Case C-671/18

Request for a preliminary ruling

Date lodged:

29 October 2018

Referring court:

Sąd Rejonowy w Chełmnie (District Court, Chełmno, Poland)

Date of the decision to refer:

16 October 2018

Applicant:

Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (Central Fine Collection Agency, Ministry of Justice and Security) (CJIB)

Defendant:

[…]

DECISION

16 October 2018

The Sąd Rejonowy w Chełmnie (District Court, Chełmno, Poland) Wydział II Karny (Second Criminal Division), composed of:

[…]

having examined […]

[…]

ex officio a case concerning the recognition of a financial penalty

hereby decides:

I. to refer the following questions concerning the interpretation of provisions of EU law to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union (2012 consolidated version — OJ 2012 C 326, p. 1):

1. Should Article 7(2)(i)(iii) and Article 20(3) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76, p. 16), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('the Framework Decision') be interpreted as authorising a court to refuse to enforce a decision of an authority of an issuing State other than a court if it finds that the service of that decision was effected in such a way as to infringe a party's right to an effective defence before a court?

2. In particular, can a finding that, despite the service procedures in force in the issuing State and the time limits laid down for appealing a decision as referred to in Article 1(a)(ii) and (iii) of Council Framework Decision 2005/214/JHA having been observed, the party residing in the State enforcing the decision did not have a real and effective opportunity to protect his rights at the pre-litigation stage of the proceedings due to not having been given **[Or. 2]** sufficient time to respond to the notification of the imposition of the penalty in a proper manner constitute grounds for refusal?

3. Under Article 3 of Council Framework Decision 2005/214/JHA, can the scope of legal protection afforded to persons against whom a financial penalty is to be recognised depend on whether the procedure for imposing the penalty was an administrative procedure, a procedure concerning a petty offence or a criminal procedure?

4. In the light of the objectives and principles set out in Council Framework Decision 2005/214/JHA, including Article 3 thereof, are the decisions of non-judicial authorities which are issued pursuant to the laws of the State issuing the decision concerned, under which the person in whose name a vehicle is registered is held liable for road traffic offences (that is to say, decisions issued solely on the basis of information obtained within the framework of the cross-border exchange of vehicle registration data and without any investigation being carried out in that case, including determining the actual offender), enforceable?

II. to stay the proceedings pursuant to Article 22 of the Kodeks Postępowania Karnego (Code of Criminal Procedure). [**Or. 3**]

GROUNDS

I. Legal framework

[…] [Article] 1(a)(ii) and (iii), Article 3, Article 7(2)(i)(iii), and Article 20(3) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76, p. 16), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('the Framework Decision').

1. Polish law

The Framework Decision has been implemented in the Polish Kodeks Postępowania Karnego (Code of Criminal Procedure) ('the CCP') in Chapter 66b (Articles 611ff to 611fm of the CCP).

Pursuant to Article 611ff(1) of the CCP:

'In the event that a Member State of the European Union ("the State in which the decision was issued"), has submitted a request for enforcement of a final decision on financial penalties, that decision shall be enforced by the district court in the district where the offender has property or income, or has his permanent or temporary place of residence. Within the meaning of the provisions of this chapter, a "financial penalty" shall be the offender's obligation to pay the following amounts as laid down in the decision:

(1) an amount of money as a penalty for the offence committed; ...'

Pursuant to Article 611fg of the CCP:

'Enforcement of the decision referred to in Article 611ff(1) may be refused if:

(1) the act in connection with which the decision in question was issued is not an offence under Polish law, unless under the law of the State in which the decision was issued it is an offence listed in Article 607w or under the law of the State in which the decision was issued it is an offence: ...

(c) against road traffic safety; ...

(9) it is apparent from the content of the certificate referred to in Article 611ff(2) that the person to whom the decision relates has not been duly instructed about the possibility of appealing that decision and his right to do so;

(10) it is apparent from the content of the certificate referred to in Article 611ff(2) that the decision was issued by default, unless: ...

(b) after having been served with a copy of the decision together with an instruction regarding his right to lodge a motion for new court proceedings with his participation in the State where the warrant was issued, and regarding the deadline for, and manner of, lodging such a motion, the offender did not lodge

such a motion within the statutory time limit or stated that he did not contest the decision; ...'

