Court of Justice of the European Union
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Press and Information

Judgment in Case C-554/14
Atanas Ognyanov v Sofiyska gradska prokuratura

# The custodial sentence of a prisoner may not be reduced, when he is transferred from one Member State to another, by reason of time spent working in prison in the first Member State if that Member State has not, under its national law, granted such a reduction in sentence

*The Framework Decision governing transfers between two Member States of persons sentenced to serve a custodial sentence has no direct effect*

By judgment of 28 November 2012, Mr Atanas Ognyanov, a Bulgarian national, was sentenced in Denmark to a period of 15 years imprisonment for murder and aggravated robbery.

Mr Ognyanov was remanded in custody in Denmark from 10 January until 28 November 2012, the date when his conviction became final. He then served part of his period of imprisonment in Denmark, from 28 November 2012 until 1 October 2013. While detained in Denmark, Mr Ognyanov worked from 23 January 2012 until 30 September 2013. On 1 October 2013 Mr Ognyanov was transferred to a prison in Bulgaria.

The Framework Decision governing transfers between two Member States of persons sentenced to serve a custodial sentence[1] establishes the general rule that the enforcement of a sentence shall be governed by the law of the executing State. The authorities of that State are therefore competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release. Further, the competent authority of the executing Member State is to deduct the full period of imprisonment already served in the other Member State ('the issuing Member State').

Bulgarian law provides that 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.[2] As stated in an interpretative judgment delivered on 12 November 2013 by the Varhoven kasatsionen sad (Supreme Court of Appeal, Bulgaria), that rule of Bulgarian law also applies in a situation where a sentenced person has carried out work in the period of his detention in a Member State other than Bulgaria before being transferred to Bulgaria for the enforcement of the remainder of the sentence.

For the purposes of transferring Mr Ognyanov to Bulgaria, 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 in the period of detention.

The Sofiyski gradski sad (Sofia City Court, Bulgaria) asks, in essence, the Court of Justice whether the national rule which permits the executing Member State (in this case, Bulgaria) to grant to the sentenced person a reduction in sentence because of work carried out by him in the period of his

[1] 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).

[2] Accordingly, in the case of Mr Ognyanov, the period of approximately one year, nine months spent in prison in Denmark would be equivalent to a period of almost two years, seven months, which would means that his sentence of 15 years imprisonment could be correspondingly reduced and consequently, Mr Ognyanov could be released earlier.

detention in the issuing Member State (in this case, Denmark), although the competent authorities in Denmark did not, in accordance with their national law, grant such a reduction in sentence, is compatible with EU law.

In today's judgment, the Court examines the context and objectives pursued by the EU law concerning the transfer of prisoners and holds that, with respect to the part of the custodial sentence served by the prisoner on the territory of the issuing Member State until his transfer to the executing Member State, only the law of the issuing Member State is applicable, not least on the question of any grant of a reduction in sentence. 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.

According to the Court, 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. Consequently, the executing State cannot, retroactively, substitute its own rules (and, in particular, its rules on reductions in sentence) for those of the issuing State with respect to that part of the sentence which has already been served by the prisoner on the territory of the issuing Member State.

In this case, the Danish authorities expressly stated that Danish legislation did not permit any reduction in a custodial sentence by reason of work carried out in the period of detention. Consequently, the Bulgarian authorities cannot grant a reduction in sentence with respect to the part of the sentence already served in Denmark. An interpretation to the contrary would be likely to undermine the objectives pursued by EU law (including the principle of mutual recognition) and would jeopardise the mutual confidence of Member States in their respective legal systems.

The Court concludes that **EU law precludes a national rule that permits the executing Member State to grant to the sentenced person a reduction in sentence by reason of work carried out in the period of his detention in the issuing Member State, although no such reduction in sentence was granted by the competent authorities of the issuing State, in accordance with the law of that State**.

In relation to this case, the Court was also asked about the legal effects of framework decisions.

In that regard, the Court states that the framework decision applicable in this case was adopted on the basis of the former third pillar of the European Union, in particular, under Article 34(2)(b) EU. Under that provision, read in the light of the Protocol on transitional provisions adopted on the entry into force of the Treaty of Lisbon, framework decisions have no direct effect until they are repealed, annulled or amended in implementation of the Treaty of Lisbon. The framework decision applicable in this case has not been subject to any such repeal, annulment or amendment. Consequently, it has no direct effect.

The Court also states that national courts called on to interpret domestic law are bound to do so, so far as possible, in the light of the wording and the purpose of the framework decision in order to achieve the result sought by it. Further, that 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.

In the light of those principles, the Court concludes that it is for the referring court to ensure that the Framework Decision 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.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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