Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

15 April 2021 *

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Framework Decision 2008/909/JHA – Article 8(2) and (4): – Article 17(1) and (2) – Article 19 – Taking into account, for the purposes of an aggregate sentence, of a conviction delivered in another Member State, which must be enforced in the Member State in which that judgment is delivered – Conditions – Framework Decision 2008/675/JHA – Article 3(3) – Concept of 'interference with a sentence or its execution' which must be taken into account in the event of new criminal proceedings initiated in a Member State other than that in which the ruling was delivered)

In Case C-221/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Gdańsku (Regional Court, Gdańsk, Poland), made by decision of 15 February 2019, received at the Court on 11 March 2019, in the proceedings

AV

intervening parties:

Pomorski Wydział Zamiejscowy Departamentu do Spraw Przestępczości Zorganizowanej i Korupcji Prokuratury Krajowej,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, N. Piçarra (Rapporteur), D. Šváby, S. Rodin and K. Jürimäe, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Polish Government, by B. Majczyna, acting as Agent,

– the Czech Government, by M. Smolek, J. Vláčil, and T. Machovičová, acting as Agents,

* Language of the case: Polish.

– the Spanish Government, initially by A. Rubio González, and subsequently by L. Aguilera Ruiz, acting as Agents,

– the Hungarian Government, by M. Z. Fehér and Z. Wagner, acting as Agents,

– the European Commission, by S. Grünheid and L. Baumgart, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 October 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(3) 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), as well as that of Article 8(2) to (4), the first sentence of Article 17(1), and Article 19 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), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2008/909').

2 The request was made in proceedings concerning the delivery of an aggregate sentence in respect of AV covering, inter alia, a sentence involving deprivation of liberty delivered by a court in another Member State, recognised for the purposes of its enforcement in Poland.

Legal context

European Union law

Framework Decision 2008/909

3 Recitals 6 and 15 of Framework Decision 2008/909 state:

'(6) This Framework Decision should be implemented and applied in a manner which allows general principles of equality, fairness and reasonableness to be respected.

…

(15) This Framework Decision should be applied in accordance with the right of citizens of the Union to move and reside freely within the territory of the Member States conferred by Article [21 TFEU].'

4 Article 1 of that framework decision states:

‘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.’

5 Article 3(1) and (3) of that framework decision provides as follows:

‘1. 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.

…

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

6 Article 8 of that framework decision, entitled ‘Recognition of the judgment and enforcement of the sentence’, provides:

‘1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.’

7 Article 12 of Framework Decision 2008/909, entitled 'Decision on the enforcement of the sentence and time limits', provides in paragraph 1 thereof as follows:

'The competent authority in the executing State shall decide as quickly as possible whether to recognise the judgment and enforce the sentence and shall inform the issuing State …'

8 Under the heading 'Law governing enforcement', Article 17 of that framework decision provides, in paragraphs 1 and 2:

'1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

2. The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served.'

9 Under Article 19 of that framework decision, entitled 'Amnesty, pardon, review of judgment':

'1. An amnesty or pardon may be granted by the issuing State and also by the executing State.

2. Only the issuing State may decide on applications for review of the judgment imposing the sentence to be enforced under this Framework Decision.'

10 Article 21 of Framework Decision 2008/909, entitled 'Information to be given by the executing State', provides:

'The competent authority in the executing State shall, without delay, inform the competent authority in the issuing State by any means which leaves a written record:

…

(e) of any decision to adapt the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision;

(f) of any decision not to enforce the sentence for the reasons referred to in Article 19(1) together with the reasons for the decision;

…'

Framework Decision 2008/675

11 Recitals 2, 5 to 8 and 14 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.

(8) Where, in the course of criminal proceedings in a Member State, information is available on a previous conviction in another Member State, it should as far as possible be avoided that the person concerned is treated less favourably than if the previous conviction had been a national conviction.

…

(14) Interference with a judgment or its execution covers, inter alia, situations where, according to the national law of the second Member State, the sanction imposed in a previous judgment is to be absorbed by or included in another sanction, which is then to be effectively executed, to the extent that the first sentence has not already been executed or its execution has not been transferred to the second Member State.'

12 Under Article 1(1) of that framework decision, its purpose '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'.

13 Article 2 of that framework decision defines a 'conviction' as 'any final decision of a criminal court establishing guilt of a criminal offence'.

