Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 March 2020*

(Reference for a preliminary ruling — Framework Decision 2008/947/JHA — Mutual recognition of judgments and probation decisions — Scope — Judgment imposing a suspended custodial sentence — Probation measure — Obligation not to commit a new criminal offence — Obligation prescribed by law)

In Case C-2/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Riigikohus (Supreme Court, Estonia), made by decision of 11 December 2018, received at the Court on 4 January 2019, in the criminal procedure against

A. P.

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen (Rapporteur), C. Toader and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 14 November 2019,

after considering the observations submitted on behalf of:

– A. P., by M. Lentsius and G. Sile, vandeadvokaadid,

– the Estonian Government, by N. Grünberg, acting as Agent,

– the Latvian Government, by V. Soņeca, L. Juškeviča and I. Kucina, acting as Agents,

– the Hungarian Government, by M.Z. Fehér, M.M. Tátrai and V. Kiss, acting as Agents,

– the Polish Government, by B. Majczyna and J. Sawicka, acting as Agents,

– the European Commission, by S. Grünheid and K. Toomus, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 February 2020,

gives the following

* Language of the case: Estonian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ 2008 L 337, p. 102).

2 The request has been made in proceedings relating to the recognition in Estonia of a judgment of the Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga City Court, Latgale District, Latvia) by which A. P. was sentenced to a suspended term of three years' imprisonment.

Legal context

EU law

3 Recitals 8 and 24 of Framework Decision 2008/947 are worded as follows:

'(8) The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.

…

(24) Since the objectives of this Framework Decision, namely facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions in case of offenders who do not live in the State of conviction, cannot be sufficiently achieved by the Member States themselves in view of the cross-border nature of the situations involved and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity …'

4 Article 1(1) and (2) of Framework Decision 2008/947 states:

'1. This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction. With a view to achieving these objectives, this Framework Decision lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided for in this Framework Decision.

2. This Framework Decision shall apply only to:

(a) the recognition of judgments and, where applicable, probation decisions;

(b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;

(c) all other decisions related to those under (a) and (b);

as described and provided for in this Framework Decision.'

5 Article 2(1) to (4) and (7) of Framework Decision 2008/947 reads as follows:

'For the purposes of this Framework Decision:

1. "judgment" shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:
   (a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision;
   (b) a suspended sentence;
   (c) a conditional sentence;
   (d) an alternative sanction;

2. "suspended sentence" shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

3. "conditional sentence" shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

4. "alternative sanction" shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

…

7. "probation measures" shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release.'

6 Article 4 of Framework Decision 2008/947 provides:

'1. This Framework Decision shall apply to the following probation measures or alternative sanctions:

(a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

…

(d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;

…

(f) an obligation to avoid contact with specific persons;

(g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

…

2. Each Member State shall notify the General Secretariat of the Council, when implementing this Framework Decision, which probation measures and alternative sanctions, apart from those referred to in paragraph 1, it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.'

7 Article 6(1) and (2) of Framework Decision 2008/947 states:

'1. When, in application of Article 5(1) or (2), the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a certificate, the standard form for which is set out in Annex I.

2. The judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1, shall be forwarded by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the judgment and, where applicable, the probation decision, or certified copies thereof, as well as the original of the certificate, shall be sent to the competent authority of the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.'

8 Article 8(2) of Framework Decision 2008/947 is worded as follows:

'The competent authority of the executing State may postpone the decision on recognition of the judgment and, where applicable, the probation decision in the situation where the certificate referred to in Article 6(1) is incomplete or obviously does not correspond to the judgment or, where applicable, the probation decision, until such reasonable deadline set for the certificate to be completed or corrected.'

9 Article 11(1)(a) and (3) of Framework Decision 2008/947 states:

'1. The competent authority of the executing State may refuse to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures or alternative sanctions if:

(a) the certificate referred to in Article 6(1) is incomplete or manifestly does not correspond to the judgment or to the probation decision and has not been completed or corrected within a reasonable period set by the competent authority of the executing State;

…

3. In the cases referred to in paragraph 1(a), (b), (c), (h), (i), (j) and (k), before deciding not to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions, the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay.'

10 Article 14(1) of Framework Decision 2008/947 provides:

‘The competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

Such subsequent decisions include notably:

(a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;

(b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; and

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence.’

11 Article 20(2) of Framework Decision 2008/947 states:

‘If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer jurisdiction back to the competent authority of the issuing State.’

