GENERAL PRINCIPLES OF EU (CRIMINAL) LAW: LEGALITY, EQUALITY, NON-DISCRIMINATION, SPECIALTY AND NE BIS IN IDEM IN THE FIELD OF THE EUROPEAN ARREST WARRANT

NOREL NEAGU[♣]

Abstract
This article deals with the case law of the Court of Justice of the European Union in the field of the European arrest warrant, critically analysing the principles invoked in several decisions validating the European legislation in the field: legality, equality and non-discrimination, specialty, ne bis in idem. The author concludes that an area of freedom, security and justice could be built on these principles, but further harmonisation of legislation needs to be realised to avoid a "journey to the unknown" for European citizens in respect to legislation of other member states of the EU.

1. Introduction

In the EU context, there are a certain number of principles which permeate the system as a whole and with which any individual piece of legislation needs to be in conformity. Some of these principles are formally higher law in that they are explicit in the treaties (such as the principle of non-discrimination on grounds of nationality). Others can only indirectly be linked to the treaties and are rather explicable on the grounds that no European judge could imagine giving effect to a legal system which does not respect them (the so called 'general principles of EU law').[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. The European arrest warrant is based on the implementation by the Member States of the principle of mutual recognition.[2] This principle was recognised by the Tampere European Council as the "cornerstone of judicial cooperation in both civil and criminal matters". It entails quasi-automatic recognition and execution of judicial decisions among Member States, as if the executing judicial authority was implementing a national judicial order.

Mutual recognition is a guiding principle in the field of the European arrest warrant, but it is not the only principle governing this field. Several other principles were taken into account when analysing the legislation and its practical implementation in the Member States. In the case law of the Court of Justice of the European Union (hereinafter ECJ), particular attention was given to legality, equality and non-discrimination, specialty, as well as the ne bis in idem principle and to compliance of the legislation in this field with these principles.

[♣] Researcher, Centre for Legal, Economic and Socio-Administrative Studies, "Nicolae Titulescu" University, Bucharest, Romania. This paper is part of a broader research activity which is carried out under the CNCSIS PN II Contract no.27/2010.

[1] Maria Fletcher, Robin Loof, Bill Gilmore, EU Criminal Law and Justice, Edward Elgar Publishing Limited (2008), p. 13.

[2] Annachiara Atti, La decisione quadro 2002/584/GAI sul mandato d'arresto europeo: la Corte di giustizia "disolve" I dubbi sulla doppia incriminazione, Dirrito pubblico comparato ed europeo (2007), n.3, p.114.

2. The Legality Principle

According to Article 2(2) of the Framework Decision,[3] double-criminality should not be verified for a list of 32 serious offences, when those offences are punished in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years. Since each of those offences have not been defined in the Framework Decision and since the wording adopted for them can be considered quite vague (e.g. "computer-related crime"), Member States may have adopted different definitions in their legal systems.[4]

These provisions triggered a complaint before the ECJ for lack of compliance of the Framework Decision on the European arrest warrant with the legality principle.[5] According to the complainant, the list of more than 30 offences in respect of which the traditional condition of double criminality is henceforth abandoned is so vague and imprecise that it breaches, or at the very least is capable of breaching, the principle of legality in criminal matters. The offences set out in that list are not accompanied by their legal definition but constitute very vaguely defined categories of undesirable conduct. A person deprived of his liberty on foot of a European arrest warrant without verification of double criminality does not benefit from the guarantee that criminal legislation must satisfy conditions as to precision, clarity and predictability allowing each person to know, at the time when an act is committed, whether that act does or does not constitute an offence, by contrast to those who are deprived of their liberty otherwise than pursuant to a European arrest warrant.

The ECJ dismissed the complaint in succinct argumentation, which is presented in the following paragraphs.

The ECJ stated that the Union is founded on the principle of the rule of law and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and as they result from the constitutional provisions common to the Member States, as general principles of Community law. It follows that the institutions are subject to review of the conformity of their acts with the Treaties and the general principles of law, just like the Member States when they implement the law of the Union[6]. It is common ground that those principles include the principle of the legality of criminal offences and penalties and the principle of equality and non-discrimination, which are also reaffirmed respectively in Articles 49, 20 and 21 of the Charter of Fundamental Rights of the European Union[7].