Pursuant to Article 116b(1) of the Polish Kodeks Postępowania w Sprawach o Wykroczenia (Code of Procedure in Cases Involving Petty Offences):

'The provisions of Chapters 66a and 66b of the Code of Criminal Procedure shall apply *mutatis mutandis* to a request addressed to a Member State of the European Union concerning the enforcement of a fine, of penalties in the form of exemplary damages or an obligation to pay damages or of a decision awarding costs, and to the enforcement of a decision on financial penalties issued by a court or another authority **[Or. 4]** of a Member State of the European Union.'

II. Facts of the case

1. By letter of 24 May 2018, the Centraal Justitieel Incassobureau (Central Fine Collection Agency, the Netherlands) ('the CJIB') sent to the Sąd Rejonowy w Chełmnie (District Court, Chełmno, Poland) ('the referring court') a request for recognition and enforcement of its decision of 9 November 2017 […] imposing a financial penalty on Z.P. for a road traffic offence. The letter enclosed a certificate drawn up in Polish, as provided for in Article 4 of the Framework Decision, and the decision imposing the penalty.

2. […] The offence was established on the basis of the vehicle registration number. As stated in the decision, in such a case, in the Netherlands, the person in whose name the vehicle is registered is liable. […] The CJIB therefore issued a decision, on 9 November 2017, imposing a fine of EUR 232.00 on the person concerned. The decision was not the subject of an appeal to the public prosecutor and as a result it became final on 21 December 2017.

3. The CJIB stated that it is part of the Netherlands Ministry of Justice and Security and that it deals, inter alia, with the collection of fines for traffic offences. In the certificate submitted to the referring court, it was also confirmed that the person concerned had had the opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.

4. The CJIB sent Z.P. the first letter (the decision) imposing the fine in Polish. The letter contained a series of instructions concerning the possibility of annulling the decision, together with the information that the appeal should be lodged by 21 December 2017 at the latest. The date of lodging the appeal would be determined by the date of the postmark. In addition, the appeal had to be received no later than one week after the date stated above. The decision also contained a reference to the relevant section of the website www.cjib.nl.

5. […] Z.P. […] explained [before the referring court] that he had sold the vehicle with registration number CCH92KL in 2014 […]. He had informed the insurer about the sale, but had not informed […] the authority responsible for including

the information in the relevant register. […] Z.P. submitted the original vehicle purchase agreement and invoice together with his correspondence with the CJIB regarding this and other penalties imposed on him by the same authority during the previous few months.

6. He explained to the referring court that until he received the summons, he had not been aware that the correspondence sent to him by the CJIB was of an official nature, since both the form and the content of the letters were incomprehensible to him. The CJIB's decision imposing financial penalties was served on him, but he is unable to indicate the date of its service, because he received around a dozen such letters **[Or. 5]** over several months […]. As proof of his claims, he submitted to the referring court the correspondence received from the CJIB, which was indeed served in both Polish (letters imposing the fines) and Dutch (probably information about increased penalties for late payment).

7. Under Article 7(3) of the Framework Decision, the referring court consulted the CJIB, asking for information regarding the date of service of the decision imposing the financial penalty. It is apparent from the response provided that the authority in the issuing State does not have information regarding the date of service of the letter.

[…]

III. Admissibility of the questions referred

1. […]

2. […] The interpretation of the Framework Decision will be of relevance to the national court's ruling, including with respect to determining whether there are grounds for refusing to enforce the foreign authority's decision.

IV. Reasons for the questions referred

1. In its judgment of 14 November 2013 in *Baláž*, C-60/12, the Court held that access to a court having jurisdiction in particular in criminal matters, within the meaning of the Framework Decision, must not be made subject to conditions which make such access impossible or excessively difficult. It also pointed out that in the light of Article 1(a)(iii) of the Framework Decision, the opportunity to have the case tried by a court having jurisdiction in particular in criminal matters may be preceded by a requirement to comply with a pre-litigation administrative procedure. The fact that the person concerned has not brought an appeal, and that, consequently, the financial penalty at issue has become final has no bearing on the application of Article 1(a)(iii) of the Framework Decision, since it is sufficient under that provision that the person concerned 'has had an opportunity' to have the case tried by a court having jurisdiction in particular in criminal matters. **[Or. 6]**

2. In that judgment, however, the Court did not have the opportunity to address the issue of the procedural guarantees to which the persons concerned should be entitled at the pre-litigation stage of the proceedings so that they could be regarded as effectively having 'had an opportunity' to have the case tried by a court.

3. The determination of whether a party has had 'an opportunity to have the case tried by a court' in accordance with Article 1(a)(ii) and (iii) of the Framework Decision should be made in the light of its objectives and principles.

