ECLI:EU:C:2016:835

JUDGMENT OF THE COURT (Grand Chamber)

8 November 2016 (*)

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2008/909/JHA — Article 17 — Law governing the enforcement of a sentence — Interpretation of a national rule of the executing State providing for reduction of a custodial sentence on account of work carried out by the sentenced person while detained in the issuing State — Legal effects of framework decisions — Obligation to interpret national law in conformity with EU law)

In Case C-554/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 25 November 2014, received at the Court on 3 December 2014, supplemented on 15 December 2014, in the criminal proceedings against

Atanas Ognyanov

intervening party:

Sofiyska gradska prokuratura,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, J.L. da Cruz Vilaça, M. Berger (Rapporteur), Presidents of Chambers, J.-C. Bonichot, A. Arabadjiev, C. Toader, M. Safjan, E. Jarašiūnas, C.G. Fernlund, C. Vajda and S. Rodin and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 12 January 2016,

after considering the observations submitted on behalf of:

– the German Government, by T. Henze and J. Kemper, acting as Agents,

– the Spanish Government, by A. Rubio González, acting as Agent,

– the Netherlands Government, by M. Bulterman and M. Gijzen, acting as Agents,

– the Austrian Government, by G. Eberhard, acting as Agent,

– the United Kingdom Government, by D. Blundell and L. Barfoot, acting as Agents,

– the European Commission, by R. Troosters, W. Bogensberger and V. Soloveytchik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 May 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 17(1) and (2) 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 has been made in proceedings relating to the recognition of a judgment in a criminal case and the enforcement, in Bulgaria, of a custodial sentence imposed on Mr Atanas Ognyanov by a Danish court.

Legal context

EU law

3 Framework Decision 2008/909 replaced, for the majority of Member States, as from 5 December 2011, the corresponding provisions of the Convention of the Council of Europe of 21 March 1983 on the transfer of sentenced persons and its additional protocol of 18 December 1997.

4 Recital 5 of Framework Decision 2008/909 is worded as follows:

‘Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Relations between the Member States, which are characterised by special mutual confidence in other Member States’ legal systems, enable recognition by the executing State of decisions taken by the issuing State’s authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. ...’

5 Article 3 of that Framework Decision, that article being headed ‘Purpose and scope’, provides:

‘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 Framework Decision 2008/909, headed ‘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 …, 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 10(1) of that Framework Decision, that article being headed ‘Partial recognition and enforcement’, provides:

‘If the competent authority of the executing State could consider recognition of the judgment and enforcement of the sentence in part, it may, before deciding to refuse recognition of the judgment and enforcement of the sentence in whole, consult the competent authority of the issuing State with a view to finding an agreement ...’

8 Article 13 of that Framework Decision provides:

‘As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.’

9 Article 17 of Framework Decision 2008/909, headed ‘Law governing enforcement’ provides:

‘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.

3. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate.

4. Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.’

10 The judgment delivered by the issuing State and sent to the executing State must be accompanied by a certificate. A template of that certificate is to be found in Annex I to Framework Decision 2008/909.

11 Section (i)2 of that template relates to ‘[d]etails of the length of the sentence’. Accordingly, the issuing State must provide information on, first, the total length of the sentence, in days (Section (i)2.1 of the certificate), second, the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued, in days (Section (i)2.2 of that certificate), and, third, the number of days to be

deducted from the total length of the sentence for reasons other than that referred to under Section 2.2 (Section (i)2.3 of the certificate).

Bulgarian law

12 It is stated in the order for reference that, on the date of that order, Framework Decision 2008/909 had not yet been transposed into Bulgarian law.

13 Article 41(3) of the Nakazatelen kodeks (Bulgarian Criminal Code) provides:

'Work done by a sentenced person is to be taken into account for the purposes of reducing the length of the sentence in that two days of work equate to three days of deprivation of liberty.'

14 Article 457(4) to (6) of the Nakazatelno protsesualen kodeks (Bulgarian Code of Criminal Procedure; 'the NPK'), on issues relating to enforcement of a sentence in cases of transfer of sentenced persons, provide:

'4. Where the maximum term of imprisonment provided for under the law of the Republic of Bulgaria for the offence committed is less than the term imposed in the judgment, the court shall reduce the sentence imposed to that term. Where the law of the Republic of Bulgaria does not provide for a custodial sentence for the offence committed, it shall determine a punishment that corresponds as far as possible to that imposed in the judgment.

