Impact of Hungary's EU Membership on Criminal Law

A Retrospective Analysis

Judit Szabó[*]

Abstract

On the 20th anniversary of Hungary's accession to the EU, it is perhaps worthwhile to look at the judgments of the CJEU that were either initiated by Hungarian judges or are significant because of the Hungarian dimension of the underlying proceedings and their impact on Hungarian law. In this retrospective analysis, however, it must be borne in mind that the initiatives in the field of criminal law are to be interpreted in a particular way: criminal law is special in the sense that national courts do not essentially apply EU law, and the referrals in criminal cases concern primarily procedural issues in the area of freedom, security and justice. The focus of the judgments presented in this study is therefore essentially on mutual recognition and enforcement of decisions and the ne bis in idem principle. In addition to the effectiveness of the initiatives, the analysis also looks at the direct impact of the CJEU's response to EU law issues raised in national case law on both national and European legislation and practice. Despite the seemingly small number of Hungarian criminal initiatives, Hungarian courts have been able to have a significant impact on the application of the law in other Member States, particularly in mutual recognition, deepening the understanding of this term. The study also aims at analyzing the Bob-Dogi and Aranyosi-Caldařaru judgments, which have strengthened the foundations of loyal cooperation and have been fundamental in determining it.

Keywords: mutual recognition, mutual trust, ne bis in idem, preliminary rulings, judicial cooperation in criminal matters

1. Introduction 68
2. Cases Initiated by Hungarian Courts 70
   2.1. Rejected Cases 71
      2.1.1. The Vajnai Case 71
      2.1.2. The Balázs-Papp Case 72
      2.1.3. The KI Case 73
      2.1.4. Conclusions 74
   2.2. Decisions of Merit 75
      2.2.1. The Katz Case 75
      2.2.2. The Eredics Case 76
      2.2.3. The Balogh Case 78
      2.2.4. The Lada Case 81
      2.2.5. The IS Case 83
      2.2.6. The LU Case 85
      2.2.7. The Alstom Case 87
      2.2.8. Conclusions 90
3. Cases Involving Hungary 91

* Judit Szabó: senior lecturer, ELTE Law School, Budapest; judge, Head of the Criminal Chamber of the Budapest-Capital Regional Court, Budapest; Deputy Coordinator in Criminal Law of the European Law Advisors' Network (ELAN), szabojudit76@ajk.elte.hu.

3.1. The Bob-Dogi Case 91
3.2. The Aranyosi-Caldařaru Case 93
4. Conclusion 96

1. Introduction

Hungary joined the EU on 1 May 2004, and this also meant a new task for the Hungarian courts: as courts of the Member States, they had to ensure the effective enforcement of EU law. To ensure that national courts interpret and apply EU law in a uniform manner throughout Europe, the CJEU, as the body responsible for the administration of justice in the EU, cooperates with national courts. This cooperation takes place in the framework of the preliminary ruling procedure provided for in Article 267 TFEU. The preliminary ruling procedure is therefore a form of cooperation between national courts and the CJEU.[1] This procedure, which is essentially a judicial protection procedure, allows a national court to ask the CJEU for a preliminary ruling in a case pending before it if it has doubts about the validity of EU law or its interpretation in a particular case. This is the inalienable and indefinite right[2] of all national judges under the Treaties.[3]

Between 1 May 2004 and the closure of this paper, the Hungarian courts referred a total of ten preliminary questions to the CJEU. However, if we consider the interaction indicated in the title of this paper, this number is almost double the number of cases with Hungarian implications, which, although not initiated as a domestic initiative, had a significant impact on Hungarian legislation and jurisprudence.

The following table lists these cases in chronological order,[4] with the case number and, where available, the name of the famous case; cases of Hungarian initiative are in italics:

1 Katalin Gombos, *Bírói jogvédelem az Európai Unióban – Lisszabon után,* Complex, Budapest, 2011, pp. 222–223.
2 *See also* Judgment of 23 November 2021, *Case C-564/19, IS,* ECLI:EU:C:2021:949, paras. 68–70.
3 *Cf.* Article 490 of the Hungarian Code of Criminal Procedure (Act CX of 2017, 2017 Code of Criminal Procedure).
4 The table does not include cases where the Hungarian government only intervened as a quasi-intervener.

Table 1

	Case no.	**Designation**
1.	*C-328/04*	*Vajnai – red star*
2.	C-161/06	SkomaLuxsro[5]
3.	*C-404/07*	*Katz*
4.	*C-205/09*	*Eredics*
5.	*C-45/14*	*Balázs-Papp*
6.	C-129/14 PPU	Spasic[6]
7.	C-340/14	Trijber[7]
8.	*C-25/15*	*Balogh*
9.	C-241/15	Bob-Dogi[8]
10.	C-404/15, C-659/15	Aranyosi – Caldararu[9]
11.	*C-390/16*	*Lada*
12.	C-453/16	Özçelik[10]
13.	C-268/17	AY[11]
14.	C-220/18	ML[12]
15.	*C-564/19*	*IS*
16.	*C-136/20*	*LU*
17.	*C-131/21*	*KI*
18.	*C-147/22.*	*Alstom*

Judging whether the number of initiatives seems sufficient is beyond the scope and purpose of this study. In any case, it can be stated that the initiatives in the field of criminal law are to be interpreted in a specific way: criminal law is special in the sense that national courts do not basically apply EU law, and the Hungarian proposals in criminal matters are, and

5 A key issue in the case was the lack of Hungarian translations of customs legislation.
6 The suspect was arrested in Hungary.
7 The main proceedings involves victims who are Hungarian citizens.
8 In the main proceedings, the Hungarian court issued an EAW, the refusal of which was the subject of the preliminary ruling procedure.
9 The case concerned the judgment of the conditions of detention in Hungary.
10 In the main proceedings, the Hungarian court issued an EAW, the refusal of which was the subject of the preliminary ruling procedure.
11 The main proceedings concerns corruption activity committed by a senior executive of a company of major importance for the Hungarian national economy.
12 The case concerned the judgment of the conditions of detention in Hungary.

have been, primarily concerned with procedural issues in freedom, security, and justice. In this context, it should also be pointed out that, compared to the EU sources of law in this area, the Hungarian legislation often contains fundamentally stricter rules,[13] and the implementations are basically complete. In my view, this is also the reason for the relatively low number of criminal law initiatives.

Having said the above, the aim of this study is to provide a summary review of the cases and judgments of Hungarian relevance adopted by the CJEU since our accession, which have both challenged the Hungarian legislator and had a significant impact on national criminal law, and to provide an insight into the impact of European criminal law on Hungarian procedural and substantive law by looking at the aftermath of the individual decisions.

2. Cases Initiated by Hungarian Courts

Before presenting the specific cases, it is not unreasonable to give an account of the statistics of the last 20 years, as far as Hungarian initiatives in the criminal law aspect are concerned, as this allows us to draw further conclusions about the effectiveness of the proceedings.

Table 2

	Court of origin	**Case no.**	**Result**
1.	Budapest-Capital Regional Court	C-328/04.	order – manifest lack of jurisdiction of CJEU
2.	Budapest-Capital Regional Court	C-404/07.	judgment
3.	Szombathely District Court	C-205/09.	judgment
4.	Budapest-Capital Regional Court of Appeal	C-45/14.	order – manifest lack of jurisdiction of CJEU
5.	Budapest Environs Regional Court	C-25/15.	judgment
6.	Szombathely District Court	C-390/16.	judgment
7.	Central District Court of Pest	C-564/19	judgment

13 *Cf. e.g.* the rules on the use of native language [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings – and its implementation in Sections 8 and 78 of the 2017 Code of Criminal Procedure].

