JUDGMENT OF THE COURT (Grand Chamber)

16 November 2010 *

In Case C-261/09,

REFERENCE for a preliminary ruling under Article 35 EU from the Oberlandesgericht Stuttgart (Germany), made by decision of 29 June 2009, received at the Court on 14 July 2009, in the proceedings concerning the execution of a European arrest warrant issued in respect of

Gaetano Mantello,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts and J.-C. Bonichot, Presidents of Chambers, M. Ilešič, J. Malenovský, U. Lõhmus, E. Levits, A. Ó Caoimh, L. Bay Larsen, C. Toader (Rapporteur) and M. Berger, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 6 July 2010,

after considering the observations submitted on behalf of:

— the German Government, by S. Unzeitig and J. Möller, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the Greek Government, by T. Papadopoulou and G. Karipsiadis, acting as Agents,

— the Spanish Government, by M. Muñoz Pérez, acting as Agent,

— the French Government, by G. de Bergues and B. Beaupère-Manokha, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by P. Gentili, avvocato dello Stato,

— the Netherlands Government, by M. de Ree, acting as Agent,

— the Polish Government, by M. Dowgielewicz, acting as Agent,

— the Swedish Government, by A. Falk and C. Meyer-Seitz, acting as Agents,

— the United Kingdom Government, by S. Hathaway, acting as Agent, and by S. Lee, Barrister,

— the European Commission, by S. Grünheid and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 September 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of 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 (OJ 2002 L 190, p. 1) ('the Framework Decision') and, in particular, of the *ne bis in idem* principle.

2 The reference was made in the context of the execution in Germany of a European arrest warrant relating to criminal proceedings instituted by the Italian authorities against Mr Mantello and 76 other persons who are suspected of having organised cocaine trafficking in the region of Vittoria, Italy.

Legal context

European Union law

3 Recitals 1, 5, 8, 10 and 12 in the preamble to the Framework Decision read as follows:

'(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

…

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the

introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

…

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

…

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

…

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union …, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

…'

4 Article 1 of the Framework Decision states:

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.'

5 Article 2(1) and (2) of the Framework Decision state:

'1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

— participation in a criminal organisation,

…

— illicit trafficking in narcotic drugs and psychotropic substances,

…'

6 The Framework Decision provides in Article 3, entitled 'Grounds for mandatory non-execution of the European arrest warrant', as follows:

'The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

…

(2) if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

…'

7 Article 15 of the Framework Decision, entitled 'Surrender decision', provides:

'1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time-limit for the receipt thereof, taking into account the need to observe the time-limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.'

8 Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at

their common borders (OJ 2000 L 239, p. 19), signed in Schengen (Luxembourg) on 19 June 1990 ('the CISA'), provides:

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.'

9 Article 57(1) and (2) of the CISA provide:

'1. Where a Contracting Party charges a person with an offence and the competent authorities of that Contracting Party have reason to believe that the charge relates to the same acts as those in respect of which the person's trial has been finally disposed of in another Contracting Party, those authorities shall, if they deem it necessary, request the relevant information from the competent authorities of the Contracting Party in whose territory judgment has already been delivered.

2. The information requested shall be provided as soon as possible and shall be taken into consideration as regards further action to be taken in the proceedings under way.'

10 It is apparent from the information concerning the date of entry into force of the Treaty of Amsterdam, published in the *Official Journal of the European Communities* of 1 May 1999 (OJ 1999 L 114, p. 56), that the Federal Republic of Germany made a declaration on the basis of Article 35(2) EU by which it accepted the jurisdiction of the Court to give preliminary rulings in accordance with the arrangements laid down in Article 35(3)(b) EU.