Estonian law

12 Paragraph 73(1) of the Karistusseadustik (Criminal Code) is worded as follows:

‘If the court, taking into consideration the circumstances of the commission of the criminal offence and the person of the offender, finds that service of the imprisonment imposed for a specified term or payment of the pecuniary penalty by the offender is unreasonable, it may order the sentence to be suspended on probation in full or in part with respect to the offender. The sentence may be suspended in full, unless otherwise provided for in the Special Part of the present code. If suspension of the sentence is ordered, the punishment imposed shall not be enforced in full or in part if the offender does not commit a new intentional offence within the probation period determined by the court …’

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

13 By judgment of 24 January 2017, the Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga City Court, Latgale District) sentenced A. P. to a suspended term of three years’ imprisonment.

14 On 22 May 2017, the Justiitsministeerium (Ministry of Justice, Estonia) forwarded to the Harju Maakohus (Court of First Instance, Harju, Estonia) a request from the competent Latvian authorities for recognition and enforcement of that judgment in Estonia.

15 By order of 16 February 2018, the Harju Maakohus (Court of First Instance, Harju) granted that request.

16 Following an appeal lodged by A. P., the Tallinna Ringkonnakohus (Court of Appeal, Tallinn, Estonia) upheld that order, by order of 21 March 2018.

17 A. P. brought an appeal against the order of 21 March 2018 before the referring court.

18 The referring court finds, in the light of the judgment of 24 January 2017 of the Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga City Court, Latgale District), that suspension of the execution of the sentence imposed on A. P. is contingent only upon the obligation, resulting from Paragraph 73(1) of the Estonian Criminal Code, not to commit a new intentional offence.

19 The referring court considers, furthermore, that such an obligation does not correspond to any of the probation measures or alternative sanctions referred to in Article 4(1) of Framework Decision 2008/947.

20 Since Estonian law authorises recognition of a judgment pursuant to Framework Decision 2008/947 only in so far as it imposes at least one of those probation measures or one of those alternative sanctions, the referring court is uncertain whether the framework decision must be interpreted as providing for recognition of a judgment such as that delivered on 24 January 2017 by the Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga City Court, Latgale District).

21 In those circumstances, the Riigikohus (Supreme Court, Estonia) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the recognition and supervision of execution of a judgment of a Member State compatible with … Framework Decision [2008/947] even where the sentenced person has by that judgment been conditionally released from the obligation to serve a custodial sentence, without any additional obligations being imposed, so that the person's only obligation is to avoid committing a new intentional offence during the probation period (this being a suspended sentence within the meaning of Paragraph 73 of the Estonian Criminal Code)?'

Consideration of the question referred

Admissibility

22 The Latvian Government asserts that the question referred is inadmissible inasmuch as the order for reference is based on an incorrect interpretation of Latvian law, a fact which, in its submission, supports the conclusion that there is not a real dispute before the referring court.

23 It contends, first, that the referring court is wrong in finding that A. P. is required solely not to commit a new intentional offence during a probation period, since Latvian law permits the suspension to be revoked also in the event of an offence not requiring intention and it automatically imposes certain probation measures on persons given a suspended custodial sentence.

24 Second, the Latvian Government contends that the Estonian courts should have requested the courts of the issuing State, pursuant to Article 8(2) and Article 11(1)(a) and (3) of Framework Decision 2008/947, to forward to them any information necessary to supplement the certificate which, in accordance with Article 6(1) of the framework decision, accompanies the judgment forwarded by the competent Latvian authority. If the referring court had complied with that obligation, it would have found there to be no dispute in the main proceedings.

25 According to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 26 and the case-law cited).

26 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, 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 (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 27 and the case-law cited).

27 Furthermore, the Court must take into account, under the division of jurisdiction between the Courts of the European Union and the national courts, the factual and legislative context as set out in the order for reference of the questions referred for a preliminary ruling. Consequently, whatever criticism the Latvian Government may have made of the assessment in the order for reference of the effects of the judgment that sentenced A. P. to a suspended term of imprisonment, the present reference for a preliminary ruling must be examined on the basis of that assessment (see, to that effect, judgment of 12 December 2019, *Bevándorlási és Menekültügyi Hivatal (Family reunification — Sister of a refugee)*, C-519/18, EU:C:2019:1070, paragraph 26 and the case-law cited).

28 In that context, the Latvian Government's argument relating to the existence of an obligation on the Estonian courts to gather information from the Latvian courts cannot succeed. It is for the referring court to determine whether it has all the information that is required by Framework Decision 2008/947 to be forwarded and, in particular, whether the certificate referred to in Article 6 thereof must be supplemented. Therefore, since the referring court considered that it had sufficient details to determine, pursuant to the relevant rules of national law, the effects of the judgment which sentenced A. P. to a suspended term of imprisonment, it is not for the Court to call that assessment into question.