	Court of origin	**Case no.**	**Result**
8.	Zalaegerszeg District Court	C-136/20	judgment
9.	Central District Court of Buda	C-131/21	order – manifest lack of jurisdiction of CJEU
10.	Budapest-Capital Regional Court	C-147/22	judgment

In 30 % of the cases,[14] the CJEU found that it lacked jurisdiction: in one case the underlying circumstance arose before our accession, while in other two cases the direct considering of the Charter of Fundamental Rights in criminal proceedings was at issue. In addition, in none of the cases cited was there any previous precedents in the case law of the CJEU which could be taken into account by analogy regarding the *erga omnes* effect. In the remaining 70 % of the cases, the CJEU answered the question on the merits, and two decisions regularly referred to the international doctrine of mutual recognition *(C-25/15, C-136/20)*.

2.1. Rejected Cases

2.1.1. The Vajnai Case

The peculiarity of the first Hungarian criminal law initiative[15] is that the underlying act itself, and even the first instance judgment on it, was rendered before Hungary's accession to the EU, so the court of second instance was able to initiate a preliminary ruling procedure.[16]

According to the underlying historical facts, in February 2003, the then vice-president of the Workers' Party showed a red star with a diameter of five centimeters, which was placed on his clothes, to the people present at an event organized by the party in Budapest, where about 30–50 people attended, in addition to the representatives of the press, and wore it visibly on his clothes until the police patrol that secured the scene acted. The district court therefore found him guilty of the offence of using an authoritarian

14 At the date of the closure of this manuscript (15 April 2024), no preliminary ruling procedure initiated by Hungary was pending before the CJEU.

15 For more details on the priority of this case, *see* Szabolcs Hornyák, 'C-138/04 – A Vajnai Ügy', *in* András Osztovits (ed.), *EUB 70 study volume*, Budapest, 2023, p. I.1.

16 Pursuant to Section 226(1) of Act XIX of 1998 on Criminal Procedure (1998 Code of Criminal Procedure).

symbol and placed him on probation for one year. The accused appealed against the judgment, which was noted by the prosecutor, to be acquitted.

The court of appeal suspended the appeal proceedings and asked the CJEU to answer the question whether the provisions of the Hungarian Criminal Code in force at the time prohibiting the use of authoritarian symbols were in line with the Community principle of non-discrimination and whether the EU provisions referring to fundamental freedoms[17] allow a person who wishes to display a symbol reflecting his political convictions to do so in any Member State.

In its decision of 6 October 2005,[18] the CJEU stated, first, that it had no jurisdiction in respect of legislation which did not fall within the scope of EU law and where the subject-matter of the dispute was in no way connected with any of the situations covered by the provisions of the Treaties. In the present case, the Hungarian legislation, as applied to the main proceedings, does not fall within the scope of EU law and, consequently, it clearly lacks jurisdiction to answer the question referred by the *Fővárosi Bíróság* (Budapest-Capital Regional Court).

Another interesting aspect of the case is that the accused subsequently appealed to the ECtHR against the final judgment of conviction, complaining that his prosecution for wearing the red star violated Article 10 ECHR, but the Strasbourg court did not uphold his claim.[19]

2.1.2. The Balázs-Papp Case

The underlying case also focused on the applicability of the EU Charter of Fundamental Rights. According to the facts in the main proceedings, two policemen were patrolling the market in Érd when they noticed a person selling telescopic batons ('vipers'). During the stop, the police officers committed several irregularities, including the taking of those objects without a receipt.

In the pre-trial phase, the court terminated the criminal proceedings against the accused for lack of a legal charge, as it considered that the indictment did not contain any intent required by the legislator for the

17 *See* Article 6(1) TEU; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Articles 10–12 of the EU Charter of Fundamental Rights.

18 Order of 6 October 2005, *Case C-328/04*, *Vajnai*, ECLI:EU:C:2005:596.

19 For more on *Vajnai* and the criticism of this preliminary ruling initiative, *see* Hornyák 2023.

offence to be established. The prosecution subsequently corrected the indictment and resubmitted it, based on which the court of first instance did not find the police defendants criminally liable and acquitted them of the charges against them.

However, the court of appeal held that the prosecutor's procedure may violate several provisions of the EU Charter of Fundamental Rights, in particular the principle of the prohibition of double jeopardy for the same act. The Hungarian court asked the CJEU for guidance on whether the prosecution procedure complied with the Charter.

In its order of 19 June 2014,[20] the CJEU held that the facts of the case did not contain any element of EU law which would allow it to be concluded that the main proceedings concerned the interpretation or application of a rule of EU law other than the Charter. However, where a point of law does not fall within the scope of EU law, the CJEU has no jurisdiction to rule on it and the provisions of the Charter which may be relied on cannot in themselves confer jurisdiction.

2.1.3. The KI Case

In the underlying case, the prosecutor's office charged KI with multiple counts of theft from grocery stores, including one count of food theft under HUF 20,000. Police action had already been taken against the accused for the latter theft, and the police imposed an on-the-spot fine on KI as part of an infringement procedure. KI undertook to pay the fine, which was confirmed by his signature. However, he subsequently failed to pay the fine within the time limit, and the district court imposed a 10-day detention as alternative sanction. If the police impose an on-the-spot fine and the offender accepts the decision imposing the fine, the decision becomes final without the intervention of a court. However, since the decision imposing the on-the-spot fine was not taken by a court, it did not result in *res iudicata*, so the prosecution could prosecute the same offence, even.

The district court in the criminal case had doubts as to the compatibility of this practice with the principle of *ne bis in idem*, and therefore suspended the criminal proceedings, and referred the matter to the CJEU. The reference for a preliminary ruling concerned the interpretation of Article 50 of the Charter in the context of Article 4 of the Seventh Additional Protocol to ECHR and the case law of the ECtHR.

20 Judgment of 19 June 2014, *Case C-45/14*, *Balázs and Papp*, ECLI:EU:C:2014:2021.

In its order of 1 September 2021,[21] the CJEU found no connection with EU law, came to the same conclusion regarding jurisdiction as in the *Vajnai* or *Balázs-Papp cases*.

2.1.4. Conclusions

In the Hungarian cases that were not examined on the merits, it can be said that the acts governing the underlying criminal proceedings did not have a *prima facie* EU law aspect, and Article 51(1) of the Charter of Fundamental Rights[22] contains a clear provision on the applicability of the Charter. However, the specificity of all cases is that they could have been referred to the Hungarian Constitutional Court on the grounds of unconstitutionality,[23] which the courts concerned did not do.

At the same time, in these decisions of Hungarian initiative, the CJEU has reaffirmed[24] with effect in all Member States the requirements for questions which may be the subject of a preliminary ruling by the Member States, and has provided further proof that the EU institutions, while endeavoring to comply with the provisions of EU law, fully respect the sovereignty of the Member States.

21 Judgment of 1 September 2021, *Case C-131/21, KI*, ECLI:EU:C:2021:695.

22 "The provisions of this Charter are addressed, with due regard for the principle of subsidiarity, to the institutions, bodies, offices and agencies of the Union and to the Member States insofar as they are implementing Union law. Accordingly, within their respective spheres of competence and within the limits of the powers conferred on the Union by the Treaties, they shall respect the rights and observe the principles set out in this Charter and shall promote the application thereof."

23 Pursuant to Article 25 of Act CLI of 2011 on the Constitutional Court: if a judge, in the course of the adjudication of an individual case pending before him, is required to apply a legal rule which he finds to be contrary to the Fundamental Law or which has already been found to be contrary to the Fundamental Law by the Constitutional Court, he shall – in addition to suspending the court proceedings – initiate an application to the Constitutional Court to declare the law or legal provision contrary to the Fundamental Law or to exclude the application of the unconstitutional law.

24 *See inter alia* Judgment of 26 February 2013, *Case C-617/10, Åkerberg Fransson,* ECLI:EU:C:2013:105, para. 22; Order of 13 February 2020, *Case C-376/19, MAK TURS case,* ECLI:EU:C:2020:99, para. 22.

2.2. Decisions of Merit

The CJEU examined the Hungarian initiatives beyond the above-mentioned, and issued a decision and judgment in these cases. However, in most of the cases, it disagreed with the legal position of the initiating court or reformulated the question itself, extending it to the EU legal level, which – in two cases[25] – was also anticipated by the interventions of other Member States.