National law

German law

11 Article 3(2) of Framework Decision 2002/584 was transposed into German law by the Law on the European Arrest Warrant of 20 July 2006 (Europäisches Haftbefehlsgesetz, BGBl. 2006 I, p. 1721) ('the EuHbG'), which amended Paragraph 83(1) of the Law of 23 December 1982 on international mutual assistance in criminal matters (Gesetz über die internationale Rechtshilfe in Strafsachen) ('IRG'). That paragraph, headed 'Supplementary conditions governing authorisation', provides:

'Extradition shall not be authorised where:

1. The accused's trial in respect of the same acts for which extradition is sought has been disposed of in another Member State by way of final judgment, provided that, where a sentence has been imposed, it has already been served, is currently being served or can no longer be executed under the law of the sentencing State …

…'

Italian law

12 Articles 73 and 74 of Decree No 309 of the President of the Republic of 9 October 1990, containing the consolidated text of the laws governing narcotic drugs and psychotropic substances and concerning the prevention and treatment of, and rehabilitation following, drug addiction ('Decree No 309/90'), read as follows:

'Article 73. Unlawful production, trafficking and possession of narcotic drugs or psychotropic substances

1. Any person who, in the absence of the authorisation referred to in Article 17, grows, produces, manufactures, extracts, refines, sells, offers or provides for sale, transfers, distributes, markets, transports, procures, sends, passes on, places in transit or delivers for whatever purpose narcotics drugs or psychotropic substances … shall be liable to a term of imprisonment of between 6 and 20 years and to a fine of between EUR 26 000 and EUR 260 000 …

…

6. If the offence is committed by three or more persons acting jointly, the penalty shall be increased.

Article 74. Association for the purpose of unlawful trafficking in narcotic drugs or psychotropic substances

1. Where three or more persons act jointly for the purpose of committing several of the offences provided for under Article 73, the person who promotes, establishes, directs, organises or finances that association shall be liable solely to a term of imprisonment of not less than 20 years.

2. Any person who participates in the association shall be liable to a term of imprisonment of not less than 10 years.

3. The penalty shall be increased if the number of persons associated is 10...

…'

13 Under Article 649 of the Italian Code of Criminal Procedure, 'an accused person who has been acquitted or convicted in criminal proceedings by way of a judgment or order which has become final may not have fresh criminal proceedings brought against him in respect of the same act, even if the latter is treated differently in terms of legal classification, degree of seriousness or circumstances'.

14 According to information provided by the Italian Government, it is none the less clear from the case-law of the Corte Suprema di cassazione (Supreme Court of Cassation) that 'the exception laid down in Article 649 of the Code of Criminal Procedure may not be relied upon if the act which gave rise to a final judgment concerns a situation in which several offences are committed by means of a single act, where the conduct in respect of which a final judgment has already been delivered may be factually redefined and classified, according to a separate or even alternative assessment, within a broader category of criminal offences'.

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

15 On 7 November 2008, the Tribunale di Catania (Catania District Court) (Italy) issued a European arrest warrant ('the arrest warrant') in respect of Mr Mantello, for his arrest and surrender to the Italian authorities in the context of criminal proceedings instituted against him. That arrest warrant is based on a national arrest warrant issued by the same court on 5 September 2008, in respect of Mr Mantello and 76 other co-accused.

16 The arrest warrant is based on two alleged acts of Mr Mantello.

17 He is accused, first, of having participated, between January 2004 and November 2005, in the framework of a criminal organisation comprising at least 10 other persons, in cocaine trafficking, organised in Vittoria, in other Italian cities and in Germany. It is alleged that Mr Mantello not only played the role of courier and middleman, but was also in charge of obtaining and dealing in cocaine. Under Article 74(1) and Article 74(3) of Decree No 309/90, those acts are punishable, under Italian law, by imprisonment for a minimum term of 20 years.

18 Second, during that period and in the same places, acting alone or in concert with others, he is alleged to have unlawfully taken possession of, retained, transported, sold or disposed of cocaine to third parties. Those acts are punishable under Italian law by imprisonment for a term of between 8 and 20 years, a sentence which is liable to be increased.

