



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

11 January 2017*

(References for a preliminary ruling — Judicial cooperation in criminal matters — Framework Decision 2008/909/JHA — Article 7 — Condition of double criminality — Article 9 — Ground for non-recognition and non-enforcement based on the lack of double criminality — National of the executing State convicted in the issuing State for failure to comply with a decision issued by a public authority)

In Case C-289/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Krajský súd v Prešove (Regional Court, Prešov, Slovakia), made by decision of 3 June 2015, received at the Court on 15 June 2015, in criminal proceedings against

Joszeif Grundza

intervening party:

Krajská prokuratúra Prešov,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, M. Berger (Rapporteur), A. Borg Barthet, E. Levits and F. Biltgen, Judges,

Advocate General: M. Bobek,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 25 May 2016,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Slovak Government, by B. Ricziová, acting as Agent,
- the Swedish Government, by A. Falk, L. Swedenborg, C. Meyer-Seitz, U. Persson, E. Karlsson and N. Otte Widgren, acting as Agents,
- the European Commission, by W. Bogensberger, J. Javorský, and S. Gruenheid, acting as Agents,

* Language of the case: Slovak.

after hearing the Opinion of the Advocate General at the sitting on 28 July 2016,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 7(3) and 9(1)(d) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008, L 327, p. 27), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2008/909').
- 2 The request has been made in proceedings concerning the recognition of a criminal judgment and the enforcement, in Slovakia, of a custodial sentence imposed by a Czech court on Mr Jozsef Grundza.

Legal context

EU law

- 3 According to recital 5 of Framework Decision 2008/909:

'Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. ...'

- 4 Article 3 of Framework Decision 2008/909, headed 'Purpose and scope', provides as follows:

'1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.

...

3. This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. ...

...'

5 Article 7 of Framework Decision 2008/909, headed ‘Double criminality’, is worded as follows:

‘The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, 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 of the judgment and enforcement of the sentence imposed:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in arms, ammunition and explosives,
- corruption,
- Fraud, ...
- laundering of the proceeds of crime,
- counterfeiting currency, ...
- computer-related crime,
- environmental crime, ...
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, ...
- swindling,
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,

- forgery of means of payment,
- trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

...

3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on the adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council, declare that it will not apply paragraph 1. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

- 6 Article 8 of Framework Decision 2008/909, headed 'Recognition of the judgment and enforcement of the sentence', provides in paragraph 1 thereof as follows:

'1. The competent authority of the executing State shall recognise a judgment which has been forwarded ... and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.'

- 7 Article 9 of Framework Decision 2008/909, headed 'Grounds for non-recognition and non-enforcement', provides, in paragraph 1(d) thereof, as follows:

'1. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

...

(d) in a case referred to in Article 7(3) and, where the executing State has made a declaration under Article 7(4), in a case referred to in Article 7(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of a judgment may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State.'

Slovak law

- 8 Framework Decision 2008/909 was transposed into Slovak law by the zákon č. 549/2011 uznávaní a výkone rozhodnutí, ktorými sa ukladá trestná sankcia spojená s odňatím slobody v Európskej Únii (Law No 549/2011 on the recognition and enforcement of decisions imposing penal sanctions involving restriction of personal liberty in the European Union), as amended by Law No 344/2012 ('Law No 549/2011').
- 9 Articles 4 and 16 of Law No 549/2011 transposed into Slovak law Articles 7 and 9, respectively, of Framework Decision 2008/909.
- 10 Article 4(1) of Law No 549/2011, which corresponds to Article 7(3) of Framework Decision 2008/909, provides that 'a decision may be recognised and enforced in the Slovak Republic if the act in respect of which the decision was issued constitutes an offence under Slovak law ...'
- 11 Under Article 4(2) of Law No 549/2011, which corresponds to Article 7(1) of Framework Decision 2008/909, if a request is made for recognition and enforcement of a decision concerning an offence for which, in the issuing State, it is possible to impose a custodial sentence of three years or more and, in the certificate for enforcement of the decision, the judicial authority of the issuing State indicates that the offence is classifiable in one or more of the categories of offence specified in Article 4(3) of that law, the court seised is not required to carry out a double criminality verification in respect of the act in question.
- 12 The order for reference indicates that the categories of offence set out in Article 4(3) of Law No 549/2011 correspond to the offences listed in Article 7(1) of Framework Decision 2008/909.
- 13 Article 16(1)(b) of Law No 549/2011, which corresponds to Article 9(1)(d) of Framework Decision 2008/909, provides that 'the court shall refuse to recognise and enforce the decision if the act on the basis of which the decision was issued does not constitute an offence under the law of the Slovak Republic and the case does not entail a procedure referred to in Article 4(2) and (3) of this law'. However, 'in relation to taxes or duties, customs and exchange, execution of a judgment may not be refused merely on the ground that the law of the Slovak Republic does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State'.
- 14 Pursuant to Article 348(1)(d) of the zákon 300/2005 Z.z., Trestný zákon (Slovak Criminal Code), 'any person who thwarts or renders substantially more difficult the implementation of a decision of a judicial authority or other public authority by ... carrying on an activity which he was prohibited from doing by decision of a judicial authority or other State body ... shall be punished by a term of imprisonment of up to two years'.