29 It follows from the foregoing that the arguments put forward by the Latvian Government are not sufficient to establish that the question referred clearly bears no relation to the actual facts of the main action or its purpose, and that those arguments are therefore not capable of rebutting the presumption of relevance enjoyed by that question.

Substance

30 By its question, the referring court asks, in essence, whether Article 1(2) of Framework Decision 2008/947 must be interpreted as meaning that recognition of a judgment that has imposed a custodial sentence whose execution is suspended subject to the sole condition that a legal obligation not to commit a new criminal offence during a probation period be complied with falls within the scope of that framework decision.

31 Article 1(2) of Framework Decision 2008/947 provides that the framework decision is to apply only to the recognition of judgments and, where applicable, probation decisions, to the transfer of responsibility for the supervision of probation measures and alternative sanctions and to all other decisions related to such recognition or supervision.

32 It follows from Article 2(1) of Framework Decision 2008/947 that, for the purposes of the framework decision, the term 'judgment' refers to a final decision or order of a court of the issuing Member State, establishing that a natural person has committed a criminal offence and imposing one of the measures listed in Article 2(1)(a) to (d).

33 Since the question referred relates to recognition of a judicial decision that has imposed a custodial sentence whose execution is suspended, it must be determined whether such a judicial decision is to be regarded as a judgment, within the meaning of Article 2(1) of Framework Decision 2008/947, on the basis of Article 2(1)(b) thereof, which refers to judicial decisions imposing a suspended sentence.

34 The term 'suspended sentence' is defined in Article 2(2) of Framework Decision 2008/947 as being a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures.

35 Consequently, it must be determined whether the obligation not to commit a new criminal offence during a probation period is a probation measure within the meaning of Framework Decision 2008/947.

36 In that regard, it is apparent from Article 2(7) of Framework Decision 2008/947 that probation measures, for the purposes of the framework decision, are constituted by obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing Member State, in connection with a suspended sentence, a conditional sentence or a conditional release.

37 As that provision does not allow only certain specific types of obligations to be classified as 'probation measures', within the meaning of Framework Decision 2008/947, the obligation not to commit a new criminal offence during a probation period may therefore be regarded as being such a probation measure when it is the condition upon which suspension of the execution of a custodial sentence is contingent.

38 However, Article 4(1) of Framework Decision 2008/947 specifies that the framework decision is to apply to the probation measures or alternative sanctions which the latter lists and therefore, in principle, restricts its scope to those probation measures and alternative sanctions.

39 It is true that that restriction can be disregarded in certain situations, since, under Article 4(2) of Framework Decision 2008/947, each Member State has the power to give notice of other probation measures or alternative sanctions that it is prepared to supervise.

40 It is apparent, however, from the order for reference that the Republic of Estonia has not exercised that power and that Estonian law provides solely for supervision of the probation measures and alternative sanctions referred to in Article 4(1) of Framework Decision 2008/947.

41 In that context, it is to be noted that the obligation not to commit a new criminal offence during a probation period is not expressly mentioned as one of the categories of obligations and instructions listed in that provision.

42 Nevertheless, Article 4(1)(d) of Framework Decision 2008/947 refers to the wider category of 'instructions relating to behaviour'.

43 As that term is not defined by Framework Decision 2008/947, in accordance with the Court's settled case-law its meaning and scope must be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the objectives of the rules in which it is used (see, to that effect, judgment du 25 October 2012, *Ketelä*, C-592/11, EU:C:2012:673, paragraph 51 and the case-law cited).

44 In that regard, first, the obligation imposed on a sentenced person not to commit a new criminal offence during a probation period must, inasmuch as it constitutes an instruction intended to determine that person's conduct, be considered to be an 'instruction relating to behaviour', in accordance with that term's usual meaning in everyday language.

45 Second, the context of Article 4(1)(d) of Framework Decision 2008/947 also indicates that that provision must be interpreted as covering, inter alia, such an obligation.

46 In the first place, whilst the referring court is uncertain as to whether Framework Decision 2008/947 can be applied to that obligation when, according to it, that obligation does not involve the implementation of measures of active supervision by the executing Member State, it must be stated that a number of probation measures referred to in Article 4 of the framework decision do not necessarily call for the implementation of such measures of supervision. That is true in particular of the obligations not to enter certain localities, places or defined areas, to avoid contact with specific persons, and to avoid contact with specific objects, referred to in Article 4(1)(b), (f) and (g) of the framework decision.