19 In that regard, Mr Mantello also faces charges of aggravated criminal conduct to the extent that the cocaine was supplied by the network to a minor.

20 According to the information contained in the national arrest warrant, from January 2004 onwards various authorities investigated the unlawful trafficking in cocaine which was rife in the Vittoria region. The investigations took the form in particular of extensive telephone tapping which made it possible to bring to light the existence of an organised network, made up of two criminal organisations, resulting in the application of Article 74 of Decree No 309/90. In addition, during the tapping of telephone calls made by Mr Mantello during the period from 19 January to 13 September 2005, his participation in the aforementioned network was confirmed. He was also shadowed by investigators during some of his journeys, including those between Sicily (Italy) and Milan (Italy) on 28 July and 12 August 2005 and between Sicily, Esslingen (Germany) and Catania on 12 September 2005.

21 During that last-mentioned journey, Mr Mantello purchased 150 g of cocaine in Esslingen and, on his return in the evening of 13 September 2005, he was arrested, when alighting from the train at Catania station, by the railway police, who searched him and discovered that he was carrying two packets containing 9.5 g and 145.96 g of cocaine, equivalent to between 599 and 719 individual doses.

22 By judgment of 30 November 2005, the Tribunale di Catania sentenced Mr Mantello to a term of imprisonment of 3 years, 6 months and 20 days and to a fine of EUR 13 000. In its indictment the Catania Public Prosecutor accused him of having been in unlawful possession, on 13 September 2005, of 155.46 g of cocaine, intended for resale. The Tribunale di Catania found those acts to be proved. At Mr Mantello's request, the court gave judgment in abridged proceedings which enabled him to obtain a reduction in his sentence. By judgment of 18 April 2006, the Corte d'appello di Catania (Court of Appeal, Catania) upheld the judgment of that court.

23 Subsequently, the Tribunale di Catania reduced Mr Mantello's sentence, meaning that he in fact served a sentence of only 10 months and 20 days in prison, while his fine was also reduced.

24 Having become aware, on 3 December 2008, of the arrest warrant on the Schengen Information System (SIS), the Generalstaatsanwaltschaft Stuttgart (Public Prosecutor's Office, Stuttgart) had Mr Mantello arrested on 29 December 2008 at his home and brought before the Amtsgericht (District Court) Stuttgart. At the hearing, Mr Mantello opposed his surrender to the issuing judicial authority and did not renounce his claim to the specialty principle. On application by the Generalstaatsanwaltschaft Stuttgart, on 22 January 2009 the Oberlandesgericht (Higher Regional Court) Stuttgart requested the Italian authorities to examine to what extent the judgment of the Tribunale di Catania of 30 November 2005 precluded execution of the arrest warrant.

25 Not having received any information from those authorities, the Oberlandesgericht Stuttgart then decided, on 20 March 2009, to suspend execution of the arrest warrant and, in view of the complex factual and legal issues raised by the main proceedings, assigned a lawyer to act for Mr Mantello.

26 Subsequently and in response to a request for information from the executing judicial authority, the investigating judge at the Tribunale di Catania finally declared, on 4 April 2009, in his capacity as issuing judicial authority for the arrest warrant, that the judgment of 30 November 2005 did not preclude the criminal proceedings referred to in the arrest warrant and therefore that the case was not subject to the *ne bis in idem* principle. The Generalstaatsanwaltschaft Stuttgart thereupon requested the referring court to execute the arrest warrant.

27 The Oberlandesgericht Stuttgart nevertheless enquires whether it may oppose execution of the arrest warrant issued in respect of the offences concerning organised crime since, in its view, the Italian investigating authorities, even at the time of the investigation which led to Mr Mantello's conviction for possession of cocaine intended for resale, had sufficient evidence to charge and prosecute him in respect of the offences referred to in the arrest warrant, including organised drug trafficking. However, in the interests of the investigation, in order to be able to break up that trafficking network and arrest the other persons involved, the investigators did not pass on the information and evidence in their possession to the investigating judge or at that time request the prosecution of those acts.

