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ECLI:EU:C:2017:710

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

21 September 2017 (\*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Framework Decision 2008/675/JHA — Scope — Taking into account, in the course of new criminal proceedings, a previous conviction handed down in another Member State, in order to impose an overall sentence — National procedure for prior recognition of that conviction — Altering the arrangements for enforcing the sentence imposed in the other Member State)

In Case C-171/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski Rayonen sad (Sofia District Court, Bulgaria), made by decision of 7 March 2016, received at the Court on 24 March 2016, in the proceedings

**Trayan Beshkov**

v

**Sofiyska rayonna prokuratura,**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, A. Tizzano (Rapporteur), Vice-President of the Court, M. Berger, A. Borg Barthet and E. Levits, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Czech Government, by L. Březinová, M. Smolek and J. Vláčil, acting as Agents,

- the Austrian Government, by G. Eberhard, acting as Agent,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by S. Grünheid and P. Mihaylova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 May 2017,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ 2008 L 220, p. 32).

2 The request has been made in the context of an application made by Mr Trayan Beshkov to the Sofiyski Rayonen sad (Sofia District Court, Bulgaria) that that court should take account of his previous conviction before a court of another Member State.

## **Legal context**

### *EU law*

3 Recitals 2, 5 to 7 and 13 of Framework Decision 2008/675 state:

“(2) On 29 November 2000 the Council, in accordance with the conclusions of the Tampere European Council, adopted the programme of measures to implement the principle of mutual recognition of decisions in criminal matters ..., which provides for the “adoption of one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender’s criminal record and establishing whether he has reoffended, and in order to determine the type of sentence applicable and the arrangements for enforcing it.”

...

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

(6) In contrast to other instruments, this Framework Decision does not aim at the execution in one Member State of judicial decisions taken in other Member States, but rather aims at enabling consequences to be attached to a previous conviction handed down in one Member State in the course of new criminal proceedings in another Member State to the extent that such consequences are attached to previous national convictions under the law of that other Member State.

...

(7) The effects of a conviction handed down in another Member State should be equivalent to the effects of a national decision at the pre-trial stage of criminal proceedings, at the trial stage and at the time of execution of the sentence.

...

(13) This Framework Decision respects the variety of domestic solutions and procedures required for taking into account a previous conviction handed down in another Member State. The exclusion of a possibility to review a previous conviction should not prevent a Member State from issuing a decision, if necessary, in order to attach the equivalent legal effects to such previous conviction. However, the procedures involved in issuing such a decision should not, in view of the time and procedures or formalities required, render it impossible to attach equivalent effects to a previous conviction handed down in another Member State.’

4 Article 1(1) of that Framework Decision provides:

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

5 Article 3(1) to (4) of that Framework Decision, headed ‘Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State’, provide:

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

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

3. The taking into account of previous convictions handed down in other Member States, as provided for in paragraph 1, shall not have the effect of interfering with, revoking or reviewing previous convictions or any decision relating to their execution by the Member State conducting the new proceedings.

4. In accordance with paragraph 3, paragraph 1 shall not apply to the extent that, had the previous conviction been a national conviction of the Member State conducting the new proceedings, the taking into account of the previous conviction would, according to the national law of that Member State, have had the effect of interfering with, revoking or reviewing the previous conviction or any decision relating to its execution.’

*Bulgarian law*

*The Criminal Code*

6 Article 8(2) of the Nakazatelen kodeks (Criminal Code), that provision having entered into force on 27 May 2011, and being designed to transpose Framework Decision 2008/675 into Bulgaria law, provides:

‘A conviction handed down in another Member State of the European Union, that is not subject to appeal, for an act which constitutes an offence under the Bulgarian Criminal Code shall be taken into account in any criminal proceedings initiated against the same person in the Republic of Bulgaria’.

7 Article 23(1) of that Code provides:

‘If one and the same act has been the means for the commission of several offences or if one person has committed several separate offences before a conviction that is not subject to appeal is handed down in respect of any one of them, the court, after determining a penalty for each offence separately, shall impose the penalty that is the highest’.