14 Article 3 of the Framework Decision, headed 'Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State', provides:

'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.

…'

Polish law

15 Article 85(4) of the kodeks karny (Criminal Code), of 6 June 1997 (Dz. U. No 88, item 553), in the version applicable to the dispute in the main proceedings, is worded as follows:

'Aggregate sentencing shall not extend to the sentences imposed by the judgments referred to in Article 114a of the Criminal Code.'

16 Article 114a(1) of the Criminal Code provides:

'A final conviction for the commission of an offence handed down by a competent court of a Member State of the European Union shall also be regarded as a convicting judgment, except where, under Polish law, the act does not constitute an offence or the perpetrator is not liable to be punished, or where the sentence imposed is unknown to Polish law.'

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

17 On 31 July 2018, AV, a Polish national, brought an application before the referring court, the Sąd Okręgowy w Gdańsku (Regional Court, Gdańsk, Poland), seeking an aggregate sentence comprising two prison sentences imposed on AV, namely, first, that imposed by the Landgericht Lüneburg (Regional Court, Lüneburg, Germany) by judgment of 15 February 2017, recognised for the purposes of its enforcement in Poland by order of the referring court of 12 January 2018, which AV was required to serve from 1 September 2016 to 29 November 2021 and, second, that imposed by the referring court, by judgment of 24 February 2010, which AV is to serve from 29 November 2021 to 30 March 2030.

18 The referring court states that the legal classification of the acts which gave rise to the judgment of the Landgericht Lüneburg (Regional Court, Lüneburg) corresponds to that under Polish law and that the duration of the custodial sentence to be enforced in Poland, as a result of the recognition of that judgment, is identical to the duration of the sentence imposed by the German court, that is to say five years and three months.

19 In his application for an aggregate sentence, AV submits that, since the judgment delivered by the Landgericht Lüneburg (Regional Court, Lüneburg) was recognised for the purposes of its enforcement in Poland, the conditions for the delivery of an aggregate sentence covering that conviction are satisfied.

20 The referring court states that an aggregate sentence sits on the border between a judgment on the substance of the case and the enforcement of a conviction and that it covers convictions that have become final, in order to 'adjust the legal response' to the offences committed, which could have been the subject of a single trial, and thus 'rationalise the penalties imposed'. It points out that an aggregate sentence does not constitute interference with the individual judgments concerned, since it does not infringe the essential elements of those judgments, in particular the determination of the guilt of the perpetrator of a given offence, but makes it possible to assess the overall criminal activity of a person who has been the subject of several convictions, and that only the duration of those convictions may be changed. That court also states that, where the conditions are met, it is mandatory to make an aggregate sentence.

21 However, according to the referring court, Article 85(4) of the Criminal Code, in the version applicable to the dispute in the main proceedings, read in conjunction with Article 114a of that code, prohibits the issue of an aggregate sentence covering convictions handed down in Poland and convictions handed down in other Member States, recognised for the purpose of their enforcement in Poland.

22 In the view of the referring court, such a prohibition means that a person who has been sentenced several times in a single Member State is in a better position than a person who has been sentenced in different Member States. By contrast, taking into account, in an aggregate sentence, convictions handed down in another Member State and recognised, in accordance with Framework Decision 2008/909, for the purpose of their enforcement in the Member State where the aggregate sentence is delivered, would ensure, at EU level, equal treatment for persons in a similar situation and would strengthen mutual trust between the Member States.

23 In those circumstances, the Sąd Okręgowy w Gdańsku (Regional Court, Gdańsk) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Should Article 3(3) of Framework Decision [2008/675] … be interpreted as meaning that interference, for the purposes of that provision, is to be taken to mean not only the inclusion in an aggregate sentence of a conviction handed down by a judgment delivered in a [Member] State, but also the inclusion in the aggregate sentence of such a conviction which was taken over for execution in another [Member] State, together with a conviction handed down in the latter State, within the framework of the aggregate sentence?

2. In light of the provisions of Framework Decision [2008/909], which are laid down in Article 8(2) to (4), … Article 19(1) and (2) and … the first sentence of Article 17(1), is it possible to pass an aggregate sentence which would include the sentences imposed by a judgment delivered in a [Member] State that was taken over for execution in another [Member] State, together with a conviction handed down in the latter State, within the framework of the aggregate sentence?'

