JUDGMENT OF THE COURT (First Chamber)

28 September 2006 *

In Case C-150/05,

REFERENCE for a preliminary ruling under Article 35 EU from the Rechtbank 's-Hertogenbosch (Netherlands), made by decision of 23 March 2005, received at the Court on 4 April 2005, in the proceedings

Jean Leon Van Straaten

v

Staat der Nederlanden,

Republiek Italië,

THE COURT (First Chamber),

composed of K. Schiemann, President of the Fourth Chamber, acting for the President of the First Chamber, N. Colneric (Rapporteur), J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges,

* Language of the case: Dutch.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure and further to the hearing on 4 May 2006,

after considering the observations submitted on behalf of:

— the Netherlands Government, by H.G. Sevenster and D.J.M. de Grave, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, and G. Aiello, avvocato dello Stato,

— the Czech Government, by T. Boček, acting as Agent,

— the Spanish Government, by M. Muñoz Pérez, acting as Agent,

— the French Government, by G. de Bergues and J.-C. Niollet, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Polish Government, by T. Nowakowski, acting as Agent,

— the Swedish Government, by K. Wistrand, acting as Agent,

— the Commission of the European Communities, by W. Bogensberger and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 June 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19; 'the CISA'), signed in Schengen (Luxembourg) on 19 June 1990.

2 The reference was made in proceedings between, first, Mr Van Straaten and, second, the Staat der Nederlanden (the Netherlands State) and the Republiek Italië (the Italian Republic) relating to the alert concerning Mr Van Straaten's conviction in Italy for drug trafficking which the Italian authorities had entered in the Schengen Information System ('the SIS') for the purpose of his extradition.

Legal context

Community law

3 Under Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam ('the Protocol'), 13 Member States of the European Union, amongst them the Italian Republic and the Kingdom of the Netherlands, are authorised to establish closer cooperation among themselves within the scope of the Schengen *acquis* as set out in the annex to the Protocol.

4 The Schengen *acquis* thus defined includes, inter alia, the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985 (OJ 2000 L 239, p. 13; the Schengen Agreement'), and the CISA. The Italian Republic signed an agreement for its accession to the CISA on 27 November 1990 (OJ 2000 L 239, p. 63), and it entered into force on 26 October 1997.

5 By virtue of the first subparagraph of Article 2(1) of the Protocol, from the date of entry into force of the Treaty of Amsterdam the Schengen *acquis* was to apply immediately to the 13 Member States referred to in Article 1 of the Protocol.

6 Pursuant to the second sentence of the second subparagraph of Article 2(1) of the Protocol, on 20 May 1999 the Council of the European Union adopted Decision 1999/436/EC determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis* (OJ 1999 L 176, p. 17). It is apparent from Article 2 of the decision, in conjunction with Annex A thereto, that the Council selected Articles 34 EU and 31 EU, which form part of Title VI of the Treaty on European Union entitled 'Provisions on police and judicial cooperation in criminal matters', as the legal basis for Articles 54 to 58 of the CISA.

7 Articles 54 to 58 form Chapter 3 ('Application of the *ne bis in idem* principle') of Title III ('Police and security') of the CISA.

8 Article 54 of the CISA provides:

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.'

9 Article 55(1) of the CISA states:

'A Contracting Party may, when ratifying, accepting or approving this Convention, declare that it is not bound by Article 54 in one or more of the following cases:

(a) where the acts to which the foreign judgment relates took place in whole or in part in its own territory; in the latter case, however, this exception shall not apply if the acts took place in part in the territory of the Contracting Party where the judgment was delivered;

...'

10 Article 71(1) of the CISA, for which Article 34 EU and Articles 30 EU and 31 EU were selected as the legal basis, provides:

'The Contracting Parties undertake as regards the direct or indirect sale of narcotic drugs and psychotropic substances of whatever type, including cannabis, and the possession of such products and substances for sale or export, to adopt in accordance with the existing United Nations Conventions ..., all necessary measures to prevent and punish the illicit trafficking in narcotic drugs and psychotropic substances.'

11 Article 95(1) and (3) of the CISA are worded as follows:

'1. Data on persons wanted for arrest for extradition purposes shall be entered at the request of the judicial authority of the requesting Contracting Party.

