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The execution of financial penalties imposed based on vehicle registration data, a commentary on the CJEU judgment C-671/18 in the case *Centraal Justitieel Incassobureau*

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Abstract

This article comments on the 5th of December 2019 CJEU judgment in the case C-671/18, where the Court resolved doubts as to whether, in accordance with EU law, it is possible to impose a financial penalty for a road traffic offence on a person designated on the basis of a legal presumption as the owner of a car by the register of vehicles of another Member State. This judgment was based on the provisions of Article 7(2)(g) and Article 20(3) of the Council Framework Decision, 2005/214/JHA, of 24 February 2005 on the application of the principle of mutual recognition to financial penalties. The Court concluded that a financial penalty issued in another Member State should be executed, even if the person sentenced (punished) presents a certificate demonstrating that he or she was not the owner of the vehicle. In the text below the consequences of this attitude will be presented, as well as both the negative and positive arguments as to the way of reasoning of the Court.

Keywords

European Union, financial penalties, mutual recognition of decisions in criminal matters, Framework Decision 2005/214/JHA, presumption of liability

Introduction

The analysed judgment of the CJEU is of great practical importance; it applies not only to issues that may be of importance to every person traveling by car across the EU Member States, but also to persons who have sold (or maintain to have sold) the car whereas other persons travelling by the same car may have committed a road offence. The frequency of offenses against road traffic regulations by Polish drivers in the Member States is clearly demonstrated by the statistics: the data for 2019 shows that the National Contact Point [Krajowy Punkt Kontaktowy, Centralna Ewidencja Pojazdów i Kierowców (CEPiK)] received 1 953 788 inquiries about the data of drivers who exceeded the speed limit abroad. Most inquiries came from Germany, 1 055 196, Austria, 218 250 and France, 148 084.[1]

On the basis of the provisions of the Directive 2015/413/EU of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences, it is possible to conduct automated searches of data relating to vehicles and data concerning owners or holders of the vehicle in case of road traffic offences in transborder cases. The state, in which the offence was committed, can be granted access to national vehicle registration data (VRD) in the state of the perpetrator.[2] As a result of the implementation of this Directive, Member States can now share vehicle registration data in order to contact the interested person directly. Each State, in which the offence was committed, can contact the owner, the holder of the vehicle or the otherwise identified person suspected of committing the road-safety-related traffic offence in order to keep the person concerned informed of the applicable procedures and the legal consequences under the law of the Member State of the offence, in particular possible administrative or penal proceedings. Sending the information directly to the interested person allows that person to respond to the information letter in an appropriate way, in particular by asking for more information, by settling the fine or by exercising his or her rights of defence, especially in the case of mistaken identity. Most Member States have incorporated internal rules that allow for the imposition of a penalty not only on the person who committed the traffic offense but also on the owner of the vehicle.

In the context of the discussed judgment, it is worth mentioning that further proceedings with the fine imposed on the person concerned are covered by applicable legal instruments adopted at EU level and implemented into the legal orders of the EU Member States, especially the Council Framework Decision 2005/214/JHA

1 On the basis of data received from the Ministry of Digitalization by tvn24bis.pl, Auto-Świat, 'Dostajemy coraz więcej mandatów z zagranicy' <https://www.auto-swiat.pl/wiadomosci/aktualnosci/dostajemy-coraz-wiecej-mandatow-z-zagranicy-prawie-2-mln-w-2019-roku/nn9fvsz> accessed 2 January 2022.

2 Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences [2015] OJ L 68/9.

of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.[3] The fundamental rule of the cooperation in that matter is that the enforcement of the decision is governed by the law of the executing State in the same way, as if the financial penalty has been issued in the executing State.

