



Reports of Cases

Case C-218/15

**Criminal proceedings
against
Gianpaolo Paoletti and Others**

(Request for a preliminary ruling
from the Tribunale ordinario di Campobasso)

(Reference for a preliminary ruling — Article 6 TEU — Article 49 of the Charter of Fundamental Rights of the European Union — Principle of retroactivity of the more lenient criminal law — Italian nationals having organised the illegal entry into Italy of Romanian nationals — Acts carried out before the accession of Romania to the European Union — Effect of Romania's accession on the criminal offence of facilitation of illegal immigration — Implementation of EU law — Jurisdiction of the Court)

Summary — Judgment of the Court (Fifth Chamber), 6 October 2016

- 1. Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Request for an interpretation of the Charter of Fundamental Rights of the European Union — National legal situation having a degree of connection with EU law — Jurisdiction of the Court*
(Art. 267 TFEU; Charter of Fundamental Rights of the European Union, Art. 51(1))
- 2. EU law — Principles — Principle of retroactive application of the lightest penalty — Principle counting amongst the general principles of EU law and included in the Charter of Fundamental Rights of the European Union*
(Art. 6(3) TEU; Charter of Fundamental Rights of the European Union, Art. 49(1))
- 3. EU law — Principles — Principle of retroactive application of the lightest penalty — Conditions under which applicable*
(Art. 6(3) TEU; Charter of Fundamental Rights of the European Union, Art. 49(1))
- 4. Border controls, asylum and immigration — Immigration policy — Preventing the facilitation of unauthorised entry, transit and residence — Criminal sanctions imposed on persons having committed the criminal offence of facilitation of illegal immigration of nationals of a Member State — Acts carried out before the accession of that Member State to the European Union — No infringement of the principle that offences and penalties must have a proper basis in law*
(Art. 6 TEU; Charter of Fundamental Rights of the European Union, Art. 49; Council Directive 2002/90, Arts 1 and 3; Council Framework Decision 2002/946, Art. 1(1))

1. See the text of the decision.

(see paras 13-20)

2. The principle of the retroactive application of the more lenient criminal law, as enshrined in Article 49(1) of the Charter of Fundamental Rights of the European Union, is part of primary EU law. Even before the entry into force of the Treaty of Lisbon, which conferred on the Charter the same legal value as the treaties, it has been held that that principle followed from the constitutional traditions common to the Member States and, therefore, had to be regarded as forming part of the general principles of EU law, which national courts must respect when applying national law.

(see para. 25)

3. The application of the more lenient criminal law necessarily involves a succession of laws over time and is based on the conclusion that the legislature changed its position either on the criminal classification of the act or the penalty to be applied to an offence.

(see para. 27)

4. Article 6 TEU and Article 49 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the accession of a State to the European Union does not preclude another Member State from imposing a criminal penalty on persons who committed, before the accession, the offence of facilitation of illegal immigration for nationals of the first State.

National criminal legislation which makes the facilitation of illegal immigration subject to a term of imprisonment, in accordance with Article 3 of Directive 2002/90, which defines the facilitation of unlawful entry, transit and residence, and Article 1 of Framework Decision 2002/946, on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, which provide that such an offence is to be punishable by effective, proportionate and dissuasive penalties, is not directed at third-country nationals who illegally enter the territory of that Member State and reside there without a residence permit, but at persons who facilitate the unlawful entry and residence of those nationals in the territory of that State. The mere fact that, after their illegal entry, those nationals have become EU citizens because of the accession of their State of origin to the European Union has no bearing on the course of the criminal proceedings brought against those persons who facilitate illegal immigration.

That acquisition of EU citizenship constitutes a factual situation which is not capable of changing the constituent elements of the offence of facilitation of illegal immigration.

No provision of that directive or of other EU legislation indicates that the acquisition of EU citizenship ought to entail the disappearance of the criminal offence committed by accused persons who engaged in labour trafficking. To decide otherwise would encourage such trafficking once a State has initiated the process of accession to the European Union, since traffickers would then be assured of benefiting from immunity. In that case, the aim achieved would be exactly the opposite of the aim pursued by the EU legislature.

(see paras 32-34, 36, 42, operative part)