5. The period of remand in custody pending trial and any part of the sentence already served in the issuing State shall be deducted and, in the event that the convictions are different, taken into account for the purposes of determining the term of imprisonment.

6. Additional punishments imposed in the judgment shall be enforced if they are provided for in the corresponding provisions of the legislation of the Republic of Bulgaria and have not been enforced in the issuing State.'

15 In accordance with an interpretative judgment No 3/13 of 12 November 2013 ('the interpretative judgment'), delivered by the Varhoven kasatsionen sad (Supreme Court of Appeal, Bulgaria), Article 457(5) of the NPK, read together with Article 41(3) of the Criminal Code, must be interpreted as meaning that work that is in the general interest, undertaken in the issuing State by a Bulgarian national convicted of an offence who is transferred, must be taken into account by the competent authorities of the executing State for the purposes of reducing the length of the sentence, in that two days of work are to be treated as equivalent to three days of deprivation of liberty, unless the issuing State had already made a corresponding reduction in that sentence.

16 In its request for a preliminary ruling, the referring court states that it is bound by that interpretative judgment.

17 The referring court adds that neither the legislation nor that interpretative judgment identify any obligation to inform the issuing State or to obtain its observations and its consent to the application of such a reduction in the sentence by the competent Bulgarian authorities.

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

18 By judgment of 28 November 2012, Mr Ognyanov, a Bulgarian national, was sentenced to a total period of 15 years' imprisonment for murder and aggravated robbery by the Retten i Glostrup (Court of Glostrup, Denmark).

19 Mr Ognyanov was initially remanded in custody in Denmark from 10 January until 28 November 2012, the date when his conviction and the sentence imposed on him became *res judicata*.

20 He then served part of his period of imprisonment in Denmark, from 28 November 2012 until 1 October 2013, when he was transferred to the Bulgarian authorities.

21 While imprisoned in Denmark, Mr Ognyanov worked from 23 January 2012 until 30 September 2013.

22 It is stated in the order for reference that, for the purposes of transferring Mr Ognyanov to the Bulgarian authorities, the Danish authorities relied on Framework Decision 2008/909. They sent to the Bulgarian authorities a request for information concerning the sentence that the latter anticipated being able to enforce and the rules applicable in Bulgaria on early release. Further, the Danish authorities expressly stated that Danish legislation did not permit any reduction in a custodial sentence on the ground that work was carried in the course of the enforcement of that sentence.

23 On a date that is not specified in the order for reference, the Sofiyska gradska prokuratura (Public Prosecutor's Office of the City of Sofia, Bulgaria) brought an action before the referring court, under Article 457 of the NPK, seeking a ruling on issues related to the enforcement of the judgment delivered by the Danish court with respect to Mr Ognyanov.

24 In the light of the approach in the interpretative judgment, the referring court has doubts as to whether, in order to determine the length of the sentence still to be served by Mr Ognyanov, it ought to take account of the period that he worked in a Danish prison. If it were to do so, Mr Ognyanov would qualify for a reduction in sentence not of one year, eight months and 20 days, but of two years, six months and 24 days, which would result in his being released earlier. The referring court adds that Framework Decision 2008/909 makes no provision for such a reduction in sentence.

25 The referring court sets out, in its order, the reasons why it has concluded that Bulgarian law does not comply with the relevant provisions of Framework Decision 2008/909.

26 The referring court considers, first, that Article 17(1) of Framework Decision 2008/909 empowers the competent authorities of the executing State to decide how a custodial sentence 'shall' be enforced, but not to undertake a further legal assessment of the sentence already enforced in the issuing State. Accordingly, in the view of that court, the competent authorities of the executing State cannot grant a reduction in sentence with respect to the balance of sentence still to be served, on the ground that work was carried out by the sentenced person in a prison of the issuing State.

27 The referring court considers, second, that Article 17(2) of Framework Decision 2008/909 obliges the executing State to deduct the full period of the custodial sentence already served by the sentenced person in the issuing State on the date of transfer, and that such an objective cannot be achieved if the competent authorities of that executing State deduct a period that is either shorter or longer than the sentence enforced in accordance with the law of the issuing State. That court considers that the deduction of a period longer than the actual period of deprivation of liberty would be contrary to that provision.

