

# CJEU: No Loopholes against Enforcement of Foreign Fines

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## News

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On 5 December 2019, the CJEU published an [important judgment](#) on the Framework Decision on the application of the principle of mutual recognition to financial penalties (FD 2005/214/JHA). In the case at issue (C-671/18), which was referred to the CJEU by a Polish court, the question was, among others, whether the contentious liability of persons in whose name the vehicle is registered for road traffic offences is in line with European fundamental rights. In the affirmative, this may be a reason for denying a request to recognise and execute a fine imposed in another EU country.

### *Facts of the Case and Legal Question on Liability:*

In the case at issue, the Dutch authorities imposed a fine of €232 against Polish national Z.P. in respect of road traffic offences in the Netherlands. Although the offences were committed by the driver of Z.P.'s vehicle and not by Z.P. personally, he can be held liable under Dutch law as the person in whose name the vehicle is registered. This form of liability is known in many European countries, whereas in others, e.g. Poland, criminal liability only lies with the individual. The referring court argued that holding somebody liable solely on the basis of information of vehicle registration data, and without any investigation being carried out, in particular in determining the actual offender, may be contrary to the principle of the presumption of innocence. Requests seeking execution of such imposed fines could then be unenforceable on the basis of Art. 20(3) of said FD.

### *The CJEU's Response:*

By interpreting Art. 48 of the Charter of Fundamental Rights which enshrines the principle of the presumption of innocence, the CJEU refers to the ECtHR case law concerning Art. 6(2) ECHR. The ECtHR held that the Dutch law is compatible with the presumption of innocence, in so far as a person who is fined can challenge the fine before a trial court with full competence in the matter and that, in any such proceedings, the person concerned is not left without any means of defence in that he or she can raise arguments based on Article 8 of the Netherlands Highway Code. The CJEU adds that objections against the presumption of liability of the person in whose name the vehicle is registered as laid down in the legislation of the issuing State (here: the Netherlands) are unfounded, provided that that presumption can be rebutted. Z.P. had these possibilities also in the present case.

The CJEU pointed out that FD 2005/214 is intended to establish an effective mechanism for cross-border recognition and execution of final decisions imposing financial penalties. Grounds for refusal to recognise or enforce such decisions must be interpreted restrictively.



### *Infringements of Defence Rights?*

Regarding a second set of questions of whether Z.P. had effective defence rights, the CJEU noted that the person concerned must have had sufficient time to contest the decision in question and to prepare his defence, and was in fact provided with the decision imposing the financial penalty. It is in line with the FD and the Charter right to an effective legal remedy if the decision was notified to the person concerned in accordance with the legislation of the issuing state. The CJEU also held a period of six weeks as time limit for exercising the right of appeal (starting with the date of decision) sufficient to guarantee the person's defence rights.

### *Put in Focus:*

The CJEU confirms its case law established in other mutual recognition instruments that grounds for refusal are to be interpreted in a very restrictive way. Denial of requests can only be the exception, also when fundamental rights infringements may be at stake. In the present judgment on financial penalties, the CJEU also concludes that the law of the issuing state on liability of persons prevails over potentially differing laws of other EU Member States. Therefore, the judgment has not only an impact to Poland, but also to other EU countries for which liability of persons who did actually not commit an offence is alien.

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