Reports of Cases

OPINION OF ADVOCATE GENERAL
PIKAMÄE
delivered on 20 April 2023 [1]

Case C-219/22

Criminal proceedings
against
QS,
interested party:
Rayonna prokuratura Burgas, TO Nesebar

(Request for a preliminary ruling
from the Rayonen sad Nesebar (District Court, Nesebar, Bulgaria))

(Reference for a preliminary ruling – Area of freedom, security and justice – Framework Decision 2008/675/JHA – Taking account of convictions in the Member States – Alteration of the arrangements for enforcing a previous conviction – Conviction subject to a stay of execution – New offence committed during the period of suspension – Revocation of the suspension and actual execution of the custodial sentence)

I. Introduction

1. This request for a preliminary ruling, submitted by the Rayonen sad Nesebar (District Court, Nesebar, Bulgaria) pursuant to Article 267 TFEU, concerns the interpretation of Article 3 of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. [2] The request was made in the context of an application submitted by the public prosecutor of the Rayonna prokuratura Nesebar (District Public Prosecutor's Office, Nesebar, Bulgaria) to the referring court for the purposes of the actual execution, by that court, of the conviction previously handed down against a Romanian national, QS, by a Romanian court.

2. The present case raises important legal questions concerning the limits laid down by the EU legislature on the principle of mutual recognition, upon which Framework Decision 2008/675 is based and which allows a court in one Member State, inter alia, to take account of final criminal judgments rendered in other Member States in order to determine the type of sentence applicable and the arrangements for enforcing it. More specifically, the Court will be called upon to rule on the role to be assigned to the traditional principle of 'territoriality' in criminal law, as an expression of State sovereignty, within the European Union's area of freedom, security and justice.

[1] Original language: French.

[2] OJ 2008 L 220, p. 32.

Although Framework Decision 2008/675 does lay down provisions intended to resolve conflicts between those two principles, their application does however run into obstacles related to doubts as to interpretation. It appears essential for the Court to take a position on such particularly sensitive matters, because effective cooperation between criminal authorities depends on it so doing.

II. Legal context

A. European Union law

1. Framework Decision 2008/675

3. Article 1 of that framework decision, which is entitled 'Subject matter', provides, in paragraph 1:

'The purpose of this Framework Decision is to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.'

4. Article 2 of the framework decision, which is entitled 'Definitions', states:

'For the purposes of this Framework Decision "conviction" means any final decision of a criminal court establishing guilt of a criminal offence.'

5. Article 3 of the same framework decision, which is entitled 'Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State', reads:

'1. Each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law.

2. Paragraph 1 shall apply at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules of procedure, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

3. The taking into account of previous convictions handed down in other Member States, as provided for in paragraph 1, shall not have the effect of interfering with, revoking or reviewing previous convictions or any decision relating to their execution by the Member State conducting the new proceedings.

4. In accordance with paragraph 3, paragraph 1 shall not apply to the extent that, had the previous conviction been a national conviction of the Member State conducting the new proceedings, the taking into account of the previous conviction would, according to the national

law of that Member State, have had the effect of interfering with, revoking or reviewing the previous conviction or any decision relating to its execution.

5. If the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed, paragraphs 1 and 2 shall not have the effect of requiring Member States to apply their national rules on imposing sentences, where the application of those rules to foreign convictions would limit the judge in imposing a sentence in the new proceedings.

However, the Member States shall ensure that in such cases their courts can otherwise take into account previous convictions handed down in other Member States.'

2. Framework Decision 2008/947/JHA

6. Article 1 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions,[3] which is entitled 'Objectives and scope', provides:

'1. This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction. …

…

3. This Framework Decision shall not apply to:

(a) the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA; [4]

…'

7. Article 5 of Framework Decision 2008/947, which is entitled 'Criteria for forwarding a judgment and, where applicable, a probation decision', states:

'1. The competent authority of the issuing State may forward a judgment and, where applicable, a probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State.

2. The competent authority of the issuing State may, upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of

[3] OJ 2008 L 337, p. 102.

[4] Council Framework Decision 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).

a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding.

…'

8. Article 14 of that framework decision, which is entitled 'Jurisdiction to take all subsequent decisions and governing law', provides as follows, in paragraph 1 thereof:

'The competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

Such subsequent decisions include notably:

…

(b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; …

…'

B. Bulgarian law

9. Article 8 of the Nakazatelen kodeks (Criminal Code) provides, in paragraph 2 thereof:

'A conviction handed down in another Member State of the European Union, which has become final, for an act which constitutes an offence under the Bulgarian Criminal Code shall be taken into account in any criminal proceedings initiated against the same person in the Republic of Bulgaria.'