28 Further, in the view of that court, the other two provisions of Framework Decision 2008/909 that provide for the possibility of a reduction in sentence, namely Article 8(2) and Article 10(1) thereof, are manifestly not applicable in the case pending before it.

29 In those circumstances the Sofiyski gradski sad (Sofia City Court) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do the provisions of Framework Decision 2008/909 preclude the executing State, in the course of the transfer procedure, from reducing the duration of the custodial sentence imposed by the issuing State, on account of work undertaken while that sentence was being served in the issuing State, as follows:

(a) the sentence is reduced by the application, in accordance with Article 17(1) of [Framework Decision 2008/909], of the law of the executing State to the enforcement of the sentence. Does that provision permit the laws of the executing State on the enforcement of the sentence to be applied even at the stage of the transfer procedure in respect of matters (work undertaken in prison in the issuing State) which occurred while the sentenced person was under the jurisdiction of the issuing State?

(b) the sentence is reduced by the application of a deduction in accordance with Article 17(2) of [Framework Decision 2008/909]. Does that provision permit the deduction of a period that is longer than the period of deprivation of liberty determined in accordance with the law of the issuing State, where the law of the executing State is

applied and, as a result, a fresh legal assessment is made of matters which occurred in the issuing State (work undertaken in prison in the issuing State)?

(2) In the event that these or other provisions of [Framework Decision 2008/909] are applicable to the reduction in sentence at issue, must the issuing State be notified if it has made a specific request to that effect and is the transfer procedure to be discontinued if the issuing State objects? If there is a notification requirement, what should the nature of that notification be: should it be in general and abstract terms as regards the applicable law, or should it relate to the specific reduction in sentence which the court will impose on a particular sentenced person?

(3) In the event that the Court rules that the provisions of Article 17(1) and (2) of [Framework Decision 2008/909] preclude the executing State from reducing the sentence on the basis of its domestic law (on account of work undertaken in the issuing State), is a decision by the national court nevertheless to apply its national law — because it is more lenient than Article 17 of [Framework Decision 2008/909] — compatible with EU law?'

Consideration of the questions referred for a preliminary ruling

The first question

30 By its first question, the referring court seeks, in essence, to ascertain whether Article 17(1) and (2) of Framework Decision 2008/909 must be interpreted as precluding a national rule being interpreted in such a way that it permits the executing State to grant to a sentenced person a reduction in the sentence by reason of work which he carried out during his detention in the issuing State, although the competent authorities of the issuing State did not, in accordance with the law of that State, grant such a reduction in the sentence.

31 In order to answer that question, it must be recalled that the Court has consistently held that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 35).

32 As regards the wording of Article 17(1) and (2) of Framework Decision 2008/909, it must be observed that, while Article 17(1) provides that 'the enforcement of a sentence shall be governed by the law of the executing State', it does not however clarify, as noted by the Advocate General in point 63 of his Opinion, whether that means the enforcement of the sentence from the moment the judgment is delivered in the issuing State or merely from the moment the person concerned is transferred to the executing State.

33 As regards Article 17(2) of Framework Decision 2008/909, it provides that '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'. That

provision, which starts from the premise that a sentenced person is liable to serve part of his sentence in the issuing State before his transfer, does not answer the question whether the executing State can apply a reduction in the sentence which takes account of work carried out by the sentenced person during his period of imprisonment in the issuing State.

34 The background to Article 17 of Framework Decision 2008/909 must therefore be taken into consideration. In that regard, it must be observed that Article 17 is to be found in Chapter II of Framework Decision 2008/909, that chapter being headed 'Recognition of judgments and enforcement of sentences'. That chapter, containing Articles 4 to 25, sets out a series of general rules in a chronological order.

35 As stated by the Advocate General in point 100 of his Opinion, Articles 4 to 14 of Framework Decision 2008/909 begin by establishing the rules which the Member States must follow in order to effect the transfer of a sentenced person. Accordingly, Articles 4 to 6 of that Framework Decision define, first, the procedures for the forwarding of the judgment and the certificate to the executing State. Articles 7 to 14 of that Framework Decision then establish the general rules applicable to decisions recognising a judgment and decisions enforcing a sentence.

36 In particular, Article 8 of Framework Decision 2008/909 lays down strict conditions governing the adaptation, by the competent authority of the executing State, of the sentence imposed in the issuing State, those conditions being the sole exceptions to the obligation imposed on that authority, in principle, to recognise the judgment forwarded to it and to enforce the sentence, which is to correspond in its length and nature to the sentence imposed in the judgment delivered in the issuing State.

