

**Case C-150/21**

**Request for a preliminary ruling**

**Date lodged:**

5 March 2021

**Referring court:**

Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (Poland)

**Date of the decision to refer:**

23 February 2021

**The party to the proceedings culminating in the requirement to pay a penalty, the execution of which forms the subject matter of the main proceedings**

D.B

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File ref. [...]

ORDER

23 February 2021

**The Sąd Rejonowy dla Łodzi- Śródmieścia w Łodzi, Sekcja Wykonania Orzeczeń V Wydziału Karnego (District Court for Central Łódź, Łódź, Section for Enforcement of Judgments, Fifth Criminal Division, Poland)**

[...] [composition of the court]

After considering, at the hearing on 23 February 2021,

the action against **D.B**

brought by the Centraal Justitieel Incassobureau (Central Fine Collection Agency, the Netherlands)

concerning execution of a decision requiring payment of a financial penalty

pursuant to Article 267 of the Treaty on the Functioning of the European Union (2012 consolidated version – OJ 2012 C 326) and Article 15(2) of the Kodeks karny wykonawczy (Code for the Execution of Sentences)

**makes the following order:**

I. The following questions concerning the interpretation of EU law are referred to the Court of Justice of the European Union for a preliminary ruling:

1. Does a decision requiring payment of a financial penalty issued by the Netherlands central administrative authority determined pursuant to Article 2 of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, against which an appeal may be lodged with the public prosecutor's office, which is subject in organisational terms to the Ministry of Justice, satisfy the criterion of 'decision against which an appeal may be lodged with a court having jurisdiction in criminal matters' for the purposes of Article 1(a)(ii) of the Framework Decision? **[Or. 2]**
2. Can the criterion that a decision requiring payment of a financial penalty be amenable to judicial remedy before 'a court having jurisdiction in criminal matters' be deemed to have been satisfied where it is possible to lodge an appeal with a district court only at a later stage of proceedings, that is to say after it has been dismissed by the public prosecutor, and, in some cases, entails a need to pay a charge equal to the penalty imposed?

II. [...] [staying of proceedings]

**Grounds:**

**1. EU law**

**1.1** Recital 5 of the preamble to the Framework Decision of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA: 'the Framework Decision') states that the Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and those reflected by the Charter of Fundamental Rights of the European Union in particular Chapter VI thereof.

**1.2** Article 3 of the Framework Decision stipulates that it is not to have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

**1.3** Article 20(3) of the Framework Decision provides that the recognition and the execution of decisions may be opposed where the certificate sent by the issuing State gives rise to an issue that fundamental rights or fundamental legal principles as enshrined in Article 6 of the Treaty may have been infringed.

**1.4** Under Article 1(a)(ii) of the Framework Decision, ‘decision’ is to mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters. **[Or. 3]**

## **2. Polish law**

**2.1** Under Article 611ff(1) of the Kodeks Postępowania Karnego (Code of Criminal Procedure, the ‘CPP’), in the event that a Member State of the European Union, referred to in this chapter as the ‘issuing State’, has submitted a request for execution of a final decision on financial penalties, such decision is to be subject to execution by the district court in the district where the offender has property or income, or has permanent or temporary residence.

## **3. Netherlands law**

**3.1** The Centraal Justitiele Incassobureau is the central administrative authority responsible for the collection and recovery of fines issued in connection with offences committed in the territory of the Kingdom of the Netherlands.

**3.2** An appeal against a fine issued by the Centraal Justitiele Incassobureau may be lodged with the public prosecutor within six weeks. If he or she does not agree with the applicant’s position, the person punished may bring an appeal before a district court. However, if the case relates to a fine in the amount of EUR 225 or more, consideration of the case by the court is made conditional on payment of a deposit equal to the fine imposed.

## **4. Facts**

**4.1** By decision of 17 January 2020, D.B was fined EUR 92 for an offence under Article 2 of the Dutch Law on Administrative and Legal Enforcement of Traffic Regulations, committed on 5 January 2020, which consisted in exceeding the permitted speed limit. The decision became final on 28 February 2020.

