Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

24 October 2018*

(Reference for a preliminary ruling — Principles of EU law — Sincere cooperation — Procedural autonomy — Principles of equivalence and effectiveness — National legislation laying down a remedy allowing criminal proceedings to be reheard in the event of infringement of the European Convention for the Protection of Human Rights and Fundamental Freedoms — No obligation to extend that procedure to cases of alleged infringement of the fundamental rights enshrined in EU law)

In Case C-234/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 23 January 2017, received at the Court on 4 May 2017, in the proceedings relating to a request for mutual assistance in criminal matters concerning

XC,

YB,

ZA

intervener:

Generalprokuratur,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev (Rapporteur), C. Toader and F. Biltgen, Presidents of Chambers, M. Ilešič, E. Levits, L. Bay Larsen, M. Safjan, D. Šváby, C.G. Fernlund, C. Vajda, and S. Rodin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 20 March 2018,

after considering the observations submitted on behalf of

– the Austrian Government, by J. Schmoll, K. Ibili and G. Eberhard, acting as Agents,

– the Hungarian Government, by M.Z. Fehér, G. Koós and G. Tornyai, acting as Agents,

– the European Commission, by H. Krämer and R. Troosters, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 5 June 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(3) TEU and the principles of equivalence and effectiveness.

2 The request has been made in proceedings for mutual legal assistance in criminal matters, initiated before the Austrian judicial authorities at the request of the Staatsanwaltschaft des Kantons St. Gallen (Public Prosecutor's Office for the Canton of St Gallen, Switzerland), concerning XC, YB and ZA, suspected, in Switzerland, of having committed the offence of tax evasion, within the meaning of the Swiss law governing value added tax (VAT), and other criminal offences.

Legal context

EU law

3 Article 50 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990, which entered into force on 26 March 1995 (OJ 2000 L 239, p. 19, 'the CISA'), which appears in Chapter 2, entitled 'Mutual Assistance in Criminal Matters', of Title III thereof, provides in paragraph 1:

'The Contracting Parties undertake to afford each other, in accordance with the [European Convention on Mutual Assistance in Criminal Matters (ETS No 30), signed at Strasbourg on 20 April 1959 and the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974], mutual assistance as regards infringements of their laws and regulations on excise duties, value added tax and customs duties. Customs provisions shall mean the rules laid down in Article 2 of the Convention of 7 September 1967 between Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands on Mutual Assistance between Customs Administrations, and Article 2 of Council Regulation (EEC) No 1468/81 [of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters (OJ 1981 L 144, p. 1)].'

4 Article 54 of the CISA, which is in Chapter 3, entitled 'Application of the *ne bis in idem* principle', of Title III of that Convention, 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.'

Austrian law

5 The Strafrechtsänderungsgesetz (Law on criminal law reform, BGBl. 762/1996) inserted into the Strafprozessordnung (Code of Criminal Procedure) Paragraphs 363a to 363c, concerning the legal institution of the 'rehearing of criminal proceedings' (*Erneuerung des Strafverfahrens*), in order to implement the judgments of the European Court of Human Rights.

6 Paragraph 363a of the Code of Criminal Procedure states:

'(1) Where a judgment of the European Court of Human Rights finds that the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950] or one of the protocols thereto, has been infringed by a judgment or decision of a criminal court, the case shall, on application, be reheard if it is possible that the infringement might have affected the substance of the criminal court's decision in a manner detrimental to the person concerned.

(2) All applications for a rehearing shall be adjudicated upon by the Oberster Gerichtshof (Supreme Court, Austria). The application may be made by the person affected by the infringement found or by the Generalprokurator (Principal Public Prosecutor); Paragraph 282(1) shall apply *mutatis mutandis*. The application shall be lodged with the Oberster Gerichtshof [(Supreme Court)]. The person concerned shall be given an opportunity to comment on an application made by the Principal Public Prosecutor; the Principal Public Prosecutor shall be given an opportunity to comment on an application made by the person concerned. Paragraph 35(2) shall apply *mutatis mutandis*'.