2.2.1. The Katz Case

The criminal case referred to in the title is the first in which the Hungarian court had doubts about a specific procedural issue. The underlying case was a so-called substitute private prosecution[26] brought by György Katz against the defendant for the crime of fraud causing particularly great damage. Mr. Katz applied to the court to be heard as a witness in the proceedings. The referring court rejected that application on the ground that, since the prosecutor could not be a witness either, the same applied, in its view, to the private prosecutor. However, after the pleadings had been heard, the court of first instance reopened the evidentiary procedure and initiated a preliminary ruling procedure. His motion specifically concerned the question of whether – the national court should be – given the possibility to hear the victim as a witness in a substitute private prosecution procedure.

In its judgment of 9 October 2008,[27] the CJEU first held that György Katz is a victim[28] and held that the Framework Decision 2001/220/JHA must be interpreted as not obliging the national court to allow a victim of a

25 *See* Judgment of 9 June 2016, *Case C-25/15, Balogh*, ECLI:EU:C:2016:423; and Judgment of 6 October 2021, *Case C-136/20, LU*, ECLI:EU:C:2021:804.

26 The action of a substitute private prosecutor is a special way of enforcing a criminal claim under Hungarian criminal procedural law. In addition to the prosecutor's indictment (public prosecution), Hungarian law allows the victim to bring and represent the prosecution in certain minor offences (private prosecution). The substitute private prosecution in the main proceedings is the third way of asserting a criminal claim: it allows the victim to act, inter alia, if the prosecutor drops the prosecution's case. Private prosecution must be distinguished from the assertion of a civil claim as a private party.

27 Judgment of 9 October 2008, *Case C-404/07*, *Katz*, ECLI:EU:C:2008:553.

28 *Cf.* Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), Article 1(a): "victim is a natural person who

criminal offence to be heard as a witness in a substitute private prosecution. However, in the absence of that possibility, the victim must be allowed to make a statement which may be taken into evidence, since it is for the referring court to ensure that the taking of evidence in criminal proceedings does not, taken as a whole, infringe the requirements of a fair trial under Article 6 ECHR.

One of the interesting aspects of the case was that the private prosecutor as the person concerned, requested the Court to interpret the reference for a preliminary ruling in a broader sense and to examine whether the Framework Decision required that certain investigative powers of the prosecution authority should also be conferred on the substitute private prosecutor. However, the CJEU firmly rejected this proposal and stated that in the direct cooperation between the CJEU and the national courts established by the Treaties, the parties do not have the right of initiative but only the possibility to submit observations. This also means that only the national courts can refer questions to the CJEU, not the parties to the main proceedings, and that only the national court can decide which questions to refer to the CJEU, the content of which cannot be changed by the parties.

2.2.2. The Eredics Case

The victim was also at the center of the Hungarian initiative that followed in due course: the question to be decided concerned the interpretation of the concept of victim and the possibilities of regulating the mediation procedure in the Member States.

In the underlying criminal case, the first defendant was the director of a primary school and kindergarten (school) in a small town, and the second defendant was the managing director of a limited liability commercial and service company (Hotel Ltd.) operating in the same small town. Under the Phare program, a project fund provided a grant to the school for the financing of a forest trail under a framework contract concluded in 2003. The project manager on behalf of the school was the first defendant. The fund agreed to provide 80.15 % of the trail funding and the grant was paid in February 2004. *VÁTI Magyar Regionális Fejlesztési és Urbanisztikai Nonprofit Korlátolt Felelősségű Társaság* (VÁTI Kht.) supervised the imple-

has suffered harm directly caused by an act or omission in breach of the criminal law of a Member State."

mentation of the project and was liable for the settlement of accounts with the grant.

Under the contract between the defendants, the second defendant undertook to organize, prepare, and provide a venue for training for the basic mushroom expert exam, as well as to organize study trips and meetings, for a fee of HUF 1,200,000 (approximately EUR 4,270 at the time). As proof of the performance of this contract, the second defendant issued a performance report on behalf of the Hotel Ltd. and made it available to his co-defendant, who then paid the final invoice from the school's current account.

In fact, the basic course in mushroom picking undertaken under the contract was not actually carried out, and the invoice and the performance log issued to certify the performance of the contract were false. The first defendant filed these false documents, as well as the minutes and evaluation report of a study tour that was not actually carried out, in the project file. In this report, even the name of the team leader was forged. The file was sent to VÁTI Kht. as proof of the fulfilment of the obligations under the above-mentioned contract. The prosecutor's office eventually indicted him with the offence of damaging the financial interests of the European Union.

During the investigation, the first defendant denied criminal responsibility, but in the proceedings before the court he pleaded guilty of the crime he was charged with and filed a motion for mediation to terminate the criminal proceedings or to reduce the sentence without limitation.[29]

At the trial, VÁTI Kht. agreed to the mediation proceedings as a quasi-victim, and the Hungarian court suspended the criminal proceedings to allow the mediation proceedings to proceed. However, the prosecution appealed against this decision.

The municipal court which initiated the preliminary ruling procedure asked the CJEU the following questions in relation to Council Framework Decision 2001/220/JHA: whether the concept of victim in mediation proceedings should include a victim who is not a natural person; which offences, under the Framework Decision, can be covered by mediation, under what conditions and at what stage of the proceedings; and whether the possibility of mediation in criminal cases should be generally available, subject to the indiscriminate preconditions laid down by law.

29 Pursuant to Section 221/A of the 1998 Code of Criminal Procedure, in force at the time.

In its judgment of 21 October 2010,[30] the CJEU pointed out that it had already decided that the concept of victim for the purposes of the Framework Decision applied only to natural persons.[31] This interpretation is not altered by the fact that some Member States provide for mediation in criminal matters even where the victim is a legal person. The CJEU also held that the Hungarian legislator did not exceed the limits of its discretion when it decided to allow the use of mediation only in cases of offences against the person, transport and property, a decision which is essentially based on legal policy reasons. The interesting thing about the judgment was that although the Hungarian government had already contested the Court's jurisdiction to answer the first question, CJEU held that there was a clear EU legal interest in interpreting all provisions of EU law in a uniform way to avoid future differences of interpretation,[32] and therefore answered the other questions.[33]

2.2.3. The Balogh Case

The next case to be examined by the CJEU also focused on a procedural issue: however, the specificity of the case was that the initiative did not question the compliance of the entire domestic legal environment with EU law, but was originally intended to examine a subsidiary issue, the bearing of criminal costs arising from translation.

In the main proceedings, the *Landesgericht Eisenstadt* sentenced the Hungarian national to 4 years and 6 months imprisonment for the crime of aggravated burglary and ordered him to pay the costs of the proceedings. The Austrian court counted the pre-trial detention in the imprisonment. The Austrian court forwarded this judgment to the International Criminal Law Division of the Ministry of Justice (MoJ) in Hungary, which forwarded it to the Budapest District Court as the competent court for recognition of the validity of the Austrian decision.

The judgment of the foreign court was in German, and the Hungarian court had to translate it. The focus of the reference for a preliminary ruling was Directive 2010/64/EU of the European Parliament and of the

30 Judgment of 21 October 2010, *Case C-205/09, Eredics and Vassné Sápi*, ECLI:EU:C:2010:623.

31 *Cf.* Judgment of 28 June 2007, *Case C-467/05, Dell'Orto,* ECLI:EU:C:2007:395.

32 *Case C-205/09, Eredics,* para. 33.

33 For more on the case and the criticism of the preliminary ruling initiative, *see* Balázs Elek, 'C-205/09 – Az Eredics ügy' *in* Osztovits (ed.) 2023, I.2.

Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, under which the right to translation was granted to the accused in criminal proceedings, with the costs incurred being borne by the State. According to the diverging Hungarian legal positions, in proceedings in Hungary for recognition of the validity of a foreign court's judgment, which was brought because the defendant was convicted abroad, the language of the proceedings is Hungarian, translation is necessary for the conduct of the proceedings, and this cannot be linked to the right to use the native language, so the defendant must bear the translation costs of those special proceedings in Hungary. In addition, the foreign proceedings constitute the main proceedings for the purposes of the special procedure, and therefore, since the foreign court has ordered the defendant to bear the costs of the criminal proceedings, he must also bear all the costs of the special procedure.