## **5. Proceedings before the national court.**

**5.1** On 22 September 2020, the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for Central Łódź) received a request from the Netherlands authorities for execution of the financial penalty imposed on D.B. **[Or. 4]**

**5.2** On 6 November 2020, the referring court put to the Centraal Justitiele Incassobureau questions concerning the procedure for appealing against a decision requiring payment of a penalty and the legal position of the

authority hearing the appeal. The referring court received a reply on 22 February 2021.

**5.3** The person punished did not appear at any of the scheduled hearings on 6 November 2020, 8 December 2020, and 23 February 2021. Nor did he lodge any statement.

**6. Admissibility of the question referred and grounds for the reference for a preliminary ruling**

**6.1** Having regard to the circumstances of the present case, the Sąd Rejonowy (District Court) is a national court against whose decisions there is a judicial remedy within the meaning of the second sentence of Article 267 of the Treaty on the Functioning of the European Union. An order of a district court concerning execution of a decision may be appealed before a Sąd Okręgowy (regional court) (Article 611fh(3) of the CCP).

**6.2** The answer provided by the Court of Justice of the European Union to the questions referred for a preliminary ruling by the national court is essential for the correct interpretation and application of the provisions of national law transposing Framework Decision 2005/214/JHA in the case pending before this court.

**6.3** In the light of the judgments of Court of Justice given in 2019 and 2020 concerning the legal position of a public prosecutor as a ‘judicial authority’ under the Framework Decision on the European arrest warrant,<sup>1</sup> the referring court considers that there are serious doubts as to the legal nature of decisions requiring payment of a financial penalty issued by the Netherlands central authority since that authority is administrative in nature and an appeal against a decision requiring payment of a financial penalty is lodged with the public prosecutor, not a court.

**7. Position of the referring court regarding the answer to the question referred**

**7.1** In the light of Articles 3 and 20(3) of the Framework Decision and the emphasis placed on provisions protecting fundamental rights in Article 6 TEU, Article 1(a)(ii) of that decision, **[Or. 5]** in particular as regards the term ‘court’, must be interpreted having regard to Article 6 of the ECHR and the interpretation of the rules contained therein arising from the case-law of the European Court of Human Rights in Strasbourg.

**7.2** According to the case-law of the European Court of Human Rights in Strasbourg, a fundamental condition safeguarding the fairness of proceedings is that a case must be heard by an impartial court which

<sup>1</sup> Inter alia, judgments in Joined Cases C-508/18 and C-82/19 PPU and C-489/19 PPU.

displays no signs of dependence on the executive.<sup>2</sup> In addition, an essential element in allowing an appeal to be brought against an unfair ruling is a lack of excessive fiscal or legal barriers which make it difficult to do so.

**7.3** The Framework Decision under consideration makes possible the cross-border execution of penalties ordered not only by courts, but also by administrative authorities. However, in that situation the national law of the issuing State must allow an appeal against that decision to be brought before a court with jurisdiction in criminal matters.<sup>3</sup>

**7.4** The term ‘court having jurisdiction in criminal matters’ was analysed by the Court of Justice in preliminary ruling proceedings initiated by a Czech court in the case of *Baláž*.<sup>4</sup> In the judgment in that case, the Court of Justice ruled, first, that it is an autonomous term of European Union law which requires a uniform and an autonomous interpretation throughout the Union.<sup>5</sup> Secondly, it stated that when examining whether a particular authority is a court within the meaning of Article 1(a)(iii) of the Framework Decision, it is necessary to take account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent.<sup>6</sup> That authority must also have jurisdiction to examine the case as regards both the legal assessment and the factual circumstances and must also have the opportunity to examine the evidence and to determine on that basis the responsibility of the person concerned and the appropriateness of the penalty.

