Case C-263/24 [Smiliev] [i]

Request for a preliminary ruling

Date lodged:

15 April 2024

Referring court:

Rayonen sad Tutrakan (Bulgaria)

Date of the decision to refer:

15 April 2024

Applicant:

Rayonna prokuratura Silistra, Teritorialno otdelenie Tutrakan

Defendant:

YE

…

REQUEST FOR A

PROVISIONAL RULING

Case: criminal case of a general nature No 63/2024

SPECIAL REQUEST: made under Article 105 of the Rules of Procedure of the Court of Justice of the European Union

…

Relevant facts and circumstances of the case and subject matter of the dispute:

I. Parties …

[i] This case has been given a fictitious name which does not correspond to the real name of any party to the proceedings.

1. **Public Prosecutor's Office:** RAYONNA PROKURATURA SILISTRA, TERITORIALNO OTDELENIE TUTRAKAN …;

2. **Defendant:** YE …;

3. **Defence counsel:** Peycho Yovev, lawyer, …

II. Subject matter of the case

4. The defendant has been charged with having …, on 25 October 2023, one year after an administrative penalty was imposed on him by a ticket …, of 7 March 2023, issued by … of the Oblastna direktsia na Ministerstvoto na vatreshnite raboti (Regional Directorate of the Ministry of the Interior, Silistra; 'the OD-MVR'), which took effect on 4 May 2023, for driving a motor vehicle without a valid driving licence, committed that same act … – an offence under Article 343c(2) of the Nakazatelen kodeks (Criminal Code; 'the NK').

III. Course of the procedure

5. The indictment was drawn up under an expedited procedure.

6. The case was initially brought before the Rayonen sad (District Court) of Tutrakan: criminal case of a general nature No 246/2023.

7. In the course of the judicial investigation, it was established that the following convictions had been handed down against the person concerned by national courts:

8. By an **agreement … of the Rayonen sad (District Court) of Dulovo**, which entered into force on 2 November 2023, the defendant was found guilty of having committed, on 22 February 2023, a documentary offence (use of a false driving licence) under Article 316, in conjunction with Article 308(1), of the NK. He was sentenced to a suspended term of imprisonment of 18 months on the basis of Article 66(1) of the NK.

9. By an **agreement [OMISSIS] of the Rayonen sad (District Court) of Elhovo …**, which entered into force on 7 December 2023, the defendant was found guilty of having again committed, on 25 February 2022, an offence under Article 343c(2) of the NK (see paragraph 4). He was sentenced to a suspended term of imprisonment of 10 months on the basis of Article 66(1) of the NK and ordered to pay a fine …

10. By an **agreement … of the Rayonen sad (District Court) of Elhovo …**, which entered into force on 19 January 2023, the defendant was found guilty of having again committed, on 25 May 2022, a documentary offence (use of a false driving licence) under Article 316, in conjunction with Article 308(1), of the NK. He was sentenced to a suspended term of imprisonment of one year and 6 months on the basis of Article 66(1) of the NK.

11. In the course of the judicial investigation, the court also found, on the basis of information extracted from the European Criminal Records Information System (ECRIS), that the defendant had also been convicted abroad.

12. **By decision … of the Tribunal de police de Vilvoorde (Police Court, Vilvoorde, Belgium)** …, which entered into force on 3 January 2022, the defendant was found guilty of three acts, committed on 14 June 2020 in Zaventem, Belgium, constituting 'traffic offences' under Belgian law …:

12.1. … having driven a motor vehicle … or … allowed a motor vehicle to be driven … without that vehicle being covered by civil liability insurance … (Articles 1, 2(1), 20, 22(1), 24, 28 and 29 of the loi, du 21 novembre 1989, relative à l'assurance obligatoire de la responsabilité civile en matière de véhicules automoteurs (Law of 21 November 1989 on compulsory insurance against civil liability in respect of motor vehicles);