In its order for a preliminary ruling, the court sought an answer to the question whether the special proceedings under Hungarian law should be included in the definition of criminal proceedings under the Directive, or whether the definition of criminal proceedings should be understood to mean only and exclusively those proceedings which end with a final decision on the criminal liability of the accused.

In its judgment of 9 June 2016 in *Balogh*, the CJEU based its decision on the fact that the competent Austrian authorities in the main proceedings had informed the Hungarian Ministry of the criminal conviction handed down by the *Landesgericht Eisenstadt via* ECRIS, to enable it to incorporate the information thus transmitted into its register. At the same time, MoJ requested the Austrian judicial authority to send the judgment and, once received, forwarded it to the Budapest Environs Regional Court for recognition of the judgment in Hungary, which also meant the entry of the decision on criminal liability in the Hungarian criminal register, for which act, under the applicable national law, this special procedure is unavoidable. The CJEU noted that, at the same time, Directive 2010/64/EU aims to ensure the right to interpretation and translation for defendants who do not speak or understand the language of the proceedings, facilitating the exercise of that right to ensure a fair trial. And since it was clear to the CJEU that the defendant had received a translation of the German-language judgment in the Austrian proceedings and that, therefore, in the context of the special procedure for the entry of that judgment in the Hungarian criminal record, a new translation of the judgment was not necessary, it was not justified in terms of the objectives pursued by the directive, namely the

enforcement of the defendant's right of defense and his right to effective judicial protection.

However, the CJEU also underlined that, according to the so-called ECRIS Framework Decisions,[34] the entry of a conviction handed down by a court in the convicting Member State in the criminal record of the central authority of the Member State of the defendant's nationality must be based directly on the transmission of information on these convictions in the form of a code by the central authorities concerned *via* ECRIS. In other words, the entry in the criminal record of a Member State should not depend on the prior and systematic application of a procedure for the recognition by a court of a judgment in another Member State, such as the Hungarian special procedure, and even less on the transmission of the judgment itself for recognition to the Member State of the defendant's nationality. In conclusion, this is in breach of the principle of mutual recognition and EU provisions do not allow for a special procedure for the recognition of the validity of a criminal conviction handed down in another Member State, which is necessary for such convictions to be considered in new criminal proceedings and which could lead to a reclassification of the offence committed and a reduction in the sentence imposed.

The novelty of the judgment is that the CJEU has for the first time established the relationship between ECRIS Framework Decisions and the mutual recognition of judgments, setting out the framework of the obligation to register.

The judgment in *Balogh* has fundamentally shaken up the Hungarian procedural system regarding the recognition of non-Hungarian convictions: the judgment required legislative action,[35] as previously the transmission of criminal data to Hungary automatically entailed the obligation to adapt the national conviction to Hungarian law.

---

34 Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records between Member States and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.

35 *See* in more detail Márta Balogh *et al*., 'A nem magyar ítéletek hazai büntetőeljárásban való részvételének újabb kérdései II.', *JURA,* 2022/1, pp. 5–27; Judit Szabó, 'A tagállami ítélet érvényessége' *in* László Kis & Judit Szabó (eds.), *Az európai büntetőjog gyakorlata*, Wolters Kluwer, Budapest, 2023, Chapter IV/1.1; Barbara Mohácsi, 'Külföldi ítéletek elismerése', *Jogászvilág*, 2 August 2016; László Angyal-Szűrös *et al*., 'Mit köszönhet a bűnügyi együttműködés az Európai Unió Bíróságának?', *Európai Jog,* Vol. 23, Issue 5, 2023, pp. 26–37.

The judgment is now a milestone in the application of EU law on mutual recognition in criminal matters, and its importance is outstanding:[36] although it is not of relevance in relation to the Translation Directive,[37] the Balogh judgment is a reference point in CJEU judgments on mutual recognition of judgments in other Member States, albeit somewhat indirectly, through *Lada* analyzed below.[38] The significance of the latter decision, by referring to *Balogh*, is that it essentially confirmed the acceptability from an EU law perspective of the Hungarian regulatory environment, which changed significantly because of *Balogh*.[39]

2.2.4. The Lada Case

As I predicted above, the focus of the so-called *Lada case* was identical to that of *Balogh*: it dealt with the transformation of non-domestic judgments. In the main proceedings, the *Landesgericht Wiener Neustadt* sentenced the Hungarian defendant to 14 months imprisonment for attempted burglary of property of high value and ordered him to serve 11 months of the sentence, while suspending 3 months of the sentence. The Austrian court forwarded the judgment to the MoJ, which forwarded it to the Szombathely District Court for the procedure for the recognition of the foreign judgment.

In *Balogh*, the Advocate General's Opinion was presented on 20 January 2016, and the Court delivered its judgment on 9 June 2016. The significance of these two dates lies in the fact that in the meantime, on 19 May 2016, the Szombathely District Court referred a question for a preliminary ruling on

36 For more on the significance of the judgment, *see* Judit Szabó, 'C-25/15 – A Balogh Ügy' *in* Osztovits (ed.) 2023, I.3.; István Ambrus, 'A ne bis in idem elve a legújabb európai joggyakorlatban, kitekintéssel a princípium érvényesülésére különböző jogterületek találkozása esetében', *Európai Tükör,* Vol. 22, Issue 3, 2019, pp. 121-135.

37 *See* Stijn Lamberigts, 'Case C-25/15 Balogh – The Translation and Interpretation Directive and (Questionable) Special Procedures', European Law Blog, 7 March 2016; and Gwynedd Parry, 'Language Rights in Criminal Proceedings and BREXIT: What Have We Got To Lose?', European Human Rights Law Review, 2017, Issue 2, pp. 155–168. The CJEU itself – in its annual report – listed its decision in the category of the right to use the mother tongue, see at https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/ragp-2016_final_en.pdf.

38 Judgment of 5 July 2018, *Case C-390/16, Lada*, ECLI:EU:C:2018:532.

39 Id. para. 40. The CJEU's judgment analyzed the Hungarian legal provisions in force between 1 September 2013 and 31 December 2017; in the absence of an express question, it could not even have had jurisdiction to take stock of the new legislation.

the above case concerning the relationship between Framework Decision 2008/675/JHA[40] and the Hungarian special procedure and the interpretation of the *ne bis in idem* principle.

Following the delivery of the judgment in *Balogh*, the Szombathely District Court – as an answer to the specific question of the CJEU – maintained its request for a preliminary ruling on the grounds that the CJEU had not taken a position on the Framework Decision.

In its decision of 5 July 2018 in *Lada*, the CJEU recalled its judgment in *Beshkov*[41] and confirmed that Framework Decision 2008/675/JHA obliges Member States to ensure that previous convictions handed down in a Member State are considered in the same way as national convictions. It also covers situations where a person previously convicted in a Member State is prosecuted in a Member State other than the one in which he was previously convicted. The CJEU has stressed that proceedings for recognition of a foreign conviction do not constitute a new criminal case, but that the purpose of the special procedure is to give a decision recognizing a conviction handed down in a Member State the same effect as a conviction handed down by a Hungarian court. Given that the Hungarian legislation requires an examination of whether the fundamental rights of the person concerned have been respected by that court, this may, save in exceptional circumstances, call into question the principle of mutual trust.

To sum up, the Framework Decision precludes making the consideration of a previous conviction handed down in another Member State subject to a prior national recognition procedure, in the context of which the conviction must be reviewed but does not preclude an examination of the individual case in the specific circumstances of the case.

