



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 November 2013*

(Police and judicial cooperation in criminal matters — Framework Decision 2005/214/JHA — Application of the principle of mutual recognition to financial penalties — ‘Court having jurisdiction in particular in criminal matters’ — The ‘Unabhängiger Verwaltungssenat’ under Austrian law — Nature and scope of the review on the part of the court of the Member State of enforcement)

In Case C-60/12,

REQUEST for a preliminary ruling under Article 35 EU from the Vrchní soud v Praze (Czech Republic), made by decision of 27 January 2012, received at the Court on 7 February 2012, in the proceedings concerning the enforcement of a financial penalty issued against

Marián Baláž,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen, T. von Danwitz and A. Borg Barthet, Presidents of Chambers, A. Rosas, J. Malenovský, A. Arabadjiev, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 12 March 2013,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek, J. Vlášil and D. Hadroušek, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by M. Russo, avvocato dello Stato,
- the Netherlands Government, by B. Koopman and C. Wissels, acting as Agents,
- the Austrian Government, by C. Pesendorfer and P. Cede, acting as Agents,
- the Swedish Government, by A. Falk and K. Ahlstrand-Oxhamre, acting as Agents,
- the European Commission, by R. Troosters and Z. Malůšková, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 July 2013,

* Language of the case: Czech.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(a)(iii) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76, p. 16), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('the Framework Decision').
- 2 The request has been made in the context of enforcement proceedings relating to the recovery of a fine imposed on Mr Baláž, a Czech national, in respect of a road traffic offence which he committed in Austria.

Legal context

Union law

- 3 Recitals 1, 2, 4 and 5 in the preamble to the Framework Decision state:
 - '(1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
 - (2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.
- ...
- (4) This Framework Decision should also cover financial penalties imposed in respect of road traffic offences.
- (5) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. ...'
- 4 Article 1 of the Framework Directive, entitled 'Definitions', reads as follows:

'For the purposes of this Framework Decision:

 - (a) "decision" shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:
 - ...
 - (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
 - ...

(b) “financial penalty” shall mean the obligation to pay:

(i) a sum of money on conviction of an offence imposed in a decision;

...

(c) “issuing State” shall mean the Member State in which a decision within the meaning of this Framework Decision was delivered;

(d) “executing State” shall mean the Member State to which a decision has been transmitted for the purpose of enforcement.’

5 Article 3 of the Framework Decision, entitled ‘Fundamental rights’, states:

‘This Framework Decision shall not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the [EU] Treaty.’

6 Article 4(1) of the Framework Decision makes provision for the transmission of a decision, together with a certificate drawn up in accordance with the standard form set out in the annex to the Framework Decision, to ‘a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat’.

7 Article 5 of the Framework Decision, entitled ‘Scope’, lists the offences in respect of which decisions are to be recognised and enforced under the Framework Decision. In particular, Article 5(1) provides:

‘The following offences, if they are punishable in the issuing State and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of decisions:

...

— conduct which infringes road traffic regulations ...’

8 Article 6 of the Framework Decision, entitled ‘Recognition and execution of decisions’, provides:

‘The competent authorities in the executing State shall recognise a decision which has been transmitted in accordance with Article 4 without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7.’

9 Under Article 7(2) and (3) of the Framework Decision:

‘2. The competent authority in the executing State may ... refuse to recognise and execute the decision if it is established that:

...

(g) according to the certificate provided for in Article 4, the person concerned, in case of a written procedure, was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his/her right to contest the case and of the time-limits for such a legal remedy;

...

(i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time:

— either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

— was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

— expressly stated that he or she does not contest the decision,

or

— did not request a retrial or appeal within the applicable time frame;

...

(3) In the cases referred to in paragraphs 1 and 2(c), (g), (i) and (j), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.'