37 Further, it is stated in Article 13 of Framework Decision 2008/909 that the issuing State is to retain its competence with respect to the enforcement of a sentence for as long as 'the enforcement of the sentence in the executing State has not begun'.

38 Article 15 of Framework Decision 2008/909 then goes on to establish the procedures applicable to the transfer of the sentenced person and Article 16 thereof lays down specific provisions in the event of the transit of the sentenced person through the territory of another Member State.

39 Article 17 of Framework Decision 2008/909 follows on from the provisions that precede it, in that it establishes the general rules applicable to the enforcement of the sentence once the sentenced person has been transferred to the competent authority of the executing State.

40 It follows that Article 17 of Framework Decision 2008/909 must be interpreted as meaning that only the law of the issuing State is applicable, not least on the question of any grant of a reduction in sentence, to the part of the sentence served by the person concerned on the territory of that State until his transfer to the executing State. The law of

the executing State can apply only to the part of the sentence that remains to be served by that person, after that transfer, on the territory of the executing State.

41 That interpretation is also indicated by the template certificate, to be found in Annex I to Framework Decision 2008/909.

42 In that regard, it must be observed that the template certificate constitutes a standard form that has to be completed by the competent authority of the issuing State, then forwarded, with the judgment passing sentence, to the competent authority of the executing State. In accordance with Article 8(1) of Framework Decision 2008/909, the competent authority of the executing State is to recognise the judgment passing sentence and to rely on the information provided, in that certificate, by the competent authority of the issuing State.

43 It is clear from Section (i)2.2 of the template certificate, on the information to be provided on the length of the sentence, that the issuing State is required to state, in days, the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued. In Section (i)2.3 of that template, the issuing State must state the number of days to be deducted from the total length of the sentence for reasons other than that referred to in Section (i)2.2 of that template. A non-exhaustive list of those other reasons is also to be found in Section (i)2.3 thereof, those reasons including a pardon or clemency decision already granted with respect to the sentence. Accordingly, as stated by the Advocate General in point 116 of his Opinion, Section (i)2.3 enables the issuing State to supply additional information when particular circumstances, such as for example work carried out in detention by the sentenced person, have already brought about a reduction in sentence.

44 It follows from all the foregoing that, before the recognition of the judgment passing sentence by the executing State and the transfer of the sentenced person to the executing State, it falls to the issuing State to determine the reductions in sentence that pertain to the period of detention served on its territory. The issuing State alone is competent to grant a reduction in sentence for work carried out before the transfer and, where appropriate, to inform the executing State of that reduction in the certificate referred to in Article 4 of Framework Decision 2008/909. Consequently, the executing State cannot, retroactively, substitute its law on the enforcement of sentences and, in particular, its rules on reductions in sentence, for the law of the issuing State with respect to that part of the sentence which has already been served by the person concerned on the territory of the issuing State.

45 In this case, it is clear from the documents submitted to the Court that, when Mr Ognyanov was transferred to the competent Bulgarian authorities, the Danish authorities expressly stated that Danish legislation did not permit any reduction in a custodial sentence on the ground that work was carried out by the sentenced person during the period of his detention. Consequently, an authority in the executing State that is competent with respect to matters concerning enforcement of the sentence, such as the referring court, cannot grant a reduction in sentence that relates to the part of the sentence

that has already been served by the sentenced person on the territory of the issuing State, when no such reduction in sentence was granted by the authorities of the issuing State, in accordance with their national law.

46 An interpretation to the contrary would be likely, last, to undermine the objectives pursued by Framework Decision 2008/909, those objectives including respect for the principle of mutual recognition, which constitutes, as stated in recital 1 of Framework Decision 2008/909, read in the light of Article 82(1) TFEU, the 'cornerstone' of judicial cooperation in criminal matters within the European Union (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 79).

47 In that regard, recital 5 of Framework Decision 2008/909 states that that cooperation is founded on a special mutual confidence of the Member States in their respective legal systems.

48 Yet were it to occur that a national court of the executing State granted, in accordance with its national law, after it had recognised the judgment passing sentence delivered by a court of the issuing State and after the sentenced person had been transferred to the authorities of the executing State, a reduction in sentence that related to the part of the sentence served by that person on the territory of the issuing State, although no such reduction in sentence was granted by the competent authorities of the issuing State, on the basis of its national law, that would jeopardise the special mutual confidence of Member States in their respective legal systems.