12.2. … having driven a vehicle which was unregistered or to which the licence plate issued at the time of registration was not affixed (Article 2(1) of the Royal Decree of 20 July 2001, Article 29(1)(3) and Article 38(1.3) of the loi relative à la police de la circulation routière coordonnée par l'arrêté royal du 16 mars 1968 (Law on the road traffic police, as coordinated by the Royal Decree of 16 March 1968);

12.3. as the driver of a vehicle …, having used a mobile phone held in his hand whilst the vehicle was not stationary or parked (Article 8.4 of the arrêté royal, du 1er décembre 1975, portant règlement général sur la police de la circulation et de l'usage de la voie publique (Royal Decree of 1 December 1975 laying down general rules concerning the traffic police and the use of the public highway); Article 29(1)(3) and Article 38(1.3) of the Law on the road traffic police, as coordinated by the Royal Decree of 16 March 1968);

12.4. having allowed a vehicle registered in Belgium and subject to roadworthiness testing … to be driven on the public highway without … having a valid certificate of roadworthiness, the relevant roadworthiness sticker and an identification report or a specification sheet or another document …, in so far as those documents are required (Articles 24(1), 26 and 81 of the arrêté royal du 15 mars 1968 portant règlement général sur les conditions techniques auxquelles doivent répondre les véhicules automobiles et leurs remorques, leurs éléments ainsi que les accessoires de sécurité (Royal Decree of 15 March 1968 laying down general rules on the roadworthiness requirements which must be satisfied by automotive vehicles and their trailers, their components and safety features), Article 4 of the loi, du 21 juin 1985, relative aux conditions techniques auxquelles doivent répondre tout véhicule de transport par terre, ses éléments ainsi que les accessoires de sécurité (Law of 21 June 1985 on the roadworthiness requirements which must be satisfied by any terrestrial transport vehicle, its components and safety features)).

13. **The following sentences were handed down in respect of his acts:**

13.1. For the acts referred to in paragraphs 12.1 and 12.2:

13.1.1. a fine of EUR 800.00, […: method of fixing the fine]; if that fine is not paid within the statutory time limit, it will be replaced by a 'ban on driving an automotive vehicle' for a 30-day period;

13.1.2. a 'ban on driving any automotive vehicle' for a period of one month.

13.2. For the act referred to in paragraph 12.3:

13.2.1. a fine of EUR 200.00 […: method of fixing the fine]; if that fine is not paid within the statutory time limit, it will be replaced by a 'ban on driving an automotive vehicle' for a 30-day period;

13.2.2. a 'ban on driving any automotive vehicle' for a 15-day period.

13.3. For the act referred to in paragraph 12.4: a fine of EUR 200.00 […: method of fixing the fine]; if that fine is not paid within the statutory time limit, it will be replaced by a 3-day 'term of imprisonment'.

14. **By judgment … of the Amtsgericht (District Court) of Prüm, Germany …**, which entered into force on 16 September 2023, the defendant was found guilty of having, on 30 June 2023, driven a vehicle without a driving licence or after being disqualified from driving – legal provisions: Paragraph 21(1)(1)(2) of the StVG (Road Traffic Act).

15. **He was punished** by a 'fine' of EUR 50.

16. The defendant pleaded guilty and the proceedings went ahead under the summary procedure.

17. In criminal case of a general nature No 246/2023 …, taking into account the previous convictions, in the judgment handing down the conviction of 15 December 2023 …, the chamber found the defendant guilty and sentenced him to serve an immediate 'term of imprisonment' and to pay a 'fine'.

18. The conviction was overturned by the Okrazhen sad (Regional Court) … of Silistra … and the case was referred back to a different bench of the [lower] count, with the direction to examine whether the penalties imposed by the Belgian court had legal effects.

19. The case referred back was brought before the Rayonen sad (District Court) of Tutrakan under a new number: criminal case of a general nature No 63/2024.