10 Article 20(3) and (8) of the Framework Decision provides:

'(3) Each Member State may, where the certificate referred to in Article 4 gives rise to an issue that fundamental rights or fundamental legal principles as enshrined in Article 6 of the Treaty may have been infringed, oppose the recognition and the execution of decisions. The procedure referred to in Article 7(3) shall apply.

...

(8) Any Member State which, during a calendar year, has applied paragraph 3 shall in the beginning of the following calendar year inform the Council and the Commission of cases in which the grounds referred to in that provision for non-recognition or non-execution of a decision have been applied.'

Czech law

- 11 In accordance with the Czech Code of Criminal Procedure, Czech law provides for the recognition and enforcement of financial penalties imposed by the courts of a Member State other than the Czech Republic. Section 460o(1) of that code, in the version applicable at the time of the decisions delivered by the Czech courts in the case in the main proceedings (Law No 141/1961 on judicial criminal procedure) ('the Code of Criminal Procedure'), states:

'The provisions of this part shall apply to the procedure for the recognition and enforcement of a final sentence for a criminal or other offence, or of a decision issued on the basis thereof, if issued in accordance with legislation of the ... Union,

(a) imposing a financial penalty,

...

if issued by a court of the Czech Republic in criminal proceedings ..., or by a court of another Member State of the ... Union in criminal proceedings or by an administrative authority of such a State, provided that the administrative authority's decision on the criminal or other offence is subject to an appeal heard by a court having jurisdiction in particular in criminal matters ...'

- 12 Section 460r of the Code of Criminal Procedure reads as follows:

'(1) After written observations have been filed by the public prosecutor, the Krajský soud (Regional Court) decides, by judgment given at a public hearing, whether the decision of another Member State of the ... Union concerning a financial penalty or monetary fine, which was submitted to it by competent authorities of that State, is recognised and enforced or whether the recognition and enforcement of the decision are refused. The judgment shall be notified to the person concerned and to the public prosecutor.

...

(3) The Krajský soud shall refuse to recognise and enforce the decision of another Member State of the ... Union concerning a financial penalty or monetary fine, referred to in paragraph 1, if

...

(i) the recognition and enforcement of the decision would be contrary to the interests of the Czech Republic as protected in Article 377,

...

(4) If a ground for refusal of the recognition or enforcement of the decision of another Member State of the ... Union concerning a financial penalty or monetary fine, referred to in paragraph (3)(c) or (i), is found to exist, the Krajský soud shall, before refusing recognition and enforcement of such a decision, ask the competent authorities of the State which adopted the decision in respect of which recognition and enforcement is sought for an opinion, in particular for the purposes of obtaining all the information necessary for its decision; where appropriate, the Krajský soud may request the competent authorities in question to supply without delay necessary additional documents and information.'