In the analysed judgment of the CJEU, the Court underlined the obligation of the Member States to apply the principle of mutual recognition and the rules governing it, in particular, in this case, the principle according to which a decision imposing a financial penalty may be challenged in substance only in the issuing state. It considered that, even if a person did not own the car, and if he or she failed, or was unable to challenge a judgment effectively in proceedings pending in another Member State, there was no longer any possibility of challenging the correctness of a judgment in the executing state at the stage of execution of the sentence. Therefore, it is not possible, at the stage of executing a foreign judgment, to correct the mistake as to the identity of the car owner.

1. Execution of financial penalties in the EU Member States

In the territory of the EU Member States, the basis for recognition and enforcement of financial penalties are provisions of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition of financial penalties (later: Framework Decision 2005/214). The Framework Decision indicates in the Preamble that the principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed. It also covers the financial penalties imposed in respect of road traffic offences.

The basic principle on which the enforcement is founded is to ensure that the competent authorities in the executing state recognise and enforce the execution of the decision issued in the issuing state without further formalities. The executing judicial authority does not 'decide' to recognise a ruling but has a 'recognition obligation'. This obligation does not only cover recognition of the decision but also an obligation to take all the necessary measures for its execution, in the same manner and timing as if the decision had been issued in the executing state. In the case of the principle of mutual recognition of judgments in criminal matters as applied to execution of financial penalties, the *exequatur* procedure (procedure of conversion) applied in relation to the transfer of execution of decision on the basis of traditional international agreements was abandoned. Thus, it is

3 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties [2005] OJ L 76/16. The procedure was described in more detail – see Hanna Kuczyńska, 'Współpraca międzynarodowa w sprawach wykroczeń' in Marta Kolendowska-Matejczuk and Valeri Vachev (eds), *Węzłowe problemy prawa wykroczeń – czy potrzebna jest reforma?* (Rzecznik Praw Obywatelskich 2016) 121-127.

the decision, imposing a financial penalty issued in another Member State, that is directly enforceable, without the decision having to be converted on the basis of applicable law in the executing State. There is an exception provided in Article 8 of Framework Decision 2005/214 according to which it is established that if the decision is related to acts which were not carried out within the territory of the issuing State, the executing State may decide to reduce the amount of the penalty enforced to the maximum amount provided for acts of the same kind under the national law of the executing State, when the acts fall within the jurisdiction of that State. Moreover, the competent authority of the executing State can, if necessary, convert the penalty into the currency of the executing State at the rate of exchange obtained at the time the penalty was imposed.

Only to a very narrow extent does the executing authority have the power to examine the conditions for the admissibility of transferring a penalty for enforcement by an authority of the issuing Member State. It may only examine formal grounds, e.g. the issue of the existence of competence of an authority of a Member State to transfer the penalty to be enforced.[4] It cannot assess whether such transfer of the penalty for execution was justified and expedient (or proportionate, which is, e.g. a condition for issuing a European Investigation Order). It may also refuse to execute such a judgment only on the basis of the grounds of non-recognition and non-execution, as listed in Article 7 of Framework Decision 2005/214.

This principle results in the inability to assess the validity and correctness of the issued decision by the authority of the executing State. Only in the issuing State it is possible to subject to appeal the very substantive decision imposing a financial penalty. In the executing State where the judgment is enforced, it is no longer possible to challenge the substantive decision by presenting evidence in defence of the sentenced person, as only enforcement proceedings are pending in that State. As a result of the appeal submitted in the executing state, it is only possible to refer the charges against the formal aspects of the executing procedure as provided in the law of the executing State. The appeal submitted in the executing State should therefore not relate to the merits of the decision imposing a financial penalty but may only raise issues relating to the enforcement proceedings pending in the executing State. The substantive grounds for issuing a decision imposing a financial penalty may only be raised in the issuing state where the decision was issued.