20. During the re-examination of the case, the defendant again pleaded guilty (he admitted in full to having committed the acts set out in the facts of the indictment and agreed to evidence of those acts not being adduced); the

proceedings are currently being conducted as a summary procedure. In that regard, the referring chamber took the view that the interpretation of a provision of EU law in the field of police and judicial cooperation in criminal matters is important in order for the dispute to be resolved properly, in so far as the recognition of the legal effects both of the Belgian decision and the German decision would have an impact on the penalty which could be imposed on the defendant.

Applicable national law and case-law:

21. **Nakazatelen kodeks (Criminal Code)**

'*Article 8 …*

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

…

Article 66(1)

Where the court imposes a custodial sentence of up to three years, it may suspend execution thereof for a period of three to five years if the person has not been convicted and had a custodial sentence imposed for a criminal offence that is the subject of prosecution by the public prosecutor and if the court finds that, in order to achieve the objectives of the sentence, and, above all, for the punishment of the person convicted, there is no need for the sentence to be executed.

…

Article 78a(1) A person of full age shall be released from criminal liability by the court [having jurisdiction] and a fine of between BGN 1 000 and BGN 5 000 shall be imposed if all the following conditions are met:

(a) [as amended – Darzhaven vestnik (Official Journal, 'DV') No 86 of 2005, which entered into force with effect from 29 April 2006], for the offence concerned, a custodial sentence not exceeding three years or another less severe penalty may be imposed where committed intentionally, or a custodial sentence not exceeding five years or another less severe penalty where committed through negligence;

(b) the offender has neither been convicted of a criminal offence of a general nature nor released from criminal liability under the provisions of this section;

(c) the damage to property caused by the offence has been compensated.

…

Article 343c (new – DV No 50 of 1995 (1) (as amended, DV No 74 of 2015) Any person who drives a motor vehicle whilst disqualified from driving a motor vehicle, after having a penalty imposed on him or her for the same offence in the context of an administrative procedure, shall be liable to a term of imprisonment not exceeding three years and a fine of between BGN 200 and 1 000.

(2) (as amended – DV No 74 of 2015) Any person who, within one year of having an administrative penalty imposed on him or her for driving a motor vehicle without a valid driving licence, commits that same offence shall be punishable by a custodial sentence of between one year and three years and a fine of between BGN 500 and BGN 1 200.

…

Article 345(1) Any person who uses a licence plate issued for another motor vehicle or a licence plate not issued by the competent authorities shall be punished by a custodial sentence not exceeding one year or a fine of between BGN 500 and BGN 1 000.

(2) The penalty provided for in paragraph 1 shall also be applied to anyone who drives a motor vehicle which is not duly registered.'

22. ***Nakazatelno-protsesualen kodeks (Code of Criminal Procedure, 'the NPK')***

'*Article 247(1) Proceedings at first instance shall be instituted:*

1. on indictment; and

2. … on a complaint lodged by the victim of the offence.'

23. ***Naredba nº 8 ot 26 februari 2008 g. za funktsiite i organizatsiata na deynostta na byurata za sadimost (Regulation No 8 of 26 February 2008 on the functions and the organisation of the activities of criminal records offices)***

'*Article 40(1) All convictions and administrative penalties handed down pursuant to Article 78a of the NK shall be entered in the criminal record.*'

The provision or act of which interpretation is sought:

24. **Article 3(1) of** Council **Framework Decision 2008/675/JHA** of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings:

'*Each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account*

to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law.'

25. **Article 2(a) of** Council **Framework Decision 2009/315/JHA** of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States:

'*(a) "conviction" means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent these decisions are entered in the criminal record of the convicting Member State;*'

Reasons why the court takes the view that a response to the questions referred for a preliminary ruling is useful in order to resolve the dispute

26. The relevant act in these proceedings occurred on 25 October 2023, after the judgments of the Belgian and German courts became final. For that reason, the judgments of those courts must be regarded as 'previous convictions' within the meaning of Article 3(1) of Framework Decision 2008/675/JHA.

