Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

29 June 2016*

(Reference for a preliminary ruling — Convention Implementing the Schengen Agreement — Articles 54 and 55(1)(a) — Charter of Fundamental Rights of the European Union — Article 50 — Ne bis in idem principle — Whether an accused may be prosecuted in a Member State after criminal proceedings brought against him in another Member State have been terminated by the public prosecutor's office without a detailed investigation — No examination of the merits of the case)

In Case C-486/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg, Germany), made by decision of 23 October 2014, received at the Court on 10 November 2014, in the criminal proceedings against

Piotr Kossowski,

Other party:

Generalstaatsanwaltschaft Hamburg,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, J.L. da Cruz Vilaça and F. Biltgen, Presidents of Chambers, E. Juhász, A. Borg Barthet, J. Malenovský, E. Levits, J.-C. Bonichot, A. Prechal (Rapporteur), C. Vajda, S. Rodin and K. Jürimäe, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 29 September 2015,

after considering the observations submitted on behalf of:

— P. Kossowski, by I. Vogel, Rechtsanwältin,

— the Generalstaatsanwaltschaft Hamburg, by L. von Selle and C. Rinio, acting as Agents,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the French Government, by F.X. Bréchot, D. Colas and C. David, acting as Agents,

— the Netherlands Government, by M. Bulterman and M. de Ree, acting as Agents,

* Language of the case: German.

— the Polish Government, by B. Majczyna, J. Sawicka and M. Szwarc, acting as Agents,

— the United Kingdom Government, by L. Christie, acting as Agent, and by J. Holmes, Barrister,

— the Swiss Government, by R. Balzaretti, acting as Agent,

— the European Commission, by W. Bogensberger and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 December 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 54 and 55 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, which was signed in Schengen (Luxembourg) on 19 June 1990 and entered into force on 26 March 1995 (OJ 2000 L 239, p. 19; the 'CISA'), and of Articles 50 and 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in criminal proceedings brought in Germany against Mr Piotr Kossowski ('the accused') who is alleged to have committed, in Germany on 2 October 2005, acts classified as extortion with aggravating factors.

Legal context

EU law

The Charter

3 Article 50 of the Charter, entitled 'Right not to be tried or punished twice in criminal proceedings for the same criminal offence', is worded as follows:

'No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.'

The CISA

4 The CISA was concluded in order to ensure the application of the Agreement 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 14 June 1985 (OJ 2000 L 239, p. 13).

5 Articles 54 and 55 of the CISA are included in Chapter 3 of that convention, which is entitled 'Application of the ne bis in idem principle'. Article 54 of the CISA provides:

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.'

6 Article 55 of the CISA provides:

'1. A Contracting Party may, when ratifying, accepting or approving this Convention, declare that it is not bound by Article 54 in one or more of the following cases:

(a) where the acts to which the foreign judgment relates took place in whole or in part in its own territory; in the latter case, however, this exception shall not apply if the acts took place in part in the territory of the Contracting Party where the judgment was delivered;

…

4. The exceptions which were the subject of a declaration under paragraph 1 shall not apply where the Contracting Party concerned has, in connection with the same acts, requested the other Contracting Party to bring the prosecution or has granted extradition of the person concerned.'

7 When the CISA was ratified, the Federal Republic of Germany made the following reservation in relation to Article 54 of the CISA, pursuant to Article 55(1) thereof (BGBl. 1994 II, p. 631):

'The Federal Republic of Germany is not bound by Article 54 of the [CISA]

(a) where the acts to which the foreign judgment relates took place in whole or in part in its own territory …'

The Protocol integrating the Schengen acquis into the framework of the European Union

8 The CISA was integrated into EU law by Protocol (No 2) integrating the Schengen *acquis* into the framework of the European Union, annexed to the EU Treaty, in the version in force before the Treaty of Lisbon, and to the EC Treaty by the Treaty of Amsterdam (OJ 1997 C 340, p. 93), as part of 'the Schengen *acquis*', as defined in the annex to that protocol. The protocol authorised 13 Member States to establish closer cooperation among themselves within the scope of the Schengen acquis.

Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union

9 Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union (OJ 2010 C 83, p. 290), annexed to the Treaty of Lisbon, authorised 25 Member States, within the institutional and legal framework of the European Union, to establish closer cooperation among themselves in areas covered by the Schengen acquis. Accordingly, under Article 2 of that protocol:

'The Schengen acquis shall apply to the Member States referred to in Article 1, without prejudice to Article 3 of the Act of Accession of 16 April 2003 or to Article 4 of the Act of Accession of 25 April 2005. The Council will substitute itself for the Executive Committee established by the Schengen agreements.'