Czech law

- 15 Article 337(1)(a) of the zákon No 40/2009 Sb., Trestní zákoník (Czech Criminal Code) provides that 'any person who thwarts or renders substantially more difficult the implementation of a decision of a judicial authority or other public authority by ... carrying on an activity which he was prohibited from doing by such a decision or for which he thereby lost or had withdrawn the corresponding authorisation pursuant to other legal provisions ... shall be punished by a term of imprisonment of up to two years'.

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

- 16 On 3 October 2014, the Okresní soud v Chebu (District Court, Cheb, Czech Republic) imposed a cumulative custodial sentence of 15 months on Mr Grundza, a Slovak national, for burglary and obstruction of the implementation of a decision of a public body, namely breach of a temporary ban on driving imposed on him by decision of the Magistrát města Přerov (Municipality of Přerov, Czech Republic) on 12 February 2014.
- 17 The judgment of 3 October 2014, together with the certificate referred to in Annex I to Framework Decision 2008/909, was sent to the Krajský súd v Prešove (Regional Court, Prešov, Slovakia) for the purpose of recognition of the judgment and enforcement of the sentence in Slovakia.
- 18 In its order for reference, that court states that the offences at issue in the main proceedings were not regarded by the judicial body of the issuing State, namely the Czech Republic, as offences for the purposes of Article 7(1) of Framework Decision 2008/909, so that enforcement of the 15-month cumulative sentence is subject to it being established that the acts covered by the judgment of 3 October 2014 also constitute offences under Slovak law.
- 19 That court is in some doubt as to whether the condition of double criminality is met with regard to the act described as ‘the offence of thwarting the implementation of the decision of a public authority’.
- 20 The referring court states in that regard that Article 348(1)(d) of the Slovak Criminal Code, which concerns the offence of thwarting the implementation of an official decision, refers only to decisions of the judicial authorities or of another ‘Slovak’ body which are enforceable in ‘Slovak territory’.
- 21 Thus, according to the referring court, it is clear from the assessment of the act for which Mr Grundza was convicted in the Czech Republic that that act does not in fact constitute an ‘offence’ for the purposes of Article 348(1)(d) of the Slovak Criminal Code, as it does not correspond to the factual constituent elements of the offence of thwarting the implementation of an official decision within the meaning of that provision. Mr Grundza was convicted of thwarting a decision adopted by a body of the Czech Republic, a decision which has effect only in the territory of that Member State.
- 22 The referring court is also uncertain whether, having regard to the purpose of Framework Decision 2008/909, namely to facilitate the social rehabilitation of a sentenced person by, inter alia, developing cooperation between Member States when enforcing criminal judgments, in a case such as that in the main proceedings, in which an interest protected by the legal order of the issuing State has been infringed, it may not be necessary to examine double criminality *in abstracto*, that is, as if an interest protected under the legal system of the executing State had been infringed.
- 23 In those circumstances, the Krajský súd v Prešove (Regional Court, Prešov) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘On a proper interpretation of Articles 7(3) and 9(1)(d) of Framework Decision 2008/909 ..., is the condition of double criminality to be considered satisfied only where the act to which the decision to be recognised refers constitutes an offence *in concreto*, i.e. on the basis of a concrete assessment of the facts (whatever its constituent elements or however it is described) also in the law of the executing State, or is that condition sufficiently satisfied where the act generally constitutes (*in abstracto*) an offence also in the legal order of the executing State?’

