Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

25 January 2017*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Mutual recognition of judgments — Framework Decision 2008/909/JHA — Scope — Article 28 — Transitional provision — Concept of 'issue of the final judgment')

In Case C-582/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 30 October 2015, received at the Court on 11 November 2015, in the criminal proceedings against

Gerrit van Vemde

intervening parties:

Openbaar Ministerie,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, A. Tizzano, Vice-President of the Court, acting as Judge of the Fifth Chamber, M. Berger (Rapporteur), A. Borg Barthet and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 September 2016,

after considering the observations submitted on behalf of:

— Mr van Vemde, by P. Souren, advocaat,

— the Openbaar Ministerie, by K. van der Schaft and U. Weitzel,

— the Netherlands Government, by M.K. Bulterman and B. Koopman and by J. Langer, 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 R. Troosters and S. Grünheid, acting as Agents,

* Language of the case: Dutch.

after hearing the Opinion of the Advocate General at the sitting on 12 October 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 28(2) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).

2 The request has been made in proceedings relating to the enforcement of a three-year custodial sentence in the Netherlands imposed by the Hof van beroep Antwerpen (Court of Appeal, Antwerp, Belgium) on Mr Gerrit van Vemde.

Legal context

EU law

3 Article 1 of Framework Decision 2008/909, headed 'Definitions', provides:

'For the purposes of this Framework Decision:

(a) "judgment" shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;

(b) "sentence" shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;

(c) "issuing State" shall mean the Member State in which a judgment is delivered;

(d) "executing State" shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement.'

4 Article 3 of that framework decision, entitled 'Purpose and scope', provides:

'The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.

…

This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. …

…'

5 Pursuant to Article 28 of the Framework Decision, headed ‘Transitional provision’:

‘1. Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision.

2. However, any Member State may, on the adoption of this Framework Decision, make a declaration indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. If such a declaration is made, those instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than 5 December 2011 The said declaration shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.’

6 On the basis of Article 28(2) of the Framework Decision, the Netherlands made the following declaration (OJ 2009 L 265, p. 41):

‘In accordance with Article 28(2), the Netherlands hereby declares that, in cases where the final judgment has been issued within 3 years following the date on which the Framework Decision enters into force, the Netherlands will, as an issuing and an executing State, continue to apply the legal instruments on the transfer of sentenced persons applicable prior to this Framework Decision.’

Netherlands law

7 Article 2:11 of the Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties (Law on the mutual recognition and enforcement of custodial and suspended sentences, ‘the WETS’), which implements Framework Decision 2008/909, provides:

‘1. [The] Minister [for Security and Justice] shall forward the judicial decision … to the advocate general of the Public Prosecutor’s Office at the appeal court.

2. The advocate general shall forthwith submit the judicial decision … to the specialised division of the Arnhem-Leeuwarden [Netherlands] court of appeal …’

8 Under Article 2(12) of the WETS, the Minister for Security and Justice is to decide whether to recognise the judicial decision of another Member State, taking account of the assessment made by the specialised division of the Arnhem-Leeuwarden court of appeal.

9 According to Article 5:2 of the WETS:

‘1. [The WETS] replaces the Wet overdracht tenuitvoerlegging strafvonnissen (Law on the transfer of enforcement of judgments in criminal matters, “the WOTS”) in relations with the Member States of the European Union.

…

3. [The WETS] shall not apply to judicial decisions … which became final before 5 December 2011.

…’

10 According to Article 2 of the Law on the transfer of enforcement of judgments in criminal matters, ‘foreign judicial decisions shall be enforced in the Netherlands only under a convention’.

11 Article 31(1) of that law provides that, 'where it considers the enforcement of the foreign judicial decision to be permissible, the [Rechtbank Amersterdam (District Court Amsterdam, Netherlands) shall issue the authorisation and, in compliance with the provisions of the convention applicable, it shall impose the sentence or the measure prescribed for the relevant offence under Netherlands law'.

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

12 The person who is the subject of the main proceedings, Mr Gerrit van Vemde, was arrested in the Netherlands on 27 October 2009 under a European arrest warrant, issued by a Belgian judicial authority, for the purposes of criminal prosecution in Belgium. After being surrendered, he was remanded in custody in Belgium. Mr Gerrit van Vemde was then released on bail in the course of the Belgian criminal proceedings. However, he returned, by his own means, to the Netherlands before judgment was delivered.