Polish law

10 Article 327 of the Kodeks postępowania karnego (Criminal Procedure Code) provides, at paragraph 2:

‘An investigation procedure which has been finally closed may be reopened, by order of the Public Prosecutor’s Office, against a person who has been subject to such a procedure as a suspect, only where essential facts or evidence, which were not known during the previous procedure, come to light. …’

11 Article 328 of the Criminal Procedure Code provides:

‘1. The Public Prosecutor’s Office may annul a final decision closing an investigation procedure against a person who has been subject to such a procedure as a suspect where it finds that closure of the investigation procedure was unfounded …

2. After the expiry of six months from the date when closure of the investigation procedure has become final, the public prosecutor’s office may annul or vary the decision, or the reasons given for it, only in favour of the suspect.’

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

12 According to the order for reference, the Staatsanwaltschaft Hamburg (Public Prosecutor’s Office, Hamburg, Germany) alleges that the accused, on 2 October 2005 in Hamburg (Germany), committed acts which, under German criminal law, are classified as extortion with aggravating factors. At the time of the crime, the accused fled in the vehicle belonging to the victim in the main proceedings. A criminal investigation was initiated against the accused in Hamburg.

13 On 20 October 2005 the Polish authorities stopped a car driven by the accused in the course of a roadside check in Kołobrzeg (Poland) and arrested him with a view to the enforcement of a term of imprisonment to which he had been sentenced in Poland in a different case. After making enquiries about the vehicle driven by the accused, the Prokuratura Rejonowa w Kołobrzegu (District Public Prosecutor’s Office, Kołobrzeg, Poland) opened an investigation procedure against him, accusing him of extortion with aggravating factors, as laid down in Article 282 of the Polish Criminal Code, on account of his actions in Hamburg on 2 October 2005.

14 As a matter of mutual legal assistance, the Prokuratura Okręgowa w Koszalinie (Regional Public Prosecutor’s Office, Koszalin, Poland) requested copies of the investigation file from the Hamburg Public Prosecutor’s Office. Those copies were provided in August 2006.

15 In December 2006, the Kołobrzeg District Public Prosecutor’s Office sent to the Hamburg Public Prosecutor’s Office its decision of 22 December 2006 terminating, for lack of sufficient evidence, the criminal proceedings against the accused.

16 It is common ground that the reasons for that decision were that the accused had refused to give a statement and that the victim in the main proceedings and a hearsay witness were living in Germany, so that it had not been possible to interview them in the course of the investigation and had therefore not been possible to verify the statements made by the victim, which were, in parts, vague and contradictory.

17 The referring court adds that, according to the appeal guidance enclosed with the decision terminating the criminal proceedings, the persons concerned had a right to appeal against that decision within a period of seven days from service of the decision. The victim in the main proceedings does not appear to have brought such an appeal.

18 On 24 July 2009 the Hamburg Public Prosecutor's Office issued a European arrest warrant against the accused, having already obtained a national arrest warrant against him from the Amtsgericht Hamburg (District Court, Hamburg, Germany) on 9 January 2006. By letter dated 4 September 2009 the Republic of Poland was requested to surrender the accused to the Federal Republic of Germany. Execution of the European arrest warrant was refused by decision of the Sąd Okręgowy w Koszalinie (Regional Court, Koszalin, Poland) of 17 September 2009, in view of the decision of the Kołobrzeg District Public Prosecutor's Office terminating the criminal proceedings, which that court classified as final for the purposes of the Polish Criminal Procedure Code.

19 On 7 February 2014, the accused, who was still wanted in Germany, was arrested in Berlin (Germany). The Hamburg Public Prosecutor's Office brought charges against him on 17 March 2014. The Landgericht Hamburg (Regional Court, Hamburg, Germany) refused to open trial proceedings, basing its decision on the fact that further prosecution had been barred, for the purposes of Article 54 of the CISA, by the decision of the Kołobrzeg District Public Prosecutor's Office terminating the criminal proceedings. Consequently, the Landgericht, by decision of 4 April 2014, discharged the arrest warrant and the accused, who had been remanded in custody, was then released.

20 The referring court, hearing an appeal brought by the Hamburg Public Prosecutor's Office against that decision, takes the view that, under the German law applicable in this regard, the evidence against the accused is sufficient to justify the opening of trial proceedings before the Landgericht Hamburg (Regional Court, Hamburg) and the acceptance of the indictment for the purposes of those proceedings, unless the principle of *ne bis in idem* laid down in Article 54 of the CISA and Article 50 of the Charter is a bar to that.