28 According to the referring court, under German law as interpreted by the Bundesgerichtshof (Federal Court of Justice), a crime relating to participation in a criminal organisation may in principle still be the subject of a subsequent prosecution if, first, the earlier charges and judicial investigation concerned only individual acts of a member of such an organisation and if, second, the accused did not have a legitimate expectation that the earlier proceedings encompassed all the acts committed in the framework of that organisation. However, it appears that the referring court does not fully subscribe to the Bundesgerichthof's position. It suggests a third condition, namely that, at the time of the judicial decision on the individual act, the investigators must have been unaware of the existence of other individual offences and of an offence relating to participation in a criminal organisation, which was specifically not the case so far as the investigating authorities in Italy were concerned.

29 In addition, the Oberlandesgericht Stuttgart notes that, first, in the main proceedings, there is no cross-border element since the potential '*idem*' is constituted by a judicial decision emanating from the issuing Member State itself and not from another Member State. Second, that court notes that the concept of 'same acts' has not yet been the subject of a decision by the Court of Justice in the context of the European arrest warrant. The referring court enquires whether the case-law developed in the CISA context may be applied in a situation such as that in the main proceedings.

30 In those circumstances, the Oberlandesgericht Stuttgart decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the existence of the "same acts" within the meaning of Article 3(2) of the Framework Decision … to be determined:

(a) according to the law of the issuing Member State, or

(b) according to the law of the executing Member State, or

(c) according to an autonomous interpretation, based on the law of the European Union, of the phrase "same acts"?

(2) Are acts consisting in the unlawful importation of narcotic drugs the "same acts", within the meaning of Article 3(2) of the Framework Decision, as participation in an organisation the purpose of which is illicit trafficking in such drugs, in so far as the investigating authorities had information and evidence, at the time at which sentence was passed in respect of such importation, which supported a strong suspicion of participation in such an organisation, but omitted for tactical reasons relating to their investigation to provide the relevant information and evidence to the court and to institute criminal proceedings on that basis?'

31 At the referring court's request, the reason for which was its concern not to prolong the surrender proceedings requested by the Italian authorities, the designated chamber assessed the need to deal with the present case under the urgent procedure laid down in Article 104b of the Rules of Procedure of the Court of Justice. By decision of 20 July 2009, taken under the fourth subparagraph of Article 104b(1) of those Rules, the designated chamber decided, after hearing the Advocate General, not to grant that request.

The questions referred for a preliminary ruling

32 By its questions, the referring court seeks to ascertain, in substance, whether, in circumstances such as those in the main proceedings, it may oppose the execution of the arrest warrant on the basis of Article 3(2) of the Framework Decision.

33 It can be seen from the first question referred, which raises the point whether the concept of the 'same acts' in Article 3(2) is an autonomous concept of European Union law, that, according to the referring court, if that concept were to be analysed only in the light of the law of the issuing Member State or of that of the executing Member State, it would then be bound to order Mr Mantello's surrender. That would be the case because, first, under German law as interpreted by the Bundesgerichtshof, a crime relating to participation in a criminal organisation may as a general rule still be the subject of a subsequent prosecution if the earlier charges and judicial investigation concerned only individual acts of a member of such an organisation and if, second, the accused did not have a legitimate expectation that the earlier proceedings encompassed all the acts committed in the framework of that organisation. Second, taking into account the case-law of the Corte suprema di cassazione referred to in paragraph 14 of the present judgment and the information, mentioned in paragraph 26 of this judgment, which was provided to the referring court on 4 April 2009

by the investigating judge of the Tribunale di Catania, the judgment of 30 November 2005 by that court does not preclude, under Italian law, the institution of criminal proceedings in respect of offences such as those alleged in the arrest warrant.