8 Article 25(1) and (2) of that Code provide:

‘1. The provisions of [Article 23] ... shall also apply in the case where the person is convicted by means of separate judgments.

2. When the sentence imposed in one of the convictions has been wholly or partly executed, it shall be deducted if it is of the same kind as the overall sentence for the purposes of execution of the sentence.’

9 Article 66(1) of the same Code is worded as follows:

‘Where the court imposes a custodial sentence of up to three years, it may suspend execution thereof ... if the person has not been convicted and had a custodial sentence imposed for an offence that is the subject of prosecution by the public prosecutor ... .’

#### *Code of Criminal Procedure*

10 Article 4(2) and (3) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure) provide:

‘2. A conviction handed down by a court in another State and not subject to appeal which has not been recognised under Bulgarian law shall not be subject to enforcement by the authorities of the Republic of Bulgaria.

3. The provisions of [paragraph 2] shall not apply if an international treaty to which the Republic of Bulgaria is a party provides otherwise, if that treaty has been ratified, published and has entered into force.’

11 Article 463 of that Code, in Section II of Chapter 36 thereof, headed ‘Recognition and enforcement of sentences handed down by foreign courts’, provides:

‘A conviction handed down by a foreign court and not subject to appeal shall be recognised and enforced by the authorities in the Republic of Bulgaria in compliance with Article 4(3) where:

- (1) the act in respect of which the request has been made constitutes a criminal offence under Bulgarian law;
- (2) the offender is criminally responsible under Bulgarian law;
- (3) the conviction has been handed down in full compliance with the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, to which the Republic of Bulgaria is a party;
- (4) the offender has not been convicted of an offence that is to be considered political or of an offence associated with such an offence or of a war crime;
- (5) the Republic of Bulgaria has not recognised any conviction handed down by another foreign court in respect of the same offender and for the same offence;
- (6) the conviction is not contrary to the fundamental principles of Bulgarian criminal law and criminal procedure.’

12 Article 465 of that Code, which set out the procedure for that recognition, states:

‘1. A request for the recognition in the Republic of Bulgaria of a conviction handed down by a foreign court shall be sent by the competent authority of the other State concerned to the Ministry of Justice.

2. The Ministry of Justice shall refer the request together with the conviction and other documents attached thereto to the Okrazhen sad [regional court] of the place of residence of the convicted person. If that person does not live in Bulgaria, the Sofijski gradski sad (Municipal Court of Sofia) shall have jurisdiction to examine the request.

...’

13 Article 466(1) of that code, which defines the effects of that recognition, provides:

‘The decision whereby a conviction handed down by a foreign court shall have the effect of a conviction handed down by a Bulgarian court.’

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

14 Mr Beshkov was convicted by a judgment, against which there is no appeal, of the Landesgericht Klagenfurt (Regional Court of Klagenfurt, Austria) of 13 December 2010 and sentenced to a custodial sentence of 18 months (six months of actual imprisonment and 12 months suspended, with a probation period of three years), for offences of receiving stolen goods, committed on 14 November 2010 in Austria. The period of six months imprisonment was served and the probation period began on 14 May 2011.

15 Subsequently, Mr Beshkov was convicted, by a judgment of the referring court, against which there is no appeal, of 29 April 2013, and sentenced to a custodial sentence of one year, for acts categorised as minor assault occasioning injury resulting from serious anti-social conduct, committed on 19 November 2008 in Sofia (Bulgaria). The whereabouts of Mr Beshkov being unknown, that sentence had not yet been executed at the date of the order for reference.

16 On 14 May 2015, Mr Beshkov, through his legal representative, submitted to the referring court an application, on the basis of Article 23(1) and Article 25(1) of the Criminal Code, that the referring court should impose, for the purposes of execution, an overall custodial sentence corresponding to the highest of the penalties imposed by, on the one hand, the judgment of 13 December 2010 of the Landesgericht Klagenfurt (Regional Court of Klagenfurt) and, on the other, the judgment of the referring court of 29 April 2013.