13 By judgment of 28 February 2011, the Hof van beroep Antwerpen (Court of Appeal, Antwerp, Belgium) sentenced Mr van Vemde to a custodial sentence of three years. On 6 December 2011, the Hof van Cassatie (Court of Cassation, Belgium) dismissed the appeal in cassation against that decision and, on that same date, the decision of the Hof van beroep Antwerpen (Court of Appeal, Antwerp) became final.

14 On 23 July 2013, the Belgian authorities requested the Kingdom of the Netherlands to take over the execution of the custodial sentence imposed by the decision of the Hof van Beroep Antwerpen (Court of Appeal, Antwerp). By application of 10 October 2013, the procureur du Roi (Public Prosecutor, Belgium) subsequently requested that the referring court authorise the enforcement of the custodial sentence.

15 Having received that request, the referring court asks whether the applicable national provisions implementing Framework Decision 2008/909, namely the WETS, are applicable to the case in the main proceedings.

16 On the one hand, according to the national court, that question should be answered, prima facie, in the affirmative, since it is clear from Article 5:2(3) of the WETS that it applies to judgments which have become final as from 5 December 2011 and that, in the present case, the judgment of the Hof van beroep Antwerpen (Court of Appeal, Antwerp) became final after that date, on 6 December 2011.

17 However, on the other hand, referring court has doubts as to the interpretation of that law, taking account of Article 28 of Framework Decision 2008/909.

18 In that regard, the referring court notes that although, pursuant to Article 28(1) of the Framework Decision 2008/909, requests for recognition of a judgment and enforcement of a sentence received after 5 December 2011 are governed by the rules adopted by the Member States in implementation of that framework decision, Article 28(2) thereof provides essentially that any Member State could make a declaration indicating that, as regards final judgments 'issued' before the date specified by that State, it would continue to apply the legal instruments applicable before that date. The Kingdom of the Netherlands has made such a declaration.

19 According to the referring court, if Article 28(2) of Framework Decision 2008/909 were to be interpreted as meaning that it covers judgments issued before the date specified by the Member State, regardless of when they became final, the transitional provision in Article 5:2(3) of the WETS ought to be read, in accordance with the principle of consistent interpretation, as excluding the application of the WETS from judgements issued before 5 December 2011. As regards the case in the main proceedings, it follows that the WETS is not applicable in the case in the main proceedings since the

judgment of the Hof van beroep Antwerpen (Court of Appeal, Antwerp) was issued on 28 February 2011 and, therefore, the referring court has jurisdiction to rule on the request made by the Belgian authorities.

20 On the other hand, if Article 28(2) of the Framework Decision had to be interpreted as meaning that it covers judgments which became final before the date specified by the Member States, the referring court observes, on the basis of the provisions of the WETS, that it does not have jurisdiction to rule on that request.

21 In those circumstances, the Rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must the first sentence of Article 28(2) of Framework Decision 2008/909 be understood as meaning that the declaration referred to therein may relate only to judgments issued before 5 December 2011, irrespective of when those judgments became final, or must that provision be understood as meaning that the declaration may relate only to judgments which became final before 5 December 2011?'

Consideration of the question referred

22 By its question, the referring court asks essentially whether Article 28(2), first sentence, of the Framework Decision 2008/909 must be interpreted as meaning that it covers judgments pronounced before the date indicated by the Member State concerned, which cannot be later than 5 December 2011, or whether it should be interpreted as meaning that it covers only judgments which have become final after that date.

23 In order to answer that question, it must be recalled, first of all, that Article 1(a) of the Framework Decision 2008/909 defines a 'judgment' as a final decision or order of a court of the issuing State imposing a sentence on a natural person. Under Article 3(1) thereof, that framework decision is intended to lay down rules enabling a Member State, with a view to facilitating the social rehabilitation of the sentenced person, to recognise a judgment and enforce the sentence. According to Article 3(3) of the Framework Decision, the latter applies only to the recognition of judgments and the enforcement of sentences within the meaning of that framework decision.