27. The indictment in these proceedings is based … on Article 343c(2) of the NK, which provides for a term of imprisonment of between one and three years and a fine …

28. With respect to the criminal offence at issue, the defendant may, in principle, be released from his criminal liability and an administrative penalty may instead be imposed on him pursuant to Article 78a of the NK, solely if the defendant, in accordance with Article 78a(1)(b) of the NK, has not been convicted of a criminal offence of a general nature. In the case of the criminal offence at issue, execution of the custodial sentence may be suspended on the basis of Article 66(1) of the NK (that is to say, the sentence is not actually executed) only if the person has not been sentenced to a 'term of imprisonment for committing a criminal offence of a general nature'.

29. Accordingly, any account taken of foreign convictions will have an impact on the determination of the penalty in the case, if a penalty is handed down.

30. …

IV. Do the convictions handed down by foreign courts constitute convictions for 'criminal offences of a general nature'?

31. Article 3(1) of Framework Decision 2008/675/JHA provides that each Member State is to ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account.

32. Under Article 2 of that [framework decision], ‘conviction’ means any final decision of a criminal court establishing that a person is guilty of a criminal offence (**Translator’s note**: in Bulgarian, ‘prestaplenie’).

33. It must be assumed that there is an error in the Bulgarian language-version here, since Article 2(a) of … Framework Decision 2009/315/JHA defines the term ‘conviction’ as ‘*… any final decision of a criminal court against a natural person in respect of a criminal offence (**Translator’s note**: in Bulgarian, ‘nakasuemo deyanie’ – literally, a ‘punishable act’),* [1] *to the extent these decisions are entered in the criminal record of the convicting Member State*’. An identical term is used in other language versions of the Framework Decisions. For example, the German-language version uses the term ‘Straftat’ and the Dutch-language version ‘strafbaar feit’. For that reason, the view must be taken that account should be taken, pursuant to Article 3(1) of Framework Decision 2008/675/JHA, of the convictions handed down in respect of ‘*punishable* acts’ and not ‘criminal offences’, since the latter concept is narrower under Bulgarian law (see paragraph 39).

34. However, an alternative classification of punishable acts exists in several legal systems. …

35. German law uses a two-level system for classifying punishable acts – ‘Verbrechen’ (serious offences) and ‘Vergehen’ (lesser offences) – under Paragraph 12 of the Strafgesetzbuch (Criminal Code):

‘*Serious offences and lesser offences*

(1) Serious offences are unlawful acts punishable by a term of imprisonment of a minimum of one year.

(2) Lesser offences are unlawful acts punishable by a term of imprisonment of less than the minimum or a fine.’

36. Belgian law introduces a three-level system for classifying punishable acts: ‘contraventions’ (infringements), ‘délits’ (lesser offences) and ‘crimes’ (serious offences) (Article 1 of the code pénal (Criminal Code)):

‘*Article 1: An offence punishable by law by a penalty imposed for serious offences is a serious offence.*

An offence punishable by law by a penalty imposed for lesser offences is a lesser offence.

An offence punishable by law by a penalty imposed for a summary offence is an infringement.’

[1] Emphasis added by translator.

37. Bulgarian law has introduced a two-level system for classifying punishable acts:

37.1. criminal offences; and

37.2. administrative offences.

38. Administrative offences are not generally included in the criminal record and should therefore not be regarded as 'punishable acts' within the meaning of Article 2(a) of Framework Decision 2009/315/JHA [**Translator's note**: in its Bulgarian-language version].

39. However, in accordance with Article 40(1) of Regulation No 8 of 26 February 2008 …, the criminal record lists not only convictions for criminal offences, but also administrative penalties imposed pursuant to Article 78a of the NK. Under the procedure laid down in Article 78a of the NK, the offender is found guilty of an offence under the Criminal Code, but he or she is released from criminal liability and an administrative penalty is imposed; the effects of that penalty differ from those affecting persons convicted of a criminal offence.

