021:376; 'judgment in *Interpol red notice*'), does not enable this issue to be decided, having regard to the differences between the case in the main proceedings and the case giving rise to that judgment.

35 First, that court notes that HF is not an EU citizen.

36 Second, the dispute in the main proceedings concerns a formal extradition request and not solely the publication of an Interpol red notice for a provisional arrest with a view to possible extradition.

37 Third, if the Federal Republic of Germany were required to refuse to extradite HF on account of the obligation to observe the principle *ne bis in idem*, within the meaning of Article 50 of the Charter, it would be in breach of the obligation to extradite laid down in Article 1(1) of the Germany-USA Extradition Treaty, since the offence attributed to HF satisfies the conditions laid down in Article 2(1) and (2) of that treaty.

38 The fact that HF has already been convicted by final judgment by the judgment of the Okrožno sodišče v Mariboru (District Court, Maribor), of 6 July 2012, for part of the offences which are the subject of the extradition request at issue in the main proceedings, namely those committed up to and including June 2010, and that the sentence imposed has already been served in full does not prevent HF's extradition. Indeed, as is clear from its wording, Article 8 of the Germany-USA Extradition Treaty only prohibits the requested State from granting extradition on the basis of the principle *ne bis in idem* in the case where the person whose extradition has been requested has been tried and punished with final and binding effect by the competent authorities of that State, namely here, the Federal Republic of Germany. It is not possible to interpret that article as also covering convictions handed down in other Member States.

39 Furthermore, the Federal Republic of Germany and the United States expressly agreed, in the negotiations relating to the Germany-USA Extradition Treaty, that decisions handed down in third countries do not prevent extradition.

40 Finally, that interpretation of Article 8 of the Germany-USA Extradition Treaty also follows from the fact that the Second Supplemental Treaty, by which the Germany-USA Extradition Treaty was adapted to the EU-USA Agreement, did not lay down any specific provision extending the prohibition of double jeopardy to all the Member States.

41 However, the referring court is uncertain whether Article 50 of the Charter, read in conjunction with Article 54 of the CISA, requires the Federal Republic of Germany to refuse to extradite HF for offences for which final judgment has been passed by the Okrožno sodišče v Mariboru (District Court, Maribor).

42 In that regard, in the first place, the referring court states that the conditions to apply the principle *ne bis in idem* enshrined in Article 50 of the Charter and in Article 54 of the CISA are satisfied in the case in the main proceedings.

43 First of all, HF was convicted by final judgment by a court of a Member State and the sentence imposed was served in full.

44 Next, the benefit of the provisions referred to in paragraph 42 of the present judgment is not reserved exclusively to citizens of the European Union.

45 Furthermore, according to paragraphs 94 and 95 of the judgment in *Interpol red notice*, the provisional arrest by one of the Member States of a person who is the subject of an Interpol red notice at the request of a third country constitutes 'prosecution', within the meaning of Article 54 of the CISA. Therefore, a decision on the lawfulness of an extradition such as that at issue in the main proceedings, which results in the surrender of the person concerned to a requesting third country with a view to his or her prosecution, must also be regarded as a 'prosecution'.

46 Finally, a decision on the lawfulness of extraditing a third-country national arrested in a Member State to the United States involves the implementation of EU law within the meaning of Article 51 of the Charter. Such a decision concerns, on any view, the EU-USA Agreement; when applying that agreement the fundamental rights enshrined in the Charter should be taken into account. In addition, according to the referring court, when HF was arrested, he was entitled to move freely under Article 20(1) of the CISA, read in conjunction with Article 6(1), first subparagraph, point (b) of the Schengen Borders Code, and with Article 4(1) of Regulation 2018/1806, given that, as a Serbian national, he was exempt from the visa requirement. Thus, when applying Article 20 of the CISA, those fundamental rights should be taken into account.

47 That said, in the second place, the referring court has doubts as to whether Article 50 of the Charter, read in conjunction with Article 54 of the CISA, may lead to the situation whereby a third-country national cannot be extradited to the United States.