Austrian law

- 13 The Austrian legal system distinguishes between offences which constitute breaches of ‘administrative criminal law’ and those which infringe ‘judicial criminal law’. In both cases, persons charged with offences have access to a court or tribunal.
- 14 The procedure in relation to administrative offences is governed by the Administrative Criminal Law 1991 (Verwaltungsstrafgesetz 1991, BGBl. 52/1991; ‘the VStG’). Administrative offences are dealt with, in the first instance, by the Bezirkshauptmannschaft (District Administrative Authority; ‘the BHM’). After the legal remedies before that administrative authority have been exhausted, the Unabhängiger Verwaltungssenat in den Ländern (Independent Administrative Tribunal in the *Länder*; ‘the Unabhängiger Verwaltungssenat’) has jurisdiction as an appeal body.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 15 By letter of 19 January 2011, the BHM Kufstein sent to the Krajský soud v Ústí nad Labem (Ústí nad Labem Regional Court, Czech Republic) a request for recognition and enforcement of its decision of 25 March 2010 imposing a financial penalty on Mr Baláž for a road traffic offence. The letter enclosed a certificate drawn up in the Czech language, as envisaged in Article 4 of the Framework Decision, and the ‘conviction and sentencing decision’ (‘Strafverfügung’).
- 16 According to those documents, on 22 October 2009 Mr Baláž, who was driving an articulated goods vehicle registered in the Czech Republic, had not complied, in Austria, with the sign ‘No entry for goods vehicles weighing in excess of 3.5 tonnes’. On this ground, he was ordered to pay a fine of EUR 220, together with 60 hours’ imprisonment should payment not be made within the prescribed period.
- 17 As is apparent from the order for reference, the certificate issued by the BHM Kufstein stated that the decision in question was a decision of an authority of the issuing State other than a court, adopted in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of rules of law. That certificate also stated that the person concerned had had the opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- 18 According to the information provided in that certificate, that decision became final and enforceable on 17 July 2010. Mr Baláž did not contest that decision, notwithstanding the fact that he had been informed, in accordance with the law of the issuing State, of his right to bring an appeal in person or through a representative appointed or assigned in accordance with national law.
- 19 On 17 May 2011, the Krajský soud v Ústí nad Labem held a public hearing for the purposes of examining the request made by the BHM Kufstein. At that hearing, it was established, inter alia, that the conviction and sentencing decision adopted by the BHM Kufstein had been notified to Mr Baláž on 2 July 2010 by the Okresní soud v Teplicích (District Court, Teplice, Czech Republic), in Czech, and that it referred to the possibility of contesting that decision either orally or in writing, including by electronic means, within two weeks of its notification, and to the possibility of submitting evidence in his defence when contesting that decision and of bringing an appeal before the Unabhängiger Verwaltungssenat.
- 20 At the conclusion of the procedure, having established that Mr Baláž had not pursued the remedy available (‘Einspruch’), the Krajský soud v Ústí nad Labem delivered a judgment by which it recognised that decision and declared it to be enforceable within the territory of the Czech Republic.

- 21 On 6 June 2011, Mr Baláž brought an appeal against that judgment before the Vrchní soud v Praze (High Court, Prague, Czech Republic). As is apparent from the order for reference, he argued, inter alia, that the information set out in the certificate issued by the BHM Kufstein could be called into question and that the latter's decision could not be enforced inasmuch as it was not amenable to review by a court having jurisdiction in particular in criminal matters. According to Mr Baláž, the Austrian legislation provides for appeals against decisions relating to road traffic offences to be brought before the Unabhängiger Verwaltungssenat alone and therefore does not make it possible for the case to be tried by a court having jurisdiction in particular in criminal matters.
- 22 In this connection, the Vrchní soud v Praze has to decide whether the measure adopted by the BHM Kufstein is a decision within the meaning of Section 460o(1)(a) of the Czech Code of Criminal Procedure and, consequently, a decision within the meaning of Article 1(a)(iii) of the Framework Decision. If so, it will then have to decide whether the conditions for recognition and enforcement of that decision in the Czech Republic are satisfied.
- 23 In those circumstances, the Vrchní soud v Praze decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Must the term “court having jurisdiction in particular in criminal matters” in Article 1(a)(iii) of [the Framework Decision] ... be interpreted as an autonomous concept of ... Union law?
- 2(a) If the answer to the first question is in the affirmative, what general defining characteristics must a court of a State which can, on the initiative of the person concerned, hear that person's case in relation to a decision issued by an authority other than a court of law (an administrative authority) have in order to qualify as a “court having jurisdiction in particular in criminal matters” within the meaning of Article 1(a)(iii) of the Framework Decision?
- 2(b) May [the] ... Unabhängiger Verwaltungssenat be regarded as a “court having jurisdiction in particular in criminal matters” within the meaning of Article 1(a)(iii) of the Framework Decision?
- 2(c) If the answer to the first question is in the negative, must the term “court having jurisdiction in particular in criminal matters” within the meaning of Article 1(a)(iii) of the Framework Decision be interpreted by the competent authority of the executing State under the law of the State whose authority issued a decision within the meaning of Article 1(a)(iii) of the Framework Decision, or under the law of the State deciding on the recognition and enforcement of such a decision?
- (3) Is the “opportunity to have the case tried” before a “court having jurisdiction in particular in criminal matters” under Article 1(a)(iii) of the Framework Decision maintained even if the person concerned cannot have a case tried before a “court having jurisdiction in particular in criminal matters” directly, but must first contest a decision of an authority other than a court of law (an administrative authority), the submission of such a contestation rendering that authority's decision ineffective and leading to the initiation of an ordinary procedure before the same authority, and only against its decision in that ordinary procedure may an appeal be brought before a “court having jurisdiction in particular in criminal matters”?