40. A further category was introduced by the Bulgarian legislature: criminal offences of a general and private nature. Under Article 247 of the NPK, offences of a general nature are those … in respect of which the proceedings are initiated by a public prosecutor, and offences of a private nature are those in respect of which the public proceedings are initiated on the basis of a complaint lodged by the victim before the court (in such cases, the victim plays the prosecutorial role).

41. In those circumstances, first of all, it is not possible on the basis of the information provided by ECRIS to determine the category of punishable acts, under the classification in German law and in Belgian law, into which the acts covered by the previous convictions fall.

42. Consequently, it is impossible to determine whether the acts in respect of which the defendant has been convicted by the foreign courts must be treated in the context of the recognition of judgments: as administrative offences or as criminal offences in the light of Bulgarian law. If they are treated as criminal offences, it is not possible to determine whether they are to be treated as criminal offences of a general or private nature.

43. If the criminal offences entered in the records in ECRIS are regarded as having an effect equivalent to the acts listed in ECRIS under Bulgarian law, the court will be obliged to take the view that the convictions handed down by the Belgian … and German courts cannot constitute administrative offences because the latter offences cannot be entered in the criminal record in Bulgarian law. It must therefore be assumed that they constitute, in the light of the law of the court adjudicating on the merits (here: Bulgarian law), either criminal offences or decisions releasing the person concerned from criminal liability for the purposes of Article 78a of the NK (see paragraph 39). However, since convictions are not

recorded … in ECRIS as decisions exempting the person concerned from criminal liability (parameter ‘S’ in Annex ‘B’ to repealed Council Decision 2009/316/JHA), it must therefore be concluded that they are convictions for criminal offences. Since there is no victim in such categories of criminal offences, it may be assumed that they are offences of a general nature, which precludes the application of Articles 66 and 78a of the [Bulgarian] Criminal Code to determine the penalty in the case pending before the referring court.

44. However, if the view is taken that the court is not obliged to take the view that the convictions included in ECRIS are equivalent to the convictions included in the Bulgarian criminal record, an additional question must be put to the central authority in order to obtain further clarifications:

44.1. the existence of various categories of criminal offences that must be entered in the criminal record of the Member State in which the judgment is given (perhaps the criteria to distinguish between such categories – sentence, person who instituted the criminal proceedings, possibilities of the effects of the sentence imposed being set aside etc.);

44.2. … into which category do the previous convictions recorded in ECRIS fall.

45. The court must thus determine to which categories of punishable acts under national law the punishable acts for which the defendant has been convicted by foreign courts correspond. This is an extremely complex assessment because there are no fixed criteria for making that assessment and the recognition of the convictions handed down will be determined on a case-by-case basis according to the individual analysis of the court.

46. In the present case, in the context of that assessment, the court may conclude that the sentences imposed by the foreign courts are convictions for administrative offences and not recognise them at all pursuant to Article 66 and Article 78a of the NK.

47. …

48. …

49. …

50. […: comment concerning the fact that the prosecution and the defence make no observations on the matter].

V. Must account be taken of the convictions handed down by foreign courts if the act does not constitute an offence in both countries?

51. Article 8(2) of the NK allows account to be taken of a conviction handed down in another Member State of the European Union only in respect of acts

constituting a criminal offence within the meaning of the Bulgarian Criminal Code.

52. In accordance with recital 6 of Framework Decision 2008/675/JHA, the court is not obliged to take account of the conviction where a national conviction would not have been possible regarding the act for which the previous conviction had been imposed.

53. This would mean that account would be taken only of:

53.1. the conviction handed down by the German court, because it corresponds to a conviction for the criminal offence under Article 343c of the NK;

53.2. the part of the conviction handed down by the Belgian court concerning the driving of an unregistered vehicle (see paragraph 12.2), because it corresponds to a conviction for the criminal offence under Article 345 of the NK.