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

7 During 2012, the Public Prosecutor's Office for the Canton of St Gallen opened an investigation into tax evasion concerning XC, YB and ZA, who were alleged to have obtained VAT refunds totalling 835 374.17 Swiss francs (CHF) (approximately EUR 716 000) by making false declarations to the Swiss tax authorities. The Prosecutor's Office submitted requests for mutual legal assistance in criminal matters to the Austrian judicial authorities, with a view to the parties concerned being questioned by the Staatsanwaltschaft Feldkirch (Public Prosecutor's Office, Feldkirch, Austria).

8 Several appeals contesting the organisation of the requested interviews have been lodged in Austria by XC, YB and ZA, on the ground, in essence, that the existence of criminal proceedings concluded in Germany and Liechtenstein in 2011 and 2012 precluded, because of the *ne bis in idem* principle enshrined in Article 54 of the CISA, further prosecutions concerning suspected criminal offences committed to the detriment of the Swiss tax authorities being brought against them. In an order of 9 October 2015 the Oberlandesgericht Innsbruck (Higher Regional Court, Innsbruck, Austria), ruling at last instance, found that there were no elements pointing to an infringement of Article 54 of the CISA.

9 Although that order had become final, XC, YB and ZA applied, on the basis of Paragraph 363a of the Code of Criminal Procedure, to the Oberster Gerichtshof (Supreme Court) for a rehearing of the criminal proceedings, relying on the fact that the grant of the requests for mutual legal assistance at issue infringed certain of their rights enshrined not only in the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), but also in the CISA and the Charter of Fundamental Rights of the European Union ('the Charter').

10 The referring court notes that, according to its settled case-law, the rehearing of criminal proceedings is only possible where there is an infringement of the rights guaranteed by the ECHR, found by the European Court of Human Rights ('the ECtHR') or, even before any decision by the ECtHR finding

such an infringement, by the Oberster Gerichtshof (Supreme Court). That court is uncertain whether the principle of sincere cooperation and the principles of equivalence and effectiveness require that the rehearing of criminal proceedings should also be ordered in cases of infringement of fundamental rights enshrined in EU law, even where that situation is not expressly provided for in the text governing that legal remedy.

11 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is EU law, in particular Article 4(3) TEU in conjunction with the principles of equivalence and effectiveness inferred from it, to be interpreted as requiring the Oberster Gerichtshof (Supreme Court), upon application by the person concerned, to review a final decision delivered by a criminal court with respect to an alleged infringement of EU law (in this case, Article 50 of the [Charter] and Article 54 of the [CISA]), where national law (Paragraph 363a of the Code of Criminal Procedure) provides for such a review only with respect to an alleged violation of the ECHR or one of the protocols thereto?'

Consideration of the question referred

Admissibility

12 The Austrian Government raises a plea of inadmissibility in respect of the present request for a preliminary ruling.

13 In the first place, that government argues that the legal situations giving rise to the dispute in the main proceedings do not fall within the scope of EU law, since the legal remedy referred to in paragraph 363a of the Code of Criminal Procedure is provided for in the event of infringement not of EU law but of the ECHR.

14 However, where, as in the main proceedings, the authorities of a Member State accept a request for judicial assistance based on the CISA, which forms an integral part of EU law by virtue of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty of Lisbon (OJ 2010 C 83, p. 290), they implement EU law within the meaning of Article 51(1) of the Charter. It has, moreover, been held that Article 54 of the CISA must be interpreted in the light of Article 50 of the Charter, Article 54 serving to ensure respect for the essence of Article 50 (see, to that effect, judgments of 27 May 2014, *Spasic*, C-129/14 PPU, EU:C:2014:586, paragraph 59; of 5 June 2014, *M*, C-398/12, EU:C:2014:1057, paragraph 35; and of 29 June 2016, *Kossowski*, C-486/14, EU:C:2016:483, paragraph 31). Therefore, the factual and legal situation giving rise to the case in the main proceedings falls within the scope of EU law.

15 In the second place, the Austrian Government maintains that the present request for a preliminary ruling is inadmissible on the ground that the referring court has already held that Article 54 of the CISA constitutes a sufficient legal basis for requesting a rehearing of criminal proceedings under Paragraph 363a of the Code of Criminal Procedure. However, that court does not explain why it considers that an answer to the question referred for a preliminary ruling is necessary.