**7.5** In its judgment in Case C-216/18, *LM*, the Court of Justice stated that the requirement of judicial independence forms part of the essence of the fundamental [Or. 6] right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded.<sup>7</sup> Every Member State must ensure that the bodies which, as ‘courts or tribunals’ within the meaning of EU law, come within its judicial system in the fields covered by EU law meet the requirements of effective

<sup>2</sup> Judgment of the ECtHR of 23 June 1981, 7238/75, *Le Compte, Van Leuven and De Meyer v. Belgium*, and judgment of the ECtHR of [29] April 1988, 10328/83, *Belilos v. Switzerland*.

<sup>3</sup> Article 1(a)(ii) of Framework Decision 2005/214/JHA.

<sup>4</sup> Judgment of the Court of Justice of 14 November 2013, *Baláž*, C-60/12, ECLI EU:C:2013:733.

<sup>5</sup> Paragraph 26.

<sup>6</sup> Paragraph 32.

<sup>7</sup> Judgment of the Court of Justice of 25 July 2018, C-216/18, *LM*, ECLI:EU:C:2018:586, paragraph 48.

judicial protection. In order for that protection to be ensured, maintaining the independence of those bodies is essential.<sup>8</sup>

- 7.6** In the above judgment, the Court of Justice explained that independence has two aspects: an external one and internal one. The first presupposes that the court concerned exercises its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. That essential freedom from such external factors requires certain guarantees appropriate for protecting the person of those who have the task of adjudicating in a dispute, such as guarantees against removal from office. Other guarantees indicated by the Court of Justice are: receipt of a level of remuneration commensurate with the importance of the functions and an appropriately structured disciplinary regime.<sup>9</sup>
- 7.7** The internal aspect, for its part, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. Therefore, it requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law.<sup>10</sup>
- 7.8** In the context of the above guidance of the Court of Justice concerning the concept of the independence of a judicial authority, it is necessary to examine whether the Netherlands public prosecutor, when hearing appeals against financial penalties ordered by an administrative authority, which the Centraal Justitiele Incassobureau is, satisfies [Or. 7] the requirements relating to independence which allow it to be regarded as a ‘court having jurisdiction in criminal matters’.
- 7.9** In several cases decided by the Court of Justice in 2019 the subject matter of the questions referred by the Member States was the legal position of the public prosecutor as an authority issuing a European arrest warrant (‘EAW’). In its judgment in Joined Cases C-508/18 and C-82/19, *OG and PI*, the Court of Justice excluded the possibility of the public prosecutor’s office being regarded as an independent judicial authority where it is exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from an executive authority, such as a Minister

<sup>8</sup> Paragraphs 52 and 53.

<sup>9</sup> Paragraphs 63 to 64.

<sup>10</sup> Paragraph 65.

for Justice.<sup>11</sup> In this respect, it is worth noting that the Court of Justice adopted this position despite the fact that an appeal against the decision of the public prosecutor to issue a European arrest warrant could be brought before a court and also despite declarations from representatives of the German party that instructions in individual cases are rarely issued by the Minister for Justice, are in principle given in writing, and must be notified to the President of the State Parliament.<sup>12</sup>

**7.10** In Case C-489/19 PPU, *NJ*,<sup>13</sup> the subject matter under consideration was the legal position of the Austrian public prosecutor's office in an EAW procedure. In the Republic of Austria the public prosecutor's office is also subject to instructions from the Federal Minister for Justice. However, an important element in the procedure for issuing an EAW in that Member State is that the public prosecutor does not take that decision independently. It requires endorsement by a court which has access to the instructions issued in the case, may carry out its own investigation or order one, and takes the final decision independently. A decision to issue a European arrest warrant may, in addition, form the subject of an action before the courts. This particular, decisive role played by the court in the procedure for issuing an EAW led the Court of Justice to accept the public prosecutor as an EAW issuing authority despite the unequivocal finding in the body of the judgment that the Austrian public prosecutor's office does not satisfy the requirement relating to independence.<sup>14</sup> **[Or. 8]**

**7.11** Under Article 116(1) and (2) of the Constitution of the Kingdom of the Netherlands, the courts administering justice and the organisation, composition and powers thereof are to be laid down in acts of parliament.