54. The other acts are not punishable as criminal offences under Bulgarian law. The question is of even greater significance as the Belgian conviction includes a custodial sentence for driving a vehicle that has not undergone roadworthiness testing (see paragraph 12.4). If the effect of that conviction were recognised, it would be impossible to impose a suspended sentence pursuant to Article 66 of the NK for the offence at issue.

55. …

56. …

57. …

58. […: comment noting the arguments of the prosecution and of the defence that the effects of foreign convictions can be recognised only if the resulting [*sic*] acts are punishable under Bulgarian law].

Specific questions referred

I. Are Article 3(1) of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings in conjunction with Article 2(a) of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States to be interpreted as meaning that taking account of previous convictions handed down against the same person in other Member States means that the court before which new criminal proceedings are brought against the same person (the executing court) is obliged to take the view that the previous convictions recorded in the European Criminal Records Information System (ECRIS) and handed down in other Member States concern the same categories of

punishable acts, which are classified in national law according to the danger to the public which they pose and are subject to entry in the criminal record of the State of the executing court? Where there are several categories of punishable acts, which are subject to entry in the criminal record under the national law of the executing court, the legal consequences of which in case of conviction are different, does it fall to the national court before which criminal proceedings are brought against a particular person to assess in each individual case into which category, under the national classification, the acts which gave rise to the previous convictions handed down in other Member States fall? In which cases must such an assessment be made?

II. Is Article 3(1) of Council Framework Decision 2008/675/JHA to be interpreted as meaning that it permits national legislation under which a court is obliged to disregard the previous convictions handed down in another Member State of the European Union in respect of acts which do not constitute criminal offences under the national law of the executing court?

Position of the referring court

VI. The first question

59. In the referring court's view, it should be recalled that, under Article 2(a) of … Framework Decision 2009/315/JHA, 'conviction' means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent these decisions are entered in the criminal record of the convicting Member State. Under Article 3(1) of … Framework Decision 2008/675/JHA, each Member State is to ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law.

60. The applicable instrument as regards the exchange of information from criminal records in this case is that referred to in Article 1(c) of … Framework Decision 2009/315/JHA: a decentralised, computerised system of exchange of information on convictions based on the criminal records databases of each Member State – the European Criminal Records Information System (ECRIS).

61. The purpose of creating ECRIS was therefore to standardise the information on individuals' criminal records and to give the same legal effects to the convictions recorded in the different Member States. For that reason, the acts recorded in the system by a Member State should be treated with the same degree of seriousness by any other Member State (subject to the considerations set out below – see paragraph 68).

62. It is established that EU countries provide for different categories of acts deemed by law to be punishable acts. Determining the groups of acts which, under the national classification, will be included in the criminal record is a matter of national law. However, it is likewise indisputable that serious punishable acts are entered in the criminal records and that the differences between [national] laws arise from the inclusion or exclusion of less serious punishable acts in the records. In any event, the view must be taken that, by entering certain groups of acts in the criminal record, the legislature considers that they pose a sufficiently significant public danger for the Member State concerned, an assessment which must be accepted by the other Member States.

63. The obligation laid down in Article 3(1) of Framework Decision 2008/675/JHA in fact requires that foreign decisions which another Member State has decided to include in its criminal records are recognised. That obligation means that those decisions must be taken into account in the same way as provided for in national legislation as regards the effects of the national convictions entered in the national criminal record.

64. Conversely, even if the foreign legislature has excluded a certain category of acts from the ambit of its records, the national court is not required to take the view that the acts in that category constitute acts excluded by the national legislature [**Translator's note**: likely meaning of the sentence, original unclear].

65. In accordance with that interpretation of the provision, the view should be taken, for example, that the convictions handed down by the German and Belgian courts (referred to above) do not concern administrative offences within the meaning of Bulgarian law (since such offences are not entered in the Bulgarian criminal record – see paragraph 43).