16 According to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object,

where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, in particular, judgment of 27 June 2018, *Altiner and Ravn*, C-230/17, EU:C:2018:497, paragraph 22).

17 In the present case, the referring court has stated the reasons why the interpretation of the provision and of the principles referred to in the question referred for a preliminary ruling is necessary in order to resolve the dispute in the main proceedings. It is apparent from that statement that the Court's answer to the question whether that court must, in the context of the examination of a request for rehearing of criminal proceedings, decide on allegations of infringement of the fundamental right guaranteed by Article 50 of the Charter and Article 54 of the CISA is likely to have a direct impact on the assessment of the applicants' situation in the main proceedings.

18 While it is true that Article 52(3) of the Charter provides that, in so far as that charter contains rights which correspond to those guaranteed by the ECHR, the meaning and scope of those rights are to be the same as those laid down by that convention, it is also clear from that provision that EU law may provide more extensive protection.

19 In those circumstances, the question referred for a preliminary ruling is admissible.

Substance

20 By its question, the referring court asks, in essence, whether EU law, in particular the principles of equivalence and effectiveness, must be interpreted as meaning that it requires the national court to extend to infringements of EU law, in particular infringements of the fundamental right guaranteed in Article 50 of the Charter and Article 54 of the CISA, a remedy under national law which, in the event of infringement of the ECHR or one of the protocols thereto, permits the rehearing of criminal proceedings closed by a national decision having the force of *res judicata*.

21 In that regard, it should be borne in mind that, in the absence of EU legislation in this area, the rules implementing the principle of *res judicata* are a matter for the national legal order, in accordance with the principle of the procedural autonomy of the Member States, but must be consistent with the principles of equivalence and effectiveness (judgment of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 54 and the case-law cited).

22 In accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see, to that effect, judgments of 16 December 1976, *Rewe-Zentralfinanz and Rewe-Zentral*, 33/76, EU:C:1976:188, paragraph 5; of 14 December 1995, *Peterbroeck*, C-312/93, EU:C:1995:437, paragraph 12; of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 46; and of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 36).

23 The requirements stemming from those principles apply both to the designation of the courts and tribunals having jurisdiction to hear and determine actions based on EU law and to the definition of the procedural rules governing such actions (see, to that effect, judgments of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 47, and of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 37).

24 The observance of those requirements must be analysed by reference to the role of the rules concerned in the procedure viewed as a whole, to the conduct of that procedure and to the special features of those rules before the various national courts (judgment of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 38 and the case-law cited).

The principle of equivalence

25 According to the case-law referred to in paragraph 22 of this judgment, the principle of equivalence prohibits a Member State from laying down less favourable procedural rules for actions for safeguarding rights that individuals derive from EU law than those applicable to similar domestic actions.

26 In that regard, it is apparent from the decision to refer and from a reply to a question put by the Court to the Austrian Government at the hearing that the action for the rehearing of criminal proceedings, provided for in Paragraph 363a of the Code of Criminal Procedure, must be regarded as a domestic action.

27 It must, therefore, be ascertained whether that action may be regarded as similar to an action brought to safeguard EU law, in particular the fundamental rights enshrined by that law, taking into consideration the purpose, cause of action and essential characteristics of those actions (see, to that effect, judgment of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 39 and the case-law cited).

28 In order to illustrate its concerns as regards the observance of the principle of equivalence by Paragraph 363a of the Code of Criminal Procedure, the referring court refers to the possibility that, in the context of an application based on that provision, a complaint alleging infringement of a fundamental right guaranteed by the ECHR may have the same purpose and basis as a complaint alleging infringement of a right guaranteed by the Charter. It also states, in essence, that, under Article 52(3) of the Charter, rights guaranteed by that charter have at least the same scope as the corresponding rights guaranteed by the ECHR.

