Special regime for the recognition of decisions on financial penalties: complex analysis[1]

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Abstract

The 'smoldering effect' of integration has inevitably resulted in widening the scope of matters in which the Member States of the European Union cooperate with each other. One such area is also the area of criminal matters, including the matter of mutual recognition on financial penalties. The aim of the article is systematically describe the specific regime for the recognition and enforcement of decisions on financial penalties under Council Framework Decision 2005/214/JHA. To this end, we analyze historical bases for an adoption of the regime on the territory of the European Communities; the current legal framework of the special regime at European Union level; the purpose and scope of Council Framework Decision 2005/214/JHA; the nature of the special regime; the transposed measure in the Slovak Republic and the nature of the decisions issued under Council Framework Decision 2005/214/JHA in terms of their extraterritorial effects. In particular, we performed textual analyses of relevant laws, legal literature and case-law of CJEU and ECtHR. Based on the synthesis of knowledge, the prospects for evolution of the special regime are assessed in conclusion.

Keywords*: decision on financial penalties, Council Framework Decision 2005/214/JHA, principle of mutual recognition*

JEL Classification*:* K23, K33

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1. Introduction

The 'smoldering effect'[3] of integration has inevitably resulted in widening the scope of matters in which the Member States of the European Union cooperate with each other. One such area is also the area of criminal matters. Although the unification or harmonization of national criminal standards is not a popular tool for deepening cooperation in this field, approximation of the laws of the Member States is based on the principle of mutual recognition originally designed for exercising the right to free movement of goods and services.[4] The consequence of penetration of

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[3] For the term *'smoldering effect'* see Mazák, J; Jánošíková, M. *Základy práva Európskej únie: (Ústavný systém a súdna ochrana). 1.vydanie*, Bratislava: IURA edition, 2009, p. 23.

[4] See Groza, A., *The principle of mutual recognition: from the internal market to the European area of freedom, security and justice*, „Juridical Tribune - Tribuna Juridica” 12, issue 1, 2022, pp. 89-104;

the principle of mutual recognition into criminal matters at the turn of the millennium is the adoption of specific normative legal acts in the European Union (hereinafter as 'EU' or 'Union'), which aimed to speed up and streamline cross-border cooperation among Member States in certain areas of criminal matters.[5] One such normative legal act is the Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties.

Although the principle of mutual recognition in criminal matters, which is also the cornerstone of the special regime for the recognition of decisions on financial penalties, has been subject to legal research continuously,[6] less attention has been paid to special regime per se. The most complex research on this matter from EU law and Slovak national law perspective has been performed by Klimek and Záhora.[7] While this research can be considered as a good starting point, we believe that not all attributes of the special regime have been sufficiently explored. Thus, the aim of this article is systematically describe the specific regime for the recognition and enforcement of decisions on financial penalties under Council Framework Decision 2005/214/JHA. To this end, we will analyze historical bases for an adoption of the regime on the territory of the European Communities; the current legal framework of the special regime at European Union level; the purpose and scope of Council Framework Decision 2005/214/JHA; the nature of the special regime; the transposed measure in the Slovak Republic and the nature of the decisions issued under Council Framework Decision 2005/214/JHA in terms of their extraterritorial effects. In particular, we performed textual analyses of relevant laws, legal literature and case-law of the Court of Justice of the European Union

Öberg, J., *Trust in the Law? Mutual Recognition as a Justification to Domestic Criminal Procedure*, „European Constitutional Law Review" 16, no. 1, (2020). p. 34 or Möstl, M., *Preconditions and limits of mutual recognition*, „Common Market Law Review" 47, (2010), p. 406.

[5] See Bloks, S. A., Van Den Brink, T., *The Impact on National Sovereignty of Mutual Recognition in the AFSJ. Case-study of the European Arrest Warrant*, „German Law Journal" 22, no. 1 (2021), pp. 45-46 or Mitsilegas, V., *The European Model of Judicial Cooperation in Criminal Matters: Towards Effectiveness based on Earned Trust*, „Revista Brasileira de Direito Processual Penal" 5, no. 2, (2019), pp. 566-572.

[6] See Öberg, J., *op. cit.*, pp. 33-62; Vermeulen, G., *How far can we go in applying the principle of mutual recognition?*, Future of police and judicial cooperation in the European Union, 2010, pp. 241-257; Borgers, M., *Mutual Recognition and the European Court of Justice: The Meaning of Consistent Interpretation and Autonomous and Uniform Interpretation of Union Law for the Development of the Principle of Mutual Recognition in Criminal Matters*, „European Journal of Crime, Criminal Law and Criminal Justice", vol. 18, issue 2, 2010, pp. 99-114; Möstl, M., *op. cit.*, pp. 405-436, Vernimmen; Van Tiggelen, G; Surano, L., *Introduction in the future of mutual recognition in criminal matters in the European Union / L´avenir de la reconnaissance mutuelle en matière pénale dans l´Union européene*. Editions de l'Université de Bruxelles. 2009, pp. 1-16; Bantekas, I., *The principle of mutual recognition in EU criminal law*, „European Law Review", 2007, pp. 365-385; Mattera, A., *The Principle of Mutual Recognition and Respect for National, Regional and Local Identities and Traditions*, in Fiorella Kostoris Padoa Schioppa (ed.), *The Principle of Mutual Recognition in the European Integration Process*, Palgrave Macmillan, 2005, pp. 1-24.

[7] See Klimek, L. *Mutual Recognition of Judicial Decisions in European Criminal Law*, Springer International Publishing Switzerland: Springer Cham, 2017, p. 742 or Záhora, J., *Zákon o uznávaní a výkone rozhodnutí o peňažnej sankcii v. Európskej únii. Komentár*, Bratislava: Wolters Kluwer SR s. r. o., 2020, p. 168.

(hereinafter as 'CJEU') and the European Court of Human Rights (hereinafter as 'ECtHR'). Based on the synthesis of knowledge, the prospects for evolution of the special regime will be assessed in conclusion.