48 In that regard, it states that, in the judgment in *Interpol red notice*, the Court referred to the right to freedom of movement, within the meaning of Article 21 TFEU, of the person subject to the red notice in the case which gave rise to that judgment, namely a German national, before concluding that that person does benefit from the principle *ne bis in idem*, as guaranteed in Article 54 of the CISA, in the context of a red notice published by Interpol concerning the provisional arrest of that person with a view to his possible extradition to a third country.

49 HF, as a Serbian national, does not enjoy the right to freedom of movement within the meaning of Article 21(1) TFEU. However, since he is exempt from the visa requirement, he does enjoy the right to freedom of movement within the meaning of Article 20 of the CISA. It is therefore necessary to examine whether the right to freedom of movement within the meaning of the latter provision may be limited in circumstances such as those at issue in the main proceedings.

50 In that regard, the referring court is inclined rather to take the view that the combined provisions of Article 54 of the CISA and Article 50 of the Charter do not preclude HF's extradition to the United States, given that that court is required to comply with the extradition obligation laid down in the Germany-USA Extradition Treaty.

51 In reaching that conclusion, the referring court relies on an interpretation of the first paragraph of Article 351 TFEU to the effect that it also covers agreements which, although having

been concluded after 1 January 1958, concern an area in respect of which the European Union did not become competent until after the conclusion of those agreements, owing to an extension of the competences of the European Union which was not objectively foreseeable for the Member State concerned at the time those agreements were concluded.

52 The Germany-USA Extradition Treaty entered into force on 30 July 1980, namely, before the conclusion, on 14 June 1985, of the Agreement 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, and, a fortiori, before the conclusion, on 19 June 1990, of the CISA and, on 2 October 1997, of the Treaty of Amsterdam, which incorporated the Schengen acquis into the framework of the European Union. Thus, the Federal Republic of Germany could not have foreseen, when concluding the Germany-USA Extradition Treaty, that a principle *ne bis in idem* at European level or that judicial cooperation in criminal matters would be incorporated into the European Union's sphere of competence.

53 Moreover, as the EU-USA Agreement does not provide such a principle *ne bis in idem* at European level, it can be inferred *a contrario* that a bilateral extradition treaty which limits itself to providing a national prohibition on double jeopardy must continue to be complied with.

54 In those circumstances, the Oberlandesgericht München (Higher Regional Court, Munich) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 54 of the [CISA], read in conjunction with Article 50 of the [Charter], be interpreted as meaning that that those provisions preclude the extradition of a third-country national who is not an EU citizen in terms of Article 20 of the TFEU by the authorities of a contracting state to that Convention and an EU Member State to a third country if final judgment has been passed against the person concerned by another Member State of the European Union for the same offences to which the extradition request relates and that judgment has been enforced and where the decision to refuse to extradite that person to the third country would be possible only at the cost of breaching a bilateral extradition treaty that exists with that third country?'

The request for the application of the urgent preliminary ruling procedure

55 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.

56 In support of its request, the referring court relied on the fact that HF has been detained in Germany since 20 January 2022 for the purposes of the extradition procedure at issue in the main proceedings and that the answer to the question referred is likely to have consequences for that detention pending extradition.

57 It should be noted, in the first place, that the present request for a preliminary ruling concerns, inter alia, the interpretation of Article 54 of the CISA and that, as is apparent from Article 2 of Decision 1999/436 and Annex A thereto, the Council designated Articles 34 and 31 EU as the legal bases for Articles 54 to 58 of the CISA.

58 Although Article 34 EU has been repealed by the Treaty of Lisbon, Article 31 EU has become Articles 82, 83 and 85 TFEU. Those latter provisions come within Title V of Part Three of

the FEU Treaty, relating to the area of freedom, security and justice. The present request may, therefore, form the subject matter of the urgent preliminary ruling procedure, in accordance with the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union and Article 107(1) of the Rules of Procedure.

59 In the second place, as regards the criterion relating to urgency, it follows from settled case-law that that criterion is satisfied where the person concerned in the case in the main proceedings is, as at the date when the request for a preliminary ruling is made, deprived of his or her liberty and the question as to whether he or she may continue to be held in custody depends on the outcome of the dispute in the main proceedings (judgment of 28 April 2022, *C and CD (Legal obstacles to the execution of a surrender decision)*, C-804/21 PPU, EU:C:2022:307, paragraph 39 and the case-law cited).