10. Article 68(1) of that code reads as follows:

'If, before the end of the probation period determined by the court, the sentenced person commits another intentional offence which is subject to prosecution by the public prosecutor's office and for which a custodial sentence is imposed on him or her, even after the probation period, he or she must also serve the suspended sentence.'

11. Under Article 343b(1) of the code:

'Driving a motor vehicle with a – duly established – blood alcohol content exceeding 0.12% shall be punishable by a custodial sentence of between one and three years and a fine of between 200 and 1 000 [Bulgarian leva (BGN)].'

III. Facts at the origin of the dispute, the main proceedings and the question referred for a preliminary ruling

12. QS is a Romanian national residing in Romania.

13. By a judgment of 3 April 2019, upheld by a judgment of the Curtea de Apel Cluji (Court of Appeal, Cluj, Romania) of 24 June 2019 which has become final, QS was sentenced to a term of imprisonment of one year and six months, execution of which was suspended for a probation period of two years, that is to say, until 24 June 2021 ('the first conviction') for a drunk driving offence ('the first offence').

14. On 1 September 2020, during the probation period, QS committed, on Bulgarian territory, an offence of driving a motor vehicle whilst under the influence of alcohol, as provided for in Article 343b(1) of the Bulgarian Criminal Code ('the second offence').

15. By order of the Rayonen sad Nesebar (District Court, Nesebar) which became final on 9 March 2022, QS was sentenced to a term of imprisonment of 3 months and a fine of BGN 150 (approximately EUR 77) and his driver's licence was suspended for 12 months ('the second conviction').

16. On 23 March 2022, a proposal was submitted to that court, the referring court, by the public prosecutor attached to the Rayonna prokuratura Burgas (District Public Prosecutor's Office, Burgas, Bulgaria), pursuant to Article 68(1) of the Bulgarian Criminal Code, for the execution of the first conviction, because the second offence had been committed during the probation period provided for by that conviction.

17. It is in that context that the referring court has doubts as to the interpretation of Article 3 of Framework Decision 2008/675.

18. In that regard, that court states that Article 8(2) of the Bulgarian Criminal Code transposed the principles laid down in that framework decision, in particular in Article 3(1) thereof, by providing that a conviction handed down in another Member State which has become final for an act which constitutes an offence under that code is to be taken into account in any criminal proceedings initiated against the same person in Bulgaria.

19. That is the case as regards the first conviction, since QS was definitively sentenced to a term of imprisonment of one year and six months in Romania and, on the basis of information obtained by means of instruments on mutual legal assistance, it is established that the act constituting the first offence is equivalent to that constituting the second offence.

20. The referring court notes, in addition, that all the conditions laid down in Article 68(1) of the Bulgarian Criminal Code for the enforcement of that conviction are met in the present case. Indeed, before the end of the probation period specified in that conviction, QS committed another intentional offence which is subject to prosecution by the public prosecutor's office and for which a custodial sentence was imposed on him.

21. Thus, that court takes the view that it is obliged to take the first conviction into account and to enforce it, pursuant to Article 8(2) of the Bulgarian Criminal Code, in conjunction with Article 68(1) thereof. The question arises, however, whether Article 3(3) of Framework Decision 2008/675 precludes such account from being taken.

22. In that regard, the court observes that that provision, as interpreted by the Court, requires that a decision relating to the enforcement of a previous conviction not be reviewed. However, it considers that the present case differs from that which gave rise to the judgment in *Beshkov*,[5] in which the Court interpreted that provision as prohibiting, when an overall sentence is imposed, the alteration of the arrangements for enforcing that sentence which were determined in another Member State.

23. In the present case, the arrangements for enforcing the first conviction would not be reviewed or altered by the referring court in the exercise of its discretion, but rather pursuant to a mandatory provision, namely Article 68(1) of the Bulgarian Criminal Code, which requires the referring court to enforce the sentence subject to a probation period where, as in the present case, all the conditions laid down in that regard are met.

24. In those circumstances, the Rayonen sad Nesebar (District Court, Nesebar) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 3(3) of [Framework Decision 2008/675] be interpreted as precluding national legislation such as [that resulting from] Article 68(1) of the [Bulgarian Criminal Code], in conjunction with Article 8(2) thereof, which provides that the national court seised of an application for execution of the sentence imposed by a previous conviction handed down by a court of another Member State may, for that purpose, alter the arrangements for executing that sentence by ordering its actual execution?'

IV. Procedure before the Court

25. The order for reference dated 25 March 2022 was received at the Registry of the Court of Justice on 28 March 2022.

26. QS and the European Commission submitted written observations within the period prescribed in Article 23 of the Statute of the Court of Justice of the European Union.