2. Special regime for the recognition of decisions on financial penalties in EU law

2.1 History and current legal framework

In our view, the first historical milestone on the road to creating the special regime for the recognition of decisions on financial penalties in EU law is the 'finding' the principle of mutual recognition as part of European Communities' law by the CJEU in the Cassis de Dijon case in 1979.[8] Initially, this principle was originally established with the aim of making the internal market fully functional.[9] Its leitmotif was to ensure that, even in the absence of harmonized measures, goods legally produced and marketed in one Member State are admitted to the market in other Member States, even though the national legal standards for the marketing of the goods in question of other Member States were different from those applied in the State of origin.[10] The reason why 'finding' this principle must be regarded as the beginning of everything in the researched issue, is the fact, that over time this principle has spread to other areas, including criminal matters.[11]

The creation of the so-called third pillar – cooperation in the fields of justice and home affairs – by the entry into force of the Treaty on European Union (hereinafter as 'TEU') in 1993 can be considered, in our opinion, as the second historical milestone.[12] The enshrining of the arrangements establishing the joint exercise of Member States' competence in that field created a future legal basis for the adoption of Union measures in the form of framework decisions in the field of criminal matters.[13] Specifically, the future legal basis became Article 31 (a)[14] and

[8] Judgment of the Court of Justice of the European Communities of 20th February 1979, case 120/78, Cassis de Dijon (*Rewe-Zentral AG v. Bundesmonopolverwaltung f ü r Branntwein*).

[9] See Mattera, A., *op. cit.,* p. 8.

[10] Similarly Leucht, B., *The Policy Origins of the European Economic Constitution*, „European Law Journal" 24, no. 2–3 (2018), pp. 191-194; Craig, P., De Búrca, G., *EU Law. Text, Cases, and Materials.* 5th edition, Oxford: Oxford University Press, 2011, pp. 685-686 or Alter, K. J.; Meunier-Aitsahalia, S., *Judicial Politics in the European-Community – European Integration and the Pathbreaking Cassis de Dijon Decision*, „Comparative Political Studies" 26, no. 4, (1994), pp. 537-540.

[11] See Groza, A., *op. cit*., pp. 89-104.

[12] See Art. K TEU.

[13] Similarly Buisman, S.S., *The Future of EU Substantive Criminal Law*, „European Journal of Crime, Criminal Law and Criminal Justice", vol. 30, issue 2, 2022, p. 163. or Vernimmen; Van Tiggelen, G.; Surano, L., *op. cit.*, p 8.

[14] According to Art. 31 (a) TEU, as amended by the Treaty of Amsterdam: '*Common action on judicial cooperation in criminal matters shall include: facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions*.'

Art. 34 par. 2 (b) TEU, as amended by the Treaty of Amsterdam.[15]

The third milestone is the declaration of political will to extend the principle of mutual recognition to criminal matters, resulting from the Conclusions of the European Council meeting in Tampere of 15 and 16 October 1999. Point 33 of that document states that the principle of mutual recognition should have become the cornerstone of judicial co-operation in civil and criminal matters within the Union.[16] By the way, in the following years after the adoption of this declaration, a number of other legally non-binding documents were adopted on the EU level,[17] defining the key concepts to be used in particular normative legal acts in the future[18] and, secondly, delineating a scope of matters to which cooperation in criminal matters should have been covered.[19]

The fourth milestone is the adoption of Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (hereinafter as 'Framework Decision 2005/214/JHA' or 'Framework Decision') in 2005, which established a special regime for the recognition of decisions on financial penalties issued by the competent authorities of each Member State.

The amendment to Framework Decision 2005/214/JHA by adopting Framework Decision 2009/299/JHA[20] can be described as the fifth milestone.

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[15] Under Art. 34 (2) (b) TEU, as amended by the Treaty of Amsterdam: '*The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this Title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may: adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect.*'

[16] According to point 33. Conclusions of the European Council meeting in Tampere of 15 and 16 October 1999: '*Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities*.'

[17] The importance of these non-binding documents are highlighted by legal scholars. See for example Klimek, L., *op. cit.*, 2017, pp. 54-58, Vermeulen, G., *op. cit.*, p. 241 or Bantekas, I., *op. cit.*, p. 366.

[18] See Communication of the European Commission on Mutual Recognition of Final Decisions in Criminal Matters (2000): Introducing the First Definition of Mutual Recognition in Criminal Matters (COM (2000) 495 final) of 26 July 2000, which defined the concept of *'mutual recognition in criminal matters'*, *'final decision'* or *'criminal matters'*.

[19] See Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters (2001): Introducing the Measures for Mutual Recognition in Criminal Matters (2001/C 12/02), in which Member States also declared their willingness to adopt measures which would allow either to automatically recognize and enforce decisions on financial penalties, including traffic offences, or at least to simplify the validation procedure.

[20] Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

Finally, the sixth and so far last major historic milestone is the explicit enshrinement of the principle of mutual recognition in the field of criminal matters in the Treaty on the Functioning of the European Union, as amended after the Treaty of Lisbon (hereinafter as 'TFEU'), in particular in Article 67 (3)[21] and Article 82 (1) TFEU.[22]

At the same time, these articles constitute the current legal basis for cooperation based on the principle of mutual recognition in the field of criminal matters at the level of primary EU law.[23] If a completely new legislative act governing any cooperation in that area were to be adopted, such an act would have to be adopted on the legal basis of those articles and in the form of a directive as an act of secondary EU law.[24] However, Framework Decision 2005/214/JHA, which still currently regulates the mutual recognition of decisions on financial penalties at EU level, is the final form of EU law before the Treaty of Lisbon, when the so-called three-pillar cooperation structure still existed. Pending the adoption of a completely new normative legal act at EU level in the form of a directive governing mutual recognition of decisions on financial penalties, the original Article 31 (a) and Art. 34 (2) (b) TEU as amended by the Treaty of Amsterdam and the Treaty of Nice should be regarded as the legal basis of Framework Decision 2005/214/JHA. Since, according to that legal basis, it was necessary to adopt an act in the form of a framework decision, any further amendment to Framework Decision 2005/214/JHA should also be made in that form. To date, the only amendment or supplementation of Framework Decision 2005/214/JHA is the already mentioned Framework Decision 2009/299/JHA.

2.2 Purpose, scope of Framework Decision 2005/214/JHA and nature of the special regime

The objective of Framework Decision 2005/214/JHA is not explicitly expressed therein. Klimek, at the maximum benefit of simplification, defines it as:

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[21] According to Art. 67 par. 3 TFEU: *'The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.*'

[22] According to Art. 82 par. 1 TFEU: *'Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83. (...) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to: (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions; (...) (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.'* For importance of the Treaty of Lisbon for development judicial cooperation in criminal matters see for example Udvarhelyi, B., *Harmonization or unification? – instruments for a more effective protection of the financial interests of the European Union*, „Studia Iuridica Cassoviensia" 9, no. 1. 2021, pp. 117-119.

[23] Klimek, L. *op. cit.,* 2017, pp. 11-12.

[24] Similarly Borgers, M., *op. cit.*, p. 114.