In relation to maintaining the “opportunity to have the case tried”, is it necessary to decide questions of whether an appeal heard by a “court having jurisdiction in particular in criminal matters” is in the nature of an ordinary appeal (that is to say, an appeal against a decision not yet final) or an extraordinary appeal (that is to say, an appeal against a final decision) and whether a “court having jurisdiction in particular in criminal matters”, on the basis of that appeal, has the authority to review the case in its entirety both in fact and in law?

Consideration of the questions referred

Question 1 and Question 2(a) and (b)

- 24 By Question 1 and Question 2(a) and (b), which it is appropriate to examine together, the referring court seeks to ascertain whether the term ‘court having jurisdiction in particular in criminal matters’, within the meaning of Article 1(a)(iii) of the Framework Decision, must be interpreted as an autonomous concept of Union law and, if so, what the relevant criteria are in that regard. It also asks whether the Unabhängiger Verwaltungssenat comes within the scope of that term.
- 25 In this connection, it must be stated that, contrary to what the Netherlands and Swedish Governments contend, and as the Advocate General has observed in point 45 of her Opinion, the meaning of ‘court having jurisdiction in particular in criminal matters’ cannot be left to the discretion of each Member State.
- 26 It follows from the need for uniform application of Union law that, inasmuch as Article 1(a)(iii) of the Framework Decision makes no reference to the law of the Member States so far as concerns the meaning of the term ‘court having jurisdiction in particular in criminal matters’, that term requires, since it is decisive for determining the scope of the Framework Decision, an autonomous and uniform interpretation throughout the Union, having regard to the context of the provision of which it forms part and the objective pursued by that framework decision (see, by analogy, Case C-66/08 *Kozłowski* [2008] ECR I-6041, paragraphs 41 and 42, and Case C-261/09 *Mantello* [2010] ECR I-11477, paragraph 38).
- 27 As is apparent in particular from Articles 1 and 6, and from recitals 1 and 2 in the preamble, the Framework Decision is intended to establish an effective mechanism for recognition and cross-border execution of final decisions requiring a financial penalty to be paid by a natural person or a legal person following the commission of one of the offences listed in Article 5 of the Framework Decision.
- 28 It is true that, in the case where the certificate referred to in Article 4 of the Framework Decision, which accompanies the decision imposing a financial penalty, suggests that fundamental rights or fundamental legal principles as enshrined in Article 6 TEU may have been infringed, the competent authorities of the executing State may refuse to recognise and execute such a decision where one of the grounds for non-recognition and non-execution listed in Article 7(1) and (2) of the Framework Decision arises, and may also so refuse under Article 20(3) of that decision.
- 29 In view of the fact that the principle of mutual recognition, which underpins the Framework Decision, means that, in accordance with Article 6 of that decision, the Member States are, as a rule, obliged to recognise a decision requiring payment of a financial penalty which has been transmitted in accordance with Article 4 of the Framework Decision without any further formality being required, and to take without delay all the measures necessary for its enforcement, the grounds for refusal to recognise or enforce such a decision must be interpreted restrictively (see, by analogy, Case C-396/11 *Radu* [2013] ECR, paragraph 36 and the case-law cited).
- 30 Such an interpretation is all the more appropriate since mutual confidence between Member States, which is the cornerstone of judicial cooperation within the Union, is coupled with appropriate safeguards. In this regard it should be noted that, under Article 20(8) of the Framework Decision, any Member State which, during a calendar year, has applied Article 7(3) of the Framework Decision, is required, at the beginning of the following calendar year, to inform the Council and the Commission of the cases in which the grounds for non-recognition or non-execution of a decision referred to in that provision have been applied.