27. At the general meeting of 24 January 2023, the Court decided not to hold a hearing.

V. Legal analysis

A. Preliminary remarks

1. The need to take into account the criminal record of the perpetrator of an offence within the European Union's area of freedom, security and justice

28. Within an area of freedom, security and justice based on mutual trust, the European Union has taken steps to guarantee the protection of citizens against crime, whilst ensuring that their fundamental rights are respected if they become involved in criminal proceedings, whether as victims or defendants. In order to establish such an integrated area of justice, convictions handed down against persons in one Member State must be taken into account in another Member State

[5] Judgment of 21 September 2017, *Beshkov* (C-171/16, EU:C:2017:710; 'the judgment in *Beshkov*').

so as to prevent future offences. Similarly, if new offences are committed by the same perpetrator, that behavioural factor should be taken into consideration in the course of new criminal proceedings, subject to ensuring the fairness of the proceedings. [6]

29. Indeed, in the interests of effective criminal justice within the European Union, it is essential that all Member States have rules which ensure that account can be taken, at all stages of the criminal proceedings, of the fact that the individual is a first-time offender or that he or she has already been sentenced in another Member State. The ability to assess the criminal record of the perpetrator of an offence is essential to the smooth running of the new criminal proceedings, in particular so that informed decisions can be made on matters related to provisional detention or release on bail and all available information is at the court's disposal when sentence is passed. It is in that context that Framework Decision 2008/675 was adopted. That instrument requires the judicial authorities of a Member State to take account of final criminal judgments rendered by the courts of other Member States, provided that certain conditions are satisified. [7]

2. Exceptions to the principle of mutual recognition provided for in Framework Decision 2008/675

30. Framework Decision 2008/675 provides for some exceptions to that obligation, the purpose of which is, in essence, to safeguard the sovereignty of the Member States in matters of criminal justice by prohibiting other Member States from taking certain decisions in their stead. [8] Thus, those exceptions have the effect of coordinating the jurisdiction of the various judicial bodies, thereby ensuring a degree of consistency in the administration of criminal justice within the European Union.

31. By its request for a preliminary ruling, the referring court asks about *the scope of one of those exceptions*, that is to say, the exception provided for in Article 3(3) of Framework Decision 2008/675, according to which 'the taking into account of previous convictions handed down in other Member States … shall not have the effect of interfering with, revoking or reviewing previous convictions or any decision relating to their execution by the Member State conducting the new proceedings'. In that court's view, the obligation imposed on it by the Bulgarian rules, in the context of new criminal proceedings against a person who has been the subject of a previous conviction in another Member State, to revoke the suspension of the execution of a sentence imposed in a previous conviction in another Member State and to *order the actual execution of that sentence on its territory* could prove contrary to the provisions of the provision cited above. The answer given by the Court should take account of the issues facing the referring court and be sufficiently precise so that the dispute can be settled.

32. However, before examining that question, it is necessary to consider whether the situation covered by the Bulgarian rules, as described in the preceding point, falls within the scope of Article 3(1) of Framework Decision 2008/675, that is to say, the provision which requires Member States to apply the principle of mutual recognition. Under that provision, the referring

6 In the judgment of 5 July 2018, *Lada* (C-390/16, EU:C:2018:532, paragraph 36), the Court refers to the creation of a 'judicial culture' within the European area of justice, in which previous convictions handed down in a Member State are in principle taken into account.

7 In the judgment of 12 January 2023, *MV (Formation of a cumulative sentence)* (C-583/22 PPU, EU:C:2023:5, paragraph 65), the Court stated that Framework Decision 2008/675 respects the variety of domestic solutions and procedures required for that objective to be achieved. Thus, that framework decision 'contributes to the constitution of an area of freedom, security and justice within the European Union while respecting the different legal systems and traditions of the Member States, in accordance with Article 67(1) TFEU'.

8 See, in that regard, Muñoz de Morales Romero, M., 'The taking into account of EU previous convictions in joint/accumulated punishment: the Spanish case', *European Criminal Law Review*, 2018, Vol. 8(2), p. 244 et seq.

court is, a priori, obliged to take account of QS' first conviction in Romania. Such a legal consequence is precluded only if the exception under Article 3(3) of Framework Decision 2008/675 were applicable.

33. My analysis of the question referred for a preliminary ruling will adhere, in essence, to the plan outlined in the preceding points. Accordingly, I will begin by examining whether Framework Decision 2008/675 is applicable to the present case.[9] Next, I will explain the scope of the obligation to take account of previous convictions which is established by that framework decision.[10] Finally, I will apply to the present case the principles upon which that obligation is based.[11] As I will explain in detail, the analysis will show that *the Bulgarian rules at issue*, as interpreted by the referring court, *are incompatible with the principle of non-interference* laid down in Article 3(3) of that framework decision.