24 Therefore, the substantive scope of Framework Decision 2008/909 is limited to judgments which have become final, with a view to their recognition and enforcement by the executing State, to the exclusion of decisions subject to appeal, such as judgments, like the judgment in the main proceedings of the Hof van beroep Antwerpen (Court of Appeal, Antwerp) of 28 February 2011, against which an appeal on point of law was brought before the Hof van Cassatie (Court of Cassation), and which became final only after the latter court dismissed the appeal on 6 December 2011.

25 Next, it must be observed that, according to settled case-law, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (judgment of 28 July 2016, *JZ*, C-294/16 PPU, EU:2016:610, paragraph 35).

26 Article 1(a) of Framework Decision 2008/909, which defines the concept of 'judgment' as a final decision, does not contain any reference to the law of the Member States, so that it must be held that that concept is an autonomous concept of EU law that must be given an autonomous and uniform interpretation throughout the European Union. To that end, account must also be taken of the terms of that provision, its context and the objectives of the legislation of which it forms part (see, to that effect, judgment of 28 July 2016, *JZ*, C-294/16 PPU, EU:2016:610, paragraph 37).

27 In that connection, although the terms of Article 28(2) of the Framework Decision 2008/909 are ambiguous, the reference made in that provision to a 'final judgment' militates in favour of an interpretation according to which that provision covers the latter judgment which is issued in criminal proceedings and which makes final the sentence imposed on the person sentenced. That interpretation is supported by the definition of 'judgment' in Article 1(a) thereof. In that connection, the fact that both Article 1(a) and Article 28(2) refer to the 'final' nature of the judgment concerned underlines the particular importance, for the purpose of the application of the latter provision, given to the unchallengeable nature of that judgment and, therefore, the date on which finality is acquired.

28 Furthermore, since the definitions of 'judgment' and 'issue' of that judgment, in Article 28(2) of the Framework Decision 2008/909, must be given an independent and uniform interpretation in the EU, the scope of those definitions and, therefore, of that provision cannot depend either on the domestic criminal proceedings of the issuing Member State or that of the enforcing State.

29 Therefore, an interpretation of Article 28(2) of Framework Decision 2008/909 according to which its application depends on the date on which a judgment is regarded as having been 'issued' within the meaning of the national law concerned, independently of the date on which it became final, must be excluded.

30 Finally, regarding the scheme and the objectives pursued by the legislation of which the relevant provision is part, it must be recalled, as the Advocate General observes in points 45 to 48 of his Opinion, that Article 28(2) of Framework Decision 2008/909 constitutes an exception to the general scheme of Article 28(1) thereof, which provides that requests for the enforcement of a judgment and enforcement of a sentence received after 5 December 2011 are to be governed by the rules adopted by Member States pursuant to that framework decision. As an exception to the general scheme, the first of those provisions must be strictly interpreted.

31 By limiting the number of cases which continue to be covered by legal instruments existing before the entry into force of Framework Decision 2008/909 and, therefore, by increasing the number of cases which fall within the rules adopted by the Member States in implementation of that framework decision, a strict interpretation of Article 28(2), to the effect that that provision covers only judgments which became final by 5 December 2011 at the latest, is the most appropriate in order to guarantee the objective pursued by that framework decision. As is clear from Article 3(1) thereof, that objective consists in enabling the Member States to recognise the judgments and enforce the sentences they contain, with a view to facilitating the social rehabilitation of a sentenced person.

32 In addition, the Austrian Government and the European Commission raised the question of the validity of the declaration made by the Kingdom of the Netherlands pursuant to Article 28(2) of Framework Decision 2008/909, having regard to the moment to which that declaration was made. Taking account of the interpretation adopted in the preceding paragraph of this judgment, that question is hypothetical, since the domestic provisions of the Netherlands implementing that framework decision are, in any event, applicable to the case in the main proceedings. In those circumstances, it is unnecessary to reply to that argument.

33 It follows from the foregoing that the answer to the question referred for a preliminary ruling is that Article 28(2), first sentence, of Framework Decision 2008/909 must be interpreted as meaning that it covers only judgments which became final before the date indicated by the Member State concerned.

Costs

34 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:

Article 28(2) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union must be interpreted as meaning that it covers only judgments which became final before the date specified by the Member State concerned.

[Signatures]