2. The application of the principle of mutual recognition to financial penalties

On the 5th of December the CJEU issued a judgment on the request for a preliminary ruling under Article 267 TFEU from the 'Sąd Rejonowy w Chełmnie' (the notion used in the judgment, District Court, Chełmno, Poland), received in the proceedings

4 See Sławomir Steinborn, 'Artykuł 611ff' in Jan Grajewski, Lech K. Paprzycki and Sławomir Steinborn (eds), *Kodeks postępowania karnego. Komentarz,* Vol. II (Wolters Kluwer Polska 2013) 1102.

brought by Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (Central Fine Collection Agency, Ministry of Justice and Security, later: CJIB). In this judgment it resolved doubts as to whether, in accordance with EU law, it is possible to impose a financial penalty on a person designated on the basis of a legal presumption as the owner of a car by the register of vehicles of another Member State.[5] This request for a preliminary ruling concerned the interpretation of Article 7(2)(g) and Article 20(3) of Council Framework Decision 2005/214. The financial penalty in question was imposed on the basis of a legal presumption provided for in Article 5 of the Highway Code in the Netherlands. According to this provision, if it is established that the offending conduct has been committed with or by means of a motor vehicle that has been assigned a registration number and it is not immediately possible to determine the identity of the driver of that vehicle, without prejudice to the provisions of Article 31(2) of that Code, the administrative penalty shall be imposed on the person in whose name the registration number was listed in the register at the time when the offending conduct took place.

This provision was utilised when on, 9 November 2017, the Central Fine Collection Agency delivered a decision requiring a person described as 'Z.P.' to pay a financial penalty in the amount of EUR 232 in respect of a road traffic offence committed by the driver of a vehicle registered in Poland in his name. This decision of 9 November 2017, requiring payment of the financial penalty, was notified by placing it in Z.P.'s letter box, as was the information about the deadline for exercising the right to contest the case, which was 21 December of that year. That period, in which the claimant could lodge an appeal, began not as of the actual receipt of the decision, but as of the date of that decision. In the absence of any appeal against the decision of 9 November 2017, that decision became final on 21 December 2017.

On the basis of the provisions implementing the Framework Decision into the Dutch legal order, the CJIB lodged a request for recognition and execution of a financial penalty imposed on Z.P. in the Netherlands in respect of a road traffic offence at the District Court in Chełmno.

As to the remaining facts of the case, the person sentenced and issued the financial fine, submitted before the Polish executing authority, the District Court in Chełmno, that on the date of the contested offence, he had sold the vehicle in question and had informed his insurer of that fact. However, he admitted that he did not inform the authority responsible for the registration of the vehicle of that sale.

Under those circumstances, the District Court in Chełmno decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

> *(1) Should Article 7(2)(i)(iii) and Article 20(3) of [the Framework Decision] be interpreted as authorising a court to refuse to enforce a decision of an authority of an issuing State other than a court if it finds that the service of*

5 Case C-671/18 *Centraal Justitieel Incassobureau,* EU:C:2019:1054.

that decision was affected in such a way as to infringe a party's right to an effective defence before a court?
(2) In particular, can a finding in which, despite the service procedures in force in the issuing State and the time limits laid down for appealing a decision, as referred to in Article 1(a)(ii) and (iii) of [the Framework Decision] having been observed, the party residing in the State enforcing the decision did not have a real and effective opportunity to protect his rights at the pre-litigation stage of the proceedings due to not having been given sufficient time to respond to the notification of the imposition of the penalty in a proper manner, constitute grounds for refusal?
(3) Under Article 3 of [the Framework Decision], can the scope of legal protection afforded to persons against whom a financial penalty is to be recognised depend on whether the procedure for imposing the penalty was an administrative procedure, a procedure concerning a petty offence or a criminal procedure?
(4) In light of the objectives and principles set out in [the Framework Decision], including Article 3 thereof, are the decisions of non-judicial authorities, which are issued pursuant to the laws of the State issuing the decision concerned under which the person in whose name a vehicle is registered is held liable for road traffic offences, (that is to say, decisions issued solely on the basis of information obtained within the framework of the cross-border exchange of vehicle registration data and without any investigation being carried out in that case, including determining the actual offender), enforceable?