21 In that regard, the referring court is uncertain whether the reservation made by the Federal Republic of Germany under Article 55(1)(a) of the CISA remains valid. If that were the case, the *ne bis in idem* principle would not apply in the present case as the acts which the accused is alleged to have committed took place on German territory and the German law enforcement authorities did not request the Polish authorities to bring the prosecution in accordance with Article 55(4) of the CISA.

22 In the event of that reservation not being valid, the referring court is uncertain whether, since the acts giving rise to prosecution in Germany and Poland are the same, the accused may, as a result of the decision of the Kołobrzeg District Public Prosecutor's Office, be regarded as a person whose trial has been 'finally disposed of' within the meaning of Article 54 of the CISA or who has been 'finally acquitted' within the meaning of Article 50 of the Charter. It takes the view that the case before it can be distinguished from the case which gave rise to the judgment of 5 June 2014 in *M* (C-398/12, EU:C:2014:1057), owing to the fact that no detailed investigation was carried out prior to the decision of 22 December 2006 terminating the criminal proceedings. The referring court also has doubts as to whether, for such a decision to be final, certain obligations imposed to penalise the unlawful conduct must have been performed.

23 In those circumstances, the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do the reservations declared at the time of ratification by the contracting parties to the CISA pursuant to Article 55(1)(a) of the CISA — specifically, the reservation [relating to Article 54 of the CISA] — continue in force following the integration of the Schengen acquis into the legal framework of the European Union by [Protocol (No 2) integrating the Schengen acquis into the framework of the European Union], as preserved by [Protocol (No 19) to the Schengen acquis integrated into the framework of the European Union]? Are these exceptions proportionate limitations on Article 50 of the Charter, within the meaning of Article 52(1) of the Charter?

(2) If that is not the case, are the prohibitions on double punishment and double prosecution laid down by Article 54 of the CISA and Article 50 of the Charter to be interpreted as prohibiting prosecution of an accused person in one Member State — in the present case, Germany — where his prosecution in another Member State — in the present case, Poland — has been discontinued by the public prosecutor's office, without any obligations imposed by way of penalty having been fulfilled and without any detailed investigation, for factual reasons in the absence of sufficient evidence for a probable conviction, and can be reopened only if essential circumstances previously unknown come to light, where such new circumstances have not in fact emerged?'

The jurisdiction of the Court

24 It can be seen from the order for reference that the request for a preliminary ruling is based on Article 267 TFEU, whereas the questions referred concern the CISA, a convention adopted under Title VI of the EU Treaty, in the version in force before the Treaty of Lisbon.

25 It is undisputed in this regard that the system laid down in Article 267 TFEU applies to the Court's jurisdiction to give preliminary rulings under Article 35 EU, itself applicable until 1 December 2014, subject to the conditions laid down by that latter provision (judgment of 27 May 2014 in *Spasic*, C-129/14 PPU, EU:C:2014:586, paragraph 43).

26 The Federal Republic of Germany made a declaration under Article 35(2) EU accepting the jurisdiction of the Court of Justice to give preliminary rulings in accordance with the arrangements laid down in Article 35(3)(b) EU, as can be seen from the information concerning the date of entry into force of the Treaty of Amsterdam, published in the *Official Journal of the European Communities* of 1 May 1999 (OJ 1999 L 114, p. 56).

27 In those circumstances, the fact that the order for reference does not mention Article 35 EU, but instead refers to Article 267 TFEU, cannot of itself mean that the Court does not have jurisdiction to answer the questions raised by the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg) (see, to that effect, judgment of 27 May 2014 in *Spasic*, C-129/14 PPU, EU:C:2014:586, paragraph 45).

28 It follows from the foregoing that the Court has jurisdiction to answer the questions referred.

Consideration of the questions referred

29 By its questions, the referring court asks, in essence (i) whether the declaration made by the Federal Republic of Germany under Article 55(1)(a) of the CISA remains valid and (ii) if Question 1 is answered in the negative, whether the accused's case has been 'finally disposed of', for the purposes of Article 54 of the CISA and Article 50 of the Charter, in circumstances such as those at issue in the main proceedings.

30 Since the question of the possible applicability of the exception in Article 55(1)(a) of the CISA to the *ne bis in idem* rule will arise only when, in circumstances such as those in issue in the main proceedings, that rule applies because a person's trial has been 'finally disposed of' within the meaning of Article 54 of the CISA, it is appropriate to start by answering Question 2.

Question 2

31 It should be recalled at the outset that the Court has already held — at paragraph 35 of the judgment of 5 June 2014 in *M* (C-398/12, EU:C:2014:1057) — that, since the right not to be tried or punished twice in criminal proceedings for the same offence is set out both in Article 54 of the CISA and in Article 50 of the Charter, Article 54 must be interpreted in the light of Article 50.

