

JUDGMENT OF THE COURT

11 February 2003 *

In Joined Cases C-187/01 and C-385/01,

REFERENCES to the Court under Article 35 EU by the Oberlandesgericht Köln (Germany) and the Rechtbank van eerste aanleg te Veurne (Belgium) for a preliminary ruling in the criminal proceedings before those courts against

Hüseyin Gözütok (C-187/01)

and

Klaus Brügge (C-385/01),

on the interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19), signed on 19 June 1990 at Schengen (Luxembourg),

* Languages of the case: German and Dutch.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen (Rapporteur) and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Mr Gözütok, by N. Hack, Rechtsanwalt, (C-187/01),

- the German Government, by W.-D. Plessing, acting as Agent (C-187/01 and C-385/01),

- the Belgian Government, by A. Snoecx, acting as Agent (C-385/01),

- the French Government, by R. Abraham, G. de Bergues and C. Isidoro, acting as Agents (C-187/01),

- the Netherlands Government, by H. G. Sevenster, acting as Agent (C-187/01 and C-385/01),

— the Commission of the European Communities, by W. Bogensberger and C. Ladenburger (C-187/01) and by W. Bogensberger and R. Troosters (C-385/01), acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Gözütok, represented by N. Hack, of the German Government, represented by A. Dittrich, acting as Agent, of the Belgian Government, represented by A. Snoecx, J. Devadder and W. Detavernier, acting as Agents, of the French Government, represented by R. Abraham, of the Italian Government, represented by G. Aiello, avvocato dello Stato, of the Netherlands Government, represented by C. Wissels, acting as Agent, and of the Commission, represented by W. Bogensberger and R. Troosters, at the hearing on 9 July 2002,

after hearing the Opinion of the Advocate General at the sitting on 19 September 2002,

gives the following

Judgment

- 1 By orders of 30 March and 4 May 2001, received at the Court on 30 April 2001 and 8 October 2001 respectively, the Oberlandesgericht Köln (Higher Regional Court, Cologne) (C-187/01) and the Rechtbank van eerste aanleg te Veurne

(Court of First Instance, Veurne) (C-385/01) each referred to the Court for a preliminary ruling under Article 35 EU a question on the interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19; hereinafter 'the CISA'), signed on 19 June 1990 at Schengen.

- 2 Those questions arose in two sets of criminal proceedings, the first in Germany against Mr Gözütok and the second in Belgium against Mr Brügge, for offences committed in the Netherlands and Belgium respectively, although proceedings brought in other Member States against the two accused on the same facts had been definitively discontinued after they had paid a sum of money determined by the Public Prosecutor as part of a procedure whereby further prosecution was barred.

Legal background

- 3 Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam (hereinafter 'the Protocol'), authorised 13 Member States, amongst them the Federal Republic of Germany, the Kingdom of Belgium and the Kingdom of the Netherlands, to establish closer cooperation among themselves within the scope of the Schengen *acquis*, as set out in the Annex to the Protocol.

- 4 The Schengen *acquis* thus defined includes *inter alia* the Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 13; ‘the Schengen Agreement’) and the CISA.
- 5 The aim of the Schengen Agreement and the CISA is ‘to abolish checks at their common borders on the movement of persons...’ (second paragraph of the preamble to the CISA), given that ‘the ever closer union of the peoples of the Member States of the European Communities should find expression in the freedom to cross internal borders for all nationals of the Member States...’ (first paragraph of the preamble to the Schengen Agreement). Pursuant to the first paragraph of the preamble to the Protocol, the Schengen *acquis* is aimed ‘at enhancing European integration and, in particular, at enabling the European Union to develop more rapidly into an area of freedom, security and justice’. Under the fourth indent of the first paragraph of Article 2 EU, the maintenance and development of such an area, in which the free movement of persons is assured, is one of the objectives of the European Union.
- 6 The first paragraph of Article 2(1) of the Protocol provides that from the date of entry into force of the Treaty of Amsterdam, the Schengen *acquis* is to apply immediately to the 13 Member States referred to in Article 1 of the Protocol.
- 7 Acting under the second sentence of the second paragraph of Article 2(1) of the Protocol, the Council adopted on 20 May 1999 Decision 1999/436/EC determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis* (OJ 1999 L 176, p. 17). It is apparent from Article 2 of the decision, in conjunction with Annex A thereto, that the Council selected Articles 34 EU and 31 EU, which form

part of Title VI of the Treaty on European Union, 'Provisions on Police and Judicial Cooperation in Criminal Matters', as the legal basis for Articles 54 to 58 of the CISA.

