Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 June 2020*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2004/757/JHA — Minimum provisions on the constituent elements of criminal acts and penalties involving illicit drug trafficking — Article 2(1)(c) — Article 4(2)(a) — Concept of 'large quantities of drugs' — Charter of Fundamental Rights of the European Union — Equal treatment — Articles 20 and 21 — Principle of legality of criminal offences and penalties — Article 49)

In Case C-634/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy w Słupsku (District Court, Słupsk, Poland), made by decision of 20 June 2018, received at the Court on 11 October 2018, in the criminal proceedings brought against

JI,

other party:

Prokuratura Rejonowa w Słupsku

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, M. Safjan, L. Bay Larsen and C. Toader, Judges,

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 2 October 2019,

after considering the observations submitted on behalf of:

– the Prokuratura Rejonowa w Słupsku, by P. Nierebiński, K. Nowicki and A. Klawitter,

– the Polish Government, by B. Majczyna, J. Sawicka and S. Żyrek, acting as Agents,

– the Czech Government, by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,

– the Spanish Government, initially by M.J. García-Valdecasas Dorrego, and subsequently by M.J. Ruiz Sánchez, acting as Agents,

– the Netherlands Government, by M. Bulterman and J. Langer, acting as Agents,

* Language of the case: Polish.

– the Swedish Government, by H. Eklinder, A. Falk, C. Meyer-Seitz, H. Shev and J. Lundberg, acting as Agents,

– the European Commission, by A. Szmytkowska and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 January 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(2)(a) of Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8), read in conjunction with Article 2(1)(c) thereof and Articles 20, 21 and 49 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in criminal proceedings brought against JI for unlawfully possessing a significant quantity of narcotic drugs and psychotropic substances.

Legal context

European Union law

3 Recitals 3 and 4 of Framework Decision 2004/757 are worded as follows:

'(3) It is necessary to adopt minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors which will allow a common approach at European Union level to the fight against such trafficking.

(4) By virtue of the principle of subsidiarity, European Union action should focus on the most serious types of drug offence. The exclusion of certain types of behaviour as regards personal consumption from the scope of this Framework Decision does not constitute a Council [of the European Union] guideline on how Member States should deal with these other cases in their national legislation.'

4 Article 2 of that framework decision, entitled 'Crimes linked to trafficking in drugs and precursors' provides:

'1. Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable:

(a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;

…

(c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a);

…

2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when it is committed by its perpetrators exclusively for their own personal consumption as defined by national law.'

5 Article 4 of that framework decision, headed 'Penalties', provides:

'1. Each Member State shall take the measures necessary to ensure that the offences defined in Articles 2 and 3 are punishable by effective, proportionate and dissuasive criminal penalties.

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2 are punishable by criminal penalties of a maximum of at least between one and three years of imprisonment.

2. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2(1)(a), (b) and (c) are punishable by criminal penalties of a maximum of at least between 5 and 10 years of imprisonment in each of the following circumstances:

(a) the offence involves large quantities of drugs;

…'

Polish law

6 Under Article 62(1) of the ustawy o przeciwdziałaniu narkomanii ('Law on combating drug addiction') of 29 July 2005 (Dz. U. of 2005, No 179, item 1485), possession of narcotic drugs or psychotropic substances is punishable by a restriction of liberty of up to 3 years.

7 Under Article 62(2) of the Law on combating drug addiction, where the possession of narcotic drugs or psychotropic substances involves a significant quantity of narcotic drugs or psychotropic substances, the offender shall be liable to a restriction of liberty of 1 to 10 years.

The main proceedings and the questions referred

8 The Prokuratura Rejonowa w Słupsku (District Prosecutor's Office, Słupsk, Poland) brought criminal proceedings against JI before the referring court, the Sąd Rejonowy w Słupsku (District Court, Słupsk, Poland), for, inter alia, possessing on 7 November 2016 a significant quantity of narcotic drugs and psychotropic substances, an offence under Article 62(2) of the Law on combating drug addiction.

9 It is apparent from the order for reference that JI possessed those drugs and substances for his own personal use.

10 The referring court observes that Framework Decision 2004/757 does not define the concept of 'large quantities of drugs' within the meaning of Article 4(2)(a) thereof.