'extend the principle of mutual recognition to financial penalties'.[25] Although, in our opinion, such a simplified objective is acceptable, it is necessary to specify the specificities of the special regime for the recognition of decisions on financial penalties created by Framework Decision 2005/214/JHA. We believe that a more precise determination of the purpose of Framework Decision 2005/214/JHA is possible by using a teleological and systematic interpretation of its provisions. The decisive parts of the Framework Decision based on which its purpose can be established by means of the above mentioned methods of interpretation are, in particular, its preamble, Article 5, Article 6 and Article 15. When using the teleological method of interpretation, it is appropriate to work in particular with the Conclusions of the European Council meeting in Tampere of 15 and 16 October 1999 and the Communication of the European Commission on Mutual Recognition of Final Decisions in Criminal Matters (2000): Introducing the Measures for Mutual Recognition in Criminal Matters (2001/C 12/02) of 26 July 2000 ('EC Notice of 26 July 2000').[26]

The preamble of Framework Decision 2005/214/JHA refers, first of all, to the above-mentioned Conclusions of the European Council meeting in Tampere of 15 and 16 October 1999, according to which the principle of mutual recognition is intended to become the cornerstone of judicial cooperation in criminal matters also within the Union. According to the preamble, that principle is to apply, in the context of Framework Decision 2005/214/JHA, to financial penalties imposed by judicial or administrative authorities for facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed. It is also explicitly apparent from the preamble that the Framework Decision should also cover financial penalties imposed in respect of road traffic offences, as well as respect fundamental rights and principles recognized by Article 6 TEU and reflected by the Charter of Fundamental Rights of the EU.

In our view, Article 6 of Framework Decision 2005/214/JHA reflects the very essence of the special regime for the recognition of decisions on financial penalties established by the Framework Decision.

Pursuant to Article 6 of Framework Decision 2005/214/JHA: *'The competent authorities in the executing State shall recognise a decision which has been transmitted in accordance with Article 4 without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7'*. Article 4, referred to in Article 6, governs the transmission of a decision on financial penalties by the issuing State to the executing State. The essence of Article 4 is that a decision on financial penalties should be sent together with a standardized certificate translated into the language of the executing State[27] to a competent authority of only one executing State in which

[25] Klimek, L. *op. cit.*, p. 360.
[26] See, in particular, point 3.1 defining, in general, the principle of mutual recognition in criminal matters.
[27] See Art. 16 of Framework Decision 2005/214/JHA.

the person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat. It is not necessary to translate the decision itself. The consequence of such transmission of the decision together with the certificate is the fundamental impossibility of continuing enforcement of the decision in the issuing State.[28] The subject of Article 7, referred to in Article 6, are exhaustively defined grounds for non-recognition and non-execution of decision sent. According to the case-law of the CJEU, such grounds must be interpreted restrictively and it is not permissible for Member States to extend their scope.[29]

It follows, in essence, from Article 6, read in conjunction with the provisions to which it refers, that where a decision on financial penalties issued by the issuing State has been duly sent to the competent authority of the executing State, the executing State is obliged to recognize it in principle. It does not need to do so only if one of the exhaustive grounds set out in the Framework Decision is given.

The Article 5 of Framework Decision 2005/214/JHA regulates its scope *ratione materiae*. It follows, in essence, from Article 5 that the Framework Decision covers the recognition and enforcement of two categories of decisions on financial penalties.

The first category concerns those decisions on financial penalties which are imposed for such offences as are exhaustively defined in paragraph 2 of this provision[30] and for which the assessment of double criminality is not required. In doing so, the Council of the EU may decide at any time, acting unanimously after consulting the European Parliament under the conditions laid down in Article 39 (2) TEU before the Treaty of Lisbon, adding other categories of offences to the list.

The second category concerns decisions on financial penalties imposed for any offences other than those referred to in paragraph 2. For these offences, the assessment of double criminality is required.

Based on the aforementioned legal framework, Framework Decision 2005/214/JHA aims to establish a harmonized procedure for mutual recognition and enforcement of decisions for financial penalties for offences falling within the scope of the Framework Decision between Member States in order to accelerate and streamline their circulation in the Union.[31]

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[28] See Art. 15 of Framework Decision 2005/214/JHA, which also provides for the provision of derogations from that rule.

[29] Judgment of the Court of Justice of the European Union of 14th November 2013, case C-60/12, Marián Baláž, p. 29.

[30] The term *'trestný čin'* used in the Slovak translation of Article 5 shall be interpreted in the light of the objective of the provision autonomously from its understanding in the national law of the Slovak Republic. Indeed, Article 5 contains, rather, categories of offences or acts in respect of which their double criminality may not be examined, irrespective of their classification under the national system of law of a Member State. In support of our opinion, we can refer to the English, French and Czech translation of Article 5, which use the terms '*offence*', '*les infractions*' or '*trestné činy a přestupky*' to denote the term '*trestný čin*' used in the Slovak translation.

[31] Similarly Douga, A. E., *On the Recognition of Foreign Administrative Acts in Greece* in *Recognition of Foreign Administrative Acts*, ed. Jaime Rodríguez-Arana Muñoz, Springer International Publishing Switzerland 2016, pp. 186-188.

In terms of scope *ratione personae*, Framework Decision 2005/214/JHA is addressed to the Member States.[32] The local scope is fundamentally limited to the territories of the Member States, which have transposed Framework Decision 2005/214/JHA and the scope *ratione temporis* begins to run substantially from the date of its transposition. The term fundamentally in defining the local and temporal scope is used deliberately, on the ground that, according to the case-law of the CJEU, the Framework Decision affects Member States in a certain way even if they have not transposed the Framework Decision 2005/214/JHA into their legal order within the time limit laid down therein. Although a framework decision has no direct effect, according to the Luxembourg Court's settled case-law, those effects consist in the obligation of national authorities, including national courts, to interpret national law in conformity with EU law so as to ensure the purpose of the framework decision and the result sought by it, even if it has never been transposed. An exception is an interpretation that would be contrary to general principles of law, particularly those of legal certainty and non-retroactivity.[33] According to its Art. 20 (1) Member States should have transposed this Framework Decision by March 22, 2007. Several Member States, including the Slovak Republic, have failed to comply with that deadline. However, in the light of the abovementioned doctrine of the CJEU, the passivity of the Member States in transposition did not result in the absence of any effects in respect of a Member State, which had failed to fulfil its transposition obligation by March 22, 2007. As from that date, at least for the sake of the obligation of conformist interpretation of national law with Framework Decision 2005/214/JHA, the Framework Decision shall operate in the territory of each EU Member State.[34]

2.3 The concept of '*decision*' for the purposes of Framework Decision 2005/214/JHA and the impact of its interpretation on the scope *ratione materiae*

Framework Decision 2005/214/JHA defines in Article 1 the basic terms that are further used in its text. This is the concept of '*decision*', '*financial penalty*', '*issuing State*' and '*executing State*'.