- 8 Articles 54 to 58 of the CISA make up Chapter 3, 'Application of the *ne bis in idem* principle', of Title III, 'Police and Security'. In particular, they provide as follows:

'Article 54

A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.

Article 55

1. A Contracting Party may, when ratifying, accepting or approving this Convention, declare that it is not bound by Article 54 in one or more of the following cases:

- (a) where the acts to which the foreign judgment relates took place in whole or in part in its own territory; in the latter case, however, this exception shall not apply if the acts took place in part in the territory of the Contracting Party where the judgment was delivered;

- (b) where the acts to which the foreign judgment relates constitute an offence against national security or other equally essential interests of that Contracting Party;

- (c) where the acts to which the foreign judgment relates were committed by officials of that Contracting Party in violation of the duties of their office.

2. A Contracting Party which has made a declaration regarding the exception referred to in paragraph 1(b) shall specify the categories of offences to which this exception may apply.

3. A Contracting Party may at any time withdraw a declaration relating to one or more of the exceptions referred to in paragraph 1.

4. The exceptions which were the subject of a declaration under paragraph 1 shall not apply where the Contracting Party concerned has, in connection with the same acts, requested the other Contracting Party to bring the prosecution or has granted extradition of the person concerned.

...

Article 58

The above provisions shall not preclude the application of broader national provisions on the *ne bis in idem* principle with regard to judicial decisions taken abroad.'

The main proceedings and the questions referred for a preliminary ruling

Case C-187/01

- 9 Mr Gözütok is a Turkish national who has lived for several years in the Netherlands. He runs a snack bar in the Netherlands town of Heerlen called the 'Coffee- and Teahouse Schorpioen'.

- 10 In the course of searches of those premises on 12 January and 11 February 1996, the Netherlands police found and seized, on the first occasion, 1 kg of hashish, 1.5 kg of marijuana and 41 hashish cigarettes and, on the second occasion, 56 g of hashish, 200 g of marijuana and 10 hashish cigarettes.

- 11 It is apparent from the documents before the Court that the criminal proceedings against Mr Gözütok in the Netherlands relating to the seizures on 12 January and 11 February 1996 were discontinued after he had accepted offers made by the Public Prosecutor's Office in the context of a procedure whereby further prosecution was barred and paid the sums of NLG 3 000 and NLG 750 demanded by the Public Prosecutor's Office in that connection.
- 12 In that regard, Article 74(1) of the Wetboek van Strafrecht (Netherlands Criminal Code) provides:

‘Before the start of the court proceedings, the Public Prosecutor may impose one or more conditions for avoidance of a prosecution of any offences, other than those subject by statute to imprisonment of a term of more than six years, or any misdemeanours. There shall be a bar on further prosecution once those conditions have been fulfilled.’

- 13 Those conditions may include payment to the State of a sum of money between NLG 5 and the maximum amount of the fine which may be imposed in respect of the offence.
- 14 The German authorities' attention was drawn to Mr Gözütok by a German bank which, on 31 January 1996, alerted them to the fact that large sums of money were passing through Mr Gözütok's account.