34 By contrast, were the notion of 'same acts' in Article 3(2) of the Framework Decision to be regarded as an autonomous concept of European Union law, the referring court asks by its second question whether, contrary to German and Italian law as interpreted by the supreme courts of those Member States, that provision of the Framework Decision would require— in order for criminal proceedings to be instituted against a person on the basis of an indictment broader than that in respect of which final judgment has already been given concerning an individual act— the investigators to have been unaware, when the charges which led to that final judgment were first laid, of the existence of other individual offences and of an offence relating to participation in a criminal organisation, which was specifically not the case so far as the investigating authorities in Italy were concerned.

35 As a preliminary point, it should be recalled that, as is apparent in particular from Article 1(1) and (2) of the Framework Decision and from recitals 5 and 7 in the preamble thereto, the purpose of the Framework Decision is to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, that system of surrender being based on the principle of mutual recognition (Case C-123/08 *Wolzenburg* [2009] ECR I-9621, paragraph 56).

36 The principle of mutual recognition, which underpins the Framework Decision, means that, in accordance with Article 1(2) of the Framework Decision, the Member States are in principle obliged to act upon a European arrest warrant (Case C-388/08 PPU *Leymann and Pustovarov* [2008] ECR I-8983, paragraph 51).

37 The Member States may refuse to execute such a warrant only in the cases of mandatory non-execution laid down in Article 3 of the Framework Decision or in the cases listed in Article 4 thereof (see, to that effect, *Leymann and Pustarov*, paragraph 51).

38 In that regard, the concept of 'same acts' in Article 3(2) of the Framework Decision cannot be left to the discretion of the judicial authorities of each Member State on the basis of their national law. It follows from the need for uniform application of European Union law that, since that provision makes no reference to the law of the Member States with regard to that concept, the latter must be given an autonomous and uniform interpretation throughout the European Union (see, by analogy, Case C-66/08 *Koszłowski* [2008] ECR I-6041, paragraphs 41 and 42). It is therefore an autonomous concept of European Union law which, as such, may be the subject of a reference for a preliminary ruling by any court before which a relevant action has been brought, under the conditions laid down in Title VII of Protocol No 36 to the Treaty on the Functioning of the European Union on transitional provisions.

39 It should be recalled that that concept of the 'same acts' also appears in Article 54 of the CISA. In that context, the concept has been interpreted as referring only to the nature of the acts, encompassing a set of concrete circumstances which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected (see Case C-436/04 *Van Esbroeck* [2006] ECR I-2333, paragraphs 27, 32 and 36, and Case C-150/05 *Van Straaten* [2006] ECR I-9327, paragraphs 41, 47 and 48).

40 In view of the shared objective of Article 54 of the CISA and Article 3(2) of the Framework Decision, which is to ensure that a person is not prosecuted or tried more than once in respect of the same acts, it must be accepted that an interpretation of that concept given in the context of the CISA is equally valid for the purposes of the Framework Decision.

41 Where it is brought to the attention of the executing judicial authority that the 'same acts' as those which are referred to in the European arrest warrant which is the subject of proceedings before it have been the subject of a final judgment in another Member State, that authority must, in accordance with Article 3(2) of the Framework Decision, refuse to execute that arrest warrant, provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.

42 In its reference for a preliminary ruling, the referring court states that it would at first sight be inclined to consider that the acts relied upon for the purposes of the final judgment of 30 November 2005, that is to say Mr Mantello's possession of 155.46 g of cocaine on 13 September 2005 at Vittoria, are, for the purposes of the concept of the 'same acts', different from those referred to in the arrest warrant, that is to say, first, the acts which took place between January 2004 and November 2005 concerning Mr Mantello's participation in a criminal organisation as courier, middleman and supplier and, second, those concerning the illegal possession of drugs during the same period in a number of Italian and German cities.