Consideration of the questions referred

Preliminary observations

24 It should be noted at the outset that, although, in principle, criminal law and national rules of criminal procedure governing an aggregate sentence fall within the competence of the Member States, they are required to exercise that power in accordance with EU law (see, to that effect, judgment of 26 February 2019, *Rimšēvičs and ECB* v *Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 57).

25 It follows from the request for a preliminary ruling that, under Polish law, an aggregate sentence must be issued where the conditions are met for imposing a cumulative sentence concerning several convictions which have become definitive. It is also apparent that an aggregate sentence does not affect the finding of guilt made by those convictions, which has become final, but modifies the quantum of the penalty or penalties imposed.

26 Furthermore, it is apparent from the case file put before the Court that an aggregate sentence, such as that at issue in the main proceedings, consisting of commuting into a single sentence one or more sentences imposed previously on the person concerned, necessarily leads to a more favourable result for the person concerned. Following several convictions, the person concerned may receive a cumulative sentence, the quantum of which is less than that resulting from the sum of the different sentences deriving from separate previous convictions. In such a case, the court has discretion in determining the level of the sentence by taking into consideration the situation or personality of the person concerned, or even mitigating or aggravating circumstances.

27 In those circumstances, such an aggregate sentence must be distinguished from the methods for executing a custodial sentence (see, to that effect, judgment of 10 August 2017, *Zdziaszek*, C-271/17 PPU, EU:C:2017:629, paragraph 85).

28 In the present case, AV's application for an aggregate sentence, inter alia, concerns the custodial sentence of five years and three months, imposed on him by judgment of the Landgericht Lüneburg (Regional Court, Lüneburg) of 15 February 2017, which was recognised for the purposes of its execution in Poland by order of the referring court.

29 Since the recognition of that judgment by the referring court and the execution in Poland of the sentence imposed on AV are governed by Framework Decision 2008/909, by virtue of the combined provisions of Article 1 and Article 3(3) thereof, the second question, which concerns the interpretation of that framework decision, must be examined first.

The second question

30 By its second question, the referring court asks, in essence, whether the combined provisions of Article 8(2) to (4), Article 17(1) and (2) and Article 19 of Framework Decision 2008/909 must be interpreted as permitting the issue of an aggregate sentence covering not only one or more previous sentences handed down against the person concerned in the Member State in which that aggregate sentence is delivered, but also one or more sentences handed down against him in another Member State, which are enforced, under that framework decision, in the first Member State.

31 In that regard, as regards, in the first place, the provisions of Article 8(2) of that framework decision, it is apparent that the competent authority of the executing State, within the meaning of Article 1(d) of that framework decision, may adapt the sentence imposed in the issuing State, within the meaning of point (c) of that provision, only if its duration is incompatible with the law of the executing State and is greater than the maximum penalty provided for similar offences under the law of that State. The sentence thus adapted may not be less than the maximum penalty provided for similar offences under the law of the executing State (see, to that effect, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State*), C-314/18, EU:C:2020:191, paragraph 64).

32 In the event that the sentence is incompatible with the law of the executing State in terms of its nature, Article 8(3) of Framework Decision 2008/909 also allows the competent authority of that State to adapt that sentence to the punishment or measure provided for under its own law for similar offences, provided that the adapted sentence corresponds as closely as possible to the sentence imposed in the issuing State. In any event, the latter cannot be converted into a pecuniary punishment.

33 Likewise, Article 8(4) of Framework Decision 2008/909 states that the adapted sentence must not aggravate the sentence passed in the issuing Member State, in terms of its nature or duration (see, to that effect, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State*), C-314/18, EU:C:2020:191, paragraph 64).

34 Furthermore, any decision adapting the sentence taken in accordance with Article 8(2) and (3) of Framework Decision 2008/909 must, pursuant to Article 21(e) thereof, be notified in writing to the competent authority of the issuing State, stating the reasons for it.