34. It must be pointed out that, where reference is made to the 'Bulgarian rules' at issue, it concerns the interpretation stemming from a combined reading of two national provisions – namely, Article 8(2) and Article 68(1) of the Bulgarian Criminal Code – which, according to the information provided by the referring court, impose on it the obligation set out in point 31 of the present Opinion. While, as the Commission states in its observations, such an interpretation is not readily apparent from a reading of the provisions at issue,[12] the fact remains that, as far as the interpretation of provisions of national law is concerned, the Court is in principle required to rely on the description given in the order for reference.[13] The question referred for a preliminary ruling must therefore be examined on the basis of the interpretation of Bulgarian law, as submitted by the referring court.

B. Applicability of Framework Decision 2008/675

35. First of all, it should be recalled that, according to Article 1(1) of Framework Decision 2008/675, the purpose of that framework decision is to '*determine the conditions under which*, in the course of criminal proceedings in a Member State against a person, *previous convictions* handed down against the same person for different facts in other Member States, *are taken into account*'.[14] As recital 2 of that framework decision makes clear, it is the intention of the framework decision to allow the offender's criminal record to be assessed.

36. It follows that Framework Decision 2008/675 applies to situations in which a person previously sentenced in another Member State is the subject of 'new criminal proceedings', in accordance with the title of that framework decision and of Article 3 thereof. As is apparent from Article 3(2) and recital 7 of the framework decision, the concept of 'new criminal proceedings' must be understood in the broad sense as including the pre-trial stage, the trial itself and *the stage of execution of the conviction*.

9 See point 35 et seq. of the present Opinion.

10 See point 42 et seq. of the present Opinion.

11 See point 55 et seq. of the present Opinion.

12 Framework Decision 2008/675 was transposed into Bulgarian law by Article 8(2) of the Criminal Code. However, the wording of that provision does not require the Bulgarian courts and tribunals to order unilaterally the execution of a sentence delivered in another Member State. That obligation stems rather from the application and the interpretation of that provision in conjunction with Article 68(1) of that code. That being said, it should be observed that the latter provision simply reflects a general provision of the criminal law of the Member States in matters relating to convictions, namely the revocation of the suspension of the execution of the sentence in cases where the sentenced person commits a new offence in the course of the probation period.

13 Judgments of 7 August 2018, *Banco Santander and Escobedo Cortés* (C-96/16 and C-94/17, EU:C:2018:643, paragraph 57), and of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)* (C-398/19, EU:C:2020:1032, paragraph 62).

14 Emphasis added.

37. In the present case, it appears to me that, since the purpose of the proceedings initiated in Bulgaria against QS is to mount a criminal prosecution for the offence of drunk driving committed on 1 September 2020 in that country, *those proceedings must be regarded as 'new criminal proceedings' within the meaning of Article 1(1) of Framework Decision 2008/675*. Therefore, the Bulgarian judicial authorities are in principle obliged to take account of the previous conviction handed down in Romania, in accordance with the principle of equivalence set out in Article 3(1) of Framework Decision 2008/675.

38. Taking into account the previous conviction, which was also handed down for drunk driving, may have an impact both in the context of the trial itself, in particular with a view to determining the type and level of the sentence imposed for the new criminal offence, and *at the stage of execution of the conviction, in order to determine the arrangements for enforcing it*. Indeed, as I have noted in the present Opinion,[15] the referring court asks specifically about the possibility of ordering the actual execution, in Bulgaria, of the conviction handed down in Romania. The question referred must be understood in that sense.

39. In that context, it is necessary to recall the case-law of the Court to the effect that Framework Decision 2008/675 is applicable 'not only to proceedings concerned with establishing that an accused person is or is not guilty of an offence',[16] but also to 'a national procedure that is concerned with the imposition, for the purposes of execution, of an overall custodial sentence that takes into account the sentence imposed on that person by a national court *and also that imposed following a previous conviction handed down by a court of another Member State* against the same person for different facts'.[17] In such circumstances, the procedure in question is a *national procedure concerned with the enforcement of the sentence*, in the context of which the sentence imposed by a conviction previously handed down in another Member State must be taken into account.

40. In the situation described in the order for reference, the national procedure (in Bulgaria) is concerned with *the execution of a conviction subject to a probation period, handed down in another Member State* (Romania). However, the national procedure was initiated solely because of the existence of a conviction that had become final for a new criminal offence committed in Bulgaria during a probation period. Under the Bulgarian rules at issue, to which reference is made in the order for reference, the Bulgarian court called upon to approve the agreement between the sentenced person and the public prosecutor concerning the criminal offence committed *must also rule on the enforcement of the penalty subject to a probation period previously imposed*.