43 Thus, in fact, the referring court's questions must be considered to relate more to the concept of 'finally judged' than to that of 'same acts'. The referring court enquires whether, given the fact that, when the judgment of 30 November 2005 was delivered, the Italian investigating authorities were in possession of evidence pertaining

to acts carried out in the period from January 2004 to November 2005 which could have proved that Mr Mantello had committed offences relating to participation in a criminal organisation and had been in illegal possession of drugs, that judgment could be regarded as constituting not only a final judgment convicting him in respect of the individual acts of 13 September 2005 in relation to which the offence of illegal possession of drugs intended for resale was applied, but also a judgment precluding subsequent prosecution of offences such as those referred to in the arrest warrant.

44 In other words, that court asks whether the fact that the investigating authorities held evidence concerning acts which constituted the offences referred to in the arrest warrant, but did not submit that evidence for consideration by the Tribunale de Catania when that court ruled on the individual acts of 13 September 2005, makes it possible to treat the judgment as if it were a final judgment in respect of the acts set out in that arrest warrant.

45 In that regard, a requested person is considered to have been finally judged in respect of the same acts within the meaning of Article 3(2) of the Framework Decision where, following criminal proceedings, further prosecution is definitively barred (see, by analogy, Joined Cases C-187/01 and C-385/01 *Gözütok and Brügge* [2003] ECR I-1345, paragraph 30, and Case C-491/07 *Turanský* [2008] ECR I-11039, paragraph 32) or where the judicial authorities of a Member State have adopted a decision by which the accused is finally acquitted in respect of the alleged acts (see, by analogy, *Van Straaten*, paragraph 61, and *Turanský*, paragraph 33).

46 Whether a person has been 'finally' judged for the purposes of Article 3(2) of the Framework Decision is determined by the law of the Member State in which judgment was delivered.

47 Thus, a decision which, under the law of the Member State which instituted criminal proceedings against a person, does not definitively bar further prosecution at national level in respect of certain acts cannot, in principle, constitute a procedural obstacle to the possible opening or continuation of criminal proceedings in respect of the same acts against that person in one of the Member States of the European Union (see, by analogy, *Turanský*, paragraph 36).

48 In that regard, as is the case with the cooperation arrangements provided for under Article 57 of the CISA, Article 15(2) of the Framework Decision allows an executing judicial authority to request from the judicial authority of the Member State in whose territory a judgment has been delivered legal information on the precise nature of that judgment in order to decide whether, under the national law of that State, the judgment must be considered as having definitively barred further prosecution at national level (see, by analogy, *Turanský*, paragraph 37).

49 In the main proceedings, the referring court specifically used the cooperation arrangements provided for in Article 15(2) of the Framework Decision. In its reply, the issuing judicial authority expressly stated that, under Italian law, the accused had been finally judged in respect of the individual acts consisting in illegal possession of drugs but that the criminal proceedings covered by the arrest warrant were based on different acts related to organised crime offences and other offences of illegal possession of drugs intended for resale, which were not covered by its judgment of 30 November 2005. Thus, although the investigating authorities held certain factual information concerning those offences, it was clear from the reply given by the issuing judicial authority that the first judgment of the Tribunale di Catania could not be regarded as having definitively barred further prosecution at national level in respect of the acts referred to in the arrest warrant issued by it.

50 Consequently, in circumstances such as those at issue in the main proceedings, where the issuing judicial authority, in response to a request for information within the meaning of Article 15(2) of the Framework Decision made by the executing judicial authority, expressly stated and explained that its earlier judgment did not cover 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, that executing judicial authority was obliged to draw all the appropriate conclusions from the assessments made by the issuing judicial authority in its response.

51 Taking all the foregoing considerations into account, the answer to be given to the referring court is that, for the purposes of the issue and execution of a European arrest warrant, the concept of 'same acts' in Article 3(2) of the Framework Decision 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.

Costs

52 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 (Grand Chamber) hereby rules:

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.

[Signatures]