**7.12** Under Article 117 of the Constitution of the Kingdom of the Netherlands, members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court are to be appointed for life by royal decree.<sup>15</sup> Members of the public prosecution service are appointed by the Queen and can be removed. In practice, the decision to appoint a

<sup>11</sup> Judgment of the Court of Justice of 27 May 2018 in Joined Cases *OG and PI*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456.

<sup>12</sup> Paragraphs 79 to 90.

<sup>13</sup> Judgment of the Court of Justice of 9 October 2019, *NJ*, C-489/19 PPU, ECLI:EU:C:2019:849.

<sup>14</sup> Paragraph 40.

<sup>15</sup> Text of the Netherlands Constitution at: <https://www.rechtspraak.nl/SiteCollectionDocuments/Constitution-NL.pdf>.

particular person to the post of public prosecutor depends on the Minister for Justice.<sup>16</sup>

- 7.13** Under the *Wet op rechterlijke organisatie* (Law on the organisation of the courts) of 18 April 1[8]27,<sup>17</sup> district courts, courts of appeal and the Supreme Court operate in the Kingdom of the Netherlands.<sup>18</sup> The law defines these entities as courts.<sup>19</sup> Public prosecutors, however, were included in the group of entities participating in the administration of justice.<sup>20</sup>
- 7.14** The Netherlands public prosecutor's office is subject to the Ministry of Justice.<sup>21</sup> The Minister for Justice is a politician and is responsible to the Parliament for his actions. In addition to shaping the general criminal policy of the ministry through general guidelines, he also exercises many executive powers over the public prosecutors subordinate to him, such as: the decisive vote in the appointment process and the capacity to send public prosecutors to work in other entities of the public prosecutor's office. In addition, he has the power to issue public prosecutors with instructions in individual cases. Failure to comply with instructions may form the basis for bringing disciplinary proceedings against a public prosecutor subordinate to him.<sup>22</sup> In principle, instructions must be in writing, but oral instructions may be issued in exceptional situations. It is also a rule that an instruction be added to the file, but no such obligation exists where '*it is contrary to the State interest*', which is a vague concept. It should also be added that [Or. 9] that members of the Netherlands prosecution service do not have immunity, do not perform their functions for life and can be removed.
- 7.15** It is also worth pointing out that the Venice Commission strongly opposes a minister for justice having the power to issue instructions in individual cases. Similar powers enjoyed by the Minister for Justice – Public Prosecutor General in the Republic of Poland have been the subject of

<sup>16</sup> Marguery T.P., *Unity and diversity of the prosecution services in Europe. A study of the Czech, Dutch, French and Polish Systems*, 2008, p.112 to 113, available at: [[https://research.rug.nl/files/145407350/14\\_thesis.pdf](https://research.rug.nl/files/145407350/14_thesis.pdf)]

<sup>17</sup> <https://www.rechtspraak.nl/SiteCollectionDocuments/Wet-op-de-Rechterlijke-Organisatie-EN.pdf>

<sup>18</sup> Section 2 of the Law on the organisation of the courts of 18 April 1[8]27.

<sup>19</sup> Section 1(a) of the Law on the organisation ...

<sup>20</sup> Section 1(b) of the Law of the organisation ...

<sup>21</sup> Marguery T.P., *Unity and diversity ...*, p. 100.

<sup>22</sup> Marguery T.P., *Unity and diversity ...*, p. 122.

criticism by that body.<sup>23</sup> The Venice Commission considers it inappropriate for the legislature or the executive to have influence over whether to prosecute or not in a given case, as that should be a decision for the prosecution office alone.<sup>24</sup>