41. In those circumstances, it would appear to me that the procedure initiated in a Member State with a view to revoking the suspension of the execution of a sentence imposed under a conviction previously handed down in another Member State, because the person concerned has been convicted of a new criminal offence committed during the probation period provided for in that previous conviction, falls within the concept of 'new criminal proceedings' within the meaning of Article 1(1) of Framework Decision 2008/675. That framework decision is therefore, in principle, applicable to the present case.

15 See point 31 of the present Opinion.

16 See judgment in *Beshkov*, paragraph 28.

17 Judgment in *Beshkov*, paragraph 29, and judgment of 15 April 2021, *AV (Aggregate sentence)* (C-221/19, EU:C:2021:278, paragraph 52). Emphasis added.

C. Scope of the obligation to take account of previous convictions established by Framework Decision 2008/675

42. Next, it is necessary to examine the scope of the obligation to take account of previous convictions established by Framework Decision 2008/675, and to consider whether there are exceptions that may apply to circumstances such as those of the present case.

43. In that regard, mention must be made, first, of recital 2 of Framework Decision 2008/675, from which it is apparent that that framework decision seeks to implement the *principle of mutual recognition of decisions in criminal matters* and which states that 'a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender's criminal record and establishing whether he has reoffended, and in order to determine the type of sentence applicable and the arrangements for enforcing it'. According to recital 3 thereof, 'the purpose of [the] Framework Decision is to *establish a minimum obligation* for Member States to take into account convictions handed down in other Member States',[18] on the basis of the principle of mutual recognition. It should be noted that the Court has understood that obligation to mean that convictions previously handed down 'must be taken into account *in the terms in which they were handed down*'.[19]

44. Second, consideration must be given to the *principle of equivalence*, which is enshrined in Article 3(1) of Framework Decision 2008/675 and to which recitals 5 and 6 of that framework decision refer. In accordance with that principle, 'Member States should attach to a conviction handed down in other Member States *effects equivalent to those attached to a conviction handed down by their own courts* in accordance with national law'.[20] Recital 5 specifies that that framework decision 'does not seek to harmonise the consequences attached by the different national legislations to the existence of previous convictions', rather that it requires merely that convictions previously handed down in other Member States be taken into account as if they had been handed down by the judicial authorities of the Member State responsible for the new criminal proceedings.

45. Third, attention should be drawn to the *principle of non-interference* enshrined in Article 3(3) of Framework Decision 2008/675, which would appear to me to be particularly relevant for the purposes of the present case. Under that principle, 'the taking into account of previous convictions handed down in other Member States … *shall not have the effect of interfering with*, revoking or reviewing previous convictions or *any decision relating to their execution by the Member State conducting the new proceedings*'.[21] That principle is clarified in Article 3(4) of that framework decision, which states that the principle of mutual recognition '*shall not apply to the extent that*, had the previous conviction been a national conviction of the Member State conducting the new proceedings, *the taking into account of the previous conviction would*, according to the national law of that Member State, *have had the effect of interfering with*, revoking or reviewing the previous conviction or *any decision relating to its execution*'[22].

[18] Emphasis added.

[19] Judgments in *Beshkov*, paragraph 37; of 5 July 2018, *Lada* (C-390/16, EU:C:2018:532, paragraph 39); and of 15 April 2021, *AV (Aggregate sentence)* (C-221/19, EU:C:2021:278, paragraph 53). Emphasis added.

[20] Recital 5 of Framework Decision 2008/675. Emphasis added.

[21] Emphasis added.

[22] Emphasis added.

46. Those paragraphs 3 and 4 are complementary and must, therefore, be read jointly in order to assess the scope of the principle of non-interference. It therefore follows that Article 3(4) of Framework Decision 2008/675 must be included in the examination of the question referred for a preliminary ruling. The fact that the referring court did not mention it expressly does not preclude its inclusion, since it is for the Court to provide that court with all the guidance on points of interpretation that may be of assistance in adjudicating on the case pending before it, whether or not the national court has referred to those points in its questions. The Court has recalled on several occasions that a question referred for a preliminary ruling must be examined in the light of all the provisions of the Treaties and of secondary legislation which may be relevant to the issue raised. [23]

47. Similarly, the importance of the preamble for the interpretation of the relevant provisions of Framework Decision 2008/675 cannot be underestimated. Although the recitals of acts of the European Union have no legal value per se, since they are rather descriptive in nature and do not make law, the case-law of the Court does however assign them non-negligible significance for the purposes of the explanation of the text. [24] The recitals in fact constitute valuable guidance for the interpretation of those acts in so far as they allow the intention of the EU legislature to be better understood. [25] It is in that respect that mention must be made of recital 14 of Framework Decision 2008/675, given that it develops the concept of '*interference* with a judgment or *its execution*', [26] which is used in Article 3(3) and (4) of that framework decision.