11 It states that the Law on combating drug addiction implemented Framework Decision 2004/757, in particular Article 62(2) thereof, which provides that the possession of a significant quantity of narcotic drugs or psychotropic substances is punishable by a restriction of liberty of a term between 1 and 10 years.

12 However, the referring court observes that that provision also does not define the concept of 'significant quantity of psychotropic substances and narcotic drugs', which corresponds to the transposition into national law of the concept of 'large quantities of drugs' appearing in Article 4(2)(a)

of Framework Decision 2004/757. It states that national case-law established certain criteria for determining whether the quantity of narcotic drugs or psychotropic substances in the offender's possession falls within the concept referred to in Article 62(2) of the Law on combating drug addiction. According to the referring court, that concept, however, remains imprecise and is subject to interpretation on a case-by-case basis by national courts.

13 According to the referring court, it follows that persons holding quantities of narcotic drugs or comparable psychotropic substances may be treated differently according to the interpretation of that concept adopted by the court hearing the case, which could infringe the principle of equality before the law. It also submits that, in so far as Framework Decision 2004/757 does not define the concept of 'large quantities of drugs' within the meaning of Article 4(2)(a) thereof, the Member States retain a wide margin of discretion in the implementation of that concept, which could have the effect that citizens of the European Union are treated differently depending on the Member State in which they commit the offence.

14 Furthermore, the referring court has doubts as to whether Article 62(2) of the Law on combating drug addiction is compatible with the principle of legality of criminal offences and penalties enshrined in Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').

15 Under those circumstances, the Sąd Rejonowy w Słupsku (District Court, Słupsk) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must the rule of EU law contained in Article 4(2)(a) of [Framework Decision 2004/757], read in conjunction with Article 2(1)(c) thereof, be interpreted as meaning that that rule does not preclude the expression "a significant quantity of drugs" from being interpreted on a case-by-case basis as part of the individual assessment of a national court, and that that assessment does not require the application of any objective criterion, in particular that it does not require a finding that the offender possesses drugs for the purpose of performing acts covered by Article 4(2)(a) of that framework decision, that is to say production, offering, offering for sale, distribution, brokerage, or delivery on any terms whatsoever?

(2) In so far as the [Law of on combating drug addiction] contains no precise definition of "a significant quantity of drugs" and leaves the interpretation thereof to the bench adjudicating in a specific case in the exercise of its "judicial discretion", are the judicial remedies necessary to ensure the effectiveness and efficiency of the rules of EU law contained in [Framework Decision 2004/757], and in particular Article 4(2)(a) of that framework decision, read in conjunction with Article 2(1)(c) thereof, sufficient to afford Polish citizens effective protection resulting from the rules of EU law laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking?

(3) Is the rule of national law contained in Article 62(2) of the [Law on combating drug addiction] compatible with EU law, and in particular [with the rule] contained in Article 4(2)(a) of [Framework Decision 2004/757], read in conjunction with Article 2(1)(c) thereof, and, if so, is the interpretation which the national Polish courts place on the expression "a significant quantity of psychotropic substances and narcotic drugs" contrary to the rule of EU law pursuant to which a person who has committed the offence of possessing large quantities of drugs to perform activities covered by Article 2(1)(c) of [Framework Decision 2004/757] is to be subject to stricter criminal liability?

(4) Is Article 62(2) of the [Law on combating drug addiction], which lays down stricter criminal liability for the offence of possessing a significant quantity of psychotropic substances and narcotic drugs, as interpreted by the Polish national courts, contrary to the principles of equality and non-discrimination (Article 14 [of the ECHR] and Articles 20 and 21 [of the Charter], read in conjunction with Article 6(1) [TEU])?'

The jurisdiction of the Court

16 In the first place, the District Public Prosecutor's Office of Słupsk challenges the jurisdiction of the Court to hear the present request for a preliminary ruling on the ground that, by its questions referred, the referring court is not asking the Court to interpret EU law but, first, to interpret a provision of national law, namely Article 62(2) of the Law on combating drug addiction and, second, to rule on the compatibility of that provision with Framework Decision 2004/757.