'*Decision*' means, a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by (i) a court of the issuing State in respect of a criminal offence under the law of the issuing State; (ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in

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[32] Art. 20 (1) of Framework Decision 2005/214/JHA.

[33] Judgment of the Court of Justice of the European Union of 29th June 2017, Case C-579/15, Poplawski, p. 30 to 36 and the case-law cited.

[34] See on the issue of conformist interpretation of national law with framework decisions Borgers, M., *op. cit*., pp. 99-114. or Spaventa, E., *Opening Pandora's Box: Some Reflections on the Constitutional Effects of the Decision in Pupino*, „European Constitutional Law Review" 3, no. 1 (2007), pp. 5-24.

criminal matters; (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters; or (iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii).[35]

'*Financial penalty*' is defined positively and negatively for the purposes of the Framework Decision. In terms of a positive definition, it is either (i) a sum of money on conviction of an offence imposed in a decision; (ii) ccompensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction; (iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision; or (iv) a sum of money to a public fund or a victim support organisation, imposed in the same decision. In terms of negative definition, these are not (i) orders for the confiscation of instrumentalities or proceeds of crime, or (ii) orders of a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with the Brussels Ia Regulation.[36]

'*Issuing State*' for the purposes of a Framework Decision means the Member State in which a decision within the meaning of this Framework Decision was delivered and '*executing State*' means the Member State to which a decision has been transmitted for the purpose of enforcement.[37]

While the last three mentioned terms do not cause fundamental interpretative problems, so the concept of '*decision*' does. Generalizing the above definition, the '*decision*' shall, for the purposes of the Framework Decision, exhibit the following basic conceptual features:

a) finality,
b) must impose an obligation on a person to pay a '*financial penalty*' within the meaning of the above definition of '*financial penalty*';
c) must be issued in respect of a criminal offence under the law of the issuing State or in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law;
d) must be issued either by the court of the issuing State or by an authority of the issuing State other than a court, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.

Ad (a) Framework Decision 2005/214/JHA states that the decision must be '*final*',[38] but without any further explanation of what is meant by that term. According to point 3.2. of the Communication of the European Commission (COM (2000) 495

[35] Art. Article 1 (a) of Framework Decision 2005/214/JHA.
[36] Art. Article 1 (b) of Framework Decision 2005/214/JHA.
[37] Art. Article 1 (c) and (d) of Framework Decision 2005/214/JHA.
[38] The term '*konečné'* is used in Slovak, '*décision à titre définitif*' in French and '*pravomocné'* in Czech.

final) of 26 July 2000[39] the term '*final decision*' must be understood as an act by which a certain matter is resolved in a binding way. Above all, it is necessary to consider as such all decisions that rule on the substance of a criminal case, and against which no more ordinary appeal is possible, or, where such an appeal is still possible, but it has no suspensive effect. We consider that this definition shall be regarded as a basis for the interpretation of this concept.[40]

Ad b) Only such a decision that will impose a financial penalty, which is consistent with the positive and negative definition of the financial penalty pursuant to Art. 1 (b) may be regarded as a decision for the purposes of Framework Decision 2005/214/JHA.

Ad c) This conceptual feature is an expression of the principle of nullum crimen, nulla poena sine lege.[41] Where a decision on financial penalties is issued for an act of an offender that is not sufficiently defined as criminal under the law of the issuing State, it cannot be a decision for the purposes of Framework Decision 2005/214/JHA. A similar conclusion applies to an illegally imposed financial penalty. However, the concept '*trestný*'[42] used in Slovak translation of Art. 1 (a) (iii) must be interpreted substantially because certain offences, including those exhaustively listed in Article 5, may be qualified in some Member States as criminal stricto sensu and in other States as administrative. We are also led to this belief by the translation of the Framework Decision in other languages. Other translations of Art. 1 (a) (iii) uses terms which refer to '*sankcionovateľnosť*' rather than '*trestnosť*' for acts which are unlawful in the issuing State.[43]

Ad d) Decision according to Art. 1 of Framework Decision 2005/214/JHA may be issued either by a court or by an authority of the issuing State other than a court.

The Court interprets the term '*court*' for the purposes of the Framework Decision, as well as for the purposes of primary EU law, autonomously. In particular, in case Marián Baláž, the CJEU stated that: *'it is appropriate to rely on the criteria identified by the Court of Justice for determining whether a referring body is a 'court or tribunal' for the purposes of Article 267 TFEU. To that end, according to settled case-law, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it*

[39] Communication of the European Commission on Mutual Recognition of Final Decisions in Criminal Matters (2000): Introducing the First Definition of Mutual Recognition in Criminal Matters (COM (2000) 495 final) of 26 July 2000.

[40] Similarly Záhora, J., *op. cit*., p. 29.

[41] For aspects of the principle *nullum crimen sine lege* see Ferenčíková, S., *Basic principles of criminal liability*, „Zeszyty Naukowe Uniwersytetu Rzeszowskiego" 19, 2016, pp. 36-49.

[42] The linguistic equivalent of the Slovak concept *'trestný'* is in English language the concept *'criminal'*.

[43] In the English translation of Art. 1 (a) (iii) is used the term *'in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law'*, in French *'en raison d'actes punissables au regard du droit national de l'État d'émission en ce qu'ils constituent des infractions aux règles de droit'* and in czech *'ve vztahu k činům, které jsou podle vnitrostátního práva vydávajícího státu považovány za porušení právních předpisů'*.

is independent (see, by analogy, Case C-196/09 Miles and Others [2011] ECR I-5105, paragraph 37 and the case-law cited)'.[44] It follows from the foregoing that it is not the formal designation of the body that is decisive, but its substantive nature.