48. In my view, recital 6 of Framework Decision 2008/675, which states that that framework decision '*does not aim at the execution* in one Member State of judicial decisions taken in other Member States', [27] is likewise relevant in assessing the scope of the principle of mutual recognition in that specific field of EU law. That clarification is logical from the perspective of the principle of non-interference underlying that framework decision, because otherwise each Member State would be free to intervene at will in the execution decisions of the courts of another Member State, which would moreover be prejudicial to the consistency of judicial decisions in an integrated area of justice.

49. The abovementioned principles, read in the light of the recitals which flesh them out, demonstrate that *the principle of non-interference places certain restrictions on the principle of mutual recognition*, limits which are determined by the aforementioned concept of 'interference'. Recital 14 of Framework Decision 2008/675 provides a number of clarifications in that regard, in so far as it specifies that the imposition of a cumulative sentence for several criminal offences constitutes an 'influence' and, therefore, 'interference' prohibited by that framework decision, where the first sentence *has not yet been executed* or *has not been 'transferred' to another Member State for the purpose of its execution*. [28]

50. As regards, specifically, the possibility referred to in that recital 14 of 'transferring' a conviction for the purpose of its execution in another Member State, it should be noted that that constitutes, in any event, an *exception to the overall* and general default *position* of the

[23] Judgment of 16 June 2022, *Obshtina Razlog* (C-376/21, EU:C:2022:472, paragraph 51).

[24] See judgment of 15 September 2022, *HN (Trial of an accused person removed from the territory)* (C-420/20, EU:C:2022:679, paragraphs 35, 52 and 53).

[25] See Opinion of Advocate General Richard de la Tour in *HN (Trial of an accused person removed from the territory)* (C-420/20, EU:C:2022:157, point 68).

[26] Emphasis added.

[27] Emphasis added.

[28] See judgment of 15 April 2021, *AV (Aggregate sentence)* (C-221/19, EU:C:2021:278, paragraph 55).

territoriality of criminal law. That assessment is consistent with the analysis of Advocate General Bobek in his Opinion in Case C-2/19, *A. P. (Probation measures)*.[29] The principle of non-interference, enshrined in Article 3(3) and (4) of Framework Decision 2008/675, guarantees respect for the right of the Member State of conviction to execute convictions handed down by its courts, on its territory and in accordance with the arrangements provided for in its national law.

51. Specifically, derogation from the general principle is permitted where the Member State which handed down the earlier conviction has forwarded the judgment imposing a sentence subject to a probation period (and, where appropriate, the probation decision) to the competent authority of the Member State conducting the new criminal proceedings for the purpose of monitoring the probation measures in the latter Member State, pursuant to the provisions of Framework Decision 2008/947. If that latter Member State recognises the conviction handed down in the first Member State, it can assume responsibility for all subsequent decisions pursuant to Article 14 of that framework decision, and inter alia revoke the suspension of the execution of the judgment if the sentenced person commits a new criminal offence. In accordance with Article 1(1) of Framework Decision 2008/947, the objective of that mechanism is to 'facilitat[e] the social rehabilitation of sentenced persons, improv[e] the protection of victims and of the general public, and facilitat[e] the application of suitable probation measures and alternative sanctions, in [the] case of offenders who do not live in the State of conviction'.

52. Notwithstanding that possibility provided for by the EU legislature, it must be borne in mind that the option of making use of that possibility ultimately rests on a *voluntary and sovereign decision of the Member State which handed down the conviction at issue*. Accordingly, it is clear that the possibility of providing for a transfer of the execution of a conviction to another Member State simply confirms the rule that each Member State has jurisdiction for the execution of the convictions handed down by its courts on its territory, in accordance with the arrangements laid down in its national law.

53. In the judgment in *Beshkov*, the Court acknowledged the division of competences between Member States in the administration of criminal justice as provided for in Framework Decision 2008/675, and established that Article 3(3) of that framework decision 'excludes *any review* of those [previous] convictions, which must therefore be taken into account in the terms in which they were handed down'.[30] The Court went on to hold that the framework decision precludes a Member State, when taking account of previous convictions, from 'alter[ing] … *the arrangements for execution*' of the sentenced handed down in another Member State.[31]

54. In the foregoing points of the present Opinion, I have identified the exceptions to the obligation to take account of previous convictions, which, in my view, may prove relevant in the present case. It is important to note that *the exceptions in question do not have the effect of removing the situations concerned from the scope of that framework decision*, but rather that they provide for derogations to the principle of mutual recognition where certain conditions are met.

