

C/2023/1104

4.12.2023

Judgment of the Court (Second Chamber) of 19 October 2023 (request for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — Criminal proceedings against Terhelt5**(Case C-147/22, ⁽¹⁾ Központi Nyomozó Főügyészség)*****(Reference for a preliminary ruling — Convention implementing the Schengen Agreement — Article 54 — Charter of Fundamental Rights of the European Union — Article 50 — Principle ne bis in idem — Admissibility of criminal prosecution for corruption of an accused person in one Member State after the closure of the criminal proceedings brought against him in respect of the same acts by the public prosecutor's office of another Member State — Conditions which must be satisfied in order for the accused person's trial to be regarded as having been finally disposed of — Condition of an assessment of the merits of the case — Requirement for a detailed investigation — No questioning of the accused person)***

(C/2023/1104)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties in the main proceedings

Terhelt5

Intervening party: Központi Nyomozó Főügyészség

Operative part of the judgment

The principle ne bis in idem enshrined in Article 54 of the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 and entered into force on 26 March 1995, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that a decision to acquit an accused person taken, in one Member State, following an investigation relating essentially to acts of corruption must be classified as a final decision, within the meaning of those articles, where the same accused person is prosecuted again in a second Member State for the same acts and where:

- the decision to acquit was taken by the public prosecutor's office without the imposition of a penalty and without the intervention of a court and was based on the finding that there was no evidence to show that the accused person had actually committed the offence with which he or she is charged;
- under the applicable national law, notwithstanding the finality of such an acquittal, the public prosecutor's office has the discretion to continue the proceedings under strictly defined conditions, such as the emergence of significant new facts or evidence, and provided that, in any event, the offence is not time-barred; and
- during the investigation, the public prosecutor's office of the first Member State gathered information without, however, questioning the accused person, who is a citizen of another Member State, since the measure of investigation having the nature of a coercive constraint aimed at locating him or her ultimately proved to be unsuccessful,

it being understood that the fact that the accused person was not questioned by the public prosecutor's office of the first Member State may be taken into account by the public prosecutor's office of the second Member State along with any other relevant evidence revealing the absence of a detailed investigation in the first Member State, provided, however, that it is established that, in the circumstances of the case, it was reasonably a matter for the public prosecutor's office of the first Member State to take a measure of investigation ensuring that the accused person was actually questioned which, clearly, could have adduced new facts or evidence capable of casting doubt, to a significant extent, on the merits of a decision to acquit.

⁽¹⁾ OJ C 213, 30.5.2022.