60 In the present case, it is apparent from the request for a preliminary ruling that HF is currently under provisional arrest and that, depending on the answer given to the question referred, the referring court might be required to order HF's release.

61 In those circumstances, the Second Chamber of the Court of Justice, on 15 July 2022, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

62 It also decided, on the basis of Article 113(2) of the Rules of Procedure, to refer the present case back to the Court for allocation to the Grand Chamber.

Consideration of the question referred

63 By its question, the referring court asks, in essence, whether Article 54 of the CISA, read in the light of Article 50 of the Charter, must be interpreted as precluding the extradition, by the authorities of a Member State, of a third-country national to another third country, where, first, that national has been convicted by final judgment in another Member State for the same acts as those referred to in the extradition request, and has been subject to the sentence imposed, and, second, the extradition request is based on a bilateral extradition treaty limiting the scope of the principle *ne bis in idem* to judgments handed down in the requested Member State.

64 As a preliminary point, it should be recalled that the principle *ne bis in idem* is a fundamental principle of EU law which is now enshrined in Article 50 of the Charter (judgments of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 22, and of 22 March 2022, *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraph 28).

65 Furthermore, that principle, which is also enshrined in Article 54 of the CISA, derives from the constitutional traditions common to the Member States. It is therefore appropriate to interpret that latter article in the light of Article 50 of the Charter, Article 54 serving to ensure respect for the essence thereof (see, to that effect, judgment in *Interpol red notice*, paragraph 70 and case-law cited).

66 In the light of the doubts expressed by the referring court and set out in paragraphs 47 to 53 of the present judgment, it is appropriate to examine, first of all, the interpretative guidance relating to Article 54 of the CISA, before addressing the possible effect, for the application of that article in the dispute in the main proceedings, of the Germany-USA Extradition Treaty and of the first paragraph of Article 351 TFEU.

Article 54 of the CISA

67 According to the settled case-law of the Court, it is necessary, when interpreting a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part (judgment in *Interpol red notice*, paragraph 77 and the case-law cited).

68 As is apparent from its wording, Article 54 of the CISA precludes a Member State from taking action against a person for the same acts as those in respect of which, as regards that person, final judgment has been passed in another Member State, 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 that latter State.

69 In the present case, the referring court specifically asks the Court, first, about the application of that provision in relation to a formal extradition request and, second, whether the concept of 'person' referred to in that provision includes a third-country national.

70 In that regard, first, it must be held that the concept of 'prosecution', within the meaning of Article 54 of the CISA, covers an extradition request. As the Advocate General stated, in essence, in point 46 of his Opinion, if the provisional arrest of a person who is the subject of an Interpol red notice, the purpose of which is to enable that person to be extradited to a third country, falls within that concept, the same is true a fortiori to the execution of an extradition request, where such execution constitutes an act of a Member State contributing to the effective prosecution of a criminal offence in the third country concerned.

71 Second, as regards whether the concept of 'person' referred to in Article 54 of the CISA includes a third-country national, it should be noted that that article guarantees protection of the principle *ne bis in idem* where 'a person's' trial has been finally disposed of in a Member State.

72 Thus, it must be held, first of all, that the wording of Article 54 of the CISA does not establish a condition relating to the possession of the nationality of a Member State.

73 Next, that conclusion is supported by the context of that provision.

74 Article 50 of the Charter, in the light of which Article 54 of the CISA must be interpreted, provides that 'no one' is to be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the European Union in accordance with the law. Accordingly, Article 50 of the Charter also does not establish a link with the status of citizen of the European Union. Furthermore, as the Advocate General observed in point 49 of his Opinion, Article 50 does not appear in Chapter V of the Charter, relating to 'Citizens' rights', but in Chapter VI thereof, relating to 'Justice'.

75 Finally, the interpretation of Article 54 of the CISA to the effect that the concept of 'person' referred to in that provision includes a third-country national is also supported by the objectives pursued by that provision.

76 First, it is apparent from case-law that the principle *ne bis in idem* set out in Article 54 of the CISA is intended to ensure, in the area of freedom, security and justice, that a person whose trial has been finally disposed of is not prosecuted in several Member States for the same acts on account of his or her having exercised his or her right to freedom of movement, the aim being to ensure legal certainty through respect for decisions of public bodies which have become final (see, to that effect, judgment in *Interpol red notice*, paragraph 79).