The principle of the legality of criminal offences and penalties (*nullum crimen, nulla poena sine lege*), which is one of the general legal principles underlying the constitutional traditions common to the Member States, has also been enshrined in various international treaties, in particular in Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[8] This principle implies that legislation must define clearly offences and the penalties which they attract.

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[3] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, published in JO L 190 from 18 July 2002, p. 1-20.

[4] For a thorough analysis of the double-criminality rule, see Stefano Manacorda, L'exception a la double incrimination dans le mandate d'arrêt européen et le principe légalité, Cahiers de droit européen (2007), vol.43, n.1/2, p.149-177.

[5] Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633.

[6] See, inter alia, Case C-354/04 P *Gestoras Pro Amnistía and Others* v *Council* [2007] ECR I-5179, paragraph 51, and Case C-355/04 P *Segi and Others* v *Council* [2007] ECR I-6157, paragraph 51.

[7] Proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1).

[8] See in this regard, inter alia, Joined Cases C-74/95 and C-129/95 *X* [1996] ECR I-6609, paragraph 25, and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraphs 215 to 219.

That condition is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable.[9]

In accordance with Article 2(2) of the Framework Decision, the offences listed in that provision give rise to surrender pursuant to a European arrest warrant, without verification of the double criminality of the act, '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'. Consequently, even if the Member States reproduce word-for-word the list of the categories of offences set out in Article 2(2) of the Framework Decision for the purposes of its implementation, the actual definition of those offences and the penalties applicable are those which follow from the law of 'the issuing Member State'.

The Framework Decision does not seek to harmonise the criminal offences in question in respect of their constituent elements or of the penalties which they attract. Accordingly, while Article 2(2) of the Framework Decision dispenses with verification of double criminality for the categories of offences mentioned therein, the definition of those offences and of the penalties applicable continue to be matters determined by the law of the issuing Member State, which, as is, moreover, stated in Article 1(3) of the Framework Decision, must respect fundamental rights and fundamental legal principles as enshrined in the Treaties, and, consequently, the principle of the legality of criminal offences and penalties. It follows that, in so far as it dispenses with verification of the requirement of double criminality in respect of the offences listed in that provision, Article 2(2) of the Framework Decision is not invalid on the ground that it infringes the principle of the legality of criminal offences and penalties.[10]

I cannot prevent myself to notice that the ECJ transferred the legality issue from European to national level based on two presumptions: firstly, that there is no harmonisation obligation for the European institutions in respect to the European arrest warrant, and secondly, that Member States must respect fundamental rights and fundamental legal principles as enshrined in the Treaties. While this argumentation is solving the problem of judicial co-operation in criminal matters and preserves the legality of the legislation on the European arrest warrant, it does not solve the problem of the European citizens,[11] which should benefit from an Area of Freedom, Security and Justice where they are able to move freely, but with 27 different set of legislation in the field of Criminal law, each legislation with its own definitions in respect to offences which can give rise to an European arrest warrant. That is a real journey to the unknown, as citizens in other Member States are not in the position to know how other national systems have developed.[12]

So, at least one aspect of the legality principle (*lex certa*), was not addressed or solved by the ECJ and can be solved only through harmonisation of legislation. In order for citizens to know the exact requirements of criminal offences in a field which can give rise to surrender on the basis of a European arrest warrant, harmonisation of legislation is needed if the double-criminality rule is waived for a certain category of offences.

3. The Principle of Equality and Non-discrimination

In the same case mentioned above, the complainant argued that the principle of equality and non-discrimination is infringed by the Framework Decision inasmuch as, for offences other than

[9] See, inter alia, European Court of Human Rights judgment of 22 June 2000 in *Coëme and Others* v *Belgium*, Reports 2000-VII, § 145.

[10] Advocaten voor de Wereld, supra, note 5, paragraphs 44-54.

[11] For a somewhat different opinion, see Nial Fennelly, The European Arrest Warrant: Recent Developments, ERA-Forum: scripta iuris europaei (2007), vol.8, n.4, p.534.

[12] Valsamis Mitsilegas, *EU Criminal Law*, Hart Publishing (2009), p. 124.

those covered by Article 2(2) thereof, surrender may be made subject to the condition that the facts in respect of which the European arrest warrant was issued constitute an offence under the law of the Member State of execution. That is, for certain categories of offences listed in Article 2(2) the double-criminality rule is waived, while for all other criminal offences there is a condition that the conduct must be incriminated in both Member States. That distinction, according to the complainant, is not objectively justified. The removal of verification of double criminality is all the more open to question as no detailed definition of the facts in respect of which surrender is requested features in the Framework Decision. The system established by the latter gives rise to an unjustified difference in treatment between individuals depending on whether the facts alleged to constitute the offence occurred in the Member State of execution or outside that State. Those individuals will thus be judged differently with regard to the deprivation of their liberty without any justification for that difference.