17 Those two provisions state, *inter alia*, that when a person has committed a number of offences before he or she is convicted, of each of those offences, and sentenced by separate convicting judgments to separate sentences, a national court is to impose on that person, for the purposes of execution of those sentences, a single overall sentence corresponding to the highest of the sentences initially imposed. The order for reference indicates, in essence, that in that situation, the highest sentence absorbs the initial more lenient sentences. Further, it follows from those provisions that when one of the initial sentences has already been wholly or partly executed, it is, for the purposes of execution, deducted from the overall sentence if it is of the same kind as the latter.

18 However, the referring court states, according to the greater part of national case-law and in the opinion of the Sofiyska rayonna prokuratura (the Sofia public prosecutor, Bulgaria), it is impossible, having regard in particular to Article 4(2) of the Code of Criminal Procedure, to determine an overall sentence that takes into account the sentence imposed by a conviction previously handed down by a court of another Member State unless that judgment has first been recognised by the Bulgarian courts with jurisdiction in accordance with the special procedure for the recognition and execution of convictions handed down by foreign courts, provided for in, in particular, Articles 463 to 466 of that code. In the light of that case-law, the referring court seeks to ascertain, in essence, whether, if the application by Mr Beshkov is to be granted, the conviction before the Landesgericht Klagenfurt (Regional Court of Klagenfurt) must, first, be recognised in accordance with, in particular, Articles 463 to 466, or rather whether, as Mr Beshkov argues, the referring court can or must grant that application, without that conviction having been the subject of such prior recognition, on the basis of Article 8(2) of the Criminal Code, which transposes Framework Decision 2008/675 into Bulgarian law.

19 In order to answer that question, that court considers, in essence, that it is necessary to determine whether that Framework Decision applies to a procedure, such as that at issue in the main proceedings, the object of which is the imposition, for the purposes of enforcement, of an overall custodial sentence that takes into account a conviction handed down by a court of another Member State and, more specifically, the sentence imposed on the convicted person by that court.

20 If the Framework Decision does apply, and if the question of taking into account the conviction handed down by Landesgericht Klagenfurt (Regional Court of Klagenfurt) is, in this case, dependent on the prior implementation of the recognition procedure laid down in, in particular, Articles 463 to 466 of the Code of Criminal Procedure, the referring court also has doubts as to the compatibility, with that Framework Decision, of the latter procedure in so far as that procedure cannot be initiated directly by the convicted person.

21 In that regard, the referring court states, in essence, that, while, in accordance with the current Bulgarian legislation, any convicted person may bring before the Bulgarian courts with jurisdiction an application for the imposition of an overall sentence pursuant to Articles 23 and 25 of the Criminal Code, the recognition procedure laid down in the relevant provisions of the Code of Criminal Procedure, in particular, Articles 463 to 466 of that code can, however, be implemented on the initiative of the competent authorities in Bulgaria or those of the State where the first conviction was handed down. It follows that the convicted person cannot, in fact, himself initiate the procedure

for the imposition of such an overall sentence that takes into account a previous conviction handed down in another Member State, even where the competent authorities take no action.

22 Further, the referring court seeks to ascertain whether Framework Decision 2008/675 precludes, for the purposes of imposing an overall sentence that takes into account the sentence imposed on Mr Beshkov by the Landesgericht Klagenfurt (Regional Court of Klagenfurt), any alteration of the arrangements for enforcing the latter sentence. In this case, since the sentence of 18 months imprisonment, a period of 12 months being suspended, imposed on Mr Beshkov by that court was higher than that imposed by the referring court in its judgment of 29 April 2013, the referring court was bound to apply to Mr Beshkov an overall sentence corresponding to that first sentence. However, in accordance with Article 66(1) of the Criminal Code, Mr Beshkov, who has, in the past, already been convicted on several occasions and sentenced to periods of imprisonment in Bulgaria, can no longer qualify for suspension of sentence in that Member State. Consequently, the referring court would have to alter the arrangements for enforcing the sentence imposed on Mr Beshkov by the Landesgericht Klagenfurt (Regional Court of Klagenfurt) and apply to him an overall sentence of 18 months imprisonment, while deducting the period of six months imprisonment already served in Austria.