77 Second, the Court has held that, as a corollary to the *res judicata* principle, the principle *ne bis in idem* aims to ensure legal certainty and fairness, in ensuring that, once the person concerned has been tried and, as the case may be, punished, that person has the certainty that he or she will not be tried again for the same offence (judgment of 22 March 2022, *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraph 62). Article 54 of the CISA thus ensures that persons who, when prosecuted, have their cases finally disposed of are left undisturbed (judgment of 28 September 2006, *Gasparini and Others*, C-467/04, EU:C:2006:610, paragraph 27).

78 Thus, in the light of the objectives pursued by Article 54 of the CISA, it must be held that the application of that provision cannot be limited solely to nationals of a Member State, since that provision seeks, more broadly, to ensure that anyone who has been convicted and served his or her sentence or, as the case may be, has been acquitted by a final judgment in one Member State may travel within the Schengen area without fear of being prosecuted in another Member State for the same acts (see, to that effect, judgment of 29 June 2016, *Kossowski*, C-486/14, EU:C:2016:483, paragraph 45).

79 It should also be added that, at the hearing, the question was raised as to whether or not HF's stay at the time of his arrest was lawful was relevant for the purposes of determining whether or not HF's stay fell within the scope of Article 54 of the CISA.

80 Such a factor is irrelevant for the purposes of the application of Article 54 of the CISA. Even if the stay of the person concerned were not lawful at the time of his or her arrest, that fact would not lead to his or her exclusion from the protection conferred by that article.

81 It is true that, as has been pointed out in paragraph 76 of the present judgment, the principle *ne bis in idem* laid down in Article 54 of the CISA is intended, inter alia, to ensure that a person whose trial has been finally disposed of in one Member State can travel within the Schengen area without having to fear prosecution for the same acts in another Member State.

82 However, it should be noted that it does not in any way follow from that provision that the enjoyment of the fundamental right provided for therein is subject, as regards third-country nationals, to compliance with conditions relating to the lawful nature of their stay or to a right to freedom of movement within the Schengen area. Indeed, the only requirement established by that provision, and applicable in all cases, is that of the trial having been finally disposed of in one of the Member States, it being understood that, in the case of a conviction, the penalty must have been enforced, or be in the process of being enforced, or can no longer be enforced under the laws of the sentencing State.

83 It should also be noted that no other provision of the CISA makes the application of Article 54 thereof subject to conditions relating to the legal status of the person concerned's stay or to the benefit of a right of free movement within the Schengen area. Furthermore, while that provision comes under Title III of the CISA, which is entitled 'Police and Security', the provisions relating to the conditions of movement of foreign nationals are included under Title II of the CISA, headed 'Abolition of internal border controls and movement of persons'.

84 Moreover, as has been pointed out in paragraphs 76 and 77 of the present judgment, the principle *ne bis in idem* laid down in Article 54 of the CISA also aims to ensure legal certainty within the area of freedom, security and justice by ensuring compliance with the decisions of the public bodies of the Member States which have become final.

85 The protection of any person whose trial has been finally disposed of in one Member State, irrespective of his or her nationality and the lawfulness of his or her stay, against further prosecution for the same acts in another Member State contributes to the attainment of that objective.

86 It follows that, in a case such as that at issue in the main proceedings, irrespective of whether or not the person concerned was staying lawfully at the time of his or her arrest, and therefore whether or not he or she enjoyed a right to freedom of movement under Article 20(1) of the CISA, he or she must be regarded as coming within the scope of Article 54 of the CISA.

87 That finding is not called into question by the fact that, as the referring court points out, in the judgment in *Interpol red notice*, the Court referred on several occasions to the right to freedom of movement, within the meaning of Article 21 TFEU.

88 It follows from that judgment, in particular from paragraphs 89 to 93 and 106 thereof, that the Court, in that judgment, interpreted Article 54 of the CISA in the light of Article 50 of the Charter alone, and not Article 21 TFEU. Moreover, as the Advocate General observed, in essence, in point 52 of his Opinion, the references to Article 21 TFEU contained in that judgment can be explained by the circumstances of the case which gave rise to that judgment, in which a German national complained that the publication of an Interpol red notice in respect of him prevented him from exercising his right to freedom of movement under that article, in that he could not go to a Member State other than the Federal Republic of Germany without running the risk of arrest.