Although the term *'an authority of the issuing State other than a court'* is not defined in the Framework Decision and has not yet been interpreted by the CJEU in its case-law, we consider that it is undoubtedly any public authority other than a '*court*' which has jurisdiction to issue a decision on financial penalties within the meaning of the Framework Decision. Such '*an authority of the issuing State other than a court*' means, in particular, an administrative authority. Administrative authorities are entitled in several Member States to deduce liability for offences of less gravity than criminal offences, so-called administrative offences, but they are generally not part of a judicial power but rather an executive, and therefore do not provide sufficient guarantees of independence. A typical penalty, which may be imposed by an administrative authority because of committing administrative offence, is a fine, i.e. the financial penalty within the meaning of the Framework Decision. Since the criminal policy of individual Member States, including the criminalization of certain proceedings, is fundamentally within their exclusive competence, it is not excluded that any of the '*offences*' pursuant to Art. 5 of the Framework Decision, from the point of view of national legal qualifications in a Member State, will fall within the scope of criminal matters decided by courts and, in others, within the scope of administrative offences decided by the administrative authorities. An example par excellence is, '*conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods*', which in several countries, including the Slovak Republic, belongs to the sphere of administrative law.[45] However, in order for an administrative authority to be regarded as '*an authority of the issuing State other than a court*' which is competent to issue a decision for the purposes of the Framework Decision, it is required that the person concerned be able to hear his case before a court having jurisdiction in particular in criminal matters.

'*A court having jurisdiction in particular in criminal matters*' according to Art. (1) (a) (iii) constitutes another notion which is not fully clearly defined. Since the concept of '*court*' is relatively well established in the case-law of the CJEU, an interpretive problem arises in finding the meaning of the expression *'in particular in criminal matters*'. The question is whether this term shall be interpreted formally or substantively.

In our opinion, the formal concept presupposes that only a '*court*' which is explicitly identified as criminal in national law or at least its dominant competence in terms of the quantity of cases pending and adjudicated concerns criminal matters

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[44] Judgment of the Court of Justice of the European Union of 14th November 2013, case C-60/12, Marián Baláž, p. 32.

[45] In the Slovak Republic, the so-called road traffic offenses are dealt with mainly in infringement proceedings pursuant to the Act of the SNR No. 372/1990 Coll. on offences as amended or in proceedings on administrative offense of the vehicle keeper pursuant to act no. 56/2012 Coll. on road transport, as amended. In both cases, the fine is imposed primarily by the authority of the Police Force, the municipality or the municipal police.

within the meaning of the Engel criteria,[46] is to be regarded as *'a court having jurisdiction in particular in criminal matters'*.

In our opinion, the substantive concept presupposes that every '*court*', regardless of its formal designation, must be regarded as a '*court having jurisdiction in particular in criminal matters*', regardless of whether, in terms of the quantity of cases dealt with and adjudicated by it, are dominated by criminal matters within the meaning of the Engel criteria. The important thing in this case is that the proceedings concerning a criminal case within the meaning of the Engel criteria are based on basic criminal-procedural principles, which give such a court sufficient authority to hear the case and rule as a criminal court *stricto sensu*.

Having regard to the decision in case Marián Baláž, where the CJEU held that: '*(...) in order to ensure that the Framework Decision is effective, it is appropriate to rely on an interpretation of the words 'having jurisdiction in particular in criminal matters' in which the classification of offences by the Member States is not conclusive. 36. To that end, the court having jurisdiction within the meaning of Article 1(a)(iii) of the Framework Decision must apply a procedure which satisfies the essential characteristics of criminal procedure, without, however, it being necessary for that court to have jurisdiction in criminal matters alone. '*, we are more inclined to the substantive concept.

The substantive perception of the term '*court having jurisdiction in particular in criminal matters*' outlined by us is the guarantee that the scope ratione materiae of Framework Decision 2005/214/JHA will not be reduced to those offences referred to in Article 5 which are decided by administrative authorities and are reviewable by the courts, but much of their competence is not in the criminal sphere. At the same time, the substantive concept contributes to the fulfilment of the purpose of Framework Decision 2005/214/JHA in terms of the full implementation of the principle of mutual recognition to financial penalties by speeding up and

[46] Without going into deep analyses of the issue, as it would be worth a separate study, the Engel criteria represent a doctrine created by the ECtHR, which was also taken over by the CJEU when interpreting the guarantees of the right to a fair trial under EU law, and the essence of which is the understanding of the concept '*criminal*' under Art. 6 of the ECHR autonomously of its meaning in national law. In the autonomous interpretation of the term '*criminal*', according to the ECtHR, its substance is crucial, which means that it is necessary to examine the fulfilment of at least one of the three so-called Engel criteria. This is the criterion of the criminal classification of an act in national law; the criminal nature of the offence; or the criminal nature and severity of the penalty that the person concerned risks incurring. If at least one of the criteria is met, the offence in question is considered criminal in nature, which implies that guarantees of the right to a fair trial under the ECHR or EU law shall be guaranteed fundamentally in the same degree, irrespective of the national classification of the offence. See on this isuue for example Kärner, M., *Procedural Rights in the Outskirts of Criminal Law: European Union Administrative Fines*, „Human Rights Law Review" 22, no. 4, (2022), pp. 1-10; Bahceci, B., *Redefining the Concept of Penalty in the Case-law of the European Court of Human Rights*, „European Public Law" 26, no. 4, (2020), pp. 867-888; Milučký, J.; Milučký, S. *Správne trestanie na Slovensku a v európskom priestore – Judikatúra*, Žilina: Eurokódex, s. r. o., 2021, p. 720; Schabas, W. A., *European Convention on Human Rights*, Oxford: Oxford University Press, 2015, p. 277; or Grbić, S., *Civil rights and obligations as the autonomous concepts under Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms*, „Pravni Vjesnik" 28, no. 3-4, (2012), pp. 119-148.

streamlining the circulation of decisions on financial penalties issued by the administrative authorities and which, as a result of formal interpretation, would be from the special regime for recognition of decisions on financial penalties excluded.

3. Transposition of Framework Decision 2005/214/JHA in the Slovak Republic

The Slovak Republic transposed Framework Decision 2005/214/JHA into national law by Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalty in the European Union and on Amendment to Certain Acts.[47] The law in question entered into force on August 1, 2011, i.e. more than four years after the date of transposition according to the Framework Decision.[48] As mentioned, however, the late transposition did not, in our opinion, cause that Framework Decision 2005/214/JHA would not produce absolutely no effects in relation to the authorities applying the law in the Slovak Republic. They were obliged even before the entry into force of that law, but at the earliest from the day following the date on which the transposition deadline expired, to interpret the current legislation on the recognition of decisions on financial penalties in conformity with the Framework Decision in order to fulfil its purpose.[49]

Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts, as amended (hereinafter referred to as the 'Act on Recognition and Enforcement of Decisions on Financial Penalties') has been amended three times so far.[50] In terms of its internal systematics, it consists of four parts. The first part regulates the general provisions, namely the subject of the law, the definition of basic concepts and the scope of application. The subject of the second part is the procedure of the Slovak authorities as authorities of the issuing State in transmitting a decision on financial penalties to the executing State and the subject of the third part is the procedure of the Slovak authorities as executing judicial authorities. Finally, part four regulates common, transitional and final provisions.