35 Article 8(2) to (4) of Framework Decision 2008/909 therefore lays down strict conditions for the adaptation, by the competent authority of the executing State, of the sentence handed down in the issuing State, those conditions being the sole exceptions to the obligation imposed on that authority, under Article 8(1) of that framework decision, to recognise a judgment which has been forwarded to it and forthwith take all the necessary measures for the enforcement of the sentence, which is to correspond in its length and nature to the sentences imposed in the judgment delivered in the issuing State (see, to that effect, judgments of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 36, and of 11 January 2017, *Grundza*, C-289/15, EU:C:2017:4, paragraph 42).

36 It follows from the foregoing that Article 8(2) to (4) of Framework Decision 2008/909 must be interpreted as allowing an aggregate sentence to cover one or more sentences handed down in other Member States, which are enforced, pursuant to that framework decision, in the Member

State in which that aggregate sentence is delivered, provided that that aggregate sentence does not result in an adaptation of the duration or nature of those convictions which exceeds the strict limits laid down by those provisions.

37 The opposite solution would, as the Advocate General observed in point 115 of his Opinion, entail an unjustified difference in treatment between persons subject to a number of sentences in a single Member State and those sentenced in several Member States where, in both cases, the sentences are enforced in the same Member State. As stated in recital 6, Framework Decision 2008/909 should be implemented and applied in a manner which allows general principles of equality, fairness and reasonableness to be respected.

38 Furthermore, such a difference in treatment would affect, in the present case, an EU citizen who has exercised the right to move and reside within the territory of the Member States conferred on him or her by Article 21 TFEU. As stated in recital 15 of that framework decision, that framework decision should be applied in accordance with that right.

39 In the second place, as regards Article 17 of Framework Decision 2008/909, it is apparent, first, from paragraph 1 of that article that the enforcement of a sentence under that framework decision is to be governed by the law of the executing State once the sentenced person has been transferred to the competent authorities of that State and those authorities are, in principle, alone competent to decide on the procedures for enforcement and to determine the measures relating thereto, including the grounds for early or conditional release. As the Advocate General observed in point 111 of his Opinion, that provision covers measures seeking to ensure the physical enforcement of a custodial sentence and the social rehabilitation of the sentenced person. However, an aggregate sentence, such as that in the main proceedings – which, as is clear from paragraph 27 of the present judgment, must be distinguished from measures enforcing a custodial sentence, cannot be considered to be covered by Article 17(1) of Framework Decision 2008/909.

40 Second, paragraph 2 of that article requires the competent authorities of the executing State to deduct the full period of deprivation of liberty already served by the sentenced person in the issuing State before his or her transfer from the total duration of the deprivation of liberty to be served in the executing State.

41 It follows that Article 17(1) and (2) of Framework Decision 2008/909 must be interpreted as permitting an aggregate sentence to cover one or more sentences passed in other Member States, which are enforced, pursuant to that framework decision, in the Member State in which that aggregate sentence is delivered, to the extent that it complies with the obligation, laid down in paragraph 2, to deduct the full period of deprivation of liberty already served, where appropriate, by the sentenced person in the issuing State from the total duration of the deprivation of liberty to be served in the executing State.

42 In the third place, as regards Article 19 of Framework Decision 2008/909, first, paragraph 1 of that article provides that an amnesty and a pardon may be granted by the issuing State and also by the executing State. As is apparent from Article 21(f) of that framework decision, amnesty and pardon are to terminate the enforcement of a sentence. An aggregate sentence, as described in paragraphs 25 and 26 of the present judgment, does not have the object of terminating the enforcement of a sentence.

43 Second, under Article 19(2) of Framework Decision 2008/909, only the issuing State may decide on applications for review of the judgment imposing the sentence or custodial measure which, under that framework decision, is to be enforced in another Member State. An aggregate sentence, as described in paragraphs 25 and 26 of this judgment, cannot have either the object or effect of reviewing convictions handed down in other Member States, which are enforced, under that framework decision, in the Member State in which that aggregate sentence is delivered.

44 It follows that Article 19 of Framework Decision 2008/909 must be interpreted as permitting an aggregate sentence to cover one or more sentences handed down in other Member States, which are enforced, pursuant to that framework decision, in the Member State in which that aggregate sentence is delivered, provided that it does not result in a review of those sentences.