3. A requested Contracting Party may add to the alert in the data file of its national section of the Schengen Information System a flag prohibiting arrest on the basis of the alert until the flag is deleted. The flag must be deleted no later than 24 hours after the alert has been entered, unless the Contracting Party refuses to make the requested arrest on legal grounds or for special reasons of expediency. In particularly exceptional cases where this is justified by the complex nature of the facts behind the alert, the above time-limit may be extended to one week. Without prejudice to a flag or a decision to refuse the arrest, the other Contracting Parties may make the arrest requested in the alert.'

12 Article 106(1) of the CISA states:

'Only the Contracting Party issuing the alert shall be authorised to modify, add to, correct or delete data which it has entered.'

13 Article 111 of the CISA provides:

'1. Any person may, in the territory of each Contracting Party, bring before the courts or the authority competent under national law an action to correct, delete or obtain information or to obtain compensation in connection with an alert involving them.

2. The Contracting Parties undertake mutually to enforce final decisions taken by the courts or authorities referred to in paragraph 1, without prejudice to the provisions of Article 116.'

14 Article 35 EU governs the Court's jurisdiction to give preliminary rulings in this field. Article 35(3) EU is worded as follows:

'A Member State making a declaration pursuant to paragraph 2 shall specify that either:

(a) ...; or

(b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.'

15 The Kingdom of the Netherlands has declared its acceptance of the Court's jurisdiction in accordance with the arrangements laid down in Article 35(2) and (3)(b) EU (OJ 1997 C 340, p. 308).

International law

16 Article 4 of Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, is worded as follows:

'1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.'

17 Article 14(7) of the International Covenant on Civil and Political Rights, which was adopted on 16 December 1966 and entered into force on 23 March 1976, is worded as follows:

'No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.'

18 Article 36 of the Single Convention on Narcotic Drugs, concluded in New York on 30 March 1961 under the aegis of the United Nations, is worded as follows:

'1. (a) Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

(b) ...

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(a) (i) Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence;

...'

The main proceedings and the questions referred for a preliminary ruling

19 It is apparent from the order for reference that on or about 27 March 1983 Mr Van Straaten was in possession of a consignment of approximately 5 kilograms of heroin in Italy, that this heroin was transported from Italy to the Netherlands and that Mr Van Straaten had a quantity of 1 000 grams of that consignment of heroin at his disposal during the period from 27 to 30 March 1983.

20 Mr Van Straaten was prosecuted in the Netherlands for (i) importing a quantity of approximately 5 500 grams of heroin from Italy into the Netherlands on or about 26 March 1983, together with A. Yilmaz, (ii) having a quantity of approximately 1 000 grams of heroin at his disposal in the Netherlands during or around the period from 27 to 30 March 1983 and (iii) possessing firearms and ammunition in the Netherlands in March 1983. By judgment of 23 June 1983, the Rechtbank 's-Hertogenbosch ('s-Hertogenbosch District Court, Netherlands) acquitted Mr Van Straaten on the charge of importing heroin, finding it not to have been legally and satisfactorily proved, and convicted him on the other two charges, sentencing him to a term of imprisonment of 20 months.

21 In Italy, Mr Van Straaten was prosecuted along with other persons, for possessing on or about 27 March 1983, and exporting to the Netherlands on several occasions together with Mr Karakus Coskun, a significant quantity of heroin, totalling approximately 5 kilograms. By judgment delivered *in absentia* on 22 November 1999 by the Tribunale ordinario di Milano (District Court, Milan, Italy), Mr Van Straaten and two other persons were, upon conviction on the charges, sentenced to a term of imprisonment of 10 years, fined ITL 50 000 000 and ordered to pay the costs.

22 The main proceedings are between, first, Mr Van Straaten and, second, the Netherlands State and the Italian Republic. The national court refers to an alert regarding Mr Van Straaten the legality of which is at issue in those proceedings, and which the national court examines in the light of the CISA. By order made on 16 July 2004, the Italian Republic was summoned to appear in the proceedings.

23 Before the national court, the Italian Republic rejected Mr Van Straaten's claims that, by virtue of Article 54 of the CISA, he should not have been prosecuted by or on behalf of the Italian State and that all acts connected with that prosecution were unlawful. According to the Italian Republic, no decision was given on Mr Van Straaten's guilt by the judgment of 23 June 1983, in so far as it concerns the charge of importing heroin, since he was acquitted on that charge. Mr Van Straaten's trial had not been disposed of, within the meaning of Article 54 of the CISA, as regards that charge. The Italian Republic further submitted that, as a result of the declaration as referred to in Article 55(1)(a) of the CISA which it had made, it was not bound by Article 54 of the CISA, a plea which was rejected by the national court.