Consideration of the question referred

- 24 By its question, the referring court seeks to ascertain, in essence, whether Articles 7(3) and 9(1)(d) of Framework Decision 2008/909 are to be interpreted as meaning that the condition of double criminality is met in a situation, such as that in the main proceedings, in which recognition of a judgment and enforcement of a sentence are sought in respect of acts which are classified in the issuing State as a ‘criminal offence consisting in thwarting the implementation of an official decision committed in the territory of the issuing State’, and for which a criminal offence, similarly classified, exists in the law of the executing State, but a national rule of the executing State requires, for such an offence to occur, the official decision to have been issued by one of the authorities operating in its own territory.
- 25 It should be noted at the outset that, for the purpose of providing a useful answer to that question, it is not appropriate to base the analysis on an *in concreto* or an *in abstracto* assessment of the condition of double criminality.
- 26 It should be observed in that regard, first, that Framework Decision 2008/909, which is an instrument providing for a minimal level of harmonisation, and in particular Article 7 thereof, which concerns the condition of double criminality, makes no mention of those notions.
- 27 Second, as the Advocate General observed in point 26 of his Opinion, Member States have adopted different positions as regard the precise meaning of those notions in the context of double criminality.
- 28 For the purpose of answering the question thus reformulated, it should be recalled that, under Article 7(3) of Framework Decision 2008/909, with regard to offences other than those included in the list of 32 offences set out in Article 7(1), it is open to the executing State to make recognition of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described. In other words, that provision allows the executing State to make recognition of the judgment and enforcement of the sentence subject to the requirement that the condition of double criminality is met.
- 29 Correspondingly, Article 9 of Framework Decision 2008/909, concerning grounds for non-recognition and non-enforcement, provides in paragraph 1(d) thereof that it is possible for the competent authority of the executing State to refuse to recognise the judgment handed down in the issuing State and to enforce the sentence imposed in that State if the condition of double criminality is not met.
- 30 It is apparent from the order for reference that the acts for which Mr Grundza was convicted, in particular the thwarting of the implementation of a decision of a public authority, were not regarded by the competent authority of the issuing State, namely the Czech Republic, as offences falling within Article 7(1) of Framework Decision 2008/909.
- 31 Accordingly, in accordance with Article 7(3) of Framework Decision 2008/909, the recognition of the judgment of 3 October 2014 and enforcement of the 15-month cumulative sentence are subject to the competent Slovak authority finding that the acts covered by that judgment also constitute an offence under Slovak law, whatever its constituent elements or however it is described in the issuing State.
- 32 That having been established, it should be noted that it is that Court’s established case-law that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it forms part (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 35, and of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraph 31).

- 33 With regard, first, to the wording of Article 7(3) of Framework Decision 2008/909, it should be noted, as observed by the Advocate General in point 47 of his Opinion, that that provision circumscribes the scope of the assessment of double criminality in that it requires the competent authority of the executing State to verify whether the acts in question ‘also constitute an offence’ under the national law of that State, ‘whatever its constituent elements or however it is described’.
- 34 As is apparent from the very wording of Article 7(3) of Framework Decision 2008/909, the necessary and sufficient condition for the purpose of assessing double criminality resides in the fact that the acts giving rise to the sentence imposed in the issuing State also constitute an offence in the executing State. It follows that the offences do not need to be identical in the two Member States concerned.
- 35 That interpretation is borne out by the words ‘whatever [the] constituent elements’ of the offence as laid down in the executing State and ‘however it is described’, which make it clear, as the Advocate General observed in points 48 and 49 of his Opinion, that there does not have to be an exact match between the constituent elements of the offence, as defined in the law of the issuing State and the executing State, respectively, or between the name given to or the classification of the offence under the national law of the respective States.
- 36 Accordingly, that provision advocates a flexible approach by the competent authority of the executing State when assessing the condition of double criminality, both as regards the constituent elements of the offence and its description.
- 37 Thus, the relevant factor when assessing double criminality, for the purposes of Article 7(3) of Framework Decision 2008/909, are that (i) the factual elements underlying the offence, as reflected in the judgment handed down in the issuing State, and (ii) how the offence is defined under the law of the executing State, should be congruent.
- 38 It follows from the foregoing considerations that, when assessing double criminality, the competent authority of the executing State is required to verify whether the factual elements underlying the offence, as reflected in the judgment handed down by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State.
- 39 Second, the context of Article 7(3) and Article 9(1)(d) of Framework Decision 2008/909 also militates in favour of such an assessment of double criminality.
- 40 It should be observed that, as provided for in Article 26 thereof, Framework Decision 2008/909 replaces, as regards relations between Member States, a number of instruments of international law in order to further develop cooperation, as stated in recital 5 of the decision, in the enforcement of criminal judgments.
- 41 Unlike those instruments of international law, Framework Decision 2008/909 is based primarily on the principle of mutual recognition, which constitutes, as stated in recital 1 of the decision, read in the light of Article 82(1) TFEU, the ‘cornerstone’ of judicial cooperation in criminal matters within the European Union, which, according to recital 5 of the decision, is founded on a special mutual confidence of the Member States in their respective legal systems (see, to that effect, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 46 and 47).
- 42 The principle of mutual recognition means, in accordance with Article 8(1) of Framework Decision 2008/909, that, in principle, the competent authority of the executing State is to recognise a judgment which has been forwarded to it and forthwith take all the necessary measures for the enforcement of the sentence.