29 Under Paragraph 363a of the Code of Criminal Procedure, the rehearing of criminal proceedings is provided for in circumstances where it is found in a judgment of the European Court of Human Rights that a judgment or a decision of a criminal court has infringed the ECHR or one of the protocols thereto. It is, therefore, clear from the wording of that provision that that remedy requires, in principle, the prior finding by the European Court of Human Rights, of an infringement of the ECHR or one of the protocols thereto.

30 The referring court states, however, that it held, in a landmark ruling of 1 August 2007, that the rehearing of criminal proceedings is not limited to a situation where the European Court of Human Rights has previously found that a judgment or a decision of a criminal court has infringed the ECHR or one of the protocols thereto, but that it may also be applied where the referring court has itself identified the existence of such an infringement. Thus, where proceedings are brought before that court instead of the European Court of Human Rights, and not on the basis of a finding by the European Court of Human Rights of an infringement of the ECHR or one of the protocols thereto, the Oberster Gerichtshof (Supreme Court) extends, provided that the conditions of admissibility applicable to actions brought before the European Court of Human Rights are satisfied, that procedure to anyone who claims to have been subject to an infringement in respect of one of the rights guaranteed by that convention and those protocols, thus anticipating a decision of the European Court of Human Rights as to the substance.

31 It is apparent from the file before the Court that the exceptional remedy laid down by Paragraph 363a of the Code of Criminal Procedure is justified by the very nature of the ECHR and, as was laid down by the Austrian legislature, is connected by a close functional relationship to the proceedings before the European Court of Human Rights. That legal remedy was inserted ‘in order to implement the judgments of the European Court of Human Rights’, the Austrian Government noting that the legislature had intended, in that way, to comply with the obligation laid down in Article 46 of the ECHR.

32 It must be observed in that connection, as noted by the Advocate General in point 75 of his Opinion, that the requirement in Article 35(1) of the ECHR, that the European Court of Human Rights may only deal with the matter after all domestic remedies have been exhausted, implies the existence of a decision of a national court adjudicating at last instance and with the force of *res judicata*.

33 As is apparent from the file before the Court, it is precisely in order to take account of that situation and to ensure the application in the national legal system of rulings made by the European Court of human Rights that the procedure laid down by Paragraph 363a of the Code of Criminal Procedure was introduced, permitting the rehearing of criminal proceedings closed by a legal decision having the force of *res judicata*.

34 Furthermore, it follows from the request for a preliminary ruling and the explanations provided by the Austrian Government that the close functional relationship between the procedure laid down in that provision and the procedure before the European Court of Human Rights is not called into question by the extension of the scope of the former procedure made by the landmark ruling of the Oberster Gerichtshof (Supreme Court) of 1 August 2007. As noted in paragraph 30 of the present judgment, an action brought under that provision before any finding by the European Court of Human Rights of an infringement of the ECHR or one of the protocols thereto is subject to the same conditions of admissibility as an application submitted before that court and, according to the explanations provided by the referring court, has the sole purpose of anticipating such a finding.

35 It should be noted that the procedure laid down in Paragraph 363a of the Code of Criminal Procedure, given its purpose, cause of action and essential characteristics as set out above, cannot be regarded as similar to an action seeking to protect a fundamental right guaranteed by EU law, in particular by the Charter; that is because of the specific characteristics arising from the very nature of that law.

36 In that regard, it should be recalled, as the Court has noted many times, that EU law is characterised by the fact that it stems from an independent source of law, the Treaties, by its primacy over the laws of the Member States (see, to that effect, judgments of 15 July 1964, *Costa*, 6/64, EU:C:1964:66, and of 17 December 1970, *Internationale Handelsgesellschaft*, 11/70, EU:C:1970:114, paragraph 3; Opinion1/91 (EEA Agreement — I), of 14 December 1991, EU:C:1991:490, paragraph 21, and 1/09, of 8 March 2011, EU:C:2011:123, paragraph 65, and judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 59) and by the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves (see, to that effect, judgment of 5 February 1963, *van Gend & Loos*, 26/62, EU:C:1963:1, p. 23; Opinion 1/09, of 8 March 2011, EU:C:2011:123, paragraph 65 and Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 166 and the case-law cited).