[29] EU:C:2020:80, point 67.

[30] Judgment in *Beshkov*, paragraph 44. Emphasis added.

[31] Judgment in *Beshkov*, paragraph 47. Emphasis added.

D. Application to the present case of the principles upon which Framework Decision 2008/675 is based

55. In the light of the foregoing considerations, I have come to the conclusion that a revocation of the suspension of the execution of a sentence imposed in the context of the first conviction with a view to ordering the actual execution of that sentence on Bulgarian territory constitutes an *alteration of the arrangements for enforcing* the sentence and, therefore, 'interference' within the meaning of Article 3(3) of Framework Decision 2008/675. It has the effect of *interfering with the decision on the execution of a previous conviction*. It should be observed that such a revocation is also covered by Article 3(4) of that framework decision, since, if the first conviction had been handed down in Bulgaria and not in Romania, taking it into account pursuant to the applicable Bulgarian rules would have had the effect of requiring an alteration of the arrangements for enforcing it, since the national court would have ordered the actual execution of the sentence which was initially subject to a probation period.

56. As I have noted in the present Opinion,[32] the Court has taken the view in its case-law that altering the arrangements for enforcing a conviction, inter alia by revoking the suspension to which the sentence imposed by the previous conviction in another Member State is subject and converting the sentence subject to a probation period into a prison sentence, constitutes 'interference' in the execution of the previous conviction. The principles arising from that case-law appear to me to be fully applicable to the present case.

57. The fact, set out by the referring court in its order for reference, that the revocation of the suspension of the execution of the sentence must be ordered on the basis of a mandatory provision which does not afford the national court any discretion, and not by virtue of a review of the previous conviction *stricto sensu*, is, in my view, irrelevant in that regard. It should be recalled that, under Article 5(1) of Framework Decision 2008/675, *the addressees of the obligations imposed by that framework decision are the Member States*. That gives rise, on the part of the various State authorities, to the duty to ensure compliance with those obligations, in accordance with their respective powers, as provided for in their domestic constitutional law. That responsibility rests with both the judiciary and the legislature. For that reason, I consider it to be irrelevant whether the national court enjoys discretion under the law or whether the national legislature requires it to act in a particular way. There is, therefore, 'interference' in the execution of the first conviction.

58. It is important to observe at the present stage of the analysis that that finding is not precluded by recital 14 of Framework Decision 2008/675, since neither of the two situations mentioned therein precluding 'influence', and therefore 'interference' prohibited within the meaning of Article 3(3) and (4) of that framework decision,[33] has occurred, as I will now explain.

59. First, it must be observed that the order for reference does not contain any information from which it can be inferred that the first conviction has already been executed in its entirety. According to the information furnished by the referring court, QS committed the offence forming the subject of the second conviction 'during the probation period' provided for in the first conviction.[34] It is important to note that the circumstances of the present case differ from those underlying the judgment in *Beshkov*, in which the Court found that 'the probation period [for the first conviction] had come to an end and, consequently, [had] finally brought to an end the part of

[32] See point 53 of the present Opinion.

[33] See point 49 of the present Opinion.

[34] See point 14 of the present Opinion.

the sentence imposed on [the person concerned] that was suspended', with the result that, in the Court's view, 'that sentence as a whole [had] to be regarded as having been executed in its entirety'.[35] On those grounds, I am of the view that, for the purpose of the present case, it must be assumed that *the first conviction has not yet been executed in its entirety*.

60. Secondly, there is nothing in the order for reference to indicate that the Romanian judicial authorities have authorised the execution of the first conviction in Bulgaria. On the contrary, the fact that the referring court asks specifically about the scope and applicability to the present case of Article 3(3) of Framework Decision 2008/675, in particular in view of the allegedly clear obligation, which affords it no leeway, laid down by the Bulgarian rules, namely to revoke the suspension of the enforcement of a sentence subject to a probation period imposed in a previous conviction in another Member State and to order the actual execution of that sentence in its territory, is rather grounds for assuming that the Bulgarian judicial authorities have acted on their own initiative, without *any transfer of the execution of the first conviction having been agreed between those Member States*.

E. Considerations relating to a possible transfer of execution of the criminal conviction

61. Furthermore, I doubt that such an agreement can be reached in the circumstances of the case in the main proceedings, because a transfer of execution to Bulgaria would run counter to the objective pursued by Framework Decision 2008/947, which is, inter alia, to facilitate 'the *social rehabilitation* of sentenced persons', as well as 'the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction'.[36] The authorities of the Member State in which the sentenced person resides are, as a general rule, more able to supervise compliance with the legal obligation not to commit a new criminal offence during the probation period and to act upon any breach thereof.[37] It is for that reason that Article 5(1) and (2) of that framework decision provides that a judgment is to be forwarded either at the initiative of the competent authorities of the issuing State, where the sentenced person has returned or wants to return to the Member State in which he or she is *lawfully and ordinarily residing*, or upon request of the sentenced person.