In answer to the doubts expressed by the Polish court, the Court of Justice adopted a restrictive interpretation of the Framework Decision provisions, deciding that:

1. Article 7(2)(g) and Article 20(3) of the Council Framework Decision 2005/214/JHA of 24 February 2005, on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where a decision requiring payment of a financial penalty has been notified in accordance with the national legislation of the issuing Member State indicating the right to contest the case and the time limit for such a legal remedy, the authority of the Member State of execution may not refuse to recognise and execute that decision provided that the person concerned has had sufficient time to contest that decision. This is for the national court to verify. That and the fact that the procedure imposing the financial penalty in question is administrative in nature, is not relevant in that regard.
2. Article 20(3) of the Framework Decision 2005/214, as amended by Framework Decision 2009/299, must be interpreted as meaning that the competent authority of the Member State of execution may not refuse to recognise and

execute a decision requiring payment of a financial penalty in respect of road traffic offences where such a penalty has been imposed on the person in whose name the vehicle in question is registered on the basis of a presumption of liability laid down in the national legislation of the issuing Member State, provided that that presumption may be rebutted.

3. The fundamental meaning of the principle of mutual recognition

The point of departure for the considerations of the Court was the opinion that it was impossible to abandon the basic assumptions, according to which the principle of mutual recognition of judgments in criminal matters operates. The Court underlined that the competent authority of the executing State is required, in principle, to recognise and execute the decision transmitted and may refuse, by way of derogation from the general rule, solely on one of the grounds for non-recognition or non-execution expressly provided for by the Framework Decision (para 33).

Only in the issuing State the proceedings on the merits is pending, aimed at the determination of the perpetrator of the traffic offense or the person who is the owner of the vehicle. Naturally, the condition for the recognition of the decision and execution of it is compliant with the relevant procedure in the issuing State, during which the person concerned should be 'in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of the time limits of such a legal remedy' (as in Article 7(2)(g)(i)). Thus, it is the legislation of the issuing States that regulates the model of the appeal procedure, as well as the method of informing the person concerned of the right to contest the case, the time limit for it, and the point at which that period begins. This information should be delivered effectively and allow for a genuine exercising of the right to defence.[6]

As a result of this assumption, the Court stated that:

In view of the fact that the principle of mutual recognition, which underpins the Framework Decision, means that, in accordance with Article 6 of that decision, the Member States are, as a rule, obliged to recognise a decision requiring payment of a financial penalty which has been transmitted in accordance with Article 4 of the Framework Decision without any further formality being required and to take, without delay, all the measures necessary for its enforcement, the grounds for refusal to recognise or enforce such a decision must be interpreted restrictively (para 31).

6 The same interpretation was used in another judgment – Joined Cases C-124/16, C-188/16 and C-213/16 *Tranca and Others,* EU:C:2017:228, para 42. See also, by analogy Case C-396/11 *Radu,* EU:C:2013:39, para 36 and the case-law cited.

This is already an established line of jurisprudence. In the *Baláž* case, judgment of 14 November 2013,[7] the Court underlined that the key question for assuming if the decision was issued in accordance with the law and if the person is to be regarded as having had the opportunity to have a case tried before a court having jurisdiction in particular in criminal matters, is weather that person was informed about his or her right to appeal against the impugned decision. In such a case, that person was required to comply with the indicated appeal procedure. In order to recognise the procedure as satisfying the judicial protection principle requirements, there is a requirement to ensure the actual and effective receipt of decisions, by utilizing an effective method of notification to the person concerned, as well as sufficient time to bring an appeal against such decisions and prepare that appeal. If that person does not exercise the right to appeal, as a result of which the decision imposing the fine becomes final, he or she cannot contest the decision on the stage of the executing procedure. According to the principle of mutual recognition, which underpins the Framework Decision, the Member States are, as a rule, obliged to recognise a decision requiring payment of a financial penalty which has been transmitted in accordance with Article 4 of the Framework Decision without any further formality being required and to take without delay all the measures necessary for its enforcement. The grounds for refusal to recognise or enforce such a decision must be interpreted restrictively. Denial of requests can only be the exception, also, when fundamental rights infringements may be at stake.[8]

