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Judgment of the Court of Justice in Case C-388/08 PPU

Leymann and Pustovarov

THE COURT EXPLAINS THE SCOPE OF THE SPECIALTY RULE WHICH STATES THAT A PERSON SURRENDERED UNDER A EUROPEAN ARREST WARRANT FOR THE PURPOSE OF PROSECUTION FOR A CRIMINAL OFFENCE MAY BE PROSECUTED ONLY FOR THAT OFFENCE

Alterations may be made to the description of the facts in the course of the procedure and may describe more precisely or amend the ingredients of the offence

Mr Leymann and Mr Pustovarov were suspected of illegally importing drugs into Finland with a view to selling them. The Finnish authorities sent a European arrest warrant to the Polish authorities in the case of Mr Leymann and the Spanish authorities in the case of Mr Pustovarov. The warrants stated that they were suspected of committing a serious drug trafficking offence, between 1 January 2005 and 31 March 2006 in the case of Mr Leymann and between 19 and 25 February 2006 in the case of Mr Pustovarov. According to the arrest warrants, the offence related to a large quantity of amphetamines. The arrest warrant for Mr Pustovarov also mentioned two separate offences.

Mr Leymann and Mr Pustovarov were surrendered to the Finnish authorities on the basis of those arrest warrants and were remanded in custody.

Some months later, the indictment against Mr Leymann and Mr Pustovarov stated that the serious drug trafficking offence concerned not amphetamines but hashish and had been committed between 15 and 26 February 2006. A new arrest warrant with those alterations was sent to the Spanish authorities, but they did not give their consent until much later. Mr Leymann and Mr Pustovarov were meanwhile both convicted at first instance and sentenced to imprisonment for that offence and, in the case of Mr Pustovarov, also for the two separate offences.

Before the appeal court and then the Korkein oikeus (Supreme Court) Mr Leymann and Mr Pustovarov argued that they had been convicted for an offence other than that for which they had been surrendered, contrary to the ‘specialty rule’ in the Framework Decision.¹ The Supreme

¹ 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).

Court found it necessary to put questions to the Court of Justice on the scope of that rule and of one of the exceptions to it.

The Court recalls that the Framework Decision has the objective of creating a judicial area of freedom, security and justice on the basis of mutual recognition and of speeding up judicial cooperation. The specialty rule, which is linked to sovereignty, has a number of exceptions. In particular, a person may be prosecuted for another offence if the judicial authorities of the Member State executing the arrest warrant give their consent. However, to require that consent for every amendment to the description of the facts would go beyond what is implied by the specialty rule and would interfere with the objective of the Framework Decision. Alterations may be made to the description of the facts in the course of the proceedings and may describe more precisely or amend the ingredients of the offence.

To determine whether or not another offence is concerned, it must be ascertained whether the ingredients of the offences as defined in the European arrest warrant are still present in the later procedural document and whether there is a sufficient correspondence between the information stated in the two documents. Alterations to the circumstances of time and place are allowed under certain conditions.

In a case such as that of Mr Leymann and Mr Pustovarov in which the offence is still punishable by imprisonment for a maximum period of at least three years, and still comes under the rubric 'illegal trafficking in narcotic drugs' in the Framework Decision, a change to the class of narcotics concerned, in this case hashish instead of amphetamines, is not in itself capable of characterising another offence.

The Finnish court also asks whether the exception to the specialty rule where the criminal proceedings do not give rise to a measure restricting personal liberty applies in the case of a person such as Mr Pustovarov who was in custody for the two separate offences of which he was accused.

The Court explains that the exception applies as long as no measure restricting personal liberty is taken against the person for the 'offence other' than that for which he has been surrendered. If that person is ultimately sentenced to imprisonment for the 'other offence', consent must be sought and obtained before the sentence is enforced. The Framework Decision does not, however, prevent the person surrendered from being subjected to a measure restricting personal liberty before consent is obtained, where that restriction is justified in law by other charges mentioned in the European arrest warrant.

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Languages available: EN FI FR

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-388/08>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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