49 In such a situation, the national court of the executing State would then be applying, retroactively, its national law to the part of the sentence served on territory subject to the jurisdiction of the court of the issuing State. The former court would thus be re-examining the period of detention served on the territory of the issuing State, which would be in breach of the principle of mutual recognition.

50 Moreover, it follows from Article 3(1) of Framework Decision 2008/909 that recognition of a judgment and enforcement of a sentence by a Member State other than that where that judgment was delivered is intended to facilitate the social rehabilitation of the sentenced person. Accordingly, to disregard the principle of mutual recognition would also jeopardise that objective.

51 In the light of all the foregoing, the answer to the first question is that Article 17(1) and (2) of Framework Decision 2008/909 must be interpreted as precluding a national rule being interpreted in such a way that it permits the executing State to grant to the sentenced person a reduction in sentence by reason of work that he carried out during the period of his detention in the issuing State, although no such reduction in sentence was granted by the competent authorities of the issuing State, in accordance with the law of the issuing State.

The second question

52 By its second question, the referring court seeks, in essence, to ascertain whether, in the event that Article 17 of Framework Decision 2008/909 permits the competent authority of the executing State to apply a reduction in sentence, such as that in the main proceedings, that relates to the part of the sentence already served by the sentenced person on the territory of the issuing State, the executing State is required to inform the issuing State, which made an explicit request for such information, of the application of a reduction. If the answer to that question is that it is so required, the referring court has doubts as to the nature of the information that should then be sent.

53 In view of the reply given to the first question, there is no need to examine the second question.

The third question

54 By its third question, the referring court seeks, in essence, to ascertain, whether EU law must be interpreted as precluding a national court from applying a national rule, such as that at issue in the main proceedings, even though that rule is in breach of Article 17(1) and (2) of Framework Decision 2008/909, on the ground that the national rule is more lenient than that provision of EU law.

55 It must be stated immediately that the allusion by the referring court to the principle of the retroactive application of the more lenient criminal law rests on the premise that Bulgarian law — in particular the provisions of that law relating to reduction in sentence — is capable of also applying to the period of detention served by Mr Ognyanov in Denmark before his transfer to Bulgaria. However, as is clear from the answer given to the first question, that premise is mistaken.

56 That said, it must further be observed that, contrary to what seems to be suggested by both the referring court and the European Commission, Framework Decision 2008/909 has no direct effect. That is because that Framework Decision was adopted on the basis of the former third pillar of the European Union, in particular, under Article 34(2)(b) EU. That provision states, first, that framework decisions are binding on the Member States as to the result to be achieved, but leave to the national authorities the choice of form and methods, and, second, that framework decisions are not to entail direct effect.

57 In that regard, it is important to point out that, in accordance with Article 9 of Protocol (No 36) on transitional provisions, annexed to the treaties, the legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted on the basis of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon are to be preserved until those acts are repealed, annulled or amended in implementation of the treaties. Since Framework Decision 2008/909 has not been subject to any such repeal, annulment or amendment, it continues therefore to have the legal effect attributed to it under Article 34(2)(b) EU.

58 It is also settled case-law that although framework decisions may not entail direct effect, as laid down in Article 34(2)(b) EU, their binding character nevertheless places on national authorities, and in particular on national courts, an obligation to interpret national law in conformity with EU law (see judgment of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 53 and the case-law cited).

59 When national courts apply domestic law they are therefore bound to interpret it, so far as possible, in the light of the wording and the purpose of the framework decision concerned in order to achieve the result sought by it. This obligation to interpret national law in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they rule on the disputes before them (see judgment of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 54 and the case-law cited).

60 Further, it is stated in the order for reference that, on the date of that order, Framework Decision 2008/909 had not yet been transposed into Bulgarian law, although, in accordance with Article 29 of that framework decision, that transposition should have taken place before 5 December 2011.

61 In that regard, it must be observed that the referring court is bound to respect the principle of interpreting national law in conformity with EU law as from the date of expiry of the period for the transposition of that Framework Decision (see, by analogy, judgment of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraphs 115 and 124).

62 However, it must be borne in mind that the principle of interpreting national law in conformity with EU law has certain limitations.