4. The importance and consequences of fundamental rights protection

According to Article 20(3) of Framework Decision 2005/214, Each Member State may, where the certificate referred to in Article 4 gives rise to an issue that fundamental rights or fundamental legal principles as enshrined in Article 6 of the TEU may have been infringed, oppose the recognition and the execution of decisions.

Furthermore, as with other legal instruments based on mutual recognition principle, this Framework Decision includes a reference in the Preamble to the respect for fundamental rights. According to the Preamble, this Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the TEU and reflected in the Charter. Based on these provisions, the Court, while affirming the fundamental importance of a kind of 'automaticity' in the enforcement of decisions issued in other Member States, recognised that there may be exceptional situations in which the principle of effective, judicial protection of the rights, which individuals derive from EU law, referred to in Article 19(1) TEU, may render the judgment impossible to

7 Case C-60/12 *Baláž,* EU:C:2013:733, para 29.

8 Thomas Wahl, 'CJEU: No Loopholes against Enforcement of Foreign Fines' [2019] (4) EUCRIM 246.

execute. The Court stressed that this is a general principle of EU law, stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the ECHR, and which, is now reaffirmed by Article 47 of the Charter.[9]

Therefore, it results clearly from the text of the judgment that an exception to the general rule on the enforcement of a decision issued in other Member States 'without further questions' is a violation of fundamental rights in the procedure for issuing this decision. In the commented judgment the Court confirmed the existence of this exception to the principle of mutual recognition. However, it did not provide a list of sample infringements of fundamental rights nor did it provide any more detailed guidelines as to their nature.[10] It confirmed the existence of this ground for non-enforcement, pointing out that:

> *If, having regard to the information available, the competent authority of the Member State of execution determines that the certificate provided for in Article 4 of the Framework Decision suggests that fundamental rights or fundamental legal principles may have been infringed, that authority may oppose the recognition and execution of the decision transmitted.*

The Court has not closed, in principle, the way for the executing authority to recognise that there has been an infringement of fundamental rights.[11] As a result, it should be stated that referring to the existence of this exception is discretionary: it is the court of the executing State that must independently assess whether there are any suspicions, in a given case, that the fundamental rights may have been violated in the proceedings before the authority issuing the decision (not in the proceedings before the executing authority).

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9 The Court applied, to that effect, the principles adopted in its previous judgments: Case C-64/16 *Associação Sindical dos Juízes Portugueses,* EU:C:2018:117, para 35; Case C-625/11 *PPG and SNF v ECHA,* EU:C:2013:594, para 35; Case C-354/15 *Henderson,* EU:C:2017:157, para 72; Case C-432/05 *Unibet,* EU:C:2007:163, para 37; Case C-279/09 *DEB,* EU:C:2010:811, paras 29-33.

10 More on that topic: Valsamis Mitsilegas, 'The European Model of Judicial Cooperation in Criminal Matters: Towards Effectiveness based on Earned Trust' (2019) 2 Revista Brasileira de Direito Processual Penal 591-592; Michiel Luchtman, 'Transnational Law Enforcement Cooperation – Fundamental Rights in European Cooperation in Criminal Matters' (2020) 1 European Journal of Crime, Criminal Law and Criminal Justice 14-45.