- 15 Once it had obtained information about Mr Gözütok's activities from the Netherlands authorities, the German police proceeded to arrest him in Germany on 15 March 1996 and, on 1 July 1996, the Staatsanwaltschaft Aachen (Public Prosecutor, Aachen) (Germany), charged Mr Gözütok with dealing in narcotics in the Netherlands on at least two occasions, one involving significant quantities, during the period from 12 January to 11 February 1996.
- 16 On 13 January 1997, the Amtsgericht Aachen (District Court, Aachen) (Germany) convicted Mr Gözütok and sentenced him to a period of one year and five months' imprisonment, suspended on probation.
- 17 Mr Gözütok and the Public Prosecutor's Office both appealed against that decision and the Landgericht Aachen (Regional Court, Aachen), by order of 27 August 1997, terminated the criminal proceedings brought against Mr Gözütok on the ground *inter alia* that under Article 54 of the CISA the definitive discontinuance of criminal proceedings by the Netherlands authorities bound the German prosecuting authorities. According to the Landgericht, the criminal proceedings were discontinued after the Public Prosecutor's Office offered a compromise ('transactie'), a procedure under Netherlands Law which amounts to the case being finally disposed of ('rechtskräftige Verurteilung') for the purposes of the German version of Article 54 of the CISA, although such compromises do not entail the participation of a court and do not take the form of a judicial decision.
- 18 The Public Prosecutor's Office appealed against the order of the Landgericht Aachen to the Oberlandesgericht Köln [Higher Regional Court, Cologne], which, taking the view that the outcome of the proceedings turned on the interpretation of Article 54 of the CISA, decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Is there a bar to prosecution in the Federal Republic of Germany under Article 54 of the CISA if, under Netherlands law, a prosecution on the same facts is barred

in the Netherlands? In particular, is there a bar to prosecution where a decision by the Public Prosecutor's Office to discontinue proceedings after the fulfilment of the conditions imposed (*transactie* under Netherlands law), which under the law of other Contracting States requires judicial approval, bars prosecution before a Netherlands court?'

Case C-385/01

- 19 Mr Brügge, a German national residing in Rheinbach (Germany) has been charged by the Belgian prosecuting authorities with having, in Oostduinkerke (Belgium) on 9 October 1997, contrary to Articles 392, 398(1) and 399(1) of the Belgian criminal code, intentionally assaulted and wounded Mrs Leliaert, with the result that she became ill or unable to work.

- 20 Mrs Leliaert, as the civil party claiming damages before the Rechtbank van eerste aanleg te Veurne (Court of First Instance, Veurne) sitting as a criminal court, before which Mr Brügge was summoned, claimed compensation for non-pecuniary damage in the amount of BEF 20 000, together with interest from 9 October 1997.

- 21 In the course of the investigation which it conducted against Mr Brügge in respect of the facts on which he had been summoned before the Rechtbank van eerste aanleg te Veurne, the Staatsanwaltschaft Bonn (Public Prosecutor's Office, Bonn) (Germany), by letter of 22 July 1998, offered Mr Brügge an out-of-court settlement in return for payment of DEM 1 000. Mr Brügge paid the proposed amount on 13 August 1998 and the Public Prosecutor's Office did not proceed with the prosecution.

- 22 It is apparent from the documents before the Court that the settlement was made under Paragraph 153a, read with the second sentence of Paragraph 153(1), of the Strafprozessordnung (German Code of Criminal Procedure), pursuant to which the Public Prosecutor may, on certain conditions, discontinue criminal proceedings without the approval of the competent court, in particular after the accused has paid a certain sum of money to a charitable organisation or to the Treasury.
- 23 Considering that an interpretation of Article 54 of the CISA was necessary in order to decide the case before it, the Rechtbank van eerste aanleg te Veurne decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

‘Under Article 54 of the [CISA] is the Belgian Public Prosecutor’s Office permitted to require a German national to appear before a Belgian criminal court and be convicted on the same facts as those in respect of which the German Public Prosecutor’s Office has made him an offer, by way of a settlement, to discontinue the case after payment of a certain sum, which was paid by the accused?’

- 24 The Court, after hearing the Advocate General, decided, on account of the connection between the cases, to join them for the purposes of the judgment, in accordance with Article 43 of the Rules of Procedure.

The questions referred for a preliminary ruling

- 25 By their questions, which it is appropriate to examine together, the national courts are essentially asking whether the *ne bis in idem* principle, laid down in Article 54 of the CISA, also applies to procedures whereby further prosecution is barred, such as those at issue in the main actions.