24 No further information on the nature of the proceedings is given in the order for reference.

25 According to the Netherlands Government, the judgment of the Rechtbank 's-Hertogenbosch of 23 June 1983 was upheld by a judgment of the Gerechtshof te 's-Hertogenbosch (Regional Court of Appeal, 's-Hertogenbosch) of 3 January 1984, which amended the terms of the second charge against Mr Van Straaten. The Gerechtshof te 's-Hertogenbosch described the act as 'voluntary possession of a quantity of approximately 1 000 grams of heroin in the Netherlands during or around the period from 27 to 30 March 1983'. The appeal on a point of law brought by Mr Van Straaten against that judgment was dismissed by judgment of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 26 February 1985. That judgment became final. Mr Van Straaten served the sentence imposed upon him.

26 The Netherlands Government then states that in 2002, at the request of the Italian judicial authorities, an alert was entered in the SIS for the arrest of Mr Van Straaten with a view to his extradition, on the basis of an arrest warrant of the Milan Public Prosecutor's Office of 11 September 2001. The Kingdom of the Netherlands added to that alert a flag as referred to in Article 95(3) of the CISA, so that he could not be arrested in the Netherlands.

27 After Mr Van Straaten had, in 2003, been informed of that alert and, therefore, of his conviction in Italy, he first requested, in vain, from the Italian judicial authorities the deletion of the data in the SIS concerning him. The Korps Landelijke Politiediensten (Netherlands National Police Services; 'the KLPD') stated to him by letter of 16 April 2004 that, since the KLPD was not the authority that issued the alert, under Article 106 of the CISA it was not authorised to delete it from the SIS.

28 The Netherlands Government further states that Mr Van Straaten then applied to the Rechtbank 's-Hertogenbosch for an order requiring the minister concerned and/or the KLPD to delete his personal data from the police register. The national court found in an order of 16 July 2004 that, by virtue of Article 106(1) of the CISA, only the Italian Republic was authorised to delete the data as requested by Mr Van

Straaten. In light of that fact, the court treated the application as an application for an order requiring the Italian Republic to delete the data. The Italian Republic was consequently joined as a party to the main proceedings.

29 According to the Netherlands Government, the national court then found that, under Article 111(1) of the CISA, Mr Van Straaten had the right to bring an action before the competent court under national law challenging the entry by the Italian Republic in the SIS of data concerning him. Pursuant to Article 111(2), the Italian Republic would be required to enforce a final decision of the Netherlands court on such an action.

30 It was in those circumstances that the Rechtbank 's-Hertogenbosch decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) What is to be understood by "the same acts" within the meaning of Article 54 of the [CISA]? (Is having at one's disposal approximately 1 000 grams of heroin in the Netherlands in or around the period from 27 to 30 March 1983 the same act as being in possession of approximately 5 kilograms of heroin in Italy on or about 27 March 1983, regard being had to the fact that the consignment of heroin in the Netherlands formed part of the consignment of heroin in Italy? Is exporting a consignment of heroin from Italy to the Netherlands the same act as importing the same consignment of heroin from Italy into the Netherlands, regard also being had to the fact that Mr Van Straaten's co-accused in the Netherlands and Italy are not entirely the same? Having regard to the acts as a whole, consisting of possessing the heroin in question in Italy, exporting it from Italy, importing it into the Netherlands and having it at one's disposal in the Netherlands, are those "the same acts"?)

(2) Is a person's trial disposed of, for the purposes of Article 54 of the CISA, if the charge brought against that person has been declared not to have been legally and satisfactorily proved and that person has been acquitted on that charge by way of a judgment?'

Admissibility of the reference for a preliminary ruling

31 In the present case, the Court has jurisdiction to rule on the interpretation of Article 54 of the CISA since the system under Article 234 EC is capable of applying to references for a preliminary ruling pursuant to Article 35 EU, subject to the conditions laid down in the latter article (see, in this regard, Case C-105/03 *Pupino* [2005] ECR I-5285, paragraph 28), and the Kingdom of the Netherlands made a declaration in accordance with Article 35(3)(b) EU taking effect on 1 May 1999, the date upon which the Treaty of Amsterdam entered into force.

32 The French Government expresses doubts as to the admissibility of the reference for a preliminary ruling, on the ground that the information provided by the national court is brief and does not make it possible to understand what the purpose of the action is or why answers to the two questions submitted are necessary.