- 7.16** Therefore, having regard to the characteristics of the public prosecutor's office in the Kingdom of the Netherlands, its position in the structure of the judiciary in the broad sense, and also the judgment in *Baláž*, the question arises as to whether the Netherlands public prosecutor's office can be regarded as a '*court having jurisdiction in criminal matters*'. In the view of the referring court, the answer to that question is in the negative. The solution adopted in Article 1(a)(ii) and (iii) of Framework Decision 2005/214/JHA is a guarantee in nature, intended to balance out any shortcomings in the protection of fundamental rights arising from the fact that administrative authorities also have the power to impose financial penalties.
- 7.17** An appeal to a fully independent judicial authority having the power to carry out a substantive assessment of the evidence and also applying the principle of *in dubio pro reo* in the proceedings, and the principle that the penalty must be individualised, forms a mechanism which allows the fundamental functions of the criminal process to be performed and the person punished to exercise his or her right of defence.
- 7.18** In this respect, it should be noted that the possibility of taking legal action becomes more important in particular in situations where the first phase of the 'decision' on guilt and punishment is entirely automated and limited to checking the details of the vehicle owner, printing off a decision generated by a computer system, and sending it to the addressee. In the case of the Netherlands central authority, the decision requiring payment of a financial penalty [Or. 10] is not issued applying the rules governing a typical criminal trial. Therefore, the entire burden of providing fundamental procedural guarantees lies with the appellate authority, that is to say the public prosecutor's office which, in the view of the referring court, is not an independent authority in the Kingdom of the Netherlands. A consequence of that assessment would be the capacity to refuse to recognise and execute the decision issued by the Centraal Justitieel Incassobureau in that it originates from an authority which does not satisfy the criteria laid down in Article 1(a)(ii) of Framework Decision 2005/214/JHA.

<sup>23</sup> European Commission For Democracy Through Law (Venice Commission), Opinion 892/2017 on the act on the public prosecutor's office as amended, paragraph 113. Text at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)028-e).

<sup>24</sup> European Commission For Democracy Through Law (Venice Commission), Report Nr 494/2008 on European standards as regards the independence of the judicial system: part II – the Prosecution Service, paragraph 87(8). Text at: <https://rm.coe.int/1680700a60>.

**7.19** At the same time, an assessment is required of the legal solution in the Netherlands appeal procedure whereby, if the public prosecutor does not allow the appeal against the decision issued by the Centraal Justitiele Incassobureau, the appeal can then be referred to the district court. In the view of the referring court, such an appeal mechanism fails to satisfy the requirement laid down in Article 1(a)(ii) of the Framework Decision under which it must be possible to lodge an appeal with a court having jurisdiction in criminal matters. It would appear that the Framework Decision requires that an appeal may be lodged with a court directly, without the need to exhaust any other, additional procedure. The judgment in *Baláz* indicated that the appeal procedure should not encounter excessive legal and fiscal barriers.<sup>25</sup> Having regard to the particular, cross-border nature of the procedure for executing a financial penalty, and also the many problems involved in the execution of penalties imposed by the Netherlands authority highlighted in the preliminary ruling proceedings initiated by the Polish courts, it is extremely important that it be possible to lodge an appeal against decisions requiring payment of a financial penalty directly and with an authority which satisfies the criteria relating to independence.

**7.20** In addition, appealing against a decision requiring payment of a financial penalty before a district court not only entails a need to go through the stage of the public prosecutor's consideration of the case, which delays the time at which the appeal is considered and constitutes an additional institutional barrier, but, in some cases, is also burdened with a fiscal barrier. If the fine constitutes a penalty in the amount of EUR 225 or more, a condition of the appeal being heard by a court is payment by the applicant of a deposit equal to that amount. In the view of the referring court, such **[Or. 11]** structuring of the appeal procedure may, in cross-border situations, constitute a barrier which discourages a foreign national from lodging an appeal.

**7.21** The doubts set out above provide grounds for a reference to the Court of Justice of the European Union.

**7.22** For these reasons, the national court has ruled as in paragraph 1 of the operative part of this order, pursuant to Article 267 of the Treaty on the Functioning of the European Union.

**7.23** [...] [staying of proceedings]

SSR Monika Stefaniak-Dąbrowska

<sup>25</sup> Paragraph 46 of the judgment in C-60/12 *Baláz*.