

C/2024/2725

29.4.2024

**Request for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 28 December 2023 –
Criminal proceedings against MSIG**

(Case C-802/23, MSIG)

(C/2024/2725)

Language of the case: Spanish

Referring court

Audiencia Nacional

Party to the main proceedings

MSIG

Questions referred

1. In the present case, according to the factual circumstances described and the legal reasons taken into account in the criminal case against MSIG in Spain, and in view of the various convictions previously handed down in France in relation to her, does the '*ne bis in idem*' principle apply under Article 50 of the Charter [of Fundamental Rights of the European Union] and Article 54 of the CISA [the Convention implementing the Schengen Agreement], in relation to the charge brought against MSIG in Spain, in that it concerns 'the same acts', in accordance with the scope given to that concept in European case-law?
2. In any event, is the lack of a regulatory provision in Spanish law allowing the recognition of effects of final convictions previously handed down by the courts of other Member States, for the possible assessment in the case under examination of the applicability of the *ne bis in idem* principle, on the ground of identical acts, compatible with Article 50 of the Charter and Article 54 of the CISA, and also with Articles 1(3), 3(2), 4(3) and 4(5) of Council Framework Decision 2002/584/JHA of 13 June 2002 ⁽¹⁾ on the European arrest warrant and the surrender procedures between Member States?
3. In the present case, or generally speaking, is the absence of any legislative, practical or, ultimately, legal mechanism or procedure in Spanish law allowing recognition of effects of final convictions previously handed down by the courts of the Member States, (i) with a view to determining the sentence, cumulating, adapting or limiting the maximum execution of sentences, either at trial and judgment stage or at the later stage of enforcement of the sentence and (ii) in order to, in the alternative, in the event of a failure to find that the *ne bis in idem* principle applies on the ground of identical acts, ensure the proportionality of the criminal penalty – where, as in the proceedings under examination, a prior conviction has been handed down by the courts of another Member State for serious penalties, which have already been completed, due to concomitant acts (concurrent in time, which are closely related or connected or have a criminal or similar connection) with those being tried in Spain – contrary to Articles 45 and 49(3) of the Charter, or to recitals 7, 8, 9, 13 and 14 and Articles 3(1), 3(2), 3(4) and 3(5) of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, ⁽²⁾ and recital 12 and Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States?
4. In the light of the circumstances of the present case and, generally speaking, is the total exclusion of the effects of earlier final judgments delivered in other EU Member States – as expressly provided for in Article 14(2)(b) on convictions to be imposed in Spain, Article 14(2)(c) on judgment execution orders and the single additional provision (in both cases prior to 15 August 2010) of Organic Law 7/2014 of 12 November 2014 on the exchange of criminal record information and the taking into account of criminal-court decisions in the European Union, transposing European Union law – compatible with:

⁽¹⁾ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States – Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190).

⁽²⁾ OJ 2008 L 220.

- Article 50 of the Charter and Article 54 of the CISA, both relating to the international *ne bis in idem* principle;
 - and recitals 7, 8, 9, 13 and 14 and Articles 3(1), 3(2), 3(4) and 3(5) of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, as well as with Articles 45 and 49(3) of the Charter and the principle of mutual recognition of legal judgments within the European Union?
-