89 Moreover, in the judgment of 27 May 2014, *Spasic* (C-129/14 PPU, EU:C:2014:586, paragraphs 61 to 63), the Court did not express any reservations as to the applicability in the dispute in the main proceedings of Article 54 of the CISA, read in the light of Article 3(2) TEU, whereas that dispute concerned, as in the case in the main proceedings, a Serbian national who did not enjoy the right to freedom of movement guaranteed in Article 21 TFEU.

90 It follows that Article 54 of the CISA, read in the light of Article 50 of the Charter, precludes the extradition, by the authorities of a Member State, of a third-country national to another third country, where, first, final judgment has been passed by another Member State, as regards that national, in respect of the same acts as those referred to in the extradition request and, second, 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 that other Member State.

91 That interpretation of Article 54 of the CISA cannot be called into question by the arguments, raised by the Public Prosecutor's Office, Munich and by the German Government both in their written observations and at the hearing, that it is necessary, in the event of an extradition request of a third-country national to another third country, to interpret that article restrictively in order to ensure the proper functioning of justice and the effectiveness of criminal prosecutions. In that context, those interested parties express reservations as to whether the proceedings before the Slovenian courts took into account all the relevant factors in order to adjudicate on the acts committed by HF during the period considered by those courts, in particular certain information available to the United States authorities.

92 In that regard, it must be recalled that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained (judgment of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, paragraph 46 and the case-law cited).

93 As regards, in particular, Article 54 of the CISA, the Court has held that it necessarily implies that the Member States have mutual trust in their respective criminal justice systems in that each of them consents to the application of the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied. That mutual trust requires that the relevant competent authorities of the second Member State accept at face value a final decision communicated to them which has been given in the first Member State (see, to that effect, judgment in *Interpol red notice*, paragraph 80 and the case-law cited).

94 In the present case, an interpretation of Article 54 of the CISA such as that advocated by the Public Prosecutor's Office, Munich and the German Government, in that it would amount to allowing multiple criminal proceedings to be brought against the same person in respect of the same acts as those in respect of which he or she has been convicted or acquitted by final judgment in another Member State, would call into question, in relations between the Member States, the very basis of the area of freedom, security and justice as an area without internal borders and would disregard the principles of mutual trust and mutual recognition of judicial decisions in criminal matters on which that provision is based.

The Germany-USA Extradition Treaty and the EU-USA Agreement

95 The referring court also seeks to ascertain whether the fact that, first, the EU-USA Agreement does not provide a ground for refusal based on the principle *ne bis in idem* and, second, the Germany-USA Extradition Treaty limits the scope of the principle *ne bis in idem* to judgments handed down in the requested State, is likely to affect the answer to be given to the question referred for a preliminary ruling.

96 In that regard, it follows from Article 1 of the EU-USA Agreement that the European Union and the United States undertook, in accordance with the provisions of that agreement, to provide for enhancements to cooperation 'in the context of applicable extradition relations between the Member States and the United States of America governing extradition of offenders'.

97 Furthermore, it is apparent from Article 3 thereof, entitled 'Scope in relation to bilateral extradition treaties concluded by the Member States', that the provisions of the EU-USA Agreement set out in Articles 4 to 14 of that agreement replace or supplement, in accordance with the conditions and procedures laid down in Article 3, the provisions of bilateral extradition treaties concluded between the Member States and the United States.

98 Accordingly, the EU-USA Agreement applies to relations existing between the Member States and the United States on extradition, namely relations governed by bilateral extradition treaties in force, such as the Germany-USA Extradition Treaty. As the European Commission points out, that agreement accordingly provides a common framework applicable to extradition procedures to the United States, of which the existing bilateral extradition treaties form part.

99 In addition, Article 16 of the EU-USA Agreement states, in paragraph 1, that it applies to offences committed before as well as after its entry into force, namely 1 February 2010, and, in paragraph 2, that it applies to requests for extradition made after that entry into force.