- 31 If the competent authority in the executing State is uncertain as to whether, in a given case, the abovementioned conditions governing recognition of the decision at issue imposing a financial penalty have been satisfied, it may ask the competent authority in the issuing State for additional information before drawing all the appropriate conclusions from the assessments made by the latter authority in its response (see, to that effect, as regards Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), *Mantello*, paragraph 50).
- 32 In that regulatory context, with a view to interpreting the term ‘court’ contained in Article 1(a)(iii) of the Framework Decision, it is appropriate to rely on the criteria identified by the Court of Justice for determining whether a referring body is a ‘court or tribunal’ for the purposes of Article 267 TFEU. To that end, according to settled case-law, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (see, by analogy, Case C-196/09 *Miles and Others* [2011] ECR I-5105, paragraph 37 and the case-law cited).
- 33 With regard to the words ‘jurisdiction in particular in criminal matters’, it is true that the Framework Decision was adopted on the basis of Article 31(1)(a) EU and of Article 34(2)(b) EU, in the context of judicial cooperation in criminal matters.
- 34 However, under its Article 5(1), the scope of the Framework Decision includes offences relating to ‘conduct which infringes road traffic regulations’. Those offences are not subject to homogeneous treatment in the various Member States, some of which classify such offences as administrative offences, while others treat them as criminal offences.
- 35 It follows that, in order to ensure that the Framework Decision is effective, it is appropriate to rely on an interpretation of the words ‘having jurisdiction in particular in criminal matters’ in which the classification of offences by the Member States is not conclusive.
- 36 To that end, the court having jurisdiction within the meaning of Article 1(a)(iii) of the Framework Decision must apply a procedure which satisfies the essential characteristics of criminal procedure, without, however, it being necessary for that court to have jurisdiction in criminal matters alone.
- 37 In order to determine whether, in circumstances such as those at issue in the main proceedings, the Unabhängiger Verwaltungssenat can be regarded as a court having jurisdiction in particular in criminal matters, within the meaning of the Framework Decision, an overall assessment of a number of objective factors that characterise that body and its operation has to be carried out.
- 38 In this connection, it should be pointed out, first, that, as the referring court rightly notes, the Court of Justice has already held that a body such as the Unabhängiger Verwaltungssenat displays all the characteristics required for it to be recognised as a court or tribunal within the meaning of Article 267 TFEU (Case C-258/97 *HI* [1999] ECR I-1405, paragraph 18).
- 39 Second, as is apparent from the information provided by the Austrian Government in its written and oral observations, even though the Unabhängiger Verwaltungssenat is formally established as an independent administrative authority, under Paragraph 51(1) of the VStG, it none the less has, *inter alia*, jurisdiction as an appeal body in relation to administrative offences, including, in particular, road traffic offences. In an appeal of that kind, which has suspensory effect, the Unabhängiger Verwaltungssenat has unlimited jurisdiction and applies a criminal procedure which is subject to compliance with the procedural safeguards appropriate to criminal matters.