37 Also at the heart of that legal structure are the fundamental rights recognised by the Charter (which, under Article 6(1) TEU, has the same legal value as the Treaties), respect for those rights being a condition of the lawfulness of EU acts, so that measures that are incompatible with those rights are not acceptable in the European Union (see, to that effect, judgments of 18 June 1991, *ERT*, C-260/89, EU:C:1991:254, paragraph 41; of 29 May 1997, *Kremzow*, C-299/95, EU:C:1997:254, paragraph 14; of 12 June 2003, *Schmidberger*, C-112/00, EU:C:2003:333, paragraph 73; and of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 283 and 284 and Opinion 2/13 (Accession of the European Union to the ECHR), of 18 December 2014, EU:C:2014:2454, paragraph 169).

38 The Court has also held, with regard to the principle of *ne bis in idem* enshrined in Article 50 of the Charter, which is at issue in the main proceedings, that that provision has direct effect (judgment of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 68).

39 In order to ensure that the specific characteristics and the autonomy of the EU legal order are preserved, the Treaties have established a judicial system intended to ensure consistency and uniformity in the interpretation of EU law (Opinion 2/13 (Accession of the EU to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 174).

40 In that context, it is for the national courts and tribunals and for the Court of Justice to ensure the full application of EU law in all Member States and to ensure judicial protection of an individual's rights under that law (Opinion 1/09, EU:C:2011:123, paragraph 68 and the case-law cited, and Opinion 2/13 (Accession of the Union to the ECHR), of 18 December 2014, EU:C:2014:2454, paragraph 175).

41 The judicial system as thus conceived has as its keystone the preliminary ruling procedure provided for in Article 267 TFEU, which, by setting up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, has the objective of securing uniform interpretation of EU law (see, to that effect, judgment of 5 February 1963, *van Gend & Loos*, 26/62, EU:C:1963:1, p. 23), thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (Opinion 2/13 (Accession of the Union to the ECHR), of 18 December 2014, EU:C:2014:2454, paragraph 176).

42 In accordance with settled case-law, Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them. National courts are, moreover, free to exercise that discretion at whatever stage of the proceedings they consider appropriate (judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 17 and the case-law cited).

43 In addition, it must be borne in mind that, under the third paragraph of Article 267 TFEU, when there is no judicial remedy under national law against the decision of a court or tribunal of a Member State, that court or tribunal is, in principle, obliged to bring the matter before the Court of Justice, where a question relating to the interpretation of EU law is raised before it (see, to that effect, judgment of 9 September 2015, *Ferreira da Silva e Brito and Others*, C-160/14, EU:C:2015:565, paragraph 37 and the case-law cited).

44 Lastly, according to the settled case-law of the Court, the national courts called upon, within the exercise of their jurisdiction, to apply provisions of EU law, are under a duty to give full effect to those provisions, if necessary refusing of their own motion to apply any conflicting provision of national law, and it is not necessary for that court to request or to await the prior setting aside of that provision of national law by legislative or other constitutional means (see, to that effect, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraphs 21 and 24, and of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 46 and the case-law cited).

45 Fundamental rights, as recognised in particular by the Charter, must therefore be interpreted and applied within the European Union in accordance with that constitutional framework (Opinion 2/13 (Accession of the Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 177).

46 Consequently, as has been stated in paragraph 36 of this judgment and as the Advocate General observed in point 55 of his Opinion, that constitutional framework guarantees everyone the opportunity to obtain the effective protection of rights conferred by the EU legal order before a national decision with the force of *res judicata* even comes into existence.

47 In the light of the foregoing, it must be concluded that the differences between the procedure laid down in Paragraph 363a of the Code of Criminal Procedure, on the one hand, and actions for protecting rights which individuals derive from EU law, on the other hand, are such that those actions cannot be regarded as similar within the meaning of the case-law referred to in paragraphs 22 to 25 of this judgment.

48 It follows that the principle of equivalence does not require national courts to extend, in the event of an alleged infringement of a fundamental right guaranteed by EU law, in particular by the Charter, a remedy under national law which, in the event of infringement of the ECHR or one of the protocols thereto, permits the rehearing of criminal proceedings closed by a national decision which has the force of *res judicata*.