32 The Court therefore considers that, by Question 2, the referring court is essentially asking whether the *ne bis in idem* principle laid down in Article 54 of the CISA, read in the light of Article 50 of the Charter, must be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person — albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, may be characterised as a final decision for the purposes of those articles, when that procedure was closed without a detailed investigation having been carried out.

33 As is clear from the wording of Article 54 of the CISA, no one may be prosecuted in a Contracting State for the same acts as those in respect of which his trial has been 'finally disposed of' in another Contracting State.

34 For a person to be regarded as someone whose trial has been 'finally disposed of' within the meaning of Article 54 of the CISA, in relation to the acts which he is alleged to have committed, it is necessary, in the first place, that further prosecution has been definitively barred (see, to that effect, judgment of 5 June 2014 in *M*, C-398/12, EU:C:2014:1057, paragraph 31 and the case-law cited).

35 That first condition must be assessed on the basis of the law of the Contracting State in which the criminal-law decision in question has been taken. A decision which does not, under the law of the Contracting State which instituted criminal proceedings against a person, definitively bar further prosecution at national level cannot, in principle, constitute a procedural obstacle to the opening or continuation of criminal proceedings in respect of the same acts against that person in another Contracting State (see, to that effect, judgments of 22 December 2008 in *Turanský*, C-491/07, EU:C:2008:768, paragraph 36, and 5 June 2014 in *M*, C-398/12, EU:C:2014:1057, paragraphs 32 and 36).

36 The order for reference indicates that, in the case in the main proceedings, under Polish law the decision of the Kołobrzeg District Public Prosecutor's Office terminating the criminal proceedings precludes any further prosecution in Poland.

37 It also appears from the documents before the Court that neither (i) the possibility, provided for in Article 327(2) of the Criminal Procedure Code, of reopening the investigation procedure where essential facts or evidence, which were not known during the previous procedure, come to light nor (ii) the right of the Principal Public Prosecutor, under Article 328 of that code, to annul a final decision closing the investigation procedure where he finds that the closure of the procedure was unfounded, calls into question, under Polish law, the fact that further prosecution is definitively precluded.

38 As regards the fact that (i) the decision at issue in the main proceedings was taken by the Kołobrzeg District Public Prosecutor's Office in its capacity as a prosecuting authority and (ii) no penalty was enforced, neither of those factors is decisive for the purpose of ascertaining whether that decision definitively bars prosecution.

39 Article 54 of the CISA is also applicable where an authority responsible for administering criminal justice in the national legal system concerned, such as the Kołobrzeg District Public Prosecutor's Office, issues decisions definitively discontinuing criminal proceedings in a Member State, although

such decisions are adopted without the involvement of a court and do not take the form of a judicial decision (see, to that effect, judgment of 11 February 2003 in *Gözütok and Brügge*, C-187/01 and C-385/01, EU:C:2003:87, paragraphs 28 and 38).

40 As regards the absence of a penalty, the Court observes that it is only where a penalty has been imposed that Article 54 of the CISA lays down the condition that the penalty has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the Contracting State of origin.

41 The reference to a penalty cannot therefore be interpreted in such a way that the application of Article 54 of the CISA is — other than in a case in which a penalty has been imposed — subject to an additional condition.

42 In order to determine whether a decision such as that at issue in the main proceedings constitutes a decision finally disposing of the case against a person for the purposes of Article 54 of the CISA, it is necessary, in the second place, to be satisfied that that decision was given after a determination had been made as to the merits of the case (see, to that effect, judgments of 10 March 2005 in *Miraglia*, C-469/03, EU:C:2005:156, paragraph 30, and 5 June 2014 in *M*, C-398/12, EU:C:2014:1057, paragraph 28).

43 It is necessary, for that purpose, to take into account both the objective of the rules of which Article 54 of the CISA forms part and the context in which it occurs (see, to that effect, judgment of 16 October 2014 in *Welmory*, C-605/12, EU:C:2014:2298, paragraph 41 and the case-law cited).

44 In that regard, it is clear from the Court's case-law that the *ne bis in idem* principle in Article 54 of the CISA is intended, on the one hand, to ensure, in the area of freedom, security and justice, that a person whose trial has been finally disposed of is not prosecuted in several Contracting States for the same acts on account of his having exercised his right to freedom of movement, the aim being to ensure legal certainty — in the absence of harmonisation or approximation of the criminal laws of the Member States — through respect for decisions of public bodies which have become final (see, to that effect, judgments of 28 September 2006 in *Gasparini and Others*, C-467/04, EU:C:2006:610, paragraph 27; 22 December 2008 in *Turanský*, C-491/07, EU:C:2008:768, paragraph 41; and 27 May 2014 in *Spasic*, C-129/14 PPU, EU:C:2014:586, paragraph 77).

