Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

26 February 2025 *

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Questions the answer to which may be clearly deduced from the Court's existing case-law or admits of no reasonable doubt – Convention implementing the Schengen Agreement – Article 54 – Article 50 of the Charter of Fundamental Rights of the European Union – Principle *ne bis in idem* – Scope – Judgment ordering the committal of a person to a facility for offenders with mental illness – Suspension subject to that person undergoing medical treatment)

In Case C-766/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Protodikeio Peiraios (Trimeles Plimmeleiodikeio Peiraios) (Court of Piraeus (three-judge Criminal Court of Piraeus), Greece), made by decision of 26 February 2024, received at the Court on 5 November 2024, in the criminal proceedings against

AB,

interested parties:

Eisaggelia Protodikon Peiraia,

CD,

EF,

GH,

IJ,

KL,

THE COURT (Eighth Chamber),

composed of S. Rodin, President of the Chamber, C. Lycourgos (Rapporteur), President of the Third Chamber, and O. Spineanu-Matei, Judge,

Advocate General: A. Biondi,

* Language of the case: Greek.

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to rule by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of the principle *ne bis in idem* in EU law.

2 The request has been made in criminal proceedings brought against AB for arson.

Legal context

3 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 (OJ 2000 L 239, p. 19), signed in Schengen on 19 June 1990, which entered into force on 26 March 1995 ('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.'

The main proceedings and the questions referred for a preliminary ruling

4 On 15 December 2018, AB, residing in Vienna (Austria), intentionally set fire to a boat in Glyfada marina (Greece). The fire destroyed that boat and damaged two others.

5 Criminal proceedings in respect of those acts were brought against AB in both Greece and Austria.

6 After examining the merits of the case, on 18 February 2020 the Landesgericht Wiener Neustadt (Regional Court, Wiener Neustadt, Austria) delivered a judgment ('the judgment of 18 February 2020') in which it found that AB had committed the acts of which she was accused and that, had the defendant not been held to lack criminal responsibility, those acts would have constituted the offence of arson, provided for in Paragraph 169(1) of the Austrian Criminal Code and punishable by a term of imprisonment of more than one year. Nonetheless, the court found that the defendant was not criminally responsible because, at the material time, she had been suffering from acute psychosis in the context of schizophrenia.

7 That court also found that, on account of her mental state, AB was likely to commit other criminal offences. Accordingly, it ordered her committal to a facility for offenders with mental illness.

8 That being the case, the court conditionally suspended that committal measure for a probationary period of five years. The conditions attached to that suspension required AB to undergo, first, pharmaceutical treatment subject to regular checks, at least once a month, as well as ongoing psychotherapeutic treatment and, secondly, psychiatric treatment every four weeks at a forensic psychiatry centre. AB complied with those conditions until at least 6 December 2022.

9 The Austrian Public Prosecutor's Office and AB having waived their right to exercise the legal remedies available to them, the judgment of 18 February 2020 became final.

10 AB – acting through her lawyer – has asked the Protodikeio Peiraios (Trimeles Plimmeleiodikeio Peiraios) (Court of Piraeus (three-judge Criminal Court of Piraeus), Greece), which is the referring court, to close the criminal proceedings brought against her in Greece. As her principal argument, she raises a plea of *res judicata*. She submits that the judgment of 18 February 2020, concerning the same acts as those at issue in the main proceedings, constitutes a conviction to which Article 54 of the CISA and Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter') apply. In the alternative, the defendant claims that she cannot be held criminally responsible for the acts of which she is accused.

11 The public prosecutor, supported by the civil parties, namely the owners of the vessels concerned, contends that the judgment of 18 February 2020 does not contain a conviction, since the Landesgericht Wiener Neustadt (Regional Court, Wiener Neustadt) held that AB lacked awareness at the material time and, consequently, ordered a therapeutic measure.

12 The referring court points out that, in addition, the judgment of 18 February 2020 conditionally suspended that measure. In the light of all of those considerations, the referring court enquires about the interpretation of the principle *ne bis in idem*, as enshrined in Article 50 of the Charter.

