

CJEU: Dutch Appeal System in Line with FD 2005/214

Thomas Wahl

News

On 7 April 2022, the CJEU decided on the compatibility of the Dutch procedure to impose fines in respect of a criminal offence with Framework Decision (FD) 2005/214 on the application of the principle of mutual recognition to financial penalties. In the case at issue (*Case C-150/21, D.B.*) the referring Polish court asked whether it can recognise and enforce a fine imposed on a Polish citizen for a road traffic offence in the Netherlands by the Central Fine Collection Agency of the Ministry of Justice and Security (CJIB). According to the Dutch system, the fine imposed by the CJIB may be challenged before a public prosecutor in the Netherlands within six weeks. If the prosecutor rejects the position of the person concerned, that person can bring an appeal before the Kantonrechter (District Court (Cantonal Sector), Netherlands).

The Polish court casted doubts as to whether this Dutch legislation fulfils the criteria set out in Art. 1(a)(ii) of FD 2005/214. Accordingly, it must be ensured that the case of the person concerned can be tried by “a court having jurisdiction in particular in criminal matters” if the decision imposing a final penalty was made by an administrative authority, such as the CJIB. The referring court mainly argued that the public prosecutor in the Netherlands might not be independent since he/she receives instructions from the Dutch Minister of Justice and thus cannot be regarded as a “court having jurisdiction in particular in criminal matters” within the meaning of Art. 1(a)(ii) of FD 2005/214. In this context, reference is made to the position of the public prosecutor’s office in the Netherlands legal system and the CJEU’s case law in which the judges in Luxembourg denied the Dutch prosecutor the status of “executing and (implicitly) issuing judicial authority” in the system of the European Arrest Warrant (*Case C-510/19* → [eucrim 4/2020, 292-293](#)).

The CJEU pointed out that it is irrelevant for the interpretation of Art. 1(a)(ii) FD 2005/214 whether the public prosecutor who is placed under the hierarchical authority of the Minister of Justice, is a court. It is only decisive whether the Kantonrechter fulfils the criteria of a “court having jurisdiction in particular in criminal matters”. The involvement of the public prosecutor is an intermediate step which is accepted by FD 2005/214. The CJEU finally concluded that the Kantonrechter fulfils the criteria of the concept of “court having jurisdiction in particular in criminal matters” which is an autonomous concept of EU law.

By this judgment, the CJEU implicitly clarified that the case law on the status of public prosecutors in the EAW system (cf. in particular *Joined Cases C-508/18 (OG) and C-82/19 PPU (PI)* → [eucrim 1/2019, 31-33](#)) cannot be transferred to the mutual recognition of financial penalties on the basis of FD 2005/214. (TW)

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