45 On the other hand, however, whilst Article 54 of the CISA aims to ensure that a person, once he has been found guilty and served his sentence, or, as the case may be, been acquitted by a final judgment in a Contracting State, may travel within the Schengen area without fear of being prosecuted in another Contracting State for the same acts, it is not intended to protect a suspect from having to submit to investigations that may be undertaken successively, in respect of the same acts, in several Contracting States (judgment of 22 December 2008 in *Turanský*, C-491/07, EU:C:2008:768, paragraph 44).

46 Article 54 of the CISA should in this respect be interpreted in the light of Article 3(2) TEU, which states that the European Union is to offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with regard to, amongst other matters, the prevention and combating of crime.

47 Therefore, the interpretation of the final nature, for the purposes of Article 54 of the CISA, of a decision in criminal proceedings in a Member State must be undertaken in the light not only of the need to ensure the free movement of persons but also of the need to promote the prevention and combating of crime within the area of freedom, security and justice.

48 In view of the foregoing considerations, a decision terminating criminal proceedings, such as the decision in issue before the referring court — which was adopted in a situation in which the prosecuting authority, without a more detailed investigation having been undertaken for the purpose of gathering and examining evidence, did not proceed with the prosecution solely because the accused had refused to give a statement and the victim and a hearsay witness were living in Germany, so that it had not been possible to interview them in the course of the investigation and had therefore not been possible to verify statements made by the victim — does not constitute a decision given after a determination has been made as to the merits of the case.

49 The consequence of applying Article 54 of the CISA to such a decision would be to make it more difficult, indeed impossible, actually to penalise in the Member States concerned the unlawful conduct alleged against the accused. First, that decision to terminate proceedings was adopted by the judicial authorities of a Member State when there had been no detailed assessment whatsoever of the unlawful conduct alleged against the accused. Second, the bringing of criminal proceedings in another Member State in respect of the same acts would be jeopardised. Such a consequence would clearly run counter to the very purpose of Article 3(2) TEU (see, to that effect, judgment of 10 March 2005 in *Miraglia*, C-469/03, EU:C:2005:156, paragraphs 33 and 34).

50 Finally, as the Court has already stated, Article 54 of the CISA necessarily implies that the Contracting States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied (judgment of 11 December 2008 in *Bourquain*, C-297/07, EU:C:2008:708, paragraph 37 and the case-law cited).

51 That mutual trust requires that the relevant competent authorities of the second Contracting State accept at face value a final decision communicated to them which has been given in the first Contracting State.

52 However, that mutual trust can prosper only if the second Contracting State is in a position to satisfy itself, on the basis of the documents provided by the first Contracting State, that the decision of the competent authorities of that first State does indeed constitute a final decision including a determination as to the merits of the case.

53 Therefore, as the Advocate General has observed at points 74 to 78 and 84 of his Opinion, a decision of the prosecuting authorities terminating criminal proceedings and closing the investigation procedure, such as the decision in issue in the main proceedings, cannot be held to have been given after a determination as to the merits of the case and, accordingly, cannot be characterised as a final decision for the purposes of Article 54 of the CISA when it is clear from the reasons actually stated in that decision that there was no detailed investigation, as otherwise the mutual trust between the Member States could be undermined. In that regard, the fact that neither the victim nor a potential witness was interviewed is an indication that no detailed investigation was undertaken in the case in the main proceedings.

54 In the light of the foregoing, the answer to Question 2 is that the principle of *ne bis in idem* laid down in Article 54 of the CISA, read in the light of Article 50 of the Charter, must be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, cannot be characterised as a final decision for the purposes of those articles when it is clear from the statement of reasons for that decision that the procedure was closed without a detailed investigation having been carried out; in that regard, the fact that neither the victim nor a potential witness was interviewed is an indication that no such investigation took place.

Question 1

55 In view of the answer to the second question, it is no longer necessary to reply to the first question.

Costs

56 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), rules as follows:

The principle of *ne bis in idem* laid down 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, which was signed in Schengen (Luxembourg) on 19 June 1990, 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 of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, cannot be characterised as a final decision for the purposes of those articles when it is clear from the statement of reasons for that decision that the procedure was closed without a detailed investigation having been carried out; in that regard, the fact that neither the victim nor a potential witness was interviewed is an indication that no such investigation took place.

[Signatures]