- 26 It is clear from the wording of Article 54 of the CISA that a person may not be prosecuted in a Member State for the same acts as those in respect of which his case has been 'finally disposed of' in another Member State.
- 27 A procedure whereby further prosecution is barred, such as those at issue in the main actions, is a procedure by which the prosecuting authority, on which national law confers power for that purpose, decides to discontinue criminal proceedings against an accused once he has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the prosecuting authority.
- 28 Therefore, it should be noted, first, that in such procedures, the prosecution is discontinued by the decision of an authority required to play a part in the administration of criminal justice in the national legal system concerned.
- 29 Second, a procedure of this kind, whose effects as laid down by the applicable national law are dependent upon the accused's undertaking to perform certain obligations prescribed by the Public Prosecutor, penalises the unlawful conduct which the accused is alleged to have committed.
- 30 In those circumstances, the conclusion must be that, where, following such a procedure, further prosecution is definitively barred, the person concerned must be regarded as someone whose case has been 'finally disposed of' for the purposes of Article 54 of the CISA in relation to the acts which he is alleged to have committed. In addition, once the accused has complied with his obligations, the penalty entailed in the procedure whereby further prosecution is barred must be regarded as having been 'enforced' for the purposes of Article 54.

- 31 The fact that no court is involved in such a procedure and that the decision in which the procedure culminates does not take the form of a judicial decision does not cast doubt on that interpretation, since such matters of procedure and form do not impinge on the effects of the procedure, as described at paragraphs 28 and 29 of this judgment, which, in the absence of an express indication to the contrary in Article 54 of the CISA, must be regarded as sufficient to allow the *ne bis in idem* principle laid down by that provision to apply.
- 32 Furthermore, it should be pointed out that nowhere in Title VI of the Treaty on European Union relating to police and judicial cooperation in criminal matters (Articles 34 and 31 of which were stated to be the legal basis for Articles 54 to 58 of the CISA), or in the Schengen Agreement or the CISA itself, is the application of Article 54 of the CISA made conditional upon harmonisation, or at the least approximation, of the criminal laws of the Member States relating to procedures whereby further prosecution is barred.
- 33 In those circumstances, whether the *ne bis in idem* principle enshrined in Article 54 of the CISA is applied to procedures whereby further prosecution is barred (regardless of whether a court is involved) or to judicial decisions, there is a necessary implication that the Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied.
- 34 For the same reasons, the application by one Member State of the *ne bis in idem* principle, as set out in Article 54 of the CISA, to procedures whereby further prosecution is barred, which have taken place in another Member State without a court being involved, cannot be made subject to a condition that the first State's legal system does not require such judicial involvement either.

35 The aptness of that interpretation of Article 54 of the CISA is borne out by the fact that it is the only interpretation to give precedence to the object and purpose of the provision rather than to procedural or purely formal matters, which, after all, vary as between the Member States concerned, and to ensure that the principle has proper effect.

36 First, as is apparent from the fourth indent of the first paragraph of Article 2 EU, by the Treaty of Amsterdam the European Union set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is assured.

37 Furthermore, as the first paragraph of the preamble to the Protocol shows, the integration of the Schengen *acquis* (which includes Article 54 of the CISA) into the framework of the European Union is aimed at enhancing European integration and, in particular, at enabling the Union to become more rapidly the area of freedom, security and justice which it is its objective to maintain and develop.

38 Article 54 of the CISA, the objective of which is to ensure that no one is prosecuted on the same facts in several Member States on account of his having exercised his right to freedom of movement, cannot play a useful role in bringing about the full attainment of that objective unless it also applies to decisions definitively discontinuing prosecutions in a Member State, even where such decisions are adopted without the involvement of a court and do not take the form of a judicial decision.

39 Second, national legal systems which provide for procedures whereby further prosecution is barred do so only in certain circumstances or in respect of certain

exhaustively listed or defined offences which, as a general rule, are not serious offences and are punishable only with relatively light penalties.

40 In those circumstances, if Article 54 of the CISA were to apply only to decisions discontinuing prosecutions which are taken by a court or take the form of a judicial decision, the consequence would be that the *ne bis in idem* principle laid down in that provision (and, thus, the freedom of movement which the latter seeks to facilitate) would be of benefit only to defendants who were guilty of offences which — on account of their seriousness or the penalties attaching to them — preclude use of a simplified method of disposing of certain criminal cases by a procedure whereby further prosecution is barred, such as the procedures at issue in the main actions.