However, this finding was nothing new for practitioners, as there have been no other significant developments in the interpretation of mutual recognition since the publication of the *Balogh* judgment.[42]

40 Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

41 Judgment of 21 September 2017, *Case C-171/16, Beshkov*, ECLI:EU:C:2017:710.

42 For a detailed critique of the judgment, *see* László Kis, 'C-390/16 – A Lada Ügy' *in* Osztovits (ed.) 2023, I.4.

2.2.5. The IS Case

The following preliminary ruling initiative was less relevant to the legal practitioners, but rather took on a politicized tone in the form of reservations about the rule of law in Hungary.[43] In the criminal proceedings underlying the initiative, IS, a Turkish-born but Swedish citizen who does not speak Hungarian, was prosecuted for misuse of firearms or ammunition. A Swedish-Hungarian interpreter was appointed to help the accused understand the criminal proceedings. There was no information on how the interpreter was selected by the investigating authority, whether his skills were checked and whether he was understood by the investigating authority. IS, who was detained in Hungary on 25 August 2015, was questioned as a suspect on the same day, but refused to testify on the grounds that his counsel did not appear at the trial. IS was subsequently released. Attempts to deliver the letter were returned with an 'unclaimed' message from the address previously provided. According to Hungarian law, the presence of the accused at the preliminary hearing is mandatory, which can be ensured by a European and/or international arrest warrant issued by the court, but this is subject to the condition that the prosecution proposes in the indictment that the accused be sentenced to a custodial sentence to be carried out. However, in the case in question, the prosecutor's office requested a fine and proposed that the proceedings be conducted in absentia.

In the light of the facts of the main case, the referring district court asked the CJEU whether EU law should be interpreted as requiring the mandatory registration of independent translators and interpreters or, failing that, the monitoring of the quality of their work. If so, and if, first, there is no such register in the Member State concerned and, second, the quality of the interpreting cannot be ascertained, must EU law be interpreted as meaning that in that case criminal proceedings in absentia cannot be brought.

At the same time, the district court – not directly related to the facts of the case – also dealt with the level of income and judicial self-administration, which ensures the independence of judges, and asked the Court questions in this area as well.

Following the initiation of the preliminary ruling procedure, the Hungarian Prosecutor General submitted a legal remedy on the ground of legality, as a result of which the *Kúria* ruled that, as the questions raised were

43 *Cf.* the introductory part of the final explanatory memorandum to Act X of 2023 and the amendment to Section 63 of certain laws on justice related to the Hungarian Recovery and Resilience Plan.

irrelevant to the resolution of the main case, the request for a preliminary ruling was unlawful: the Hungarian court could not refer the case to the CJEU to establish that the law of the Member State was not in conformity with the fundamental principles protected by EU law. The order of the *Kúria* found an infringement without annulling the decision to refer the case back to the CJEU for a preliminary ruling.

In the meantime, the President of the Budapest-Capital Regional Court, acting in his capacity as employer of the judges of the Pest Central District Court, initiated disciplinary proceedings against the judge who had submitted the request for a preliminary ruling, on the grounds set out in the order of the *Kúria*, which he subsequently withdrew within a month.

In view of these recent developments, the district judge referred two further questions to the CJEU: On the one hand, he also sought an answer from the CJEU to the question whether the rules governing the preliminary ruling procedure should be interpreted as precluding a Member State court of last instance from declaring an order of a lower court which has initiated a preliminary ruling procedure to be unlawful without affecting its legal effect; if so, whether EU law should be interpreted in such a way that, in the light of that interpretation, the Member States' contrary positions of principle should be disregarded. On the other hand, must the principle of judicial independence be interpreted as precluding disciplinary proceedings against a judge for having initiated the preliminary ruling procedure.

In its judgment of 3 November 2021,[44] the CJEU has firmly established that only the CJEU shall and can examine the admissibility and therefore the relevance and necessity of the questions raised in the preliminary ruling procedure. A decision of the national supreme court of a Member State which deprives the CJEU of its exclusive jurisdiction must be disregarded by the lower courts of that Member State. The role of the preliminary ruling procedure in Union law and the smooth functioning of cooperation between the CJEU and the courts of the Member States should also be ensured by the fact that no disciplinary proceedings may be brought against a national judge for having initiated a preliminary ruling procedure, which is also a guarantee of the fundamental principle of judicial independence.

In summary, the rule that no disciplinary proceedings may be brought against a national judge for having initiated a preliminary ruling procedure also protects the uniform interpretation of EU law, the smoothness of the preliminary ruling procedure and the independence of judges.

44 *Case C-564/19, IS.*

As far as the specific criminal proceedings are concerned, the authorities of the Member States are obliged not only to ensure the translation, but also to ensure the quality of the translation. If the latter cannot be verified, this may also be an obstacle to the prosecution in the absence of the accused.

As I have already mentioned above, the CJEU's judgment[45] had significance in Hungarian public dialogue, both the Hungarian *Kúria* and the Office of the Prosecutor General issued notices,[46] and the Hungarian legislator expressly provided for the exclusion of legal remedies against judicial initiatives for preliminary rulings in the light of the CJEU decision.[47]

2.2.6. The LU Case

Contrary to the above, the judgment presented below has had an impact not only on Hungarian but also on international jurisprudence. In the main proceedings, in June 2018, an Austrian authority, the administrative authority of first instance in Weiz imposed a fine of EUR 80 on LU, on the ground that LU, as the driver of a vehicle involved in a road traffic offence committed on 28 December 2017 in Gleisdorf (Austria), committed an offence by failing to comply with the request of that administrative authority to identify the person who was driving or stopped the vehicle in question within the time-limit prescribed by Austrian law. The Austrian authorities forwarded the decision imposing the fine to the Zalaegerszeg District Court for enforcement under Framework Decision 2005/214/JHA on the mutual recognition of financial penalties.[48] The Austrian authorities have also indicated that this offence is a breach of road traffic rules within the meaning of the Framework Decision and that decisions on such offences must be recognized and enforced without any consideration of the double criminality of the act.

---

45 For more on the domestic significance and criticism of the judgment *see* András Bertaldó, 'C-564/19 – Az IS Ügy' *in* Osztovits (ed.) 2023, 1.6.

46 *See* at www.kuria-birosag.hu/hu/sajto/kuria-kozlemenye-az-europai-unio-birosaga-c-56419-szamu-ugyben-hozott-itelete-vonatkozasaban; at www.ugyeszseg.hu/az-europai-unio-birosaganak-c-564-19-szamu-ugyeben-a-legfobb-ugyesz-nem-sertett-unios-jogot-mivel-a-jogorvoslati-kezdemenyezese-nem-az-elozetes-donteshozatali-eljaras-hanem-a-magyar-buntetoeljaras/.

47 *See* Section 490(4) of the 2017 Code of Criminal Procedure, as in force from 1 June 2023.

48 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

The Zalaegerszeg District Court had doubts that although the Austrian authorities had indicated that the offence fell into the category of 'behavior in breach of road traffic rules', LU's act was more of a disobedience to an official order, and automatic enforcement would therefore overly broaden the scope of the traffic offences catalogued.[49] The question referred to the CJEU by the Hungarian court was whether, as an executing authority, it has any further discretion to refuse recognition and enforcement in the event of the designation of the listed forms of conduct by the issuing Member State, or whether it must enforce the Member State decision without discretion if the Member State authority indicates one of the types of conduct listed. In the second question, whether, if discretion is available, the authority of the executing Member State should argue that the conduct indicated in the decision of the issuing Member State does not correspond to the conduct described in the list.

In its judgment of 6 October 2021,[50] the CJEU recalled at the outset that the principle of mutual recognition implies a restrictive interpretation of the grounds for non-enforcement. The choice of the category of offence indicated in the certificate is based on the legal classification of the issuing Member State, which the executing Member State authority may not challenge, since to do so would be precisely contrary to the principle of mutual recognition as the cornerstone of criminal judicial cooperation. If there is no indication that the certificate is manifestly not in conformity with the underlying decision, or that it is incomplete or has not been sent, or that it contains a category of offence to which the double criminality check does not apply, the executing authority in the Member State has no further leeway and must execute it without delay.

In summary, under these conditions, the CJEU held that the Zalaegerszeg District Court could not refuse to recognize and enforce the decision imposing the sanction forwarded to it by the Austrian authorities.