47 In the second place, the first subparagraph of Article 14(1) of Framework Decision 2008/947 provides that the competent authority of the executing Member State is to have jurisdiction to take, inter alia, all subsequent decisions relating to a suspended sentence, in particular if the sentenced person commits a new criminal offence.

48 As is apparent from Article 14(1)(a) and (b) of Framework Decision 2008/947, decisions adopted on that basis may provide for modification of a probation measure, modification of the duration of the probation period or revocation of the suspension.

49 It follows that one of the effects of recognition of a judgment imposing a suspended sentence is to confer upon the competent authority of the executing Member State the power to adopt the measures relating to the suspension initially granted which appear necessary when the sentenced person commits a new criminal offence.

50 That being so, to interpret the list set out in Article 4(1) of Framework Decision 2008/947 as not including the obligation not to commit a new criminal offence would lead to a paradoxical result.

51 Such an interpretation would mean that the power to adopt subsequent measures if the sentenced person commits a new criminal offence would necessarily be denied to the competent authority of the Member State of residence when the judgment imposing a suspended sentence ties maintenance of the suspension exclusively to compliance with that obligation. However, that power would be accorded to that authority if the suspension were contingent upon another obligation referred to in Article 4(1) of Framework Decision 2008/947, not directly connected with any commission of a new criminal offence. The latter outcome would apply, in particular, if that other obligation has a very limited scope, such as the obligation laid down in Article 4(1)(a) of the framework decision to inform a specific authority of any change of address or working place, or if that other obligation is entirely unconnected with the executing Member State, such as the obligation laid down in Article 4(1)(b) of the framework decision not to enter certain areas in the issuing Member State.

52 Third, acceptance that a judgment which has imposed a suspended sentence may be recognised under Framework Decision 2008/947 where execution of the sentence is suspended subject to the sole condition that a new criminal offence not be committed is such as to contribute to attainment of the objectives pursued by the framework decision. It is apparent from Article 1(1) and recitals 8 and 24 that the framework decision pursues three complementary objectives, namely facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public by preventing recidivism, and facilitating the application of suitable probation measures and alternative sanctions, in the case of offenders who do not live in the Member State of conviction.

53 In particular, the authorities of the Member State in which the sentenced person resides are, as a general rule, more able to supervise compliance with that obligation and to act upon any breach thereof, since they are, in principle, better placed to assess the nature of the breach, the situation of the person committing it and his or her prospects of rehabilitation.

54 Furthermore, the link created between suspension of the execution of the sentence and the obligation not to commit a new criminal offence is intended to deter reoffending. Thus, to permit the competent authority of the Member State of residence to act upon any breach of that obligation is liable to contribute to attainment of the objective of protecting victims and the general public.

55 It follows from the foregoing that the obligation not to commit a new criminal offence during a probation period may, in principle, constitute a probation measure, within the meaning of Article 2(7) of Framework Decision 2008/947, when it is a condition upon which suspension of the execution of a custodial sentence is contingent.

56 However, it is to be noted that Article 2(2) of Framework Decision 2008/947 specifies that probation measures linked to a suspended sentence may be included in the judgment itself or determined in a separate probation decision taken by a competent authority.

57 Also, it is apparent from Article 2(7) of Framework Decision 2008/947 that the probation measures to which the framework decision refers are, by definition, 'imposed by a competent authority'.

58 It follows that it is incumbent upon the competent authority of the issuing Member State to determine the conditions upon which suspension of the execution of the custodial sentence or measure involving deprivation of liberty that is imposed is contingent, in such a way as to enable the authorities of the executing Member State to identify, on the basis of the judgment or probation decision, the probation measures imposed on the sentenced person. It is for the referring court to establish whether, in the light of the matters set out in the judgment forwarded, that is so in the main proceedings.

59 In the light of all the foregoing considerations, the answer to the question referred is that Article 1(2) of Framework Decision 2008/947, read in conjunction with Article 4(1)(d) thereof, must be interpreted as meaning that recognition of a judgment that has imposed a custodial sentence whose execution is suspended subject to the sole condition that a legal obligation not to commit a new criminal offence during a probation period be complied with falls within the scope of that framework decision, provided that that legal obligation results from that judgment or from a probation decision taken on the basis of that judgment, a matter which is for the referring court to establish.

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 (First Chamber) hereby rules:

Article 1(2) of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, read in conjunction with Article 4(1)(d) thereof, must be interpreted as meaning that recognition of a judgment that has imposed a custodial sentence whose execution is suspended subject to the sole condition that a legal obligation not to commit a new criminal offence during a probation period be complied with falls within the scope of that framework decision, provided that that legal obligation results from that judgment or from a probation decision taken on the basis of that judgment, a matter which is for the referring court to establish.

[Signatures]