45 In the light of the foregoing, the answer to the second question is that the combined provisions of Article 8(2) to (4), Article 17(1) and (2) and Article 19 of Framework Decision 2008/909 must be interpreted as permitting the issue of an aggregate sentence covering not only one or more previous sentences handed down against the person concerned in the Member State in which that aggregate sentence is delivered, but also one or more sentences handed down against him in another Member State, which are enforced, under that framework decision, in the first Member State. Such an aggregate sentence may not, however, lead to (i) an adaptation of the duration or nature of those sentences which goes beyond the strict limits laid down in Article 8(2) to (4) of Framework Decision 2008/909, (ii) a breach of the obligation, imposed by Article 17(2) of that framework decision, to deduct the full period of deprivation of liberty already served, where appropriate, by the sentenced person in the issuing State, from the total duration of the deprivation of liberty to be served in the executing Member State, or (iii) a review of the sentences imposed on him or her in another Member State, in breach of Article 19(2) of that framework decision.

The first question

46 By its first question, the referring court asks, in essence, whether Article 3(3) of Framework Decision 2008/675, read in the light of recital 14 thereof, must be interpreted as meaning that it allows the issue of an aggregate sentence covering not only one or more previous convictions handed down against the person concerned in the Member State in which that aggregate sentence is delivered, but also one or more convictions handed down against him or her in another Member State, which are enforced, under Framework Decision 2008/909, in the first Member State, as long as that aggregate sentence does not have the effect of interfering with the convictions handed down in that second Member State or with any decision relating to its enforcement, revoking or reviewing it, within the meaning of that provision of Framework Decision 2008/675.

47 In that regard, it should be noted at the outset that the purpose of Framework Decision 2008/675, pursuant to Article 1(1) thereof, is to determine the conditions under which previous convictions handed down in one Member State in respect of a person, within the meaning of Article 2 of that framework decision, must be taken into account in the course of new criminal proceedings brought against the same person in another Member State for different facts (see, to that effect, judgments of 21 September 2017, *Beshkov*, C-171/16, EU:C:2017:710, paragraph 25, and of 5 July 2018, *Lada*, C-390/16, EU:C:2018:532, paragraph 27). As is apparent from recital 2, the purpose of that framework decision is to make it possible to assess the past criminal record of the person concerned.

48 It is therefore not the objective of Framework Decision 2008/675, as stated in recital 6, to bring about the execution, in a Member State, of judicial decisions taken in other Member States (judgment of 21 September 2017, *Beshkov*, C-171/16, EU:C:2017:710, paragraph 45).

49 As is apparent from recitals 5 to 8, that framework decision seeks to ensure that each Member State seeks to attach to previous criminal convictions handed down in another Member State legal effects equivalent to those attached to previous national convictions in accordance with its own national law.

50 In accordance with that objective, Article 3(1) of that framework decision, read in the light of recital 5, obliges Member States to ensure that, where new criminal proceedings are brought against a person, previous convictions handed down in other Member States against him or her for different facts, 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 (see, to that effect, judgments of 21 September 2017, *Beshkov*, C-171/16, EU:C:2017:710, paragraph 26, and of 5 July 2018, *Lada*, C-390/16, EU:C:2018:532, paragraph 28).

51 Article 3(2) of Framework Decision 2008/675 states 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 those relating to the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision (judgments of 21 September 2017, *Beshkov*, C-171/16, EU:C:2017:710, paragraph 27, and of 5 July 2018, *Lada*, C-390/16, EU:C:2018:532, paragraph 29).

52 The Court has previously held that Framework Decision 2008/675 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 (judgment of 21 September 2017, *Beshkov*, C-171/16, EU:C:2017:710, paragraph 29).

53 In that context, in accordance with Article 3(3) of Framework Decision 2008/675, the taking into account, in new criminal proceedings, of previous convictions handed down in another Member State may not have the effect either of interfering with those previous convictions or with any decision relating to their execution in the Member State in which the new criminal proceedings are conducted, or of revoking or reviewing those convictions, which must be taken into account in the terms in which they were handed down (see, to that effect, judgments of 21 September 2017, *Beshkov*, C-171/16, EU:C:2017:710, paragraph 44, and of 5 July 2018, *Lada*, C-390/16, EU:C:2018:532, paragraph 39).

54 In that regard, recital 14 of Framework Decision 2008/675 states that 'interference' with a judgment or its execution, within the meaning of Article 3(3), covers, inter alia, 'situations where, according to the national law of the second Member State, the sanction imposed in a previous judgment is to be absorbed by or included in another sanction, which is then to be effectively executed, to the extent that the first sentence has not already been executed or its execution has not been transferred to the second Member State'.

