Reports of Cases

ORDER OF THE COURT (Fourth Chamber)

1 October 2019*

(Reference for a preliminary ruling — No need to adjudicate)

In Case C-495/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), made by decision of 29 May 2018, received at the Court on 30 July 2018, in criminal proceedings against

YX,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, K. Jürimäe, D. Šváby, S. Rodin and N. Piçarra (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Polish Government, by B. Majczyna, acting as Agent,

– the Romanian Government, by C.-R. Canțăr, A. Wellman and L. Lițu, acting as Agents,

– the Finnish Government, by H. Leppo, acting as Agent,

– the European Commission, by A. Tokár and R. Troosters, acting as Agents,

after hearing the Advocate General,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 4(1)(a) and (2), and Article 9(1)(b) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial

* Language of the case: Slovak.

sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27 and corrigendum OJ 2018 L 243, p. 21), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2008/909').

2 The request has been made in proceedings relating to the recognition and enforcement in Slovakia of a criminal judgment handed down by a Czech court imposing on YX, a Slovak national, a custodial sentence of 5 years for offences of 'withholding taxes, charges and other similar compulsory payments'.

Legal context

EU law

3 Article 3(1) of Framework Decision 2008/909 reads as follows:

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

4 Article 4(1) of that framework decision states:

'Provided that the sentenced person is in the issuing State or in the executing State, and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to one of the following Member States:

(a) the Member State of nationality of the sentenced person in which he or she lives; …

…'

5 Article 13 of that framework decision provides:

'As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.'

Slovak law

6 It is apparent from Paragraph 4(1)(a) of the Zákon č. 549/2011 Z.z. o uznávaní a výkone rozhodnutí, ktorými sa ukladá trestná sankcia spojená s odňatím slobody v Európskej únii (Law No 549/2011 on the recognition and enforcement of decisions imposing custodial sentences in the European Union) that a sentence may be recognised and enforced in the Slovak Republic if the acts for which the sentence was handed down constitute an offence under Slovak law and the convicted person is a Slovak national who is habitually resident in the Slovak Republic or has on its territory family, social or professional ties which may contribute to facilitating his rehabilitation in the course of the enforcement of the custodial sentence.

7 Under Paragraph 3(g) of Law No 549/2011, for the purposes of that law 'habitual residence' means permanent residence or temporary residence.

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

8 By decision of 10 November 2014 of the Krajský soud v Ústi nad Labem (Regional Court, Ústi nad Labem, Czech Republic), confirmed by decision of 27 February 2015 of the Vrchní soud v Praze (High Court, Prague, Czech Republic), YX, a Slovak national, was given a custodial sentence of 5 years for tax offences ('the judgment at issue').

9 On 16 October 2017, the Krajský súd v Trenčíne (Regional Court, Trenčín, Slovakia) received from the Krajský soud v Ústi nad Labem (Regional Court, Ústi nad Labem) the judgment at issue, together with the certificate referred to in Annex I to Framework Decision 2008/909.

10 By decision of 6 December 2017, the Krajský súd v Trenčíne (Regional Court, Trenčín) recognised the judgment at issue.

11 YX lodged an appeal against that decision before the referring court, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic). In support of his appeal, he claimed that, since 2015, he has been living in the Czech Republic, proof of which he could have provided had he been informed of the proceedings before the Krajský súd v Trenčíne (Regional Court, Trenčín), so that the place of his habitual residence would not have been determined as being in the Slovak Republic.

12 The referring court states that it is apparent from the population register of the Slovak Republic that, since 22 October 1986, YX's permanent residence has been registered in the territory of that Member State. It also states that, under the relevant provisions of national law, the permanent or temporary residence of a Slovak national in the territory of the Slovak Republic is purely for record-keeping purposes and is not conditional upon the citizen actually living there or having family, social, professional or other ties to that territory. Thus a decision of another Member State imposing a custodial sentence may be recognised and enforced in Slovakia if the convicted Slovak national has his permanent or temporary residence there, in formal terms even if he is not actually living in Slovak territory.

13 In those circumstances, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 4(1)(a) of [Framework Decision 2008/909] to be interpreted to the effect that the criteria set out therein are satisfied only when the sentenced person has, in the Member State of his nationality, such family, social, professional or other ties that it is possible to assume reasonably from those ties that enforcement in that State of the sentence may facilitate his social rehabilitation, and as therefore precluding national legislation such as Paragraph 4(1)(a) of Law No 549/2011 which, in such cases, enables a judgment to be recognised and enforced in the event of merely formally recorded habitual residence in the executing State, regardless of whether the sentenced person has concrete ties in that State which could enhance his social rehabilitation?

(2) If that question is answered in the affirmative, is Article 4(2) of [Framework Decision 2008/909] to be interpreted to the effect that the competent authority of the issuing State is required also in the situation provided for in Article 4(1)(a) of that framework decision to satisfy itself, even before forwarding the judgment and certificate, that enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and is, furthermore, required to provide the information gathered for that purpose in section (d), point 4, of the certificate specifically, where the sentenced person claims in the statement of his opinion provided for in Article 6(3) of that framework decision that he has concrete family, social or professional ties in the issuing State?