63 Thus, the obligation on a national court to refer to the content of a framework decision when it interprets and applies the relevant rules of its national law is limited by the general principles of law, in particular, the principles of legal certainty and non-retroactivity (see judgments of 16 June 2005, *Pupino*, C-105/03, EU:C:2005:386, paragraph 44, and 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 55).

64 In particular, those principles preclude that obligation from leading to the criminal liability of individuals being determined or aggravated, on the basis of a framework decision alone, absent any legislation implementing its provisions, where they are in breach of those provisions (see judgment of 16 June 2005, *Pupino*, C-105/03, EU:C:2005:386, paragraph 45).

65 However, in this case, the obligation to interpret national law in conformity with EU law would mean that Mr Ognyanov cannot qualify, under Bulgarian law, for a reduction in sentence by reason of work carried out during his period of detention in Denmark, because that matter is wholly within the competence of Denmark. That

obligation would not, however, cause the criminal liability of Mr Ognyanov to be determined or aggravated, or alter, to his disadvantage, the length of the sentence imposed on him in the judgment delivered on 28 November 2012 by the Retten i Glostrup (Court of Glostrup).

66 The obligation to interpret national law in conformity with EU law ceases, moreover, when the former cannot be applied in a way that would lead to a result compatible with that envisaged by that framework decision. In other words, that principle cannot serve as the basis for an interpretation of national law *contra legem*. That principle does, however, require that the national court consider, where necessary, the whole body of national law in order to assess how far it can be applied in such a way as not to produce a result contrary to that envisaged by the framework decision (see judgments of 16 June 2005, *Pupino*, C-105/03, EU:C:2005:386, paragraph 47, and of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraphs 55 and 56).

67 Against that background, it must be made clear that the requirement to interpret national law in conformity with EU law includes the obligation, on national courts, including those ruling as courts of last instance, to alter, where necessary, settled case-law if that case-law is based on an interpretation of national law that is incompatible with the objectives of a framework decision (see, by analogy, judgments of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 33, and 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 35).

68 In this case, it is apparent from the documents submitted to the Court that the national rules at issue in the main proceedings, to the effect that work in the general interest carried out, in the issuing State, by the Bulgarian prisoner who was sentenced and transferred must be taken into account by the competent authority of the executing State with a view to reduction in the sentence, stems from an interpretation of Article 457(5) of the NPK, read together with Article 41(3) of the Criminal Code, adopted by the Varhoven kasatsionen sad (Supreme Court of Appeal) in its interpretative judgment.

69 Consequently, the referring court cannot, in the main proceedings, validly claim that it is impossible for it to interpret the provision of national law at issue in a manner that is compatible with EU law, for the sole reason that that provision has been interpreted, by Varhoven kasatsionen sad (Supreme Court of Appeal), in a way that is not compatible with EU law (see, to that effect, judgment of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 34).

70 In those circumstances, it is for the referring court to ensure that Framework Decision 2008/909 is given full effect, and if necessary to disapply, on its own authority, the interpretation adopted by the Varhoven kasatsionen sad (Supreme Court of Appeal), since that interpretation is not compatible with EU law (see, to that effect, judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 36).

71 In the light of all the foregoing, the answer to the third question is that EU law must be interpreted as meaning that a national court is bound to take into consideration

the whole body of rules of national law and to interpret them, so far as possible, in accordance with Framework Decision 2008/909, in order to achieve the result sought by that framework decision, and if necessary to disapply, on its own authority, the interpretation adopted by the national court of last resort, if that interpretation is not compatible with EU law.

Costs

72 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:

1. **Article 17(1) and (2) 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 precluding a national rule being interpreted in such a way that it permits the executing State to grant to the sentenced person a reduction in sentence by reason of work he carried out during the period of his detention in the issuing State, although no such reduction in sentence was granted by the competent authorities of the issuing State, in accordance with the law of the issuing State.**

2. **EU law must be interpreted as meaning that a national court is bound to take into consideration the whole body of rules of national law and to interpret them, so far as possible, in accordance with Framework Decision 2008/909, as amended by Framework Decision 2009/299, in order to achieve the result sought by that framework decision, and if necessary to disapply, on its own authority, the interpretation adopted by the national court of last resort, if that interpretation is not compatible with EU law.**

[Signatures]

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* Language of the case: Bulgarian