With this decision, the CJEU confirmed its statement in *Melloni*,[51] in which it also stated that the principle of mutual trust does not allow Member States to review each other's decision before implementation. The

49 It should be stressed that the Hungarian court deciding on the issue of recognition and acceptance did not challenge the application of the presumption of objective liability, since the presumption allows the fine for a traffic offence to be imposed indirectly on the operator of the vehicle. *See also* judgment of 5 December 2019, *Case C-671/18, Centraal Justitieel Incassobureau*, ECLI:EU:C:2019:1054.

50 Judgment of 6 October 2021, *Case C-136/20, LU*, ECLI:EU:C:2021:804.

51 Judgment of 26 February 2013, *Case C-399/11, Melloni*, ECLI:EU:C:2013:107.

reason behind the decision is clearly the principle of mutual trust, which is the basis of cooperation in the field of European criminal justice. It can also be concluded that in this proceedings initiated by Hungary the CJEU interpreted the concept of mutual trust as an irrefutable principle that can only be challenged in exceptional circumstances, primarily from a fundamental rights perspective, and therefore the judgment is of landmark importance in international jurisprudence, especially in the issue of the comparability of conflicting criminal law classifications.[52]

2.2.7. The Alstom Case

The last case initiated by Hungary until the closure of this paper, also involving Austria, focused on the clarification of the *ne bis in idem* principle,[53] as far as the admissibility of prosecutorial termination decisions is concerned, the analysis was on the *bis*. According to the facts of the main proceedings, criminal proceedings was initiated against a Hungarian national defendant in Austria in August 2012 for several offences, including suspected bribery committed between 2005 and 2010. In the Austrian proceedings, several suspects and witnesses were questioned, and other evidence was obtained, but the defendant was at an unknown location and was not questioned and no coercive measures were taken to trace him. In November 2014, the Austrian prosecutor's office decided to terminate the criminal proceedings against the defendant. The reason for the decision was that the investigation carried out up to that point had led to the conclusion that there were no grounds for further prosecution, as there was insufficient evidence – amounting to a conviction – that the defendant

52 For more on the domestic significance and criticism of the judgment, *see* Tamás Palkó, C-136/20 – Az LU Ügy' *in* Osztovits (ed.) 2023, 1.5.

53 The CJEU has already interpreted the content of the principle and the scope of the exceptions to its application on several occasions, *see e.g.* Judgment of 25 June 2018, *Case C-268/17, AY,* ECLI:EU:C:2018:602; Judgment of 5 June 2012, *Case C-489/10, Bonda,* ECLI:EU:C:2012:319; Judgment of 11 December 2008, *Case C-297/07, Bourquain*, ECLI:EU:C:2008:708; Judgment of 10 March 2005, *Case C-469/03, Miraglia,* ECLI:EU:C:2005:156; Judgment of 24 November 2020, *Case C-510/19, Openbaar Ministerie,* ECLI:EU:C:2020:494; Judgment of 16 June 2005, *Case C-105/03, Pupino,* ECLI:EU:C:2005:386; Judgment of 27 May 2014, *Case C-129/14 PPU, Spasic,* ECLI:EU:C:2014:586; Judgment of 9 March 2006, *Case C-436/04, van Esbroeck*, ECLI:EU:C:2006:165; Judgment of 28 September 2006, *Case C-150/05, van Strateen*, ECLI:EU:C:2006:614). In its most recent decision, the CJEU dealt with the *idem* element of the principle, *i.e.* the question of the identity of the facts, *see* Judgment of 21 September 2023, *Case C-164/22, Juan*, ECLI:EU:C:2023:684.

and his suspected accomplices had committed the bribery offences. Under Austrian law, there is no appeal against this decision, but the prosecution may, under strict conditions, decide to continue the proceedings until the statute of limitations has expired if further evidence is obtained. The decision was reviewed several times, but each time it was concluded that the proceedings could not be continued, inter alia because the criminal liability for the offence had expired in Austria in 2015 at the latest. In April 2019, the Hungarian Investigating Prosecutor General's Office filed an indictment with the Hungarian court charging the defendant with the same bribery offence. The tribunal terminated the proceedings in the first instance as it considered that the Austrian prosecution had already dealt with this offence with final effect, but the Court of Appeal ordered the first instance court to conduct a new trial, as it considered that the Austrian investigation was not sufficiently thorough, that it cannot be clearly established from the documents whether this order was based on a sufficiently thorough and complete assessment of the evidence, and that the accused was not even questioned.

In the retrial, the tribunal made a reference for a preliminary ruling. The questions were, first, whether the prosecution could take a decision resulting in a final judgment without the involvement of the court and, second, whether a decision leaving open the possibility of continuing the proceedings could fall within the scope of ne bis in idem.

In its judgment of 19 October 2023,[54] the CJEU, referring to its previous judgments cited above, held that any authority involved in the criminal justice system has the power to issue a decision to terminate or acquit, so a decision to terminate taken by the prosecution may also have a *ne bis in idem* effect, even if the decision was taken without the involvement of the court, and even if it does not take the form of a judicial decision. In the present case, after analyzing the question of *res iudicata*, the Court concluded that the decision of the Austrian public prosecutor to terminate the proceedings could be regarded as final, since the criminal liability for the act was time-barred under Austrian law. However, the CJEU emphasized that the content of the decision must also be examined, since only a decision taken following an assessment of the merits of the case can have a

54 Judgment of 19 October 2023, *Case C-147/22, Central Investigating Prosecutor's Office,* ECLI:EU:C:2023:790
The case was named after the Hungarian law enforcement agency accused of misusing the subway construction contracts that were the original subject of the main case.

ne bis in idem effect: the mere acquittal or termination of the proceedings, even in the absence of evidence, does not exclude that condition from being fulfilled. In other words, if the reasoning of the decision itself indicate that no detailed investigation has been carried out, this may undermine mutual trust and mutual recognition between Member States, which is the very basis of the protective effect of a final decision taken in another Member State based on the *ne bis in idem* principle.

The question arises as to the extent to which the second Member State initiating proceedings should review or reassess the final decision or proceedings of the first Member State. In this context, the CJEU has explained that it would be contrary to the principle of mutual trust if the investigation of the other Member State had to be examined in detail and then unilaterally decided whether it was sufficiently substantiated. Instead, the principle of loyal cooperation[55] applies, *i.e.* the investigating authority or prosecutor's office of the second Member State must seek the assistance of the prosecutor's office of the first Member State, in particular as regards the applicable national law and the grounds on which the decision taken following the investigation was based. Even after such consultation, only in exceptional cases can such a conclusion be reached that the investigation was not sufficiently detailed, a conclusion which may be based on the national law of the first Member State which took the decision, the grounds for the decision and any additional information. In essence, an inadequate investigation may be inferred by the prosecution of the second Member State if, for example, the suspect has not been questioned, whereas the first Member State would reasonably have been obliged to take all measures to ensure that this was the case.

In its judgment, the CJEU essentially formulated the principle that cooperation between investigating authorities and prosecution services of the Member States should be based on respect for the principle of loyal cooperation and the exercise of loyal cooperation through consultation, precisely in order to strengthen mutual trust, and thus, while not introducing anything new in the area of the *ne bis in idem* principle, it drew attention to one of the cornerstones of EU cooperation in criminal matters, which has been discussed only to a limited extent,[56] confirming its previous judgments.

55 Article 4(3) TEU.

56 *E.g.* Judgment of 22 December 2008, *Case C-491/07, Turansky*, ECLI:EU:C:2008:768; Judgment of 29 June 2016, Case *C-486/14, Kossowski*, ECLI:EU:C:2016:483; also *cf.*

2.2.8. Conclusions

The Hungarian submissions in criminal matters dealt with issues of a mainly procedural nature in the area of freedom, security and justice. Despite the seemingly small number of initiatives, the Hungarian courts have been able to have a significant impact on the application of the law in other Member States, particularly in mutual recognition, and have deepened the understanding of this term.

Of course, the existence or non-existence of an international resonance should not be a benchmark for the case, the focus should rather be whether the question to be decided refers to a problem that is present in the law and practice of other Member States, or fills a vacuum, providing a new interpretation of EU law.

It is perhaps worth mentioning that the network of European legal advisors set up by the Hungarian judicial administration[57] could play a significant role in identifying the EU relevance of a case and thus, where appropriate, in initiating decision-making procedures: half of the initiatives come from its members.