100 Since the EU-USA Agreement does not directly provide for extradition procedures, but relies on extradition procedures provided for in the bilateral extradition instruments in force, requests for extradition referred to in Article 16(2) must necessarily be made on the basis of a bilateral extradition treaty between a Member State and the United States, such as the Germany-USA Extradition Treaty.

101 It follows that the EU-USA agreement is applicable to an extradition procedure such as that at issue in the main proceedings, once the extradition request has been made, on the basis of the Germany-USA Extradition Treaty after the entry into force of that agreement (see, by analogy, judgment of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraph 32).

102 It is true that the EU-USA Agreement does not expressly provide that, where the principle *ne bis in idem* applies, the authorities of the Member States may refuse an extradition requested by the United States (judgment in *Interpol red notice*, paragraph 97).

103 However, Article 17(2) of the EU-USA Agreement covers situations in which the constitutional principles of the requested State or final judicial decisions of a binding nature are such as to prevent the fulfilment of its obligation to extradite and where neither the EU-USA Agreement nor the applicable bilateral treaty enables the matter to be resolved, by providing that, in such situations, consultations are to take place between the requested State and the requesting State (see, to that effect, judgment of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraph 40).

104 Article 17(2) thus allows, in principle, a Member State, on the basis either of the rules of its constitutional law or of final judicial decisions of a binding nature, to provide for a particular outcome for persons who have already been finally judged in respect of the same offence for which extradition is sought, by prohibiting that extradition (see, to that effect, judgment of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraph 41). It thus constitutes an autonomous and subsidiary legal basis for the application of the principle *ne bis in idem* in the context of an extradition request made by the United States to a Member State, where the applicable bilateral treaty does not enable that question to be resolved.

105 The referring court however observes that although Article 8 of the Germany-USA Extradition Treaty provides that extradition is not to be granted when the person whose extradition is requested has been tried and discharged or punished with final and binding effect by the competent authorities of the requested State for the offence for which his or her extradition is requested, it does not provide for such a possibility where a final judgment has been passed in another State.

106 The Member States' power to adopt rules on extradition procedures must nevertheless be exercised in accordance with EU law, which includes Article 54 of the CISA and Article 50 of the Charter, applicable to the dispute in the main proceedings having regard to the findings made in paragraphs 86 and 101 above. It is apparent from the case-law of the Court that, although, in the absence of rules of EU legal provisions governing extradition procedures to a third country, the Member States retain the power to adopt such rules, those Member States are required to exercise that power in accordance with EU law (see, to that effect, judgment in *Interpol red notice*, paragraph 100 and the case-law cited).

107 In the order for reference, the referring court indicates that Article 8 of the Germany-USA Extradition Treaty must be interpreted as excluding judgments delivered in the other Member States.

108 If it is not possible to interpret national law in conformity with EU law, the principle of primacy places the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law under a duty to give full effect to the requirements of that law in the dispute before it, if necessary disapplying of its own motion any national legislation, even if adopted subsequently, which is contrary to a provision of EU law with direct effect, and it is not necessary for that court to request or await the prior setting aside of such national legislation by legislative or

other constitutional means (see, to that effect, judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C-205/20, EU:C:2022:168, paragraph 37 and the case-law cited).

109 In that regard, the Court has held, with regard to the principle *ne bis in idem* enshrined in Article 50 of the Charter, that that provision has direct effect (judgments of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 68, and of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 38). In the light of the case-law referred to in paragraph 65 of the present judgment, the same is true of Article 54 of the CISA.

110 Consequently, as required by the case-law cited in paragraph 108 of the present judgment, it is for the referring court to ensure the full effect of Article 54 of the CISA and Article 50 of the Charter in the main proceedings, by disapplying, of its own motion, any provision of the Germany-USA Extradition Treaty which proves to be incompatible with the principle *ne bis in idem* enshrined in those articles, without having to wait for the Federal Republic of Germany to renegotiate that treaty.

111 It is irrelevant in that regard that, as the referring court points out, the Federal Republic of Germany and the United States agreed, in the context of the negotiations for extradition which took place in 1978, that decisions handed down in third countries would not prevent extradition. Without prejudice to the examination of Article 351 TFEU in paragraphs 115 to 127 above, such an undertaking cannot take precedence over the obligations arising, for that Member State, from the provisions of EU law cited in the preceding paragraph of this judgment as from their entry into force.