55 It is thus apparent from Article 3(3) of Framework Decision 2008/675, read in the light of recital 14 thereof, that, first, situations in which a cumulative sentence is imposed are not excluded as such from the scope of that framework decision and, second, the imposition of a cumulative sentence is capable of interfering with the previous conviction or its execution where the first sentence has not yet been executed or has not been transferred to the second Member State for the purpose of its execution.

56 Consequently, as the Advocate General observed, in essence, in points 83 and 84 of his Opinion, since a previous criminal conviction, such as that at issue in the main proceedings, delivered in one Member State, was forwarded and recognised, in accordance with Framework Decision 2008/909, for the purposes of its execution in another Member State, the fact that that conviction is taken into account in that paragraph for the purposes of issuing an aggregate sentence cannot have the effect of 'interfering' with that conviction or its execution, or 'revoking or 'reviewing' it, within the meaning of Article 3(3) of Framework Decision 2008/675, provided that that aggregate sentence, in so far as concerns that conviction, observes the conditions and limits arising from Article 8(2) to (4), Article 17(2) and Article 19(2) of Framework Decision 2008/909, as recalled in paragraphs 36, 41 and 44 of the present judgment.

57 It follows from the foregoing considerations that, in order to ensure that previous convictions handed down in another Member State are recognised as having effects equivalent to those attached to previous national convictions, the court hearing the case in new criminal proceedings, such as the aggregate sentencing procedure at issue in the main proceedings, is, in principle, required to take into account the previous conviction handed down by a court of another Member State in the same way as it would take into consideration a previous conviction handed down by a court of the Member State in which that court is situated, subject to compliance with the conditions and limits set out in the preceding paragraph.

58 That interpretation is borne out by the objective pursued by Framework Decision 2008/675, as recalled in paragraph 49 above, of preventing, as far as possible, the person concerned from being treated less favourably than if the previous criminal conviction at issue had been a national conviction.

59 In the light of the foregoing, the answer to the first question is that Article 3(3) of Framework Decision 2008/675, read in the light of recital 14, must be interpreted as permitting the issue of an aggregate sentence covering not only one or more previous convictions handed down against the person concerned in the Member State in which that aggregate sentence is delivered, but also one or more convictions handed down against him in another Member State, which are enforced, under Framework Decision 2008/909, in the first Member State, on condition that that aggregate sentence observes, in so far as concerns the latter convictions, the conditions and limits arising from Article 8(2) to (4), Article 17(2) and Article 19(2) of that framework decision.

Costs

60 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 (Fourth Chamber) hereby rules:

1. **The combined provisions of Article 8(2) to (4), Article 17(1) and (2) and Article 19 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, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 must be interpreted as permitting the issue of an aggregate sentence covering not only one or more previous sentences handed down against the person concerned in the Member State in which that aggregate sentence is delivered, but also one or more sentences handed down against him or her in another Member State, which are enforced under that framework decision in the first Member State. Such an aggregate sentence cannot, however, lead to an adaptation of the duration or nature of those sentences which goes beyond the strict limits laid down in Article 8(2) to (4) of that framework decision, a breach of the obligation, imposed by Article 17(2) of that framework decision, to deduct the full period of deprivation of liberty already served, where appropriate, by the sentenced person in the issuing State, from the total duration of the deprivation of liberty to be served in the executing Member State, or to a review of the sentences imposed in another Member State, in breach of Article 19(2) of that framework decision.**

2. **Article 3(3) of Council Framework Decision 2008/675/JHA of 24 July 2008 on the European arrest warrant and the surrender procedures between Member States, read in the light of recital 14 thereof, must be interpreted as permitting the issue of an aggregate sentence covering not only one or more previous convictions handed down against the person concerned in the Member State in which that aggregate sentence is delivered, but also one or more convictions handed down against him in another Member State and which are enforced, under Framework Decision 2008/909, as amended by Framework Decision 2009/299, in the first Member State, on condition that that aggregate sentence observes, in so far as concerns the latter convictions, the conditions and limits arising from Article 8(2) to (4), Article 17(2) and Article 19(2) of that framework decision 2008/909, as amended.**

[Signatures]