In response, the ECJ emphasised that the principle of equality and non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified.[13]

With regard, first, to the choice of the 32 categories of offences listed in Article 2(2) of the Framework Decision, the Council was able to form the view, on the basis of the principle of mutual recognition and in the light of the high degree of trust and solidarity between the Member States, that, whether by reason of their inherent nature or by reason of the punishment incurred of a maximum of at least three years, the categories of offences in question feature among those the seriousness of which in terms of adversely affecting public order and public safety justifies dispensing with the verification of double criminality. Consequently, even if one were to assume that the situation of persons suspected of having committed offences featuring on the list set out in Article 2(2) of the Framework Decision or convicted of having committed such offences is comparable to the situation of persons suspected of having committed, or convicted of having committed, offences other than those listed in that provision, the distinction is, in any event, objectively justified.

With regard, second, to the fact that the lack of precision in the definition of the categories of offences in question risks giving rise to disparate implementation of the Framework Decision within the various national legal orders, suffice it to point out that it is not the objective of the Framework Decision to harmonise the substantive criminal law of the Member States and that nothing in the Treaties which were indicated as forming the legal basis of the Framework Decision, makes the application of the European arrest warrant conditional on harmonisation of the criminal laws of the Member States within the area of the offences in question.[14]

The Court concluded that, in so far as it dispenses with verification of double criminality in respect of the offences listed therein, Article 2(2) of the Framework Decision is not invalid inasmuch as it does not breach the principle of equality and non-discrimination.[15]

I tend to agree with the Court's reasoning as regards the objectively justified difference between the categories of offences for which double-criminality is not required and other categories of offences, where this condition is imposed for surrender of the requested person. The offences provided for in Article 2(2) of the Framework Decision are serious ones and there is no national legislative system in the European Union which does not incriminate every category as a criminal offence. However, even if there is no obligation of harmonisation in respect to those offences, different rules in different Member States can lead to different treatment of comparable situations and consequently a breach of the non-discrimination principle. That is why, even if not mandatory,

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[13] See, in particular, Case C-248/04 *Koninklijke Coöperatie Cosun* [2006] ECR I- 10211, paragraph 72 and the case-law there cited.

[14] See by way of analogy, inter alia, Joined Cases C-187/01 and C-385/01 *Gözütok and Brügge* [2003] ECR I-1345, paragraph 32, and Case C-467/04 *Gasparini and Others* [2006] ECR I-9199, paragraph 29.

[15] Advocaten voor de Wereld, supra, note 5, paragraphs 55-60.

harmonisation of legislation in this field must occur in order to comply with fundamental rights and fundamental legal principles as enshrined in the Treaties.

4. The Specialty Principle

Article 27(2) of the Framework Decision on the European arrest warrant lays down the specialty rule, according to which a person who has been surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered. That rule is linked to the sovereignty of the executing Member State and confers on the person requested the right not to be prosecuted, sentenced or otherwise deprived of liberty except for the offence for which he or she was surrendered. The Member States may waive the application of the specialty rule, which is subject, moreover, to a number of exceptions, laid down in Article 27(3).

In this context, a case was brought before the ECJ where, in the main proceedings, the indictment relates to the importation of hashish whereas the arrest warrants refer to the importation of amphetamines. However, the offence concerned is still punishable by imprisonment for a maximum period of at least three years and comes under the rubric 'illegal trafficking in narcotic drugs' in Article 2(2) of the Framework Decision.[16]

By its first question, the referring court asks, essentially, what the decisive criteria are which would enable it to determine whether the person surrendered is being prosecuted for an 'offence other' than that for which he was surrendered within the meaning of Article 27(2) of the Framework Decision, making it necessary to apply the consent procedure laid down in Article 27(3)(g) and 27(4).