(3) If question 1 is answered in the affirmative, must Article 9(1)(b) of [Framework Decision 2008/909] be interpreted to the effect that where, in the situation set out in Article 4(1)(a) of that framework decision, despite the consultation under Article 4(1)(3) of that framework decision and any provision of other necessary information, it is not proven that there are such family, social or professional ties from which it could reasonably be assumed that the enforcement in the executing State of the sentence may facilitate the social rehabilitation of the sentenced person, there is still a ground for refusing to recognise and enforce the judgment?'

Developments since the request for a preliminary ruling was made

14 By letters of 4 June 2019, the referring court and the Czech Government informed the Court that the Krajský soud v Ústi nad Labem (Regional Court, Ústi nad Labem) had withdrawn its request for recognition of the judgment at issue. The Czech Government also informed the Court that enforcement of the sentence in the Czech Republic was ordered and that YX has been serving his sentence in a prison of that Member State since 4 March 2019.

15 In addition, the referring court announced that it does not wish to withdraw its request for a preliminary ruling on the ground that the Court's judgment in the present case might be relevant for the decision in another case pending before it.

16 In the light of that information, the Court, by letter of 11 June 2019, asked the referring court, first, to confirm whether it is still dealing with the dispute in which it submitted its request for a preliminary ruling and, second, to indicate whether it has retained that case.

17 By letter of 27 June 2019, received at the Court Registry on 4 July 2019, the referring court informed the Court that the proceedings which gave rise to its request for a preliminary ruling have been stayed pending the judgment of the Court. The referring court also confirmed that it was not withdrawing that request for a preliminary ruling on the ground that 'the judgment to be delivered is important for the decision to be handed down in another case before [it], which contains the same matters of fact and law and in which the proceedings have been stayed … pending the judgment of the Court in the present case'.

Request for a preliminary ruling

18 According to settled case-law of the Court, the procedure provided for by Article 267 TFEU is an instrument for cooperation between the Court and national courts by means of which the Court provides national courts with the criteria for the interpretation of EU law which they need in order to decide the disputes before them (order of 10 January 2019, *Mahmood and Others*, C-169/18, EU:C:2019:5, paragraph 21 and the case-law cited).

19 It is thus clear, from both the wording and the scheme of Article 267 TFEU, that the preliminary ruling procedure presupposes that a dispute is actually pending before the national courts in which they are called upon to give a decision which is capable of taking account of the preliminary ruling (see, inter alia, orders 22 October 2012, *Šujetová*, C-252/11, not published, EU:C:2012:653, paragraph 14, and of 3 March 2016, *Euro Bank*, C-537/15, not published, EU:C:2016:143, paragraph 32).

20 The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered, but rather that it is necessary for the effective resolution of a dispute (see, inter alia, orders 22 October 2012, *Šujetová*, C-252/11, not published, EU:C:2012:653, paragraph 15, and of 3 March 2016, *Euro Bank*, C-537/15, not published, EU:C:2016:143, paragraph 33).

21 In the present case, it is apparent from the request for a preliminary ruling that the dispute in the main proceedings concerns the decision of the Krajský súd v Trenčíne (Regional Court, Trenčín) to recognise and declare as enforceable in Slovak territory the judgment at issue which was forwarded to it by the Krajský soud v Ústi nad Labem (Regional Court, Ústi nad Labem), together with the certificate referred to in Annex I to Framework Decision 2008/909.

22 In that regard, it should be observed that, under Article 13 of Framework Decision 2008/909, after the certificate referred to in Annex I thereto is withdrawn, the Member State of enforcement no longer enforces the sentence.

23 It is apparent from the letters sent to the Court on 4 and 27 June 2019 that the Krajský soud v Ústi nad Labem (Regional Court, Ústi nad Labem) withdrew its request for recognition of the judgment at issue and that, since 4 March 2019, the sentence pronounced against YX is being enforced in the issuing Member State.

24 Therefore, it must be held that, following that withdrawal, there is no need to adjudicate on the action.

25 It follows that the questions referred for a preliminary ruling are now hypothetical and that the conditions enabling the Court to proceed with the reference are no longer satisfied.

26 In those circumstances, there is no need to adjudicate on this request for a preliminary ruling.

27 That finding is without prejudice to the possibility or, as the case may be, the obligation for the referring court to make a fresh request for a preliminary ruling to the Court of Justice under Article 267 TFEU, if it considers that such a decision is necessary to resolve a dispute before it and in the context of which, in its opinion, the same questions of interpretation of EU law arise.

Costs

28 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 (Fourth Chamber) hereby rules:

There is no need to adjudicate on the request for a preliminary ruling made by the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) by decision of 29 May 2018.

[Signatures]