However, not only preliminary rulings initiated by Hungary, but also those initiated by other Member States have had a significant impact on the application of Hungarian law. It is beyond the scope of this study to list all the cases, but regarding the interaction and dialogue, it is essential to mention two cases, which have a Hungarian relevance, and which have brought about radical changes in legislation, beyond the scope of case law. Interestingly, both were published in 2016, the same year as the Balogh judgment.

Judit Szabó, *A ne bis in idem elve az európai jogalkalmazásban,* Doctoral Thesis, Debrecen, 2022.

57 The basic task of the European Law Advisors' Network is to provide legal advice on theoretical and practical questions relating to the application of Community law, on any question concerning the scope of primary and secondary law rules, on any question concerning the preliminary ruling procedure, on the legal structure of the EU, on the functioning of its other legal instruments, on the interpretation of the Council of Europe's legal procedures and on the interpretation of the judgments and case law of the ECtHR. Consultation of the expert advisors is not an obligation but an opportunity for judges, and the members of the ELAN, while respecting the independence of the judiciary, are committed to providing professional assistance to any colleague serving in the Hungarian judiciary who has a question on EU law during their judicial activity.

3. Cases Involving Hungary

3.1. The Bob-Dogi Case

According to the facts of the main case, a Romanian lorry driver caused a speeding accident in Hungary, resulting in serious injuries to the driver of another vehicle. The Hungarian authorities sent a European Arrest Warrant (EAW) to the Romanian authorities requesting the arrest and surrender of the lorry driver. However, the Romanian authorities refused to execute the EAW on the grounds that the Hungarian authorities had failed to issue a national arrest warrant which could have formed the basis for the issuance of an EAW. According to the Romanian authorities, an EAW can only be issued based on a previous national arrest warrant, but not independently. Following a reference from the *Curtea de Apel Cluj*, the CJEU had to decide whether the execution of an EAW could be refused in the absence of a national arrest warrant.

In its judgment of 1 June 2016,[58] the CJEU stated that a national arrest warrant prior to an EAW can only be an arrest warrant issued by a judicial authority, *i.e.* a prosecutor's office or a court. In the reasoning of its judgment, the Court explained that the application of that requirement results in a two-level protection of the procedural rights and fundamental rights of the requested person, since the judicial protection afforded at the first level when a national judicial decision such as a national arrest warrant is adopted is complemented by the judicial protection which must be afforded at the second level when an EAW is issued.

In Hungarian case law, this meant that if the Hungarian national arrest warrant was not issued by a court, the EAW could only be issued on the basis of a national arrest warrant issued by the prosecution or by the investigating authority, but with the approval of the prosecutor, so in this case the arrest warrant of the investigating authority, which is not a judicial authority for the purposes of the Framework Decision, must be approved by the prosecutor. If the information on the form does not indicate that this is the case, the CJEU has stated that, in the first instance, direct consultation based on mutual trust must be initiated; but if no such national arrest warrant has in fact been issued, the executing authority cannot execute the EAW.

58 Judgment of 1 June 2016, *Case C-241/15, Bob-Dogi*, ECLI:EU:C:2016:385.

In other words, the CJEU's judgment in *Bob-Dogi*[59] requires a national arrest warrant issued by a judicial authority as a condition for the execution of the EAW, as this is not always included in the form, and it is necessary to obtain it at short notice if the suspect does not consent to surrender.

This meant that from June 2016, as a departure from previous practice, the Hungarian judicial authority had to pay increased attention to the fact that the EAW could not be issued on its own but had to be preceded by a national arrest warrant, called the 'pink warrant',[60] based on the color of the previous form.

It is a different matter that neither the *Bob-Dogi* decision nor the current Code of Criminal Procedure allows for any appeal against the issuance of an arrest warrant,[61] whether domestic or foreign (European or international). This does not mean, however, that the lawfulness of the warrant itself or of the measures taken cannot be challenged: for example, there is no obstacle to the initiation of a prosecutorial review of the lawfulness of an unlawful warrant during the investigation, and there is also a right of appeal against detention following arrest based on an unjustified warrant.[62]

---

59 On the significance of the judgment, see also Anita Zsuzsanna Nagy, 'Európai elfogatóparancs az Európai Unió Bírósága és a Kúria döntéseiben', Kúriai Döntések, Vol. 65, Issue 4, 2017, pp. 547–552; Sándor Berczeli, 'Az európai elfogatóparancs kibocsátása' in Kis & Szabó (eds.) 2023, Chapter II/2.1.1; Andre Klip, 'A Next Level Model for the European Arrest Warrant', European Journal of Crime, Criminal Law and Criminal Justice, Vol. 30, Issue 2, 2022, pp. 107–126.

60 This is also reflected in recent legislation: *cf.* Section 119(1)(c) of the 2017 Code of Criminal Procedure: "The court, the public prosecutor's office and the investigating authority may, in the case of an offence punishable by imprisonment, issue an arrest warrant by decision in order to order the custody of the accused or of a person reasonably suspected of having committed the offence, if the suspected person or the person reasonably suspected of having committed the offence is detained abroad, the conditions for issuing an international arrest warrant or an EAW are fulfilled and the transfer or extradition of the suspected person or the person reasonably suspected of having committed the offence to Hungary is justified." In comparison, Section 73/A (1) of the 1998 Code of Criminal Procedure in force at the time of the decision merely referred back to the rules of the domestic arrest warrant with regard to the European or international arrest warrant.

61 Section 119(4) of the 2017 Code of Criminal Procedure: "There shall be no legal remedy against the issuance of an arrest warrant." Section 73(9) of the 1998 Code of Criminal Procedure contained the same rule.

62 Furthermore, a specific legal remedy is provided by the procedural provision which excludes the ordering of detention in the case of the voluntary appearance of the person subject to the arrest warrant, if the basis for the order would be solely the previous unavailability of the person concerned [Section 119(4) second sentence of the 2017 Code of Criminal Procedure]. It should also be emphasized here that a

3.2. The Aranyosi-Caldařařu Case

The CJEU judgment of 2016, described below, also has a Hungarian relevance and impact to this day. The international importance of the judgment, which was already anticipated, is illustrated by the fact that the Czech, Irish, Spanish, French, Lithuanian, Hungarian, Dutch, Austrian, Romanian, and Dutch governments intervened.

The joined cases were because the *Generalstaatsanwaltschaft Bremen* had to decide on the surrender of two defendants: Pál Aranyosi, a Hungarian national, was requested by the Hungarian and Romanian authorities to be extradited from Germany for the purpose of prosecution for multiple burglary and Robert Căldăraru, a Romanian, was requested by the Romanian authorities for the purpose of execution of his sentence. Both persons were arrested by the German authorities in Bremen and there were doubts about whether they could be extradited to a country where the conditions of detention in prisons violate fundamental rights protected by EU law, as repeatedly ruled by the ECtHR in Strasbourg.[63] The *Generalstaatsanwaltschaft Bremen* has asked the CJEU to answer this question, and whether extradition can take place if Hungary guarantees that the conditions of detention are in line with the requirements of human treatment.

The CJEU joined the two cases because of the similarity of the EU law issues. In its judgment of 5 April 2016,[64] the Grand Chamber emphasized that the principle of mutual recognition, which is the cornerstone of judicial cooperation in criminal matters, applies in the area covered by the Framework Decision,[65] and that the executing judicial authority is therefore, as a general rule, obliged to execute the EAW and may refuse execution only on the mandatory and discretionary grounds listed in the Framework

---

domestic arrest warrant cannot be issued for the purposes of a foreign arrest warrant if the participation of the person detained abroad can be achieved by other means, in particular by a procedural act (interrogation) carried out by means of a request for legal assistance, by using telecommunication equipment or by temporarily transferring the detained person (*cf.* Chapters CI and CII of the 2017 Code of Criminal Procedure).

63 *Varga and others v. Hungary*, Nos.14097/12, 45135/12, 73712/12, 34001/13, 44055/13, 64586/13, 10 March 2015.