The ECJ answered that in order to decide on surrender of the person requested for the purposes of prosecution of an offence defined by the national law applicable in the issuing Member State, the judicial authority of the executing Member State, acting on the basis of Article 2 of the Framework Decision, will examine the description of the offence in the European arrest warrant. That description must contain information on the nature and legal classification of the offence, a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person, and the prescribed scale of penalties for the offence. The surrender request is based on information which reflects the state of investigations at the time of issue of the European arrest warrant. It is therefore possible that, in the course of the proceedings, the description of the offence no longer corresponds in all respects to the original description. The evidence which has been gathered can lead to a clarification or even a modification of the constituent elements of the offence which initially justified the issue of the European arrest warrant.

In order to assess, in the light of the consent requirement, whether it is possible to infer from a procedural document an 'offence other' than that referred to in the European arrest warrant, the description of the offence in the European arrest warrant must be compared with that in the later procedural document. To require the consent of the executing Member State for every modification of the description of the offence would go beyond what is implied by the specialty rule and interfere with the objective of speeding up and simplifying judicial cooperation of the kind referred to in the Framework Decision between the Member States.

In order to establish whether what is at issue is an 'offence other' than that for which the person was surrendered, it is necessary to ascertain whether the constituent elements of the offence, according to the legal description given by the issuing State, are those for which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document.

[16] Case C-388/08 PPU *Leymann and Pustovarov* [2008] ECR I-8983.

Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.[17]

By its second question, the referring court asks essentially whether a modification of the description of the offence, concerning only the kind of narcotics in question and not changing the legal classification of the offence, is such as to define an 'offence other' than that for which the person was surrendered. The ECJ answered that a modification of the description of the offence concerning the kind of narcotics concerned is not such, of itself, as to define an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of the Framework Decision.

By its third question, the referring court asks, essentially, how the exception to the specialty rule in Article 27(3)(c) of the Framework Decision must be interpreted, taking into account the consent procedure laid down in Article 27(4) of the Framework Decision. It asks in particular whether those provisions permit a person to be prosecuted and sentenced for an 'offence other' than that for which he was surrendered, requiring the consent of the executing Member State, before that consent has been received, in so far as his liberty is not restricted. It also asks whether the fact that the person concerned is, in addition, detained on the basis of other charges providing a lawful basis for his detention affects the possibility of prosecuting and sentencing him for that 'other offence'.

The Court answered that if the proceedings result in the finding that there has been an 'offence other' than that for which the person was surrendered, that offence cannot be prosecuted without consent having been obtained, unless the exceptions provided for in Article 27(3)(a) to (f) of the Framework Decision apply. The exception in Article 27(3)(c) of the Framework Decision concerns a situation in which the criminal proceedings do not give rise to the application of a measure restricting personal liberty. It follows that, in the case of that exception, a person can be prosecuted and sentenced for an 'offence other' than that for which he was surrendered, which gives rise to a penalty or measure involving the deprivation of liberty, without recourse being necessary to the consent procedure, provided that no measure restricting liberty is applied during the criminal proceedings. If however, after judgment has been given, that person is sentenced to a penalty or a measure restricting liberty, consent is required in order to enable that penalty to be executed. Article 27(3)(c) of the Framework Decision does not, however, preclude a measure restricting liberty from being imposed on the person surrendered before consent has been obtained, where that restriction is lawful on the basis of other charges which appear in the European arrest warrant.[18]

5. The 'Ne Bis in Idem' Principle

The 'ne bis in idem' principle raises a lot of questions as regards judicial co-operation in criminal matters in the European Union. I do not intend to present here an extended overview of the principle, as this has been done elsewhere.[19] I will analyse here only one case of significance for the European arrest warrant, which establishes the connection between the 'ne bis in idem' principle contained in the Framework Decision and the same principle provided for in the Convention implementing the Schengen Agreements (hereinafter CISA).[20]

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[17] *Leymann and Pustovarov*, supra, note 16, paragraphs 41-59.

[18] See *Leymann and Pustovarov*, supra, note 16, paragraphs 64-75.

[19] **Norel Neagu, The "*ne bis in idem*" principle in the case-law of the European Court of Justice (I). The 'idem' issue, Lex Et Scientia 2011, vol.XVIII, n.2, p.34-54. for an extended analysis of the 'ne bis in idem' principle, see Bas van Bockel, The Ne Bis in Idem Principle in EU Law, Kluwer Law International (2010).**

[20] The *Schengen acquis* comprises all the acts which were adopted in the framework of the Schengen cooperation till the incorporation of the rules governing the Schengen cooperation into the EU framework by the Treaty of Amsterdam. Accordingly, it is composed of: (1) the Schengen Agreement, signed on 14 June 1985, between

The 'ne bis in idem' principle constitutes a ground for mandatory refusal of the European arrest warrant. According to Article 3(2) of the Framework Decision, the judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant 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.