62. I would point out in that context that *the social rehabilitation and the reintegration of the sentenced person into society* are an objective that is likewise pursued by other EU legislative acts,[38] such as Framework Decision 2008/909. As is clear from recital 9 thereof, enforcement of the sentence in the executing State 'should *enhance the possibility of social rehabilitation* of the sentenced person'.[39] In addition, it follows from that recital that, in the context of satisfying itself that the enforcement of the sentence by the executing State will serve the abovementioned purpose, the competent authority of the issuing State, that is to say, the Member State in which the judgment in criminal matters is given, 'should take into account such elements as, for example, *the person's attachment to the executing State*, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State'.[40] Moreover, I note that in his Opinion in Case C-582/15, *van Vemde*, Advocate General Bot interpreted that

[35] Judgment in *Beshkov*, paragraph 42.

[36] See point 51 of the present Opinion. Emphasis added.

[37] See, to that effect, judgment of 26 March 2020, *A. P. (Probation measures)* (C-2/19, EU:C:2020:237, paragraphs 52 and 53).

[38] Rosanò, A., '*Beshkov* or the long road to the principle of social rehabilitation of offenders', *European Papers*, Vol. 3, 2018, No 1, p. 434. According to that author, social rehabilitation of offenders forms part of the constitutional traditions of some Member States and is mentioned in some EU legislative acts, sometimes even as an objective to be pursued.

[39] Emphasis added.

[40] Emphasis added.

recital 9 as meaning that 'all measures concerning how the sentence is to be enforced and organised must be tailored to the individual by the judicial authorities, in such a way as to *further the social inclusion or social rehabilitation of the sentenced person*, while at the same time respecting the interests of society and the rights of victims and the aim of preventing repeat offending'. [41]

63. In the present case, the sentenced person is a Romanian national residing in Romania, and therefore the competent Romanian authorities did not prima facie have any reason to forward the first conviction to the Bulgarian authorities for the purposes of monitoring the probation measures, and that person likewise probably had no interest in requesting such a transfer. The subsequent forwarding of that conviction to the Bulgarian authorities for the purposes of its actual execution, further to the commission of a new offence in Bulgaria during the probation period, like the revocation of the suspension of execution which would follow therefrom in accordance with the Bulgarian rules, also cannot contribute to the social rehabilitation of that person. Those considerations strengthen my belief that the objective of Framework Decision 2008/947 would be thwarted if QS were to serve his sentence abroad.

64. That being said, it is important to note that, while there are certain obstacles to the execution of the first conviction handed down in Romania, the competent Bulgarian authorities are still permitted to forward the second conviction to the competent Romanian authorities, pursuant to Framework Decision 2008/909, for the purposes of the execution of that second conviction in Romania, subject to QS' consent and to compliance with the conditions laid down in that framework decision. It would fall, as the case might be, to the Romanian courts to assess the effects of the second conviction on the arrangements for enforcing the first. In the interest of the proper administration of justice, it seems appropriate to me for the Court to draw the attention of the referring court to such a possibility offered by Framework Decision 2008/909.

65. In the light of the foregoing considerations set out above, it should be concluded that Article 3(3) and (4) of Framework Decision 2008/675 precludes the application of national provisions which would have the effect of requiring a national court of a Member State, in the course of new criminal proceedings initiated against a person previously sentenced in another Member State, to revoke the suspension of the execution of a sentence imposed in the context of a previous conviction handed down in the other Member State and to order the actual execution of that sentence in the territory of its Member State.

VI. Conclusion

66. In the light of all the foregoing considerations, I propose that the Court answer the question referred by the Rayonen sad Nesebar (District Court, Nesebar, Bulgaria) for a preliminary ruling as follows:

Article 3(3) and (4) of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings

[41] Opinions of Advocate General Bot in *van Vemde* (C-582/15, EU:C:2016:766, point 48) and in *Ognyanov* (C-554/14, EU:C:2016:319, points 107 and 108). Emphasis added.

must be interpreted as precluding the application of national provisions which would have the effect of requiring a national court of a Member State, in the course of new criminal proceedings initiated against a person previously sentenced in another Member State, to revoke the suspension of the execution of a sentence imposed in the context of a previous conviction handed down in the other Member State and to order the actual execution of that sentence in the territory of its Member State.