11 Monika Stefaniak-Dąbrowska writes (although she formulates this conclusion in relation to infringements in the delivering and translation of decisions required by law by the authority of the issuing state) that 'the Court has in some way shifted to the authority executing the decision the burden of proving that there was no violation of fundamental rights in the procedure preceding the cross-border transfer of the sentence.' See Monika Stefaniak-Dąbrowska, 'Wzajemne uznawanie orzeczeń nakładających kary pieniężne w świetle standardów procesowych Unii Europejskiej' [2020] (9) Europejski Przegląd Sądowy 4-12.

However, notwithstanding the recognition of the exception of fundamental rights violation, the Court closed this door in regard to the circumstances of the case at hand:

> *Article 20(3) of the Framework Decision must be interpreted as meaning that the competent authority of the Member State of execution may not refuse to recognise and execute a decision requiring payment of a financial penalty in respect of road traffic offences where such a penalty has been imposed on the person in, whose name the vehicle in question is registered, on the basis of a presumption of liability laid down in the national legislation of the issuing Member State, provided that that presumption may be rebutted* (para 58),

thus establishing a new rule applicable in cross-border proceedings.

It should be noted that the justification of the CJEU judgment is limited and laconic in nature. The Court referred only in general terms to the existing rule and the possible exception to it. It assessed the potential violation of fundamental rights in a specific manner. The judgment allows only for an evaluation of whether the time limit for appeal was sufficient by assessing if the decision was effectively delivered. This is done in order to allow for a sufficiently extended period to bring a complaint and the preparation of such a contestation. If these premises existed, the requirement to respect the right to effective judicial protection was fulfilled.

As for the imposition of the penalty on the person indicated in the register as the owner of the vehicle, the Court only analysed the possibility of applying a legal presumption, reaching the correct conclusion, that it is possible to impose a penalty on the person to whom the vehicle is registered, on the basis of the presumption of liability provided for in the national regulations of the issuing State. In such a case, the competent authority of the executing State cannot refuse to recognise and enforce a decision imposing a penalty on that person for road traffic offenses, even in a situation where it is clear that the person concerned could have obtained the annulment of the fine had he been able to prove that he was not the owner or was not in possession of the vehicle at the time of the offending conduct.[12]

The Court speculated about the compliance of this provision with the principle of the presumption of innocence laid down in Article 48 of the Charter, which corresponds to Article 6(2) of the ECHR. It was on the basis of the jurisprudence of the ECtHR that it came to the conclusion that such a presumption is consistent with EU law. It considered that the case-law of the ECtHR concerning Article 6(2) which the Court of Justice takes into consideration, pursuant to Article 52(3) of the Charter, for the purposes of interpreting Article 48 of that Charter, is clear on the fact that a person's right in a criminal case to be presumed innocent and to require the prosecution to bear

12 See Centraal Justitieel Incassobureau (CJIB), Exécution des sanctions pécuniaires <https://eclan.eu/en/eu-case-law/centraal-justitieel-incassobureau-cjib-execution-des-sanctions-pecuniaires> accessed 26 January 2022.

the onus of proving the allegations against him or her is not absolute. Presumptions of fact or of law operate in every criminal-law system and are not prohibited in principle by the ECHR, as long as States remain within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence.[13] It noted that:

> *In that decision, the European Court of Human Rights held that Article 5 of the Netherlands Highway Code is compatible with the presumption of innocence, insofar as a person who is fined under that article can challenge the fine before a trial court with full competence in the matter and that, in any such proceedings, the person concerned is not left without any means of defence in that he or she can raise arguments based on Article 8 of the Highway Code* (para 55).

It may follow from the thesis of the judgment that the Court established an exception to the exception: while the violation of fundamental rights in the procedure of issuing a decision to be enforced may constitute an exception to the principle of mutual recognition of judgments in criminal matters, there is an exception to this conclusion: the accused may not rely on Article 20(3) of the Framework Decision 2005/214, arguing that he or she is not, and has not been, the owner of the vehicle, if he does not do so at the appropriate stage of the proceedings. The Court found that the application of such a presumption about the owner of the vehicle cannot constitute an infringement of fundamental rights. The procedural effect resulting from the functioning of this legal presumption is 'stamped' at this stage and, at the stage of enforcement of the judgment in the 'own' State, the provision of Article 20(3) cannot work. The Tribunal 'top down' decided that relying on this presumption could not be considered as falling within the scope of Article 20(3) of the Framework Decision.