- 40 In this respect, it should be pointed out that included, in particular, among the applicable procedural safeguards are the principle *nulla poena sine lege*, laid down in Paragraph 1 of the VStG, the principle that culpability should arise only where there is capacity or criminal responsibility, laid down in Paragraphs 3 and 4 of the VStG, and the principle that the penalty must be in proportion to the degree of responsibility and to the facts, laid down in Paragraph 19 of the VStG.
- 41 The Unabhängiger Verwaltungssenat must therefore be considered to be a ‘court having jurisdiction in particular in criminal matters’ within the meaning of Article 1(a)(iii) of the Framework Decision.
- 42 In the light of all of the foregoing considerations, the answer to Question 1 and to Question 2(a) and (b) is that the term ‘court having jurisdiction in particular in criminal matters’, set out in Article 1(a)(iii) of the Framework Decision, is an autonomous concept of Union law and must be interpreted as covering any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure. The Unabhängiger Verwaltungssenat fulfils those criteria and must for that reason be regarded as coming within the scope of that term.
- 43 In view of the answer given to Question 1 and to Question 2(a) and (b), there is no need to answer Question 2(c).

Question 3

- 44 By Question 3, the referring court asks, in essence, whether Article 1(a)(iii) of the Framework Decision must be interpreted as meaning that a person is to be regarded as having had the opportunity to have a case tried before a court having jurisdiction in particular in criminal matters in a situation where, prior to bringing his appeal, that person was required to comply with a pre-litigation administrative procedure and whether, in this connection, the nature and scope of the review carried out by the court having jurisdiction are relevant to the recognition and enforcement of the decision imposing a financial penalty.
- 45 With regard, first, to the question as to whether the right of appeal is ensured notwithstanding the obligation to comply with a prior administrative procedure before the case is examined by a court having jurisdiction in particular in criminal matters, within the meaning of the Framework Decision, it should be pointed out, as the referring court and all of the parties which have submitted observations to the Court have done, that Article 1(a)(iii) of the Framework Decision does not require that the case may be brought directly before such a court.
- 46 The Framework Decision also applies to financial penalties imposed by administrative authorities. Consequently, as the Netherlands Government rightly observes, a prior administrative phase may be required, depending on the particular features of the judicial systems of the Member States. However, access to a court having jurisdiction in particular in criminal matters, within the meaning of the Framework Decision, must not be made subject to conditions which make such access impossible or excessively difficult (see, by analogy, Case C-69/10 *Samba Diouf* [2011] ECR I-7151, paragraph 57).
- 47 With regard, secondly, to the scope and nature of the review carried out by the court before which the case may be brought, that court must have full jurisdiction to examine the case as regards both the legal assessment and the factual circumstances and must have, inter alia, the opportunity to examine the evidence and to determine on that basis the responsibility of the person concerned and the appropriateness of the penalty.
- 48 Thirdly, the fact that the person concerned has not brought an appeal, and that, consequently, the financial penalty at issue has become final has no bearing on the application of Article 1(a)(iii) of the Framework Decision since it is sufficient under that provision that the person concerned ‘has had an opportunity’ to have the case tried by a court having jurisdiction in particular in criminal matters.

- 49 In the light of all of the foregoing considerations, the answer to Question 3 is that Article 1(a)(iii) of the Framework Decision must be interpreted as meaning that a person is to be regarded as having had the opportunity to have a case tried before a court having jurisdiction in particular in criminal matters in the situation where, prior to bringing his appeal, that person was required to comply with a pre-litigation administrative procedure. Such a court must have full jurisdiction to examine the case as regards both the legal assessment and the factual circumstances.

Costs

- 50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. The term ‘court having jurisdiction in particular in criminal matters’, set out in Article 1(a)(iii) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, is an autonomous concept of Union law and must be interpreted as covering any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure. The Unabhängiger Verwaltungssenat in den Ländern (Austria) fulfils those criteria and must for that reason be regarded as coming within the scope of that term.
2. Article 1(a)(iii) of Framework Decision 2005/214, as amended by Framework Decision 2009/299, must be interpreted as meaning that a person is to be regarded as having had the opportunity to have a case tried before a court having jurisdiction in particular in criminal matters in the situation where, prior to bringing his appeal, that person was required to comply with a pre-litigation administrative procedure. Such a court must have full jurisdiction to examine the case as regards both the legal assessment and the factual circumstances.

[Signatures]