112 It should be added that, assuming that an interpretation of the relevant provisions of the Germany-USA Extradition Treaty in accordance with Article 54 of the CISA and Article 50 of the Charter, as interpreted in paragraph 90 of the present judgment, is ruled out, it must be held that that treaty does not resolve a question relating to the application of the principle *ne bis in idem* such as that raised in the dispute in the main proceedings, with the result that that question must be resolved on the basis of Article 17(2) of the EU-USA Agreement, read in the light of Article 50 of the Charter.

113 In the light of the finding made in paragraph 104 of the present judgment and as the Advocate General observed, in essence, in points 67 and 68 of his Opinion, a judicial decision such as the judgment of the Okrožno sodišče v Mariboru (District Court, Maribor), of 6 July 2012, may fall within the scope of Article 17(2) of the EU-USA Agreement, since it follows from the very wording of that provision that a binding judicial decision is capable of impeding the obligation to extradite on the requested State in a situation in which the bilateral extradition treaty concluded between the Member State concerned and the United States is unable to resolve the issue of the application of the principle *ne bis in idem*.

114 It follows that the fact that the Germany-USA Extradition Treaty limits the scope of the principle *ne bis in idem* to judgments delivered in the requested State cannot call into question the applicability of Article 54 of the CISA in a dispute such as that in the main proceedings, arising from the interpretation of that provision given in paragraph 90 above.

Article 351 TFEU

115 It is also necessary to examine whether, as the referring court submits, the first paragraph of Article 351 TFEU may be interpreted as meaning that the Germany-USA Extradition Treaty is not

affected by the provisions of EU law, with the result that the German authorities could grant the extradition request at issue in the main proceedings without infringing EU law.

116 Under the first paragraph of Article 351 TFEU, the rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States, on the one hand, and one or more third countries, on the other, are not to be affected by the provisions of the Treaties.

117 It should be noted that, as the referring court itself acknowledges, that provision, in keeping with its wording, is not applicable to the dispute in the main proceedings, since the Germany-USA Extradition Treaty was signed on 20 June 1978 and entered into force on 30 July 1980, that is to say, after 1 January 1958.

118 The referring court wonders, nevertheless, whether that provision should not be interpreted broadly as also referring to agreements concluded by a Member State after 1 January 1958 or the date of its accession, but before the date on which the European Union became competent in the field covered by those agreements.

119 In this respect, it is important to note that the first paragraph of Article 351 TFEU is a rule which may, where its conditions of application are met, allow derogations from the application of EU law, including primary law (see, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 301 and the case-law cited).

120 It is settled case-law that exceptions are to be interpreted strictly so that general rules are not negated (judgment of 26 February 2015, *Wucher Helicopter and Euro-Aviation Versicherung*, C-6/14, EU:C:2015:122, paragraph 24 and the case-law cited).

121 Such a strict interpretation is particularly necessary as regards the first paragraph of Article 351 TFEU, since that provision allows derogation not from a specific principle but from the application of any provisions of the Treaties.

122 Moreover, such a strict interpretation is also necessary in the light of the obligation of the Member States under the second paragraph of Article 351 TFEU to take all appropriate steps to eliminate existing incompatibilities between an agreement and the Treaties (see, to that effect, judgments of 3 March 2009, *Commission* v *Austria*, C-205/06, EU:C:2009:118, paragraph 45; of 3 March 2009, *Commission* v *Sweden*, C-249/06, EU:C:2009:119, paragraph 45; and of 22 October 2020, *Ferrari*, C-720/18 and C-721/18, EU:C:2020:854, paragraph 67).

123 Moreover, the reference in the first paragraph of Article 351 TFEU to the date of 1 January 1958 or, for acceding States, on the date of their accession, was inserted by the Treaty of Amsterdam, entered into force on 1 May 1999. Until then, Article 234 of the EC Treaty used the phrase ‘before the entry into force of this Treaty’.

124 Thus, when, during the negotiation of the Treaty of Amsterdam, the Member States amended what is now the first paragraph of Article 351 TFEU, they decided to fix as relevant dates 1 January 1958 or, for acceding States, the date of their accession. That text was not amended when the Treaties of Nice and Lisbon were adopted.