4. As is apparent in particular from Articles 1 and 6, and from recitals 1 and 2 thereof, the Framework Decision is intended to establish an effective mechanism for the recognition and cross-border enforcement of final decisions requiring a financial penalty to be paid by a natural person or a legal person following the commission of one of the offences listed in Article 5 of that decision. The possibility of recognising a financial penalty against a person who, after being served with the decision and being expressly informed about the right to a retrial, has neither requested a retrial nor lodged an appeal within the statutory time limit, was introduced by Council Framework Decision 2009/299/JHA amending Framework Decision 2005/214/JHA. The purpose of that amendment was to enhance the procedural rights of persons subject to criminal proceedings, to facilitate judicial cooperation in criminal matters and, in particular, to improve mutual recognition of judicial decisions between Member States.

5. The instruments set out in the Framework Decision are based on the principle of mutual recognition which underpins judicial cooperation within the European Union. […] That principle is based on mutual trust in the legal systems of Member States, including the recognition that Member States respect fundamental rights and observe the principles recognised by Article 6 of the Treaty on European Union and set out in the Charter of Fundamental Rights of the European Union ('the Charter'). This also concerns compliance with international agreements to which the Member States are parties, and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the ECHR').

6. The principle of mutual recognition, which underpins the Framework Decision, means that the Member States are, as a rule, obliged to recognise a decision requiring payment of a financial penalty which has been transmitted in accordance with Article 4 of the Framework Decision without any further formality being required, and to take forthwith all the measures necessary for its enforcement.

7. The Framework Decision also incorporates a number of provisions designed to protect the fundamental rights of the person whom the request concerns. These are primarily procedural guarantees which allow the executing court to refuse to recognise and enforce the decision in certain circumstances.

8. The grounds for refusal to recognise or enforce a decision are subject to strict interpretation (see the judgment of the Court of 29 January 2013, *Radu*, C-396/11, paragraph 36 and the case-law cited). In the case where the certificate referred to in Article 4 of the Framework Decision, which accompanies the decision imposing a financial penalty, suggests that fundamental rights or fundamental legal principles as enshrined in Article 6 TEU may have been infringed, a court of the executing State may thus refuse to recognise and enforce the decision imposing a financial penalty where one of the grounds listed in Article 7(1) and (2) of the Framework Decision arises, and may also so refuse under Article 20(3) thereof (see judgment of 14 November 2013, *Baláž*, C-60/12, paragraphs 28 and 31). [**Or. 7**]

9. Applying the above principles to the present case, the referring court considers it possible that Z.P.'s right to an effective judicial remedy has been infringed, that infringement consisting in a failure to provide adequate time for the lodging of an appeal during the pre-litigation administrative procedure.

10. According to settled case-law, the right to an effective judicial remedy is a general principle of EU law, which has been enshrined in Articles 6 and 13 ECHR and reaffirmed by Article 47 of the Charter, and also stems from the constitutional traditions common to the Member States (see judgments of the Court of 3 December 1992, *Oleificio Borelli* v *Commission*, C-97/91, paragraph 14, and of 19 June 2003, *Eribrand*, C-467/01, paragraph 53).

11. Article 3 of the Framework Decision, which refers, inter alia, to Article 6 ECHR and Articles 47 and 48 of the Charter, seeks to ensure that persons against whom proceedings for the enforcement of a financial penalty are pending have rights that are practical and effective and not theoretical or illusory. Therefore, if Member States assume that in order to take advantage of the opportunity to have the case tried by a court it is necessary to exhaust the administrative route first, it appears reasonable to recognise that also at this stage of the procedure the party concerned should be afforded certain specific minimum procedural guarantees allowing him effectively to exercise this right, since it cannot be ruled out that the pre-litigation administrative procedure in the State issuing the decision may be designed in a manner that prevents or significantly hinders that party's access to a court.

12. The court hearing the present case shares the view expressed in Advocate General Sharpston's Opinion in *Baláž*, C-60/12 (point 84), according to which, if the court enforcing the penalty has doubts concerning a possible breach of the guarantees arising from fundamental rights, it is responsible for making the appropriate findings in this respect.

13. Thus, the court in the State enforcing the decision imposing a financial penalty should, since that decision was issued by a non-judicial authority, have the opportunity to determine whether the decision respects the fundamental rights and fundamental legal principles enshrined in Article 6 of the Treaty, including a party's right to be informed in detail in a language which he understands of the

nature and cause of the accusation levelled against him; to have adequate time and opportunity to prepare a defence; or the right to adequate legal assistance or to have the assistance of an interpreter free of charge.