17 In that regard, it should be noted that, by some of its questions, the referring court asks the Court to rule on the compatibility of Article 62(2) of the Law on combating drug addiction with EU law.

18 However, while it is not for the Court, in proceedings under Article 267 TFEU, to rule on the conformity or compatibility of national provisions with EU law or to interpret national legislative or regulatory provisions, the Court nonetheless has jurisdiction to give the national court full guidance on the interpretation of EU law in order to enable it to determine the issue of conformity or compatibility for the purposes of the case before it (judgment of 18 September 2019, *VIPA*, C-222/18, EU:C:2019:751, paragraph 28 and the case-law cited).

19 It is therefore appropriate for the Court, in the present case, to restrict its analysis to the provisions of EU law and provide an interpretation of the national provisions which will be of use to the national court, which has the task of determining the compatibility and conformity of the instruments of national law with EU law, for the purposes of deciding the dispute before it (judgment of 26 July 2017, *Europa Way and Persidera*, C-560/15, EU:C:2017:593, paragraph 36).

20 Thus, having regard to the wording of the questions referred and the reasons for the order for reference, those questions must be understood as relating to the interpretation of Articles 2(1)(c) and 4(2)(a) of Framework Decision 2004/757 and Articles 20, 21 and 49 of the Charter, so that the plea of lack of jurisdiction raised by the District Public Prosecutor's Office of Słupsk must be dismissed.

21 In the second place, the District Public Prosecutor's Office of Słupsk, the Polish, Spanish and Swedish Governments, and the European Commission are of the view that there is no need to answer the questions referred, since the situation in which JI finds himself falls outside the scope of Framework Decision 2004/757. In their view, it is apparent from the order for reference that JI is being prosecuted solely for possessing drugs for personal consumption, which, in accordance with Article 2(2) of Framework Decision 2004/757, constitutes conduct falling outside the scope of that decision.

22 In that regard, under Article 2(2) of Framework Decision 2004/757, the possession of drugs exclusively for a person's own personal consumption, as defined under national law, is not included within the scope of that framework decision.

23 In the present case, it is apparent from the order for reference, first, that JI is being prosecuted for possessing a significant quantity of narcotic drugs and psychotropic substances, an offence under Article 62(2) of the Law on combating drug addiction, and, second, that he was in possession of those drugs and substances for personal consumption. Therefore, such circumstances fall outside the scope of Framework Decision 2004/757.

24 Nonetheless, it must be recalled that the Court has repeatedly considered itself to have jurisdiction to give preliminary rulings on questions concerning provisions of EU law in situations where the facts at issue in the main proceedings were outside the scope of EU law and therefore fell within the competence of the Member States alone, but where those provisions of EU law had been rendered applicable by domestic law due to a reference made by that law to the content of those provisions (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 86 and the case-law cited).

25 The Court has stated in particular in that regard that where, in regulating purely internal situations, domestic legislation seeks to adopt the same solutions as those adopted in EU law in order, for example, to avoid discrimination against a Member State's own nationals or any distortion of competition or to provide for one single procedure in comparable situations, there is clearly an interest that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 87 and the case-law cited).

26 Thus, an interpretation by the Court of provisions of EU law in situations outside its scope is justified where those provisions have been made applicable to such situations by national law in a direct and unconditional way in order to ensure that internal situations and situations governed by EU law are treated in the same way (judgment of 18 October 2012 *Nolan*, C-583/10, EU:C:2012:638, paragraph 47 and the case-law cited).

27 In the present case, it appears from the order for reference that Framework Decision 2004/757 has been implemented in Polish law by the Law on combating drug addiction. In particular, it is apparent from the information provided by the referring court and the clarifications made by the Polish Government at the hearing that Article 62(2) of that law transposed into domestic law Article 2(1)(a) and the concept of 'large quantities of drugs' contained in Article 4(2)(a) of that framework decision.

28 As explained by the District Prosecutor's Office of Słupsk and the Polish Government at the hearing, Article 62(2) of the Law on combating drug addiction criminalises the possession of a significant quantity of narcotic drugs or psychotropic substances, whether for personal consumption or for other purposes, in particular for the purpose of carrying out one of the activities listed in Article 2(1)(a) of Framework Decision 2004/757.