33 In that regard, it must be borne in mind that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see Case C-437/97 *EKW and Wein & Co.* [2000] ECR I-1157, paragraph 52, and Case C-448/01 *EVN and Wienstrom* [2003] ECR I-14527, paragraph 74). Consequently, where the questions submitted concern the interpretation of Community law, the Court is, in principle, bound to give a ruling.

34 The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the

questions submitted to it (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Case C-35/99 *Arduino* [2002] ECR I-1529, paragraph 25; and Case C-13/05 *Chacón Navas* [2006] ECR I-6387, paragraph 33).

35 In the present case, although the grounds of the order for reference are succinct and lack structure, the information which they contain is sufficient, first, to rule out that the questions submitted bear no relation to the actual facts of the main action or its purpose or that the problem is hypothetical and, second, to enable the Court to give a useful answer to those questions. It is apparent from the context of the order for reference that Mr Van Straaten's action is for the annulment of the alert concerning him entered in the SIS and that, in the view of the national court, the action can succeed only if, under the *ne bis in idem* principle pursuant to Article 54 of the CISA, the conviction in the Netherlands precludes the prosecution of him in Italy which is the cause of that alert.

36 The Spanish Government submits that the first question is inadmissible. It maintains that this question concerns only the facts of the main action and that the national court is in actual fact asking the Court to apply Article 54 of the CISA to the facts which gave rise to the domestic proceedings.

37 As to those submissions, although the Court has no jurisdiction under Article 234 EC to apply a rule of Community law to a particular case, it may, in the framework of the judicial cooperation provided for by that article and on the basis of the material presented to it, provide the national court with an interpretation of Community law which may be useful to it in assessing the effects of the provision in question (Joined Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 *Reisch and Others* [2002] ECR I-2157, paragraph 22).

38 By its first question, the national court seeks an interpretation of Article 54 of the CISA in light of the facts which it takes pains to specify in parentheses. The Court is not requested, on the other hand, to apply that article to the facts set out.

39 It follows from the foregoing that the reference for a preliminary ruling is admissible.

The questions

Question 1

40 By this question, the national court essentially asks what the relevant criteria are for the purposes of applying the concept of 'the same acts' within the meaning of Article 54 of the CISA, having regard to the facts which it has specified in parentheses.

41 The Court held in Case C-436/04 *Van Esbroeck* [2006] ECR I-2333, at paragraph 27, that the wording of Article 54 of the CISA, 'the same acts', shows that that provision refers only to the nature of the acts in dispute and not to their legal classification.

42 The wording used in that article thus differs from that in other international instruments which enshrine the *ne bis in idem* principle (*Van Esbroeck*, paragraph 28).

43 There is a necessary implication in the *ne bis in idem* principle enshrined in Article 54 of the CISA that the Contracting States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied (*Van Esbroeck*, paragraph 30).

44 The possibility of divergent legal classifications of the same acts in two different Contracting States is therefore no obstacle to the application of Article 54 of the CISA (*Van Esbroeck*, paragraph 31).

45 The above findings are further reinforced by the objective of Article 54 of the CISA, which seeks to ensure that no one is prosecuted for the same acts in several Contracting States on account of his having exercised his right to freedom of movement (*Van Esbroeck*, paragraph 33, and the case-law cited).

46 That right to freedom of movement is effectively guaranteed only if the perpetrator of an act knows that, once he has been found guilty and served his sentence, or, where applicable, been acquitted by a final judgment in a Contracting State, he may travel within the Schengen area without fear of prosecution in another Contracting State on the basis that the legal system of that Member State treats the act concerned as a separate offence (see *Van Esbroeck*, paragraph 34).

47 Because there is no harmonisation of national criminal law, a criterion based on the legal classification of the acts or on the legal interest protected might create as many barriers to freedom of movement within the Schengen area as there are penal systems in the Contracting States (*Van Esbroeck*, paragraph 35).

48 In those circumstances, the only relevant criterion for the application of Article 54 of the CISA is identity of the material acts, understood as the existence of a set of concrete circumstances which are inextricably linked together (*Van Esbroeck*, paragraph 36).

49 In the case of offences relating to narcotic drugs, the quantities of the drug that are at issue in the two Contracting States concerned or the persons alleged to have been party to the acts in the two States are not required to be identical.

50 It is therefore possible that a situation in which such identity is lacking involves a set of facts which, by their very nature, are inextricably linked.