Pursuant to § 1 of the Act on Recognition and Enforcement of Decisions on Financial Penalties, this act governs the procedure of Slovak authorities in:

[47] In Slovak language zákon č. 183/2011 Z. z. o uznávaní a výkone rozhodnutí o peňažnej sankcii v Európskej únii a o zmene a doplnení niektorých zákonov.

[48] According to Art. 20 (1), it was the responsibility of the Slovak Republic to take all necessary measures necessary to comply with the provisions of the Framework Decision by March 22, 2007.

[49] See more in subchapter 1.2.

[50] The first amendment was implemented by Act No. 91/2016 Coll. on Criminal Liability of Legal Entities and on Amendment to Certain Acts, Second Act No. 396/2019 Coll. amending Act No. 183/2011 Coll. on the Recognition and Enforcement of Decisions on Financial Penalties in the European Union and on Amendment to Certain Acts, as amended by Act No. 91/2016 Coll. and amending certain laws and the third by Act No 150/2022 on amendments to certain acts in connection with new seats and districts of courts, the effect of which will be reflected in the Act on Recognition and Enforcement of Decisions on Financial Penalties not earlier than June 1, 2023.

a) the recognition and enforcement of a decision imposing a financial penalty issued by a court or other competent authority of an EU Member State; and
b) the transmission of a judgment on a financial penalty issued by a court in criminal proceedings for recognition and enforcement in another Member State.

This act shall apply only in respect of the Member State, which has transposed a special act into its legal order. The Framework Decision 2005/214/JHA shall be understood as a specific act. Condition sine qua non for the application of the law is therefore that the Member State has transposed the Framework Decision in the same way as the Slovak Republic.

It follows from the subject of the law that in the case of recognition of decisions on financial penalties issued in another Member State by the judicial authorities of the Slovak Republic, the application of the act is permissible, if the decision has been issued both by the court and by another competent authority. On the other hand, in the case of a decision on financial penalties issued in the Slovak Republic, the application of the law is permissible only if such a decision was issued by a court in criminal proceedings *stricto sensu*. Decisions on financial penalties issued by administrative authorities of the Slovak Republic falling within the scope of Framework Decision 2005/214/JHA will therefore not be recognized and enforced in another Member State in accordance with the Act on the Recognition and Enforcement of Decisions on Financial Penalties.[51] Záhora states that the reason why decisions issued by administrative authorities of the Slovak Republic do not fall within the scope of the act is that they do not fulfil the condition set by the Framework Decision, i.e. they are not the decisions of the administrative authorities against which person concerned may file an appeal, which is decided by the court having jurisdiction in particular in criminal matters.[52] However, we believe that the stated opinion is incorrect, due to the fact that Art. 1 (a) (iii) of the Framework Decision in the section relating to the use of the notion *'court having jurisdiction in particular in criminal matters'* must be interpreted, as already explained in subchapter 1.3, substantively.

In the Slovak Republic, essentially all decisions of administrative authorities, subject to compliance with procedural conditions, are reviewable in the administrative judiciary.[53] The administrative court always carries out such an

[51] For example, a decision on a road safety and traffic fluidity offence imposed on the accused will not be recognized and enforced in accordance with the act, since the competent authority to issue such a decision is in accordance with § 52 (2) of the Act on infringements, as amended, the authority of the Police Force, although the offence - '*conduct which infringes road traffic regulations*' - falls within the material scope of both the Framework Decision and the Act in question (§ 3 para. 5).

[52] Záhora, J., *op. cit.*, p. 25.

[53] The conditions laid down by the Administrative Court Code relate in particular to the eligible subject matter of the review, which is based on the principle of a general clause with a negative enumeration of cases which are excluded from judicial review; principally obligatory representation by an attorney; conditions of active and passive procedural legitimacy; filing an administrative action in principle within two months from notification of the decision against which it is directed to the competent court; compliance with the obligatory requirements of the administrative action laid down

investigation based on one of the four types of administrative actions.[54] In addition to administrative actions, the administrative court also adjudicates in special proceedings on actions and applications in other matters.[55] The administrative court is therefore entitled to act in a broad range of proceedings in which there is no criminal proceeding *stricto sensu*. One of the administrative action proceeding, which can, however, review decisions of administrative authorities imposing a fine (financial penalty) is the administrative action in matters of administrative punishment pursuant to § 194 et seq. of Act No. 162/2015 Coll. Administrative Court Code, as amended (hereinafter as "Administrative Court Code").[56] The particular feature of this proceeding is the possibility of the administrative court to apply full jurisdiction in the form of penalty moderation and the possibility of taking of evidence in relation to the finding of facts beyond the facts established by the administrative authority.[57] Based on the evidence provided, the administrative court in this type of proceeding can either change a decision of the administrative authority to the extent of the sentence on sanction or it may reverse the decision and remand a case to the administrative authority for reasons that can eliminate both the factual and legal deficits of the decision of the administrative body in further proceedings in the case of an illegal sentence on guilt.[58] By these powers, the administrative court has the substantive opportunity to comply with the requirements arising from the fundamental right of access to the court in conjunction with the right to an independent court pursuant to Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter as 'ECHR'), namely the requirement to review the decision of an administrative authority on a criminal matter by an independent body, i.e. by a court, which has full jurisdiction including the power to quash the decision both on grounds of law and fact.[59] At the same time, the administrative court in proceeding on administrative action in matters of administrative punishment is in principle obliged to provide basic guarantees arising from the right to a fair trial in criminal matters pursuant to Art. 6 of the ECHR, as well as it is obliged to apply by analogy the principles of criminal proceedings under the Criminal Procedure Code, which must be applied to administrative punishment and the principles of imposition of punishments under the Criminal Code, which must also be used for the imposition of penalties in the context of administrative punishment.[60]

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by the Administrative Court Code. See more Baricová, J., Fečík, M., Števček, M., Filová, A. et al., *Správny súdny poriadok. Komentár*, Bratislava: C. H. Beck, 2018, p. 520 et seq.

[54] See § 6 in conjunction with Part Three of the Administrative Court Code.

[55] See § 6 in conjunction with the fourth part of the Administrative Court Code.

[56] In Slovak language zákon č. 162/2015 Z. z. Správny súdny poriadok v znení neskorších predpisov.

[57] § 120 (b) of the Administrative Court Code.

