

proceedings, under which university professors are compulsorily retired when they reach the age of 68 and may continue working beyond the age of 65 only by means of fixed-term one-year contracts renewable at most twice, provided that that legislation pursues a legitimate aim linked *inter alia* to employment and labour market policy, such as the delivery of quality teaching and the best possible allocation of posts for professors between the generations, and that it makes it possible to achieve that aim by appropriate and necessary means. It is for the national court to determine whether those conditions are satisfied.

Since this is a dispute between a public institution and an individual, if national legislation such as that at issue in the main proceedings does not satisfy the conditions set out in Article 6(1) of Directive 2000/78, the national court must decline to apply that legislation.

(<sup>1</sup>) OJ C 220, 12.09.2009.

**Judgment of the Court (Grand Chamber) of 16 November 2010 (reference for a preliminary ruling from the Oberlandesgericht Stuttgart — Germany) — Execution of a European arrest warrant issued in respect of Gaetano Mantello**

(Case C-261/09) (<sup>1</sup>)

*(Reference for a preliminary ruling — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 3(2) — Ne bis in idem — Concept of the ‘same acts’ — Possibility for the executing judicial authority to refuse to execute a European arrest warrant — Final judgment in the issuing Member State — Possession of narcotic drugs — Trafficking in narcotic drugs — Criminal organisation)*

(2011/C 13/20)

Language of the case: German

**Referring court**

Oberlandesgericht Stuttgart

**Party in the main proceedings**

Gaetano Mantello

**Re:**

Reference for a preliminary ruling — Oberlandesgericht Stuttgart — Interpretation of Article 3(2) of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) — Principle of ‘ne bis in idem’ at national level — Whether executing judicial authority may refuse to execute a European arrest warrant issued for the purpose of conducting a criminal prosecution concerning acts some of which have already been subject to final disposal at

trial in the issuing Member State — Concept of ‘the same acts’ — Situation in which all the facts on which the European arrest warrant is based were known to the investigating authorities of the issuing Member State at the time of the first criminal proceedings but were not used for tactical reasons relating to the investigation

**Operative part of the judgment**

The Court:

For the purposes of the issue and execution of a European arrest warrant, the concept of ‘same acts’ in Article 3(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States constitutes an autonomous concept of European Union law.

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

(<sup>1</sup>) OJ C 220, 12.9.2009.

**Judgment of the Court (Fifth Chamber) of 18 November 2010 — Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) v Commission**

(Case C-317/09 P) (<sup>1</sup>)

*(Appeal — Set-off of claims governed by separate legal orders — Application for repayment of sums advanced — Principle of litis denuntiatio — Rights of the defence and right to a fair hearing)*

(2011/C 13/21)

Language of the case: French

**Parties**

*Appellant:* Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) (represented by: P.-P. Van Gehuchten, lawyer)

*Other party to the proceedings:* European Commission (represented by: E. Manhaeve and S. Delaude, Agents)