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Judgment of the Court of Justice in Case C-303/05

Advocaten voor de Wereld VZW v. Leden van de Ministerraad

**THE FRAMEWORK DECISION ON THE EUROPEAN ARREST WARRANT AND
THE SURRENDER PROCEDURES BETWEEN MEMBER STATES IS VALID**

*The removal of verification of double criminality complies with the principle of legality and with
the principle of equality and non-discrimination*

The purpose of the Framework Decision on the European arrest warrant and the surrender procedures between Member States is to introduce a simplified system for the surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or conducting criminal proceedings.¹

Certain offences listed in the Framework Decision, as defined by the law of the issuing Member State, give rise to surrender on the basis of a European arrest warrant without verification of the double criminality of the act, on condition that the offences in question are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years.

In 2004 the association ‘Advocaten voor de Wereld’ brought an action before the Arbitragehof (Court of Arbitration) (Belgium) in which it sought the annulment, in whole or in part, of the Belgian Law transposing the provisions of the Framework Decision into national law. The Arbitragehof referred for a preliminary ruling to the Court of Justice of the European Communities several questions concerning the validity of the Framework Decision.

First, ‘Advocaten voor de Wereld’ submits that the subject-matter of the European arrest warrant ought to have been regulated by means of a convention. While it accepts that the European arrest warrant could equally have been the subject of a convention, the Court takes the view that it is within the Council’s discretion to give preference to the legal instrument of the framework decision in the case where, as in the present, the conditions governing the adoption of such a measure are satisfied.

Second, ‘Advocaten voor de Wereld’ contends that the removal of verification of double criminality for certain offences mentioned in the Framework Decision is contrary to the **principle of legality in criminal matters**. This principle implies that legislation must define

¹ Council Framework Decision 2002/584/JHA of 13 June 2002 (OJ 2002 L 190, p. 1).

clearly offences and the penalties which they attract. That condition is satisfied where the individual concerned is in a position to know which acts or omissions render him criminally liable.

The Court finds in this connection that 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. Consequently, while it dispenses with verification of double criminality for certain categories of offences, the definition of those offences and of the penalties applicable continues to be determined by the law of the issuing Member State, which must respect fundamental rights and fundamental legal principles, including the principle of the legality of criminal offences and penalties. It follows that the removal of verification of double criminality for certain offences is in conformity with the principle of legality.

Third, ‘Advocaten voor de Wereld’ submits, **the principle of equality and non-discrimination** is infringed by the Framework Decision inasmuch as, for offences other than those which it covers, 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 distinction, it argues, is not objectively justified. The removal of verification of double criminality, it continues, is all the more open to question as the Framework Decision contains no detailed definition of the facts in respect of which surrender may be requested.

The Court points out that, with regard, first, to the choice of the 32 categories of offences listed in 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.

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, it is sufficient to point out that it is not the objective of the Framework Decision to harmonise the substantive criminal law of the Member States.

The Court concludes that the examination of the questions submitted has revealed no factor capable of affecting the validity of the Framework Decision on the European arrest warrant and the surrender procedures between Member States.

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Languages available: BG FR DE EN ES EL IT NL PL

*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-303/05>*

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

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