23 In those circumstances, the Sofiyski Rayonen sad (Sofia District Court) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

‘1. How must the expression ‘new criminal proceedings’ used in Framework Decision 2008/675 be interpreted, and must that expression necessarily be connected with a finding of guilt in respect of an offence committed or can it also relate to proceedings in which, under the national law of the second Member State, the penalty imposed in an earlier judgment must absorb another sanction or be included in it or must be enforced separately?’

2. Must Article 3(1), read in conjunction with recital 13, of Framework Decision 2008/675 be interpreted as permitting national legislation which provides that the procedure for a previous conviction handed down in another Member State to be taken into account may not be initiated by the convicted person but only by the Member State in which the previous conviction was handed down or by the Member State in which the new criminal proceedings are taking place?’

3. Must Article 3(3) of Framework Decision 2008/675 be interpreted as meaning that the Member State in which the new criminal proceedings are taking place may not change the arrangements for enforcing the penalty imposed by the Member State where the previous conviction was handed down, including in the event that, under the national law of the second Member State, the penalty imposed by the previous conviction must absorb another penalty or be included in it or must be enforced separately?’

### **Consideration of the questions referred**

#### *The first question*

24 By its first question, the referring court seeks, in essence, to ascertain whether Framework Decision 2008/675 must be interpreted as meaning that it is applicable solely to proceedings concerned with establishing that an accused person is or is not guilty of an offence or whether it is also applicable to a national procedure that is concerned with the imposition, for the purposes of execution, of an overall custodial sentence that takes into account the sentence imposed on that person by a national court and also that imposed following a previous conviction handed down by a court of another Member State against the same person for different facts.

25 In order to answer that question, it must be observed that Article 1(1) of Framework Decision 2008/675 provides that the purpose of that framework decision is to determine the conditions under which previous convictions handed down in one Member State against a person are taken into account in the course of new criminal proceedings brought in another Member State against the same person and for different facts.

26 To that end, Article 3(1) of that Framework Decision, read in the light of recital 5 thereof, obliges Member States to ensure that, when such criminal proceedings are brought, previous convictions handed down in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent that previous national convictions are taken into account under national law, and that the legal effects attached to them are equivalent to those attached to previous national convictions, in accordance with national law, whether in relation to questions of fact or questions of substantive or procedural law.

27 Article 3(2) of that Framework Decision adds that that obligation is to apply at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules of procedure, including the rules relating to the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision. Thus, recitals 2 and 7 of that Framework Decision state that a national court must be able to take account of convictions handed down in other Member States including how arrangements for enforcement might be implemented and that the effects of those convictions should be equivalent to the effects of national decisions at each of those procedural stages.

28 It follows that Framework Decision 2008/675 is applicable not only to proceedings concerned with establishing that an accused person is or is not guilty of an offence, but also to proceedings relating to the enforcement of the sentence where account must be taken of a sentence imposed following a previous conviction handed down in another Member State. As the Advocate General stated in point 59 of his Opinion, it is apparent from the documents available to the Court that, in this case, the proceedings seeking the imposition of an overall sentence brought by Mr Beshkov fall into the second category, and consequently that procedure falls within the scope of that Framework Decision.

29 In the light of the foregoing, the answer to the first question is that Framework Decision 2008/675 must be interpreted as meaning that it is applicable to a national procedure that is concerned with the imposition, for the purposes of execution, of an overall custodial sentence that takes into account the sentence imposed on that person by a national court and also that imposed following a previous conviction handed down by a court of another Member State against the same person for different facts.

#### *The second question*

30 First, it must be observed, as stated in paragraph 18 of the present judgment, that the referring court questions whether it is a prerequisite of the possibility that the conviction handed down by the Landesgericht Klagenfurt (Regional Court of Klagenfurt) at issue in the main proceedings might be taken into account for the imposition of an overall sentence, that that conviction must first be recognised by the Bulgarian courts with jurisdiction in accordance with the procedure laid down in, in particular, Articles 463 to 466 of the Code of Criminal Procedure.