13 In those circumstances, the Protodikeio Peiraios (Trimeles Plimmeleiodikeio Peiraios) (Court of Piraeus (three-judge Criminal Court of Piraeus)) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the principle *ne bis in idem* also apply to a final or irrevocable judgment of a criminal court of another EU Member State, following a prosecution in respect of the same acts, in which that court, after examining the facts of the case and having found that the defendant cannot be held criminally responsible, acknowledges that the defendant committed the act for which he or she was prosecuted but imposes on him or her a therapeutic measure – namely committal to a facility for offenders with mental illness – entailing deprivation of the defendant's liberty against his or her will? In other words, does the therapeutic measure thus imposed constitute a "penalty" and is the judgment considered, in such a case, to be a "conviction"?

(2) Would the answer to the previous question be different if the abovementioned judgment suspended the therapeutic measure subject to certain conditions with which the defendant has complied?'

Consideration of the questions referred

14 Under Article 99 of the Rules of Procedure of the Court of Justice, where the reply to a question referred for a preliminary ruling may be clearly deduced from existing case-law, or where the answer to the question referred admits of no reasonable doubt, the Court may at any time, on a proposal by the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

15 That provision must be applied in the present case.

16 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions. The Court may provide the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (see, to that effect, judgment of 4 October 2024, *Confédération paysanne (Melons and tomatoes from Western Sahara)*, C-399/22, EU:C:2024:839, paragraph 40 and the case-law cited).

17 In the present case, it is apparent from the request for a preliminary ruling that AB's trial was finally disposed of in Austria, a Member State to which the CISA applies. That person is being prosecuted for the same acts by another Member State to which the CISA applies. Therefore, the situation at issue in the main proceedings falls within the scope of Article 54 of the CISA, under which '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'.

18 It is also settled case-law that Article 54 of the CISA must be interpreted in the light of Article 50 of the Charter (see, to that effect, judgment of 12 October 2023, INTER CONSULTING, C-726/21, EU:C:2023:764, paragraph 39 and the case-law cited).

19 In those circumstances, the Court takes the view that, by its questions, the referring court asks, in essence, whether Article 54 of the CISA, read in the light of Article 50 of the Charter, must be interpreted as precluding a Member State from bringing criminal proceedings against a person suspected of having committed an offence, where a court of another Member State, by a judgment which has become final, has found that that person committed the same acts as those which gave rise to those proceedings, has declared that that person cannot be held criminally responsible due to a psychiatric condition and has ordered his or her committal to a facility for offenders with mental illness, in a situation in which that committal measure was conditionally suspended for a probationary period of five years and the conditions attaching thereto – namely that the person concerned must undergo medical treatment – have been complied with.

20 In the first place, it is apparent from Article 54 of the CISA that that article applies not only where a penalty has been imposed on a person but also, more generally, to the situation of any person whose trial has been finally disposed of.

21 In that regard, the Court has already held that Article 54 of the CISA aims to ensure that a person, once he or she has been found guilty and served his or her sentence, or, as the case may be, been acquitted by a final judgment in a Member State, may travel within the Schengen area without fear of being prosecuted in another Member State for the same acts (judgment of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, EU:C:2023:663, paragraph 81 and the case-law cited).

22 Similarly, under Article 50 of the Charter, no one is to 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 European Union in accordance with the law.

23 In that connection, it should be noted that the application of the principle *ne bis in idem* is subject to a twofold condition, namely, first, that there must be a prior final decision (the '*bis*' condition) and, secondly, that the prior decision and the subsequent proceedings or decisions must concern the same facts (the '*idem*' condition) (judgment of 25 January 2024, *Parchetul de pe lângă Curtea de Apel Craiova*, C-58/22, EU:C:2024:70, paragraph 47 and the case-law cited).

24 The '*idem*' condition is satisfied in the present case, since the referring court has found that the acts forming the subject matter of the judgment of 18 February 2020 and those forming the subject matter of the prosecution in the main proceedings are the same.

25 As regards the '*bis*' condition, in order for a decision to be regarded as having given a final ruling on the facts subject to a second set of proceedings, that decision must have become final and have been taken after a determination has been made as to the merits of the case (see, to that effect, judgments of 29 June 2016, *Kossowski*, C-486/14, EU:C:2016:483, paragraph 42 and the case-law cited, and of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, EU:C:2023:663, paragraph 58 and the case-law cited).