Many questions arise on the basis of this judgment. First, about the scope of the rights of the accused in repressive proceedings. It follows from this ruling that the procedural rights of the accused exist only in the issuing State. The right to be presumed innocent and the right to defence cease with the delivery of a final decision. Second, about the extent of the national court's discretion in deciding whether to execute a decision that infringes fundamental rights; the Court has, in fact, ordered the domestic courts to refrain from examining a possible violation of fundamental rights in the case of using this specific legal presumption.

It seems strange that in the discussion about fundamental rights the notion of 'fair trial' does not appear even once in the judgment. Several assumptions can be made. Firstly, one may conclude that there can be no mention of the fair trial rights as long as all the procedural rights of the accused have been safeguarded. One cannot 'put the horse before the cart' and assess whether the fair trial rights have been violated if all the

13 Invoking *Falk v the Netherlands* App no 66273/01 (ECtHR, 19 October 2004).

formal elements of such rights were secured. If no provisions were infringed, fair trial rights could not be violated. However, this conclusion should be rejected. Secondly, an attitude can be adopted that the notion of fair trial presumes evaluation of criminal trial from a general perspective, evaluating whether the trial, seen as a whole, could be considered fair. Perhaps, it was not the wish of the makers of the Framework Decision to allow the executing authority to assess the fair trial safeguards in the issuing State. This conclusion should, also, be considered incorrect. Most probable is the third assumption: it may signify that it is exactly what should happen: the 'fundamental rights' notion has the same meaning as the 'fair trial principles', as the Court invoked Article 6 of the ECHR, creating thus a point of reference for the evaluation of fundamental rights' infringements.

5. The impact of the CJEU judgment on the Polish law

The thesis of this CJEU judgment was applied under Polish law in a similar factual situation. In the decision of 19 January 2021, III KK 130/20,[14] the Polish Supreme Court concluded that:

> *It does not preclude the execution of a financial penalty issued by a judicial authority of a European Union Member State pursuant to Art. 611ff of the Code of Criminal Procedure by a competent district court, if the decision is based on the presumption that the punished (sentenced) person is the perpetrator of the criminal act, even if the person before a Polish court challenges, even credibly, their authorship, provided it is established that the said presumption could have been levered in appeal proceedings conducted in a European Union Member State and that the punished (convicted) person, properly instructed by the authority of that state about the date and manner of lodging an appeal, had sufficient time for the preparation and contribution of this measure.*

In the case examined before the Supreme Court, the factual situation was quite different: in this case, the Polish authorities provided the Dutch authorities with incorrect data on the owner of the vehicle because of the mistake made in the register. In *Centraal Justitieel Incassobureau* the main 'character' of the case, Z.P., admitted that he did not inform the authority responsible for the registration of the vehicle of that sale (para 20 of the judgment). Meanwhile, in the case III KK 130/20, only the fact that the sale of the vehicle was not entered into the Central Vehicle Register (even if it had been correctly reported by the previous owner, who became the accused) led to the imposition

14 Polish Supreme Court, decision of 19 January 2021, III KK 130/20, [2021] (3) Orzecznictwo Sądu Najwyższego w sprawach Karnych i Wojskowych 11.

of a penalty on the given person for an offense that he was neither the perpetrator of, nor the owner of the car as the 'owner of license plates'.

