

CJEU: Special Recognition Procedure Not in Line with EU Law

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News

On 5 July 2018, the CJEU ruled that Framework Decision 2008/675/JHA precludes Hungarian procedural rules on the recognition and validity of final criminal judgments previously handed down by the court of another Member State ([Case C-390/16 \[Lada\]](#)).

The case at issue was triggered by the Hungarian court of Szombathely to which a judgment of the Regional Court of Wiener Neustadt/Austria against the Hungarian national *Dániel Bertold Lada* had been submitted. The Austrian court convicted Mr. Lada to 14 months of imprisonment for attempted theft by force of high-value goods. The court ordered him to serve 11 months of that sentence.

According to Sec. 46-48 of the Hungarian Law on international judicial assistance in criminal matters, the Hungarian courts must carry out a special procedure for recognition of the validity of a foreign judgment. This special procedure entails, *inter alia*, the following aspects:

- The Hungarian court must examine whether fundamental rights and the basic provisions of Hungarian legislation on criminal procedure were observed in the foreign proceedings;
- It must assess, and if necessary, reclassify the offence committed by the convicted person by referring to the relevant provision of the Hungarian Criminal Code in force at the material time;
- It must, if necessary, reformulate the foreign judgment in accordance with the Hungarian Criminal Code, with respect to the type and level of sentence (provided that the sentence is not more severe than that imposed in the foreign judgment).

The referring court of Szombathely doubted whether this special procedure complies with the principle of mutual recognition (Art. 82 TFEU) and Framework Decision 2008/675 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. Since the special procedure, in fact, operates as a new procedure against the defendant for the same offences, the court also doubted whether it runs counter to the EU rules on *ne bis in idem* (Art. 50 CFR, Art. 54 CISA).

The CJEU only examined the first issue. It observed that the procedure at issue is a preliminary procedure with the main purpose of giving effect to a foreign criminal conviction by a Hungarian court. Consequently, the decisive question was whether the special procedure for recognition of foreign judgments, such as that at issue in the main proceedings, renders FD 2008/675 ineffective.

The CJEU first noted that a national procedure that imposes an obligation to ascertain whether the court of another EU Member State observed the fundamental rights of the person concerned is liable (in the absence

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of exceptional circumstances) to call into question the principle of mutual trust and hence one of the objectives of FD 2008/675.

In the context of the issue of reclassifying the criminal offence or altering the sentence imposed in another Member State, the CJEU stated that the FD indeed allows a Member State to issue a decision, if necessary, in order to attach the equivalent legal effects to a previous foreign conviction. However, this possibility cannot involve, in any event, the implementation of a special national procedure for prior recognition, such as that foreseen by the Hungarian Law on international judicial assistance in criminal matters.

In conclusion, FD 2008/675, read in light of Art. 82 TFEU, precludes the taking into account in a Member State, in new criminal proceedings brought against a person, of a final judgment previously handed down by the court of another Member State convicting that person of other offences being conditional on a special procedure for prior recognition, such as that at issue in the main proceedings, by the courts of the first Member State.

It should be noted that the CJEU already substantially decided the main questions at issue in its judgments “*Beshkov*” (Case C-171/16, see [eucrim 3/2017](#), pp. 119-120) and “*Balogh*” (Case C-25/15, see [eucrim 2/2016](#), p. 77). The CJEU often referred to these decisions in the present case.

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