14. With respect to the case being heard by the referring court, doubts arise concerning the CJIB's method of serving the decision imposing the fine and the time limit for appealing that decision before the public prosecutor. The letter to Z.P. was drawn up on 9 November 2017 and the deadline for appealing the decision was set for 21 December 2017. The letter was served by placing it in the addressee's mailbox. The time limit for appealing the decision did not run from the date on which the letter was actually served, but from the date on which it was sent by the Netherlands authority. According to the information obtained by the referring court, this manner of calculating time limits for appeals and this form of service are consistent with the law of the State issuing the decision.

15. The main aim of the Framework Decision is to establish an effective mechanism for the cross-border recognition and enforcement of final decisions. […] Those objectives should not be attained by undermining in any way the rights of defence of the addressees of decisions **[Or. 8]** imposing penalties. It is important, therefore, not only to ensure that the addressee of a document actually receives the decision imposing the penalty on him, but also that he is able to know and understand effectively and completely the meaning and scope of the act of which he is accused by the foreign authority, so as to be able to effectively prepare his defence and assert his rights in the Member State which issued the decision (the Court has made similar findings in cases concerning the service of judicial and extrajudicial documents in civil and commercial cases; see judgment of 2 March 2017, *Henderson*, C-354/15, EU:C:2017:157, paragraph 51 and the case-law cited).

16. The referring court would also like to emphasise that, in accordance with the principles stemming from the case-law of the European Court of Human Rights ('the ECtHR'), the time limit for lodging an appeal should begin to run from the date on which the defendant could actually become acquainted with the judicial decision (see judgment of the ECtHR of 26 January 2017, *Ivanova and Ivashova v. Russia*, CE:ECHR:2017:0126JUD000079714, paragraph 57 and the case-law cited). It appears, therefore, that in matters covered by the Framework Decision, the time limit for lodging an appeal should be calculated from the date of service rather than the date of posting.

17. The referring court considers that the correct service of a decision imposing a penalty, in particular where international service is involved and also in particular where these decisions are issued according to the procedure applicable to the present case, constitutes an essential formal requirement enabling the effective exercise of the rights of defence. Under Article 19 TEU, which gives concrete expression to the value of respect for human rights affirmed in Article 2 TEU, it is for the national courts and tribunals and the Court of Justice to ensure the judicial protection of rights afforded to individuals pursuant to EU law. Therefore, courts

enforcing penalties imposed by an administrative (non-judicial) body have a special obligation to assess whether the person on whom the penalty was imposed was deprived of certain rights.

18. Furthermore, the referring court points out that no negative consequences can be effectively inferred from the fact that the addressee of the document did not, within the time limit set, object to the irregularities related to service, since it cannot be certain, given that the relevant instruction was absent, that the person concerned would be able to raise such an objection effectively.

19. Having regard to the foregoing, the referring court considers that Article 7(2)(i)(iii) of the Framework Decision, read in conjunction with Article 20(3) thereof, must be interpreted as authorising a refusal to enforce a decision where it is found that the decision was served in a manner which could infringe the right to an effective judicial remedy both in the context of the pre-litigation procedure (for example in administrative proceedings) and in appealing the decision directly before a court.

20. In its third question, the referring court aims to determine whether Council Framework Decision 2005/214/JHA allows the different treatment of persons against whom a financial penalty is to be recognised depending on whether the procedure for imposing the penalty was an administrative procedure, a procedure concerning a petty offence or a criminal procedure.

21. Under Article 5(1) of the Framework Decision, the scope of that decision is to include offences relating to 'conduct which infringes road traffic regulations'. The court hearing the case at issue considers that road traffic offences are not subject to homogeneous treatment in the various Member States, because some of them classify such offences as administrative offences, while others treat them as criminal offences.

22. As a consequence, the parties to the proceedings are already entitled to different procedural guarantees at the stage when the financial penalty is imposed. In criminal proceedings, the defendant **[Or. 9]** in principle has the right to an effective judicial remedy and access to an impartial court, benefits from the presumption of innocence, and has rights of defence. In administrative procedures, the decisions issued by administrative authorities generally do not meet the requirements of Article 6 ECHR or the corresponding requirements of Articles 47 and 48 of the Charter.

23. The fourth question seeks, in essence, to determine whether a court may refuse, on the basis of Article 20(3) [of the Framework Decision], to recognise a decision issued by an administrative authority and to enforce a financial penalty where it is apparent from the very content of the decision that the penalty was imposed without any investigation being carried out.