In the case raised before the ECJ concerning the 'ne bis in idem' principle in the framework of the European arrest warrant, the referring court seeks to ascertain, in substance, whether the concept of the 'same acts' in Article 3(2) is an autonomous concept of European Union law, or 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.[21].

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.

The ECJ answered that 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.[22] 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.[23]

Belgium, France, Germany, Luxembourg, and the Netherlands on the gradual abolition of checks at their common borders; (2) the Schengen Convention, signed on 19 June 1990, between Belgium, France, Germany, Luxembourg, and the Netherlands, implementing the 1985 Agreement (CISA) with related Final Acts and declarations; (3) the Accession Protocols and Agreements to the 1985 Agreement and the 1990 implementing Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) as well as Denmark, Finland and Sweden (signed in Luxembourg on 19 December 1996), with related Final Acts and declarations; (4) decisions and declarations of the Schengen Executive Committee which was the administrative body of the Schengen cooperation and generally mandated by the CISA "to ensure that this Convention [CISA] is implemented correctly"; (5) further implementing acts and decisions taken by subgroups to which respective powers were conferred by the Executive Committee. The latter two Paragraphs regarding the Schengen acquis refer to further decisions and declarations, which were made in order to implement the 1990 Implementing Convention itself. The Schengen acquis was published in the Official Journal L 239 of 22 September 2000. In order to reconcile the overlap between the Schengen cooperation and Justice and Home Affairs cooperation as introduced by the 1992 Maastricht Treaty, the Member States decided to integrate the Schengen acquis into the legal framework of the European Union. This was achieved in 1997 by means of a Protocol attached to the Treaty of Amsterdam. The Council allocated each provision or measure taken to date under the Schengen cooperation to the corresponding legal basis in the EC Treaty and EU Treaty as amended by the Treaty of Amsterdam (COUNCIL DECISION of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis, 1999/436/EC, L 176/17, 10.7.1999). As a further result of the incorporation, the Schengen acquis is binding on and applicable in the new Member States from the date of accession onwards (Article 3 Act of Accession, OJ L 236 of 23 September 2003, p. 33).

[21] Case 261/09 *Mantello* ECR [2010] I-0000.

[22] *Leymann and Pustovarov*, supra, note 16, paragraph 51.

[23] See, to that effect, *Leymann and Pustarov*, supra, note 16, paragraph 51.

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.[24]

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. The 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.[25]

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** (emphasis added).

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.

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.[26]

6. Conclusion

Further clarification was given by the ECJ when analysing case law in the field of European arrest warrant in the light of principles of EU (criminal) law. One of the most important decisions of the ECJ related to uniform interpretation of the 'ne bis in idem' principle in the fields of CISA and European arrest warrant, bringing into the area of the latter all the case law relevant to the former. However, further harmonisation is needed in the field of criminal offences giving rise to a European arrest warrant in order to fully comply with the principles of legality, equality and non-discrimination.

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[24] See, by analogy, Case C-66/08 *Koszlowski* [2008] ECR I-6041, paragraphs 41 and 42.

[25] 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.

[26] *Mantello*, supra, note 21, paragraphs 33-51.

References

- Annachiara Atti, *La decisione quadro 2002/584/GAI sul mandato d'arresto europeo: la Corte di giustizia "disolve"I dubbi sulla doppia incriminazione*, Dirrito pubblico comparato ed europeo (2007), n.3
- Bas van Bockel, *The Ne Bis in Idem Principle in EU Law*, Kluwer Law International (2010)
- Nial Fennelly, *The European Arrest Warrant: Recent Developments*, ERA-Forum: scripta iuris europaei (2007), vol.8, n.4
- Maria Fletcher, Robin Loof, Bill Gilmore, *EU Criminal Law and Justice*, Edward Elgar Publishing Limited (2008)
- Stefano Manacorda, *L'exception a la double incrimination dans le mandate d'arrêt européen et le principe légalité*, Cahiers de droit européen (2007), vol.43, n.1/2
- Valsamis Mitsilegas, *EU Criminal Law*, Hart Publishing (2009)