66. Where national law recognises several categories of acts which must be entered in the criminal record, the national court only has to determine the group of acts, under the national classification, into which the foreign convictions fall (if they have different legal consequences and if this is relevant to the case). That determination will be made on the basis of the information recorded in ECRIS. Only if that information is insufficient can use be made of other instruments of legal assistance applicable within the EU.

67. Here, such supplementary information must be deemed unnecessary (see paragraph 43).

VIII. The second question

68. In the referring court's view, account should be taken of recital 11 of … Framework Decision 2008/675/JHA, which mentions respect for the principle of subsidiarity as set out in Article 2 TFEU and Article 5 TEU. According to recital 6 of that framework decision, there is no obligation to take into account such previous convictions, for example, where a national conviction would not have

been possible regarding the act for which the previous conviction had been imposed.

69. In accordance with the Framework Decision, the national legislature amended (DV No 33 of 2011, in force since 27 May 2011) Article 8(2) of the NK by providing that a final conviction handed down in another Member State of the European Union in respect of an act which constitutes an offence under the Bulgarian Criminal Code is to be taken into account in any criminal proceedings instituted against the same person in the Republic of Bulgaria.

70. In those circumstances, the view must be taken that there is no conflict between Article 8(2) of the NK and Article 3(1) of Council Framework Decision 2008/675/JHA.

71. That solution supplements the arguments put forward in connection with the previous question: namely, the entry of the act in the criminal record of another Member State and, at the same time, the fact that criminal liability attaches to the same act in both that other Member State and in the State of the executing court create additional safeguards that the defendant will not be in a worse situation – as a result of a more severe penalty – than if he or she had been convicted for the same act by the national court.

72. In addition, this will avoid another problem related to determining an overall sentence for the convictions handed down in different Member States.

73. In accordance with points 1 and 2 of the operative part of the judgment of 21 September 2017, *Beshkov* (C-171/16, EU:C:2017:710):

‘*1. Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings must be interpreted as meaning that it is applicable to a national procedure that is concerned with the imposition, for the purposes of execution, of an overall custodial sentence that takes into account the sentence imposed on that person by a national court and also that imposed following a previous conviction handed down by a court of another Member State against the same person for different facts.*

2. Framework Decision 2008/675 must be interpreted as precluding the possibility that it should be a prerequisite of account being taken, in a Member State, of a previous conviction handed down by a court of another Member State that a national procedure for recognition of that conviction by the courts with jurisdiction in the former State, such as that laid down in Articles 463 to 466 of the Nakazatelno-protsesualen kodeks (Code of criminal Procedure), be implemented.’

74. Thus, in principle, in the context of a procedure to determine an overall sentence, the sentence handed down in another Member State should be applied.

This could lead to the conviction handed down by the foreign court being executed without it being recognised pursuant to Articles 463 to 466 of the NPK.

75. If the conviction handed down by the foreign court concerns an act which is not illegal under the national law, this will ultimately mean, in practice, executing a conviction for an act which is not prosecuted in the executing State.

76. That last point is a further argument in favour of the compatibility of Article 8(2) of the NK with Article 3(1) of Council Framework Decision 2008/675/JHA.

Summary of the facts and circumstances justifying the need for the reference to be examined under the expedited procedure

77. In the case pending before the referring court, the prosecutions were brought under an expedited procedure (Section 25 of the NPK). In the context of that procedure, procedural law lays down shorter deadlines for completion of procedural acts, for instance:

77.1. the case is listed for a public hearing within seven days of its receipt (Article 358(1) of the NPK);

77.2. the case is heard and adjudicated on, if possible, in a single hearing and the conviction is handed down immediately, together with a statement of grounds; where the case raises complex matters of fact and of law, the statement of grounds may prepared after the conviction is handed down, but no later than seven days thereafter (Article 359 of the NPK).

78. As things currently stand, the procedure has been significantly delayed as a result of the referral of the case for further examination. This is prejudicial to the defendant's rights.

79. **This court therefore takes the view that the request for a preliminary ruling should be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice.**

…

1. …