41 The German, Belgian and French Governments none the less raise the objection that not only the wording of Article 54 of the CISA but also the general scheme of the provision and, in particular, its relationship with Articles 55 and 58 of the CISA, as well as the intentions of the Contracting Parties and certain other international provisions with a similar purpose, preclude Article 54 from being construed in such a way as to apply to procedures barring further prosecution in which no court is involved. The Belgian Government also adds that, for the purposes of applying Article 54, a decision taken on conclusion of a procedure such as that at issue in Mr Brügge's case does not amount to a case being finally disposed of unless the victim's rights have first been properly safeguarded.

42 As regards, in the first place, the wording of Article 54 of the CISA, it is appropriate to observe, as is apparent from paragraphs 26 to 38 of this judgment, that, given the object and purpose of Article 54, use of the term 'finally disposed of' does not preclude the provision from being construed in such a way that it also

applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, in which no court is involved.

- 43 In the second place, far from requiring that Article 54 of the CISA should apply solely to judgments or to procedures barring further prosecution in which a court is involved, Articles 55 and 58 of the CISA are consistent with the interpretation of Article 54 set out at paragraphs 26 to 38 of this judgment.
- 44 First, Article 55 of the CISA, in so far as it allows Member States to provide for exceptions from the *ne bis in idem* principle for certain exhaustively listed facts to which foreign judgments relate, must logically refer to the same acts and procedures as those by which, in relation to those facts, a case is likely to be 'finally disposed of' for the purposes of Article 54 of the CISA. That is borne out by the fact that Articles 54 and 55 of the CISA use, in most of the language versions, the same term when referring to those acts and procedures.
- 45 In addition, applying Article 54 of the CISA to procedures whereby further prosecution is barred does not render Article 58 of the CISA nugatory. Under the terms of Article 58, it is possible for Member States to apply national provisions which are broader than those not only of Article 54 of the CISA but also all those of the CISA which relate to the *ne bis in idem* principle. Furthermore, it does not just allow them to apply that principle to judicial decisions other than those falling within Article 54 but acknowledges, more generally, their right to implement national provisions giving the principle a wider scope or to make its application subject to less restrictive conditions, regardless of the nature of the foreign decisions concerned.

- 46 In the third place, as regards the intention of the Contracting Parties, as revealed by certain national parliamentary documents relating to the ratification of the CISA or of the Convention between the Member States of the European Communities on Double Jeopardy of 25 May 1987, Article 1 of which contains a provision in essence identical to that in Article 54 of the CISA, it is sufficient to note that the documents predate the Treaty of Amsterdam's integration of the Schengen *acquis* into the framework of the European Union.
- 47 Finally, concerning the Belgian Government's contention that applying Article 54 of the CISA to settlements in criminal proceedings is likely to prejudice the rights of the victim, the Court observes that the only effect of the *ne bis in idem* principle, as set out in that provision, is to ensure that a person whose case has been finally disposed of in a Member State is not prosecuted again on the same facts in another Member State. The *ne bis in idem* principle does not preclude the victim or any other person harmed by the accused's conduct from bringing a civil action to seek compensation for the damage suffered.
- 48 In the light of the foregoing considerations, the answer to the questions must be that the *ne bis in idem* principle laid down in Article 54 of the CISA also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor in a Member State discontinues, without the involvement of a court, a prosecution brought in that State once the accused has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor.

Costs

- 49 The costs incurred by the German, Belgian, French, Italian and Netherlands Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national courts, the decision on costs is a matter for those courts.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Oberlandesgericht Köln and the Rechtbank van eerste aanleg te Veurne by orders of 30 March 2001 and 4 May 2001 respectively, hereby rules:

The *ne bis in idem* principle, laid down in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of

Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 at Schengen, also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor of a Member State discontinues criminal proceedings brought in that State, without the involvement of a court, once the accused has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor.

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| Rodríguez Iglesias | Puissochet | Wathelet |
| Schintgen | Timmermans | Gulmann |
| La Pergola | Jann | Skouris |
| Macken | Colneric | von Bahr |
| | Cunha Rodrigues | |

Delivered in open court in Luxembourg on 11 February 2003.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President