- 43 As the Advocate General observed in point 36 of his Opinion, the principle of mutual recognition has led to, among other things, the establishment, in Article 7(1) of Framework Decision 2008/909, of a list of criminal offences in respect of which the review of the condition of double criminality has been done away with.
- 44 Moreover, it should be noted that, even as regards offences which do not appear on that list, Article 7(3) of Framework Decision 2008/909 merely provides Member States with the option of making recognition of a judgment and enforcement of a sentence subject to the requirement that the condition of double criminality be met.
- 45 In that context, that option enables Member States, as the Advocate General observed in point 68 of his Opinion, to decline to recognise a judgment and enforce a sentence in respect of conduct which they do not consider to be morally wrong and which does not, therefore, constitute an offence.
- 46 It follows from the foregoing considerations that the condition of double criminality is an exception to the general rule of recognition of judgments and enforcement of sentences. Accordingly, the scope of the grounds for refusing to recognise a judgment or enforce a sentence, on the basis of lack of double criminality, as provided for in Article 9(1)(d) of Framework Decision 2008/909, must be interpreted strictly in order to limit cases of non-recognition and non-enforcement.
- 47 Accordingly, the purpose of the assessment of double criminality by the competent authority of the executing State, to which Article 7(3) of Framework Decision 2008/909 refers, is to verify whether the factual elements underlying the offence, as reflected in the judgment handed down by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the territory of the executing State if they were present there.
- 48 In that regard, the referring court has stated that the offence at issue in the main proceedings constitutes an infringement of an official decision adopted by a Czech public body and, therefore, an infringement of an interest protected by the Czech Republic, so that the condition of double criminality cannot, in any event, be considered to have been met.
- 49 Nevertheless, in assessing double criminality, the competent authority of the executing State must ascertain, not whether an interest protected by the issuing State has been infringed, but whether, in the event that the offence at issue were committed in the territory of the executing State, it would be found that a similar interest, protected under the national law of that State, had been infringed.
- 50 Third, it should be recalled that Article 3(1) of Framework Decision 2008/909 states that the purpose of that decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and to enforce a sentence.
- 51 A strict interpretation of Article 9(1)(d) of Framework Decision 2008/909 contributes to the attainment of that objective of facilitating the social rehabilitation of the sentenced person, inter alia in a situation, such as that in the main proceedings, in which that person is a national of the executing State.
- 52 In this instance, it is apparent from the documents submitted to the Court that Mr Grundza was convicted by the competent Czech judicial authority for, among other things, driving a motor vehicle in the territory of that Member State notwithstanding the fact that he had been banned from so doing by a decision issued by a Czech public authority.
- 53 For the purpose of determining whether the condition of double criminality was met in the proceedings before it, the referring court, which is called upon to recognise and enforce the sentence, is thus required to ascertain whether, in the event that those factual elements — that is, the driving of a motor vehicle notwithstanding the existence a ban imposed by an official decision — were present in

the territory of the Member State to which that court belongs, they would be subject to a criminal penalty under the domestic law of that State. If that is the case, it must be concluded that the condition of double criminality is met.

- 54 In the light of the foregoing considerations, the answer to the question referred is that Article 7(3) and Article 9(1)(d) of Framework Decision 2008/909 must be interpreted as meaning that the condition of double criminality must be considered to be met in a situation such as that in the main proceedings, where the factual elements underlying the offence, as reflected in the judgment handed down by the competent authority of the issuing State, would also, per se, be subject to a criminal sanction in the territory of the executing State if they were present in that State.

Costs

- 55 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 (Fifth Chamber) hereby rules:

Article 7(3) and Article 9(1)(d) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the condition of double criminality must be considered to be met, in a situation such as that in the main proceedings, where the factual elements underlying the offence, as reflected in the judgment handed down by the competent authority of the issuing State, would also, per se, be subject to a criminal sanction in the territory of the executing State if they were present in that State.

[Signatures]