Despite the different facts, the Supreme Court fully applied the thesis of the judgment in the case C-671/18. In this decision, the Supreme Court referred to the analysed judgment of the CJEU and emphasized that the key to the legal analysis of the legal situation of a person, who was not the owner of the vehicle at the time of committing a traffic offense, should be the finding, that the person on whom a fine was wrongly imposed, did not appeal the decision delivered by the issuing State. In this context, it pointed out that even the use of the appeal procedure, if it were ineffective, would not give the Polish court an opportunity to challenge the correctness of the executed decision. As a result, the Supreme Court stated that the decisive factor for the court's decision to execute the decision of an authority of another Member State should not be whether the judgment was issued against the beneficial owner of the vehicle, but that the person, designated by the Dutch authority, as the owner did not properly use an effective appeal procedure available in the issuing country. The decision of the authority of the issuing state was based on a lawful presumption that has not been effectively rebutted.

CONCLUSIONS

The justification of this decision lacks a more detailed consideration of the mutual relationship between the principles in force in EU law. It can, however, be presumed that the principle of mutual recognition of judgments in criminal matters is of fundamental importance. This implies that in the executing State, its authorities cannot assess the substantive grounds for its issuance, i.e. they cannot assess the conclusions resulting from the evidence. The issuance of a final decision must end such considerations. Only cases of violation of fundamental rights in these proceedings may constitute an exception to this rule. In this respect, the judicial authority of the executing State has the discretion to assess whether such an event took place. Until then, the judgment of the Court does not raise doubts and this thesis is, literally, derived from the provisions of the Framework Decision. The next, third, stage of the analysis raises doubts. For the Court top-down and, one can say, 'once and for all decided' that the accused may not rely on Article 20(3) of Framework Decision 2005/214 before the authorities of the executing State, arguing that he was not the owner of the vehicle. At this stage of the proceedings, such a presumption may no longer be called into question as it has already produced certain legal effects. The Court indicated that proceeding on the basis of such a presumption did not constitute an infringement of fundamental rights. Consequently, it 'removed' the facts as they were in the discussed case from the pool of possible 'violations of fundamental rights'. Therefore, the executing authority is unable to examine whether that presumption has been correctly applied. The Court closed the door to finding that the imposition of a fine on a person, indicated as the owner of the vehicle by the system

of records of a given state, may fall within the scope of Article 20(3) of Framework Decision 2005/214.

The CJEU judgment should be assessed as more pragmatic than fair. The thesis presented by the CJEU enables the functioning of the system in which it is possible to impose financial penalties for road law violations on the basis of a legal presumption as to the owner of the vehicle. It can be concluded that the Court in Luxembourg established a norm that must now be applied by the courts of the Member States, following the clause *dura lex sed lex*. According to the adopted attitude, it is imperative to comply with the principle of mutual recognition of decisions in criminal matters, irrespective of possible negative consequences for the rights of the respective person. Although the Court found that the importance of the protection of fundamental rights cannot be called into question, it also pointed out that it must be balanced by the consequences of applying other legal principles in force in EU law, in this case, the principle of mutual recognition and the admissibility of relying on the effects of applying legal presumptions. Furthermore, although fundamental rights are immovable, as evidenced by the content of Article 20(3) of Framework Decision 2005/214, the importance of which was emphasized by the Court, these have their end and limits, they are not absolutely binding rights. The end of their validity is to be the issuance of a final decision. There may be one more conclusion of a practical character resulting from the practical dimension of consequences of this ruling. An analysis of the documentation sent by the Dutch authorities in similar misdemeanour cases shows that the appeal procedure in such traffic offences cases cannot be described as clear and understandable to the average 'recipient of the financial penalty'. The average punished person, only with the greatest difficulty, can use the appeal procedure available in another Member State in a correct and effective manner. It could be practicable to discuss the possibility of adopting a transparent appeal procedure in each Member State, perhaps by standardizing the forms of instructions and developing clear and uniform rules for providing information on the appeal procedure, as well as the need to raise awareness of the need for an early procedural reaction to the information received from another Member State about the issuance of a judgment in a criminal case against the person.

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