24. In the case at issue, the financial penalty was imposed on a natural person residing in another Member State solely on the basis of a vehicle registration number and

information obtained through the cross-border exchange of vehicle registration data. It is apparent from the content of the decision that the authority took no action to determine who actually committed the road traffic offence (speeding) that was the basis for imposing the penalty in question.

25. […] Article 1(b)(i) [of the Framework Decision] indicates […] that a financial penalty means an obligation to pay a sum of money on conviction of an offence imposed in a decision. Criminal liability is based on the principle that guilt can be attributed to the perpetrator of the act in question. Therefore, in the referring court's view, the commission of the offence referred to in the Framework Decision should involve a specific act or omission on the part of the offender rather than resulting merely from the fact of being registered as the owner of the vehicle.

26. Under Polish law, speeding offences are defined in the Kodeks Wykroczeń (Code of Petty Offences). However, the only person who can be held liable for such an offence is the person who has committed it, that is, the driver of the vehicle who has infringed road traffic regulations. Where the offender is not known, the authority requests the person listed in the relevant register as the owner or co-owner of the vehicle to indicate the driver of the vehicle at the time the offence was committed.

27. The regulation in force in the Netherlands undoubtedly makes it easier for the authorities of that State to enforce fines for offences committed by drivers of vehicles registered in other Member States. However, it makes persons who are listed in the relevant register as vehicle owners liable for road traffic offences committed using that vehicle irrespective of who the actual offender was.

28. Furthermore, it should be pointed out that a non-judicial authority […] does not take into account a number of circumstances which may be relevant for determining whether access to a court for the person concerned is subject to conditions that make it impossible or excessively difficult to exercise that right. The only information available to the authority is the given name, surname, address, and age of the person in whose name the vehicle is registered. The authority does not examine who actually infringed road traffic regulations, whether the vehicle had several co-owners, or whether the person in whose name the vehicle is registered is capable of defending his rights effectively, on account of his age, health or other factors. [**Or. 10**]

29. Incidentally, it should also be pointed out that the procedures resulting in the issuing by an administrative authority of the decision that is the subject of the present proceedings introduce a 'presumption of guilt', which is a concept alien to criminal law, against the person listed in the relevant register as the owner of the vehicle that was used to commit the offence; such procedures shift onto the person on whom the penalty has been imposed the burden of demonstrating in administrative, and subsequently in judicial proceedings, that he was not the one who infringed road traffic regulations. As is apparent from the decision served in

the present case, in order to have that decision annulled, the person on whom the penalty is imposed must: (a) demonstrate that a third party used the vehicle against his will and the owner could not reasonably have prevented this; (b) demonstrate that he rented the vehicle for a maximum of three months for business purposes; or (c) produce a certificate confirming that he was no longer the owner or user of the vehicle.

30. The referring court also points out that it follows from the case-law of the Court of Justice that measures to improve road safety, which in the referring court's view certainly include measures aimed at the cross-border enforcement of fines for traffic offences that are imposed on vehicle owners rather than on actual offenders, are part of transport policy and therefore should be assessed in the light of Article 91(1)(c) TFEU because they fall within the scope of the concept of 'measures to improve transport safety' within the meaning of that provision rather than in the light of Article 82(1) TFEU (see, to that effect, judgment [of 6 May 2014,] *Commission* v *Parliament and Council*, C-43/12, EU:C:2014:298, paragraphs 47 and 48).

31. Similarly, Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences (OJ 2015 L 68, p. 9-25) expressly sets out in its preamble that improving road safety is a prime objective of the Union's transport policy and an important element of that policy is the consistent enforcement of sanctions for road traffic offences committed in the Union which considerably jeopardise road safety.

32. Consequently, the referring court takes the view that Article 20(3) and Article 3 of the Framework Decision must be interpreted as meaning that the court of the State enforcing the financial penalty imposed in connection with an infringement of road traffic regulations referred to in Article 5(1) of the Framework Decision may refuse to enforce the penalty against the person whom the decision concerns where the decision was issued solely on the basis of information obtained within the framework of the cross-border exchange of vehicle registration data without making any other determinations as to who actually infringed road traffic regulations and in what circumstances.

V. Summary

The assessment as to whether there are grounds for refusing to recognise the decision depends on the Court's response to the doubts expressed above. A ruling by the Court of Justice is thus indispensable for the resolution of the proceedings pending before the national court.

Since it is referring questions for a preliminary ruling, the referring court has stayed the proceedings pursuant to Article 22 of the Code of Criminal Procedure.