31 As was stated in paragraphs 20 and 21 of this judgment, the referring court, while expressing some doubts, nonetheless starts from the premiss that that prior recognition procedure should be



implemented for that purpose and raises the issue, by means of its second question, of whether Framework Decision 2008/675 precludes the abovementioned Articles 463 to 466 in so far as those articles provide that that procedure cannot be initiated directly by the convicted person.

32 However, in order to provide a useful answer to the referring court, it is necessary to determine, first, whether that Framework Decision precludes the implementation of such a recognition procedure.

33 To that end, it is appropriate, as is open to the Court in accordance with the Court's settled case-law (judgment of 21 December 2016, *Ucar and Kilic*, C-508/15 and C-509/15, EU:C:2016:986, paragraph 51 and case-law cited), to reformulate the second question referred as seeking in essence to ascertain whether Framework Decision 2008/675 must be interpreted as precluding the possibility that it should be a prerequisite of account being taken, in a Member State, of a previous conviction handed down by a court of another Member State, that a national procedure for prior recognition of that conviction by the courts with jurisdiction in the former Member State, such as that laid down in, in particular, Articles 463 to 466 of the Code of Criminal Procedure at issue in the main proceedings, be implemented, and, if it does not preclude that possibility, whether that Framework Decision precludes national legislation that provides that that procedure may be initiated solely by the competent national authorities, but not by the convicted person.

34 In order to answer that question, reference must be made to the content of Articles 463 to 466 of the Code of Criminal Procedure as set out in paragraphs 11 to 13 of the present judgment, from which it is apparent that those articles establish a special procedure for prior recognition, by the Bulgarian courts with jurisdiction, of convictions not subject to appeal handed down by foreign courts, with the aim of ensuring that the decision whereby those convictions are recognised has the effect of a conviction handed down by a Bulgarian court. That procedure involves an examination of the foreign conviction concerned in order to determine whether the conditions laid down in Article 463 are satisfied.

35 In that regard, the national court admittedly must, for the purposes of the application of Article 3(1) of Framework Decision 2008/675, referred to in paragraph 26 of the present judgment, be in a position to determine, *inter alia*, whether previous national convictions are to be taken into account under national law and, if so, what effects are to be attached to them under that law.

36 Nonetheless, as stated in recital 2 of the Framework Decision, the aim of Framework Decision 2008/675 is to implement the principle of mutual recognition of judgments and judicial decisions in criminal matters, a principle enshrined in Article 82(1) TFEU, which replaced Article 31 EU, on the basis of which that Framework Decision was adopted. As the Advocate General stated in points 30, 31 and 64 of his Opinion, that principle precludes the possibility that it should be a prerequisite of account being taken, in the context of that Framework Decision, of a previous conviction handed down by a court of another Member State, that a national procedure for prior recognition, such as that at issue in the main proceedings, be implemented, and also the possibility of that previous conviction being, in that procedure, reviewed (see, by analogy, judgment of 9 June 2016, *Balogh*, C-25/15, EU:C:2016:423, paragraph 54).

37 Article 3(3) and recital 13 of Framework Decision 2008/675 expressly proscribe such a review, since previous convictions handed down in other Member States must be taken into account in the terms in which they were handed down.

38 Therefore, contrary to what is argued by the Austrian government, while recital 13 also states that that Framework Decision respects the diversity of domestic solutions and procedures required for taking into account a previous conviction handed down in another Member State and does not prevent a Member State from issuing a decision, if necessary, in order to attach the equivalent legal effects to that conviction, the adoption of such a decision cannot, however, in any event, involve the implementation of a national procedure for prior recognition such as that at issue in the main proceedings.

39 In the light of the foregoing, there is no need to answer the question as to whether it is a requirement imposed by the Framework Decision that the convicted person should himself be able to initiate that procedure.