[58] Similarly, Baricová, J., Fečík, M., Števček, M., Filová, A. et al., *op. cit.*, pp. 648-649.

[59] It follows from the case-law of the ECtHR that ensuring the requirement of full jurisdiction and the possibility of examining the decision on a factual and legal basis must be examined in the circumstances of each case, which means that it is preferable to meet that requirement on a specific level rather than abstract (normative). See Zrvandyan, A. *Casebook on European fair trial standards in administrative justice*, Strasbourg: Council of Europe Publishing, 2016, pp. 28-29, and the case-law of the ECHR cited therein.

[60] § 195 of the Administrative Court Code.

The regulation of administrative judicial proceedings in Administrative Court Code and particularities of proceedings of administrative action in matters of administrative punishment, including the statutory imperative to use the analogy of criminal-procedural principles according to the Criminal Procedure Code and the principles of imposition of penalties under the Criminal Code in conjunction with the constitutional imperative to ensure also in proceeding on administrative offense, which is a matter of criminal nature for the purposes of Art. 6 of the ECHR the same level of guarantees arising from the right to a fair trial, drives us to conclusion that such proceedings fulfils essential characteristics of criminal procedure. For that reason, the person concerned has the opportunity to have his case tried by a court having jurisdiction in particular in criminal matters in case of decisions on financial penalties issued by the administrative authorities of the Slovak Republic. We consider that due to the fulfillment of the condition specified in Art. 1 (c) (iii) of Framework Decision 2005/214/JHA, consisting in the possibility of having a decision of an authority of the issuing State other than a court reviewed by a court having jurisdiction in particular in criminal matters, is the restriction of the subject of the Act on Recognition and Enforcement of Decisions on Financial Penalties when transmitting decisions on a financial penalties issued in the Slovak Republic only to decisions issued by a criminal court proceedings unjustified. At the same time, such a restriction of subject of the act de facto narrows the scope *ratione materiae* of Framework Decision 2005/214/JHA, which is contrary to its purpose. Therefore, in our opinion, it is appropriate for the Slovak legislature to bring the wording of the act into line with Framework Decision 2005/214/JHA in the future and to extend the subject of the act so that the decisions of the administrative authorities of the Slovak Republic imposing financial penalties can also be transmitted under the Act on Recognition and Enforcement of Decisions on Financial Penalties.

Paragraph 2 of the Act on Recognition and Enforcement of Decisions on Financial Penalties defines the basic concepts for the purposes of this act. Specifically, citing in Slovak, these concepts are: '*rozhodnutie o peňažnej sankcii*', '*peňažná sankcia*', '*pokuta*', '*štát pôvodu*', '*vykonávajúci štát*', '*justičný orgán štátu pôvodu*', '*vykonávajúci justičný orgán*' and '*povinný*'. We consider that the law defines the concept of '*financial penalty*' – '*peňažná sankcia*', '*issuing State*' – '*štát pôvodu*' and '*executing State*' – '*vykonávajúci štát*' in accordance with the definitions of these concepts under Art. 1 of the Framework Decision 2005/214/JHA and the terms '*fine*' – '*pokuta*', '*judicial authority of the issuing State*' – '*justičný orgán štátu pôvodu*', '*executing judicial authority*' – '*vykonávajúci justičný orgán*' *and* '*obliged*' – '*povinný*', which are not explicitly defined by the Framework Decision in such a way that their definition is consistent with the purpose of the Framework Decision. However, in the case of the concept of '*decision on financial penalty*', we again consider that it is not entirely conformal with the definition of the term '*decision*' contained in Art. 1 (a) of Framework Decision 2005/214/JHA. This is because the term used in § 2 (a) of the Act on Recognition and Enforcement of Decisions on

Financial Penalties[61] again narrow the scope of the Framework Decision. Apart from the above-mentioned non-conformity in the interpretation of the term '*jurisdiction in particular in criminal matters*', in the case of the definition of the term '*decision on financial penalty*', appears to be problematic also the need for the decision to be issued for the criminal offence *stricto sensu* with one sole exception, which is an unlawful act relating to a violation of the road traffic rules.

Unlike the Slovak translation of Art. 3 (5) of the Framework Decision 2005/214/JHA, the Act on Recognition and Enforcement of Decisions on Financial Penalties no longer uses the term '*criminal offence*' – '*trestný čin*', but the '*categories of criminal offences*' in defining the scope of the Act. The language solution is from the point of view of conformity with the purpose of Art. 5 of Framework Decision 2005/214/JHA more appropriate, but not entirely ideal. In terms of the scope and content of the category of offences to be recognized and enforced irrespective of the assessment of double criminality, § 3 corresponds in principle to the provision on the scope *ratione materiae* of Framework Decision 2005/214/JHA.[62] The regime for the recognition and enforcement of decisions on financial penalties, which require an assessment of the double criminality, is also regulated in conformity with Framework Decision.

Pursuant to § 4 of the Act on Recognition and Enforcement of Decisions on Financial Penalties, a decision on financial penalty of a Member State may be recognized and enforced in the Slovak Republic if the obliged is normally resident, or he has a registered seat, property or income in the Slovak Republic. In the context of this provision, one of the above-mentioned amendments was implemented with effect from January 1, 2020. The essence of the amendment was to change the previously used term '*residence*' into the concept of '*normally resident*', which corresponds better with the wording of Art. 4 (1) of the Framework Decision 2005/214/JHA.[63]

The second part of the Act on Recognition and Enforcement of Decisions on Financial Penalties regulates the procedure of transmitting and enforcement per se, the consequences of such transmission and the provision of information to the executing State.[64] In order for the transmission of enforcement of the decision to be successfully implemented, at the beginning of this process there must always be a decision on financial penalty with the characteristics arising from the definition of § 2 (a) of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

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[61] Pursuant to § 2 (a) of the Act on Recognition and Enforcement of Decisions on Finanncial Penalties cited in Slovak: '*Na účely tohto zákona sa rozumie rozhodnutím o peňažnej sankcii právoplatné odsudzujúce rozhodnutie vydané pre trestný čin alebo pre protiprávne konanie týkajúce sa porušenia pravidiel cestnej premávky vydané 1. súdom štátu pôvodu v trestnom konaní, alebo 2. správnym orgánom štátu pôvodu, ak podľa právneho poriadku štátu pôvodu bolo proti tomuto rozhodnutiu možné podať opravný prostriedok, o ktorom rozhoduje súd s právomocou v trestných veciach*'.

[62] For deviations see Záhora, J., *op. cit.*, pp. 45-64.

[63] Ibid., p. 66.

