

Poland, Gdańsk Court of Appeal, II Aka 261/22 appellate, 27th September 2022

Member State

 Poland

Topic

Mutual Trust

Sector

European Arrest Warrant

Deciding Court Original Language

Sąd Apelacyjny w Gdańsku

Deciding Court English translation

Gdańsk Court of Appeal

Registration N

II AKa 261/22

Date Decision

2022-09-27

ECLI (if available)

N/A

National Follow Up Of (when relevant)

(Indirect) follow up of C-221/19

EU legal sources and CJEU jurisprudence

Framework Decision 2008/909

21.09.2017 r., Beshkov, C-171/16, EU:C:2017:710, para 44; 5.09.2018 r., Lada, C-390/16, EU:C:2018:532, pkt 39

Subject Matter

The court of appeal faced the problem of the imposition of an aggregate sentence of the same amount as that imposed by the judgment under appeal, instead of the individual custodial sentences imposed in Poland, by unjustifiably giving EU law precedence over national law, which does not allow such a result - according to prosecutors office (appellant) .

Legal issue(s)

Reference for a preliminary ruling – Judicial cooperation in criminal matters – Framework Decision 2008/909/JHA – Article 8(2) and (4): – Article 17(1) and (2) – Article 19 – Taking into account, for the purposes of an aggregate sentence, of a conviction delivered in another Member State, which must be enforced in the Member State in which that judgment is delivered – Conditions – Framework Decision 2008/675/JHA – Article 3(3) – Concept of ‘interference with a sentence or its execution’ which must be taken into account in the event of new criminal proceedings initiated in a Member State other than that in which the ruling was delivered

Request for expedited/PPU procedures

YES

Interim Relief

NO

National Law Sources

Criminal law code art. 85 § 1 i 2, art. 86 § 1 art. 4 § 1 k.k., criminal procedure code - art.. 438, 439 provisions on grounds of appeal against a judgment in criminal proceedings.

Facts of the case

By a joint judgment of the court of first instance, the convict A.L. was given an aggregate sentence. It consisted of convictions for offences committed in another Member State, which the convict was later to serve in Poland. A. L.'s situation both before his incarceration in isolation and in prison is reprehensible. He had a bad reputation in his place of residence. His relationships with those closest to him were also poor. A.L. used physical violence against his mother, for which he was convicted with a final sentence. He abused alcohol and, under the influence of alcohol, destroyed household items and was aggressive and vulgar. He also used drugs. His behaviour created a sense of constant threat. He took up casual work in Germany. By judgment of the Neuruppin Regional Court of 30 May 2018, he was convicted of an offence equivalent to a crime under Article 280 § 2 of the Criminal Code and of an offence under Article 157 § 1 of the Criminal Code. Using a knife, the convicted man forced the victim out of the car, despite the latter's resistance, and then took the car. Immediately afterwards, he drove the car backwards and pulled the vehicle towards the victim, who was standing by the open door, causing him to be thrown against another stationary vehicle. In addition, the court took into account the commission of an offence under Article 177 and 178 of the Criminal Code. The German court sentenced him to 6 years' imprisonment. The defendant was remanded in custody in this connection on 14.11.2017

until 30.11.2017 and then from 19.01.2018. While the proceedings for the offence of aggravated robbery were pending and in connection with this A. L. was still deprived of his liberty before the sentence of the District Court of Neuruppin became final, he committed another offence: on 26 August 2018 at around 2.30 p.m. he set fire to the prison cell in which he was being held - by setting fire to paper and a blanket - and also set off the fire alarm himself. For this he was sentenced on 22 January 2021 by the Bad Freienwalde District Court to 9 months' imprisonment for an offence covered by Article 288 § 1 of the Code of Criminal Procedure. As stated by the German court, the offender's behaviour was motivated by frustration and the desire to create an opportunity for the offender to be transferred to another institution. A.L., after being transferred to the ZK in W., is serving his sentence in the ordinary system. Despite the pedagogue's motivation, he is not interested in serving the remaining part of his sentence in the system of programmatic influence. The prisoner's behaviour has been assessed as extremely negative by the ZK administration. He does not always respect the established internal order, he does not always adopt a regulatory attitude towards his superiors. He behaves properly among his fellow inmates. He was disciplined for hitting the door of his cell with a stool. In total, he was disciplined twice. He was not rewarded. He is not interested in a job and does not take part in rehabilitation programmes. He is critical of the acts he has committed. The criminological and social prognosis is negative. The process of the offender's re-socialisation has not been completed, and his attitude requires further training and correction of deficits related to the nature of the criminal acts committed.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The purpose of the preliminary ruling procedure is to ensure consistency in the interpretation of EU law by national courts applying EU law. It is a form of cooperation between the ECJ and the national courts of the Member States. The judicial authorities of a Member State acquire the powers under Article 267 TFEU upon accession to the EU (in the case of the Republic of Poland, on 1 May 2004). From that moment on, the ECJ is competent to issue preliminary rulings at the request of (Polish) courts, which are at the same time obliged to comply with the effects of the rulings in accordance with their content. On the other hand, the fact that it is a condition of accession to the EU that the new states adopt the entire *acquis communautaire*, and thus also the entire case-law of the ECJ, means that the national courts are in fact obliged to know and apply the entire case-law of the ECJ from the moment the judgments are handed down, and thus also those handed down in the pre-accession period. In the view of the Court of Appeal, it is therefore not possible to argue as simplistically as the applicant did in the present case. There is no doubt that the interpretation given by the Court of Justice is binding on the court which referred the question for a preliminary ruling. However, this binding effect extends not only to the court which referred the question, but also to any national court which decides the case (e.g. on appeal or review). However, the same national court (or another court deciding the same case) in the same proceedings may again request a preliminary ruling on a question of interpretation if new circumstances and arguments arise. Although the decision of the ECJ does not have *erga omnes* effect and does not constitute a formal precedent with effects beyond the case in relation to which it was given and in relation to third parties, its effectiveness derives from the doctrines cited above.

The binding effect and the obligation of the national court that refers a question to the ECJ to implement a preliminary ruling are not currently in doubt. On the other hand, the potential precedential character and force of preliminary rulings *erga omnes* is controversial among practitioners and academics.

There is no doubt that a national court hearing a case in which the ECJ has given a binding ruling

on a point of law is bound by the force of the judgment, even to the extent that the ECJ has ruled outside the framework of the questions posed (if the questions in question are applicable to the case at all). The case law of the ECJ makes it clear that if the national court recognises the need to apply EU law, it is obliged to give a judgment fully in accordance with the answer given to it by the ECJ. This judgment is binding throughout the main proceedings, unless the national court raises a new question.

Relation of the case to the EU Charter

Reference to a case cited above - C-221/19

Use of Judicial Interaction technique(s)

Preliminary reference. Disapplication of national law in favour of EU law.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

External vertical interaction - case C-221/19

Impact on Legislation / Policy

No changes in national legislative framework

Notes on the national implementation of the preliminary ruling by the referring court

It is consistent and aims to provide consistency. The ruling is a reminder for other courts, especially important in Polish legal framework.

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

See 5.2

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

No

Did the national court take into account national case law on fundamental rights?

No

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

Not available

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

Not available

Other

N/A

(Link to) full text

[https://orzeczenia.ms.gov.pl/content/\\$N/151000000001006_II_AKa_000261_2022_Uz_2022-09-27_003](https://orzeczenia.ms.gov.pl/content/$N/151000000001006_II_AKa_000261_2022_Uz_2022-09-27_003)

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