The principle of effectiveness

49 As regards the principle of effectiveness, it should be recalled that, according to settled case-law, every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary, inter alia, to take into consideration, where relevant, the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the procedure (judgment of 22 February 2018, *INEOS Köln*, C-572/16, EU:C:2018:100, paragraph 44).

50 In order to assess the existence of an infringement of the EU law principle of effectiveness, it must be determined whether the impossibility of requesting, on the basis of Paragraph 363a of the Code of Criminal Procedure, the rehearing of criminal proceedings closed by a decision which has the force of *res judicata* by relying on the infringement of a fundamental right guaranteed by EU law, as enshrined in Article 50 of the Charter and Article 54 of the CISA, makes it impossible in practice or excessively difficult to exercise the rights conferred by the EU legal order.

51 In that regard, it must be observed that the TFEU was not intended to require the Member States to introduce in proceedings before their national courts, with a view to ensuring the protection of the rights that individuals derive from EU law, remedies other than those laid down by national law (see, to that effect, judgment of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 40 and the case-law cited).

52 Furthermore, attention should be drawn to the importance, both in the legal order of the European Union and in national legal systems, of the principle of *res judicata*. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question (judgments of 16 March 2006, *Kapferer*, C-234/04, EU:C:2006:178, paragraph 20; of 29 June 2010, *Commission* v *Luxembourg*, C-526/08, EU:C:2010:379, paragraph 26; of 29 March 2011, *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 123; and of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 58).

53 Therefore, EU law does not require a national court to disapply domestic rules of procedure conferring finality on a judgment, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law (judgments of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 59 and the case-law cited, and of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 29).

54 Accordingly, EU law does not require a judicial body automatically to go back on a judgment having the authority of *res judicata* in order to take into account the interpretation of a relevant provision of EU law adopted by the Court after delivery of that judgment (see, to that effect, judgments of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 60, and of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 38).

55 In the present case, no information in the file before the Court leads to the conclusion that there are not, in the Austrian legal system, legal remedies which effectively guarantee the protection of the rights that individuals derive from Article 50 of the Charter and Article 54 of the CISA.

56 On the contrary, it is common ground that the applicants in the main proceedings, when objecting to the mutual legal assistance requests from the Public Prosecutor's Office for the Canton of St Gallen (Switzerland) before the Austrian courts, were fully able to plead an infringement of those provisions and that those courts considered those complaints. The referring court also points out that the Code of Criminal Procedure offers various possibilities for individuals who are affected to assert the rights conferred on them by the EU legal order.

57 Consequently, the effectiveness of EU law is ensured by that framework without it being necessary to add to it the exceptional remedy provided for in Paragraph 363a of the Code of Criminal Procedure, enabling national decisions which have the force of *res judicata* to be challenged.

58 Moreover, as the Advocate General observed in point 56 of his Opinion, the principle of *res judicata* does not preclude recognition of the principle of State liability for the decision of a court adjudicating at last instance (judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 40). Given, inter alia, that an infringement, by such a decision, of rights deriving from EU law cannot normally be corrected thereafter, individuals cannot be deprived of the possibility of holding the State liable in order to obtain legal protection of their rights (judgments of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 34, and of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 40).

59 In the light of all the foregoing considerations, the answer to the question referred is that EU law, in particular the principles of equivalence and effectiveness, must be interpreted as meaning that a national court is not required to extend to infringements of EU law, in particular to infringements of the fundamental right guaranteed by Article 50 of the Charter and Article 54 of the CISA, a remedy under national law permitting, only in the event of infringement of the ECHR or one of the protocols thereto, the rehearing of criminal proceedings closed by a national decision having the force of *res judicata*.

Costs

60 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:

EU law, in particular the principles of equivalence and effectiveness, must be interpreted as meaning that a national court is not required to extend to infringements of EU law, in particular to infringements of the fundamental right guaranteed by Article 50 of the Charter of Fundamental Rights of the European Union and Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990 and which entered into force on 26 March 1995, a remedy under national law permitting, only in the event of infringement of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, or one of the protocols thereto, the rehearing of criminal proceedings closed by a national decision having the force of *res judicata.*

[Signatures]