29 Since the aggravating circumstance of the possession of 'large quantities of drugs' within the meaning of Article 4(2)(a) of Framework Decision 2004/757 applies, by means of the Law on combating drug addiction, to conduct excluded from the scope of that law, namely the possession of drugs exclusively for personal consumption, there is a definite interest in providing a uniform interpretation of that provision of EU law.

30 In those circumstances, the Court has jurisdiction to answer the questions referred.

Consideration of the questions referred

31 By its questions, which must be considered together, the referring court asks, in essence, whether Article 4(2)(a) of Framework Decision 2004/757, read in conjunction with Article 2(1)(c) thereof, and Articles 20, 21 and 49 of the Charter, must be interpreted as precluding a Member State from classifying as a criminal offence the possession of a significant quantity of narcotic drugs or psychotropic substances both for personal consumption and for the purposes of illicit drug trafficking, while leaving the interpretation of the concept of 'significant quantity of narcotic drugs or psychotropic substances' to the discretion of the national courts, on a case-by-case basis.

32 In that regard, it should be noted that Framework Decision 2004/757 was adopted, inter alia, on the basis of Article 31(1)(e) TEU, which provided, in particular, that common action on judicial cooperation in criminal matters is to include progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the field of illicit drug trafficking.

33 Furthermore, it follows from recital 3 of Framework Decision 2004/757 that that framework decision lays down minimum rules relating to the constituent elements of criminal acts and penalties in the field of illicit drug trafficking and precursors, the aim of which is to define a common approach at EU level to the fight against drug trafficking.

34 In particular, it follows from Article 2(1)(a) and (c) of Framework Decision 2004/757 and Article 4(1) thereof that possession of drugs with a view to the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation must be classified as a criminal offence, punishable by a maximum sentence of at least 1 to 3 years' imprisonment.

35 In addition, it follows from Article 4(2)(a) of that framework decision that the Member States must penalise that offence, where it involves 'large quantities of drugs', with a maximum penalty of at least 5 to 10 years' imprisonment.

36 That being so, first, as is apparent from paragraph 22 of the present judgment, Article 2(2) of Framework Decision 2004/757 excludes from the scope of that framework decision, inter alia, the possession of drugs exclusively for personal consumption, as defined by national legislation. Second, recital 4 of Framework Decision 2004/757 sets out that 'the exclusion of certain types of behaviour as regards personal consumption from the scope of [Framework Decision 2004/757] does not constitute a Council guideline on how Member States should deal with these other cases in their national legislation'.

37 It follows, as the Advocate General observed in paragraph 47 of her Opinion, that Member States remain free to treat the possession of large quantities of drugs for personal consumption as an aggravated criminal offence.

38 However, as is clear from paragraphs 12 to 14 of the present judgment, the referring court is uncertain whether the principles of equality before the law, non-discrimination and the legality of criminal offences and penalties, enshrined in Articles 20, 21 and 49 of the Charter, must be interpreted as precluding the concept of 'significant quantity of narcotic drugs or psychotropic substances', referred to in Article 62(2) of the Law on combating drug addiction, which transposes into national law the concept of 'large quantities of drugs' contained in Article 4(2)(a) of Framework Decision 2004/757, from not being further defined by the national legislature but being made subject to interpretation on a case-by-case basis by the national courts.

39 In that regard, it should be recalled that framework decisions are binding on the Member States as to the result to be achieved, while leaving to the national authorities the choice of form and methods (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 69).

40 In that context, it should be noted that Article 2(1)(a) and (c) of Framework Decision 2004/757 and Article 4(2)(a) thereof require Member States only to penalise the possession of drugs linked to trafficking, where it involves 'large quantities of drugs', with a maximum penalty of at least 5 to 10 years' imprisonment.

41 First, that framework decision does not contain any definition of the concept of 'large quantities of drugs' within the meaning of Article 4(2)(a) thereof. Second, as is apparent from paragraphs 32 and 33 of the present judgment, that framework decision constitutes only an instrument of minimum harmonisation. Consequently, the Member States have a wide margin of discretion as regards the implementation of that concept in their national law.