51 In addition, the Court has already held that punishable acts consisting of exporting and of importing the same narcotic drugs and which are prosecuted in different Contracting States party to the CISA are, in principle, to be regarded as 'the same acts' for the purposes of Article 54 (*Van Esbroeck*, paragraph 42).

52 However, as rightly pointed out by the Netherlands Government, the definitive assessment in this regard is a matter for the competent national courts which are charged with the task of determining whether the material acts at issue constitute a set of facts which are inextricably linked together in time, in space and by their subject-matter (*Van Esbroeck*, paragraph 38).

53 In the light of the foregoing, the answer to the first question must be that Article 54 of the CISA must be interpreted as meaning that:

— the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;

— in the case of offences relating to narcotic drugs, the quantities of the drug that are at issue in the two Contracting States concerned or the persons alleged to have been party to the acts in the two States are not required to be identical;

— punishable acts consisting of exporting and of importing the same narcotic drugs and which are prosecuted in different Contracting States party to that Convention are, in principle, to be regarded as 'the same acts' for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.

Question 2

54 By this question, the national court essentially asks whether the *ne bis in idem* principle, enshrined in Article 54 of the CISA, applies in respect of a decision of the judicial authorities of a Contracting State by which the accused is acquitted for lack of evidence.

55 Under Article 54 of the CISA, a person may not be prosecuted in a Contracting State for the same acts as those in respect of which his trial has already been 'finally disposed of' in another Contracting State provided that, in the event of conviction, the penalty has been enforced, is actually in the process of being enforced or can no longer be enforced.

56 The main clause of the single sentence comprising Article 54 of the CISA makes no reference to the content of the judgment that has become final. It is only in the subordinate clause that Article 54 refers to the case of a conviction by stating that, in that situation, the prohibition of a prosecution is subject to a specific condition. If the general rule laid down in the main clause were applicable only to judgments convicting the accused, it would be superfluous to provide that the special rule is applicable in the event of conviction.

57 It is settled case-law that Article 54 of the CISA has the objective of ensuring that no one is prosecuted for the same acts in several Contracting States on account of the fact that he exercises his right to freedom of movement (see Joined Cases C-187/01 and C-385/01 *Gözütok and Brügge* [2003] ECR I-1345, paragraph 38).

58 Not to apply that article to a final decision acquitting the accused for lack of evidence would have the effect of jeopardising exercise of the right to freedom of movement (see, to this effect, *Van Esbroeck*, paragraph 34).

59 Furthermore, in the case of a final acquittal for lack of evidence, the bringing of criminal proceedings in another Contracting State for the same acts would undermine the principles of legal certainty and of the protection of legitimate expectations. The accused would have to fear a fresh prosecution in another Contracting State although a case in respect of the same acts has been finally disposed of.

60 It should be added that, in Case C-469/03 *Miraglia* [2005] ECR I-2009, at paragraph 35, the Court held that the *ne bis in idem* principle, enshrined in Article 54 of the CISA, does not fall to be applied in respect of a decision of the judicial authorities of one Member State declaring a case to be closed, after the Public Prosecutor has decided not to pursue the prosecution on the sole ground that criminal proceedings have been started in another Member State against the same defendant and for the same acts, without any determination whatsoever as to the merits of the case. While there is no need to give a ruling in the present case as to whether an acquittal which is not based on a determination as to the merits of the case may fall within that article, it must be found that an acquittal for lack of evidence is based on such a determination.

61 Consequently, the answer to the second question must be that the *ne bis in idem* principle, enshrined in Article 54 of the CISA, falls to be applied in respect of a decision of the judicial authorities of a Contracting State by which the accused is acquitted finally for lack of evidence.

Costs

62 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 (First Chamber) hereby rules:

1. Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux

Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 in Schengen, must be interpreted as meaning that:

— **the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;**

— **in the case of offences relating to narcotic drugs, the quantities of the drug that are at issue in the two Contracting States concerned or the persons alleged to have been party to the acts in the two States are not required to be identical;**

— **punishable acts consisting of exporting and of importing the same narcotic drugs and which are prosecuted in different Contracting States party to that Convention are, in principle, to be regarded as 'the same acts' for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.**

2. **The *ne bis in idem* principle, enshrined in Article 54 of that Convention, falls to be applied in respect of a decision of the judicial authorities of a Contracting State by which the accused is acquitted finally for lack of evidence.**

[Signatures]