40 Consequently, the answer to the second question is that Framework Decision 2008/675 must be interpreted as precluding the possibility that it should be a prerequisite of account being taken, in a Member State, of a previous conviction handed down by a court of another Member State that a national procedure for prior recognition of that conviction by the courts with jurisdiction in the former Member State, such as that laid down in Articles 463 to 466 of the Code of Criminal Procedure at issue in the main proceedings, be implemented.

#### *The third question*

41 By its third question, the referring court seeks, in essence, to ascertain whether Article 3(3) of Framework Decision 2008/675 must be interpreted as precluding national legislation which provides that a national court, seised of an application for the imposition, for the purposes of execution, of an overall custodial sentence that takes into account, inter alia, the sentence imposed following a previous conviction handed down by a court of another Member State, may alter for that purpose the arrangements for enforcement of that latter sentence.

42 First, it must be observed that it is apparent from the documents available to the Court that, by means of a decision of 15 October 2014, the Landesgericht Klagenfurt (Regional Court of Klagenfurt) held that the probation period of three years laid down by its decision of 13 December 2010 had come to an end and, consequently, finally brought to an end the part of the sentence imposed on Mr Beshkov that was suspended, with the result that that sentence as a whole has to be regarded as having been executed in its entirety. For the purposes of examining the third question, that fact must be taken into consideration, as the referring court was informed in correspondence on a request for clarification sent to it by the Court pursuant to Article 101 of the Court's Rules of Procedure.

43 In answering that question, it must indeed be borne in mind, as stated in paragraph 26 of the present judgment, that, pursuant to Article 3(1) of Framework Decision 2008/675, previous convictions handed down in another Member State must, as a general rule, be taken into account to the extent that national previous convictions taken into account under national law and legal effects must be attached to them that are equivalent to those of the latter convictions, in accordance with national law.

44 However, Article 3(3) of that Framework Decision adds that that taking into account is not to have the effect of interfering with, or revoking, previous convictions handed down by the courts of other Member States or any decision relating to their execution in the Member State in which the new criminal proceedings are being conducted. As stated in paragraph 37 of the present judgment, that provision also excludes any review of those convictions, which must therefore be taken into account in the terms in which they were handed down.

45 Moreover, it is apparent from recital 6 of that Framework Decision that it is not its objective to bring about the execution, in a Member State, of judicial decisions taken in other Member States.

46 It follows that a national court cannot, pursuant to that Framework Decision, review and alter the arrangements for execution of previous convictions handed down in another Member State that have been previously executed, in particular by revoking a suspension attached to the sentence imposed on that conviction and converting that sentence to a period of imprisonment. Nor can a national court order, in that context, further execution of that sentence as thus altered.

47 In the light of the foregoing, the answer to the third question is that Article 3(3) of Framework Decision 2008/675 must be interpreted as precluding national legislation which provides that a national court, seised of an application for the imposition, for the purposes of execution, of an overall custodial sentence that takes into account, inter alia, the sentence imposed following a previous conviction handed down by a court of another Member State, may alter for that purpose the arrangements for execution of that latter sentence.

### Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fifth Chamber) hereby rules:

- 1. Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings must be interpreted as meaning that it is applicable to a national procedure that is concerned with the imposition, for the purposes of execution, of an overall custodial sentence that takes into account the sentence imposed on that person by a national court and also that imposed following a previous conviction handed down by a court of another Member State against the same person for different facts.**
- 2. Framework Decision 2008/675 must be interpreted as precluding the possibility that it should be a prerequisite of account being taken, in a Member State, of a previous conviction handed down by a court of another Member State that a national procedure for prior recognition of that conviction by the courts with jurisdiction in the former Member State, such as that laid down in Articles 463 to 466 of the Nakazatelnoprotsesualen kodeks (Code of Criminal Procedure), be implemented.**
- 3. Article 3(3) of Framework Decision 2008/675 must be interpreted as precluding national legislation which provides that a national court, seised of an application for the imposition, for the purposes of execution, of an overall custodial sentence that takes into account, inter alia, the sentence imposed following a previous conviction handed down by a court of another Member State, may alter for that purpose the arrangements for execution of that latter sentence.**

[Signatures]