42 That being so, when implementing EU law, Member States are required, under Article 51(1) of the Charter, to respect the fundamental rights guaranteed by the Charter, including in particular those enshrined in Articles 20, 21 and 49 of the Charter (see, to that effect, judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraphs 17 and 18).

43 In that context, it is important, in the first place, to recall that the principles of equality before the law and non-discrimination enshrined in Articles 20 and 21 of the Charter require that comparable situations should not be treated differently and that different situations should not be treated equally unless such treatment is objectively justified (judgment of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, EU:C:2007:261, paragraph 56).

44 In the present case, it must be noted, first, that, by providing that the possession of a significant quantity of narcotic drugs or psychotropic substances is punishable by a restriction of liberty of 1 to 10 years, Article 62(2) of the Law on combating drug addiction does not establish any difference in the treatment between potential perpetrators of that offence.

45 Second, as noted by the Advocate General in paragraph 62 of her Opinion, the fact that national courts enjoy a certain degree of discretion when interpreting and applying a provision of national law does not, as such, constitute an infringement of Articles 20 and 21 of the Charter.

46 Finally, thirdly, as is clear from paragraphs 32 and 33 of the present judgment, Framework Decision 2004/757 lays down only minimum rules relating to the constituent elements of criminal acts and penalties in the field of illicit trafficking in drugs and precursors. It follows that the existence of differences between the measures implementing that framework decision in the various national legal orders cannot be regarded as an infringement of the principle of non-discrimination (see, by analogy, judgment of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, EU:C:2007:261, paragraphs 59 and 60).

47 As regards, in the second place, the principle of the legality of criminal offences and penalties, enshrined in Article 49(1) of the Charter, it should be recalled that that principle has been enshrined, inter alia, in Article 7(1) of the ECHR (see, to that effect, judgment of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 53). In accordance with Article 52(3) of the Charter, the right guaranteed in Article 49 thereof has the same meaning and scope as the right guaranteed by the ECHR.

48 Under that principle, criminal law provisions must comply with certain requirements of accessibility and predictability as regards both the definition of the offence and the sentencing (judgment of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 55 and the case-law cited).

49 It follows that the law must define clearly offences and the penalties which they attract. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him or her criminally liable (see, to that effect, judgments of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraph 71, and of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 56).

50 Further, the principle that the applicable law must be precise cannot be interpreted as prohibiting the gradual clarification of rules of criminal liability by means of interpretations in the case-law, provided that those interpretations are reasonably foreseeable (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 167 and the case-law cited).

51 Accordingly, the principle of the legality of offences and penalties must be interpreted as not precluding a Member State from providing for aggravated criminal penalties for the offence of possession of a 'significant quantity of narcotic drugs and psychotropic substances', while leaving the interpretation of that concept to the national courts, on a case-by-case basis, provided that that interpretation meets the requirements of foreseeability, as set out in paragraphs 48 to 50 of the present judgment.

52 It follows from all the foregoing considerations that the answer to the questions referred is that Article 4(2)(a) of Framework Decision 2004/757, read in conjunction with Article 2(1)(c) thereof, and Articles 20, 21 and 49 of the Charter, must be interpreted as not precluding a Member State from classifying as a criminal offence the possession of a significant quantity of narcotic drugs or psychotropic substances both for personal consumption and for the purposes of illicit drug trafficking, while leaving the interpretation of the concept of 'significant quantity of narcotic drugs or psychotropic substances' to the discretion of the national courts, on a case-by-case basis, provided that that interpretation is reasonably foreseeable.

Costs

53 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 (First Chamber) hereby rules:

Article 4(2)(a) of Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, read in conjunction with Article 2(1)(c) thereof, and Articles 20, 21 and 49 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a Member State from classifying as a criminal offence the possession of a significant quantity of narcotic drugs or psychotropic substances both for personal consumption and for the purposes of illicit drug trafficking, while leaving the interpretation of the concept of 'significant quantity of narcotic drugs or psychotropic substances' to the discretion of the national courts, on a case-by-case basis, provided that that interpretation is reasonably foreseeable.

[Signatures]