64 Judgment of 5 April 2016, *Case C-149/03, Aranyosi and Căldăraru*, ECLI:EU:C:2016:198.

65 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

Decision, or may request guarantees as conditions for surrender in the cases also exhaustively listed therein.

The CJEU has established that, exceptionally, the execution of an EAW can be suspended,[66] but only if one of the Member States commits a serious and persistent breach of fundamental EU values[67] and this has been established in the so-called Article 7 procedure.[68]

The CJEU has laid down a two-step test for assessing a potential threat of infringement in the issuing Member State. *(i)* As a first step, the court in the executing State must examine the general conditions of detention and whether there are systemic problems in the issuing Member State. In doing so, it must consider objective, reliable, accurate and sufficiently up-to-date data demonstrating general and systematic disorder, whether in relation to specific groups or to specific prisons. Such data may be available from various sources, such as judgments of international courts, national courts, the Council of Europe, or UN bodies. Where the executing judicial authority is satisfied that there is systematic and generalized disorder, it must in a *(ii)* second step examine whether, in the circumstances of the case, there are serious and substantiated reasons to believe that the person concerned would be exposed to a real risk of inhuman or degrading treatment or punishment in the issuing Member State because of his or her transfer. To this end, the executing judicial authority may request additional information from the issuing judicial authority, which the latter, if necessary, with the assistance of the central authority, shall send to the executing judicial authority within the time limit set out in the request.

The executing judicial authority may consider any other information at its disposal. If the executing judicial authority rules out the existence of a real risk of inhuman or degrading treatment, the person concerned must be surrendered to the issuing Member State. However, if the authority establishes that there is a real risk of inhuman or degrading treatment of the person subject to the EAW, the execution of that warrant must be postponed but it cannot be abandoned.

66 Id. Recital (10).

67 *E.g.* human dignity, freedom, democracy, equality, the rule of law, respect for human rights and in particular the rights of minorities (Article 2 TEU).

68 The Council, acting by most four-fifths of its members and after obtaining the consent of the European Parliament, may, on a reasoned proposal from a third of the Member States, the European Parliament or the Commission, determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2 (Article 7 TEU).

If the executing judicial authority decides to postpone, the executing Member State shall inform Eurojust, stating the reasons for the delay. A Member State which experiences repeated delays in the execution of EAW by another Member State shall inform the Council accordingly. This obligation may help to identify problems in the implementation of the Framework Decision. Neither the Member State nor the individual may abuse the right to postpone execution.

If the executing judicial authority rules out that the person concerned is in real danger of being subjected to inhuman or degrading treatment in the issuing Member State, it must execute the EAW. However, this decision does not limit the possibility for the person concerned to challenge the lawfulness of the conditions of his detention in the issuing Member State after the surrender.

To sum up, the CJEU has long interpreted the Framework Decision as a basis of mutual trust, as it requires all Member States to respect the fundamental principles of the EU and if a Member State violated these principles in relation to human rights, the Article 7 procedure would be triggered. However, in view of the non-existent practice of this procedure, this meant that no enforcing Member State could invoke a violation of human rights to suspend enforcement. Thus, the *Aranyosi and Căldăraru* judgments[69] are the first cases where the CJEU has developed a test for an exception to the principle of mutual recognition without recourse to a separate EU procedure, explicitly invoking human rights.[70]

---

69 On the significance and criticism of the judgment, see Petra Bárd, 'Aranyosi and Căldăraru', Fundamentum, Vol. 20, Issue 2–4, 2016, pp. 103–106; Balázs Lehoczki, 'A kibocsátó tagállamban fennálló fogvatartási körülmények az európai elfogatóparancs végrehajtását megelőző vizsgálatának korlátai', Acta Humana, Vol. 6, Issue 3, 2018, pp. 63–69; Gergő Czédli, 'Az európai elfogatóparancs kibocsátása' in Kis & Szabó (eds.) 2023, Chapter II/4.4; Szilárd Gáspár Szilágyi, 'Converging Human Rights Standards, Mutual Trust and a New Ground for Postponing a European Arrest Warrant', European Journal of Crime, Criminal Law and Criminal Justice, Vol. 24, Issue 2–3, 2016. pp. 197–219; Koen Bovend'Eerdt, 'The Joined Cases Aranyosi and Căldăraru: A New Limit to the Mutual Trust Presumption in the Area of Freedom, Security, and Justice?', Utrecht Journal of International and European Law, Vol. 32, Issue 83, 2016, p. 112.

70 The judgment of 25 July 2018, *Case C-220/18 PPU, ML*, ECLI:EU:C:2018:589 can be seen as a continuation of *Aranyosi*. The CJEU clearly stated that any examination of the conditions of detention in the issuing Member State prior to the execution of an EAW must be limited to the penitentiary institutions in which the person concerned is specifically intended to be detained. A further important finding in the case is that the right to lodge a complaint is not in itself sufficient to exclude the existence of

In addition, as I indicated above, to this day we receive almost every month a request, typically from German judicial authorities (prosecutors) for the Hungarian authorities to provide information and guarantees on the appropriate conditions of execution of sentences following the transfer.[71]

4. Conclusion

It is generally accepted in the literature[72] – and consistently supported by the relevant case law of the CJEU[73] – that the preliminary ruling procedure is a dialogue between the CJEU and national courts to achieve the correct interpretation and uniform application of EU law. Similarly, in criminal judgments, there is a difference in the perspective of national courts and the CJEU on the application of EU law: while the CJEU, in interpreting EU law, seeks an interpretation of the law that is binding on all Member States and applies throughout the Union, national courts necessarily apply EU law in addition to national law within the framework of their national jurisdiction. This different perspective is one of the reasons for the different interpretations of the questions raised in the preliminary ruling procedures. If the question posed asks too much about an interpretation of EU law arising from a specific problem of national law, the CJEU often reinterprets it, puts it in a different light and answers the question in the way it has reformulated it.[74]

It is clear to see how in some cases the CJEU's response to questions of EU law raised in national case law has had a direct impact on both

---

a real risk of inhuman treatment, but that the possibility of such a remedy may be considered when deciding whether to surrender the person concerned.

71 The provision of information and guarantees is a joint responsibility of the Hungarian Ministry of Justice and the Hungarian Prison Service.

72 *See e.g.* András Osztovits, *Az előzetes döntéshozatali eljárás legfontosabb elméleti és gyakorlati kérdései*, KJK-Kerszöv, Budapest, 2005; Ágnes Czine *et al.*, *Az előzetes döntéshozatali eljárás a büntető ügyszakban*, HVG ORAC, Budapest, 2006; Michal Bobek, 'Learning to talk: preliminary rulings, the courts of the new Member States and the Court of Justice', *Common Market Law Review,* Vol. 45, Issue 6, 2008, pp. 1611–1543; Paul Craig & Grainne de Burca, *EU Law. Text, Cases, and Materials, Sixth Edition*, Oxford University Press, Oxford, 2015, pp. 464–544.

73 Judgment of 29 March 2022, *Case C-132/20, Getin Noble Bank*, ECLI:EU:C:2023:366, para. 71; Judgment of 17 May 2023, *Case C-176/22, BK and ZhP*, ECLI:EU:C:2023:416, para. 26.

74 *See* in more detail the summary reports of the jurisprudence analysis of the *Kúria* on preliminary Ruling procedures (2013, 2024), at https://kuria-birosag.hu/hu/joggyakorlat-elemzo-csoportok-osszefoglaloi.

national and European legislation and practice. This is precisely one of the purposes of the preliminary ruling procedure: the national judge essentially steps outside the national framework and, as an EU judge, influences the jurisprudence of the other Member States. However, EU's involvement in criminal matters, especially in the area of substantive criminal law, is limited but perhaps the acceleration of EU legislation in the area of freedom, security and justice, in the light of the challenges of today's global action ––the fight against crimes against children, trafficking in human beings for various purposes, money laundering and terrorist financing – and the deepening of mutual recognition and mutual trust, will change this phenomenon.

And then, after another 20 years, there will be more cases of outstanding Hungarian initiative or involvement to report.