125 Although they were already aware, when concluding those Treaties, that the competences of the European Union may evolve significantly over time, including in fields which were the subject

of agreements concluded with third countries, the Member States did not provide for the possibility of taking into account, for the purposes of the first paragraph of Article 351 TFEU, the date on which the European Union became competent in a given area.

126 It follows that that derogating provision must be interpreted as applying only to agreements concluded before 1 January 1958 or, in the case of acceding States, before the date of their accession.

127 Consequently, the first paragraph of Article 351 TFEU is not applicable to the Germany-USA Extradition Treaty.

The identical nature of the acts

128 In order to provide a reply which is as useful as possible to the referring court, it should also be recalled that, according to the Court's settled case-law, the relevant criterion for the purposes of assessing the existence of the same offence, within the meaning of Article 50 of the Charter, is identity of the material facts, understood as the existence of a set of concrete circumstances which are inextricably linked together and which have resulted in the final acquittal or conviction of the person concerned. Therefore, that article prohibits the imposition, with respect to identical facts, of several criminal penalties as a result of different proceedings brought for those purposes (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 33 and the case-law cited).

129 Therefore, the condition relating to the existence of the same infringement requires that the material facts be identical. By contrast, the principle *ne bis in idem* is not intended to be applied where the facts at issue are not identical, but merely similar (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 36).

130 Identity of the material acts is understood to mean a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 37).

131 In the present case, first, it is apparent from the order for reference that the extradition request at issue in the main proceedings concerns offences committed by HF between September 2008 and December 2013. Second, the referring court points out that the acts in respect of which final judgment over HF was passed in Slovenia are identical to those referred to in that extradition request, in so far as it describes offences committed up to and including June 2010. Thus, the referring court notes that the conviction handed down by Slovenian courts covers only part of the acts which are the subject of that extradition request.

132 The question referred in the present case is based on the premiss that the acts referred to in an extradition request are the same as those in respect of which the accused person has already been convicted by final judgment by the courts of another Member State.

133 In that regard, it is for the referring court, which alone has jurisdiction to rule on the facts, and not for the Court, to determine whether the acts which are the subject of the extradition request at issue in the main proceedings are the same as those in respect of which final judgment has been passed by the Slovenian courts (see, by analogy, judgments of 28 September 2006, *Gasparini and Others*, C-467/04, EU:C:2006:610, paragraph 56, and of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 38). That being so, the Court may provide the referring court with elements of interpretation of EU law in the context of the assessment of the identity of the acts (see,

to that effect, judgment of 22 March 2022, *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraph 42).

134 In that regard, in the light of the case-law referred to in paragraphs 128 to 130 of the present judgment, it must be stated, first, that the principle *ne bis in idem*, within the meaning of Article 54 of the CISA, read in the light of Article 50 of the Charter, cannot preclude extradition as regards offences allegedly committed by the person concerned whose factual evidence is, according to the findings of the court of the requested Member State in the light of the file before it, taken into account for the purposes of conviction by the courts of another Member State.

135 Second, the principle *ne bis in idem* cannot cover any offences covered by the extradition request which, although committed during the period taken into account for the purposes of that conviction, concern material acts other than those which were the subject of that conviction (see, to that effect, judgment of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraph 50).

136 In the light of all the foregoing considerations, the answer to the question referred is that Article 54 of the CISA, read in the light of Article 50 of the Charter, must be interpreted as precluding the extradition, by the authorities of a Member State, of a third-country national to another third country, where, first, that national has been convicted by final judgment in another Member State for the same acts as those referred to in the extradition request, and has been subject to the sentence imposed in that State, and, second, the extradition request is based on a bilateral extradition treaty limiting the scope of the principle *ne bis in idem* to judgments handed down in the requested Member State.

Costs

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

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

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, signed in Schengen on 19 June 1990 and entered into force on 26 March 1995, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding the extradition, by the authorities of a Member State, of a third-country national to another third country, where, first, that national has been convicted by final judgment in another Member State for the same acts as those referred to in the extradition request, and has been subject to the sentence imposed in that State, and, second, the extradition request is based on a bilateral extradition treaty limiting the scope of the principle *ne bis in idem* to judgments handed down in the requested Member State.

[Signatures]

* Language of the case: German.