26 That is the case here. It is apparent from the request for a preliminary ruling that AB was the subject, in Austria, of criminal proceedings that gave rise to the judgment of 18 February 2020, which became final. The referring court states that that judgment was delivered after consideration of the merits of the case and contains, first, a finding that the defendant committed acts which, had she not been held to lack criminal responsibility, would have constituted the offence of arson, and, secondly, a determination of the defendant's criminal liability.

27 In the second place, in the circumstances of the present case, there is no need to determine whether a judgment ordering the committal of a person to a facility for offenders with mental illness, accompanied by a conditional suspension, is one in which a 'penalty [was] imposed' within the meaning of Article 54 of the CISA.

28 The Court has already held that it is only where 'a penalty has been imposed' that that article 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 ('the enforcement condition'). The reference to a 'penalty' cannot therefore be interpreted in such a

way that the application of that article is – other than in a case in which a penalty has been imposed – subject to an additional condition (see, to that effect, judgment of 29 June 2016, *Kossowski*, C-486/14, EU:C:2016:483, paragraphs 40 and 41).

29 In the present case, it is clear that if a 'penalty [was] imposed' on AB, within the meaning of Article 54 of the CISA, by means of the judgment of 18 February 2020, the enforcement condition is satisfied. The Court has held that a suspended sentence constitutes a 'penalty' within the meaning of Article 54. That penalty must be regarded as 'actually in the process of being enforced' as soon as the sentence has become enforceable and during the probation period. Subsequently, once the probation period has come to an end, the penalty must be regarded as 'having been enforced' within the meaning of that provision (see, to that effect, judgment of 18 July 2007, *Kretzinger*, C-288/05, EU:C:2007:441, paragraph 42).

30 In that regard, it should be noted that, according to the referring court, the conditions attaching to the conditional suspension at issue in the main proceedings, namely that the person concerned must undergo medical treatment, were complied with until at least 6 December 2022. Furthermore, it is not apparent from the request for a preliminary ruling that AB subsequently breached those conditions or that she was not committed to a facility for offenders with mental illness following such a breach.

31 Therefore, even on the assumption that the judgment of 18 February 2020 is one in which a 'penalty [was] imposed', within the meaning of Article 54 of the CISA, that 'penalty' would have been 'enforced', within the meaning of that article, if the probation period had ended without the conditions attaching to the conditional suspension having been breached, or would be 'actually in the process of being enforced', within the meaning of that article, if AB had been committed to a facility for offenders with mental illness following such a breach.

32 In order to provide the referring court with a full answer, it should be added that a limitation of the principle *ne bis in idem*, enshrined in Article 50 of the Charter, may be justified on the basis of Article 52(1) thereof (judgment of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, EU:C:2023:663, paragraph 87 and the case-law cited).

33 That being so, as stated in paragraph 17 of the present order, the situation at issue in the main proceedings falls within the scope of Article 54 of the CISA. That article does not provide for any limitation of the principle *ne bis in idem* other than the enforcement condition, applicable where a penalty has been imposed, which has been held by the Court to be compatible with Article 50 of the Charter (see, to that effect, judgment of 27 May 2014, *Spasic*, C-129/14 PPU, EU:C:2014:586, paragraphs 55 and 74). Therefore, Article 52 of the Charter is not relevant to this case.

34 In the light of all the foregoing considerations, the answer to the questions referred is that Article 54 of the CISA, read in the light of Article 50 of the Charter, must be interpreted as precluding a Member State from bringing criminal proceedings against a person suspected of having committed an offence, where a court of another Member State, by a judgment which has become final, has found that that person committed the same acts as those which gave rise to those proceedings, has declared that that person cannot be held criminally responsible due to a psychiatric condition and has ordered his or her committal to a facility for offenders with mental illness, in a situation in which that committal measure was conditionally suspended for a probationary period of five years and the conditions attaching thereto – namely that the person concerned must undergo medical treatment – have been complied with.

Costs

35 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court.

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

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 in Schengen on 19 June 1990, which entered into force on 26 March 1995, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding a Member State from bringing criminal proceedings against a person suspected of having committed an offence, where a court of another Member State, by a judgment which has become final, has found that that person committed the same acts as those which gave rise to those proceedings, has declared that that person cannot be held criminally responsible due to a psychiatric condition and has ordered his or her committal to a facility for offenders with mental illness, in a situation in which that committal measure was conditionally suspended for a probationary period of five years and the conditions attaching thereto – namely that the person concerned must undergo medical treatment – have been complied with.

[Signatures]