[64] See for comparable analyses of the Act for example Klimek, L., *Uznávanie a výkon rozhodnutí o peňažnej sankcii v. EÚ; aplikácia v. Slovenskej republike*, „Justičná revue” 63, no. 12, 2011, pp. 1676-1685.

It must be emphasized once again that de *lege lata* there must always be a decision on financial penalty issued by the court of the Slovak Republic in criminal proceedings *stricto sensu*. In addition to its existence, it is required to complete the certificate referred to in Annex 1 to the act in the official language of the executing State, which corresponds to the standardized certificate under Framework Decision 2005/214/JHA. Subsequently, the court issuing such a decision sends its equivalent together with the translated certificate through the Ministry of Justice of the Slovak Republic (hereinafter as 'Ministry') for the purpose of transferring its enforcement to the Member State in which the person concerned has normally residence, registered seat, property or income. Where several Member States have jurisdiction to enforce a decision in respect of the criteria laid down, the court is obliged to designate only one Member State on the certificate, namely the Member State in which the successful enforcement of the decision on financial penalty may be expected.[65] That is important for the fulfilment of the requirement to transmit enforcement of a decision only to one Member State under Art. 4 (1) of Framework Decision 2005/214/JHA. The consequence of the transmission of enforcement of the decision on financial penalty is a fundamental impossibility to implement it in the Slovak Republic. However, the act, in conformity with the Framework Decision, provides exceptions to this rule.[66] Finally, § 7 of the Act on Recognition and Enforcement of Decisions on Financial Penalties governs the information obligation of the Slovak authority as an authority of the issuing State in accordance with the requirements arising from the provisions of the Framework Decision.[67]

Within the third part of the Act on Recognition and Enforcement of Decisions on Financial Penalties is specifically regulated the jurisdiction to receive a certificate and a decision on financial penalty of a Member State for the purposes of its recognition and enforcement in the Slovak Republic; the jurisdiction to proceedings on recognition and enforcement of a decision on financial penalty issued by the Member State as issuing State in the Slovak Republic; the procedure of the Ministry; the court decision; the grounds for non-recognition; the recognition and enforcement per se; and the information obligation of the executing judicial authorities of the Slovak Republic in relation to the competent authorities of the issuing State.

The competent authority for accepting the certificate and decision on financial penalty of a Member State for the purposes of its recognition and enforcement in the Slovak Republic is the Ministry.[68] If the translated certificate has not been transmitted together with the decision, the Ministry shall invite the competent authority of the issuing State to remedy the deficiencies within the prescribed time limit, informing that otherwise the matter will not be dealt with. The Ministry returns the case even if an authority, which was not competent, issued the

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[65] See § 6 of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

[66] See § 8 of the Act on Recognition and Enforcement of Decisions on Financial Penalties and Art. 15 of Framework Decision 2005/214/JHA.

[67] See in particular Art. 14 of the Framework Decision 2005/214/JHA.

[68] § 9 (1) of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

certificate or if the jurisdiction of the Slovak courts is not established. If these reasons are not given, the Ministry is obliged to submit the decision with the translated certificate to the competent court for a decision immediately.[69]

The jurisdiction of the authorities for proceedings on recognition and enforcement of decisions on financial penalties issued by a Member State as issuing State in the Slovak Republic is the court. Which court in which particular case will have jurisdiction depends on whether the decision on the financial penalty is issued in the issuing State by a court or administrative authority. If the decision is issued by a court, the competent court for the recognition and enforcement of the decision will be a regional court in whose district the person concerned has its residence or registered seat. If the person does not have such a residence or registered seat in Slovakia, the Regional Court in Bratislava will have jurisdiction. If an administrative authority issues a decision, the competent court for the procedure for recognition and enforcement of a decision on financial penalty will be the District Court Bratislava I.[70] In relation to the determination of jurisdiction, the traditional principle of *perpetuatio fori applies*.[71]

If there is no ground for refusal to recognize and enforce a decision on a financial penalty,[72] the competent court is obliged to decide on the recognition of the decision and at the same time decide that such a decision is enforced.[73] Such a decision may be appealed which has a suspended effect.[74] Upon its entry into force, the court will ask the obliged to pay the financial penalty within fifteen days, and if a substitute prison sentence is not imposed, the court will warn the person concerned that otherwise the payment will be executed.[75] After the vain expiry of the period for payment of the financial penalty, the court sends an equivalent of the decision on recognition and enforcement together with the certificate and the decision on the financial penalty without justification to the authority under a special act. This body is the Regional Court in Bratislava, which performs the function of the judicial treasury and subsequently execute a recognized claim as any other court claim under Act No. 65/2001 Coll. on the Administration and Execution of Judicial Debts,[76] as amended.[77] However, this does not apply where the court imposes a substitute prison sentence.

[69] § 10 of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

[70] Since June 1, 2023, when the latest amendment of the Act on Recognition and Enforcement of Decisions on Financial Penalties enters into force, the competent court will be the Municipal Court Bratislava I,

[71] § 9 (2) to (4) of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

[72] For the forms of decisions and procedural specificities of their issue see § 11 of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

[73] § 13 (1) of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

[74] On the form of decisions, their delivery and available remedies against them see § 11 of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

[75] § 13 (5) of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

[76] In Slovak language zákon č. 65/2001 Z. z. o správe a vymáhaní súdnych pohľadávok v znení neskorších predpisov.

[77] § 13 (5) and (6) of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

The grounds for non-recognition and non-enforcement of decision on financial penalty are exhaustively defined in § 12 of the Act on Recognition and Enforcement of Decisions on Financial Penalties. We consider that the list of grounds fundamentally corresponds to the reasons defined in Art. 7 of the Framework Decision 2005/214/JHA.[78] However, the difference from Article 7 is their binding character for the courts. While Article 7 understands the grounds for refusal as optional,[79] as expressed by the use of the term '*may refuse*', § 12 of the Act on Recognition and Enforcement of Decisions on Financial Penalties as obligatory, which is expressed by the terms *'decide on refusal'* or *'refuse'*. Thus, the Slovak legislature did not leave the court's discretion as to whether or not the grounds for refusal would be exercised. Although the view on the possibility of Member States to make the grounds for non-recognition binding differs,[80] we are inclined to consider the obligation of a Member State to transpose Article 7 in a wording which leaves to the competent authorities the possibility of discretion especially in the light of the CJEU's case-law enforcing the doctrine of restrictive interpretation of the grounds for non-recognition and non-enforcement.[81] It is therefore appropriate for the Slovak legislature in the future to align the wording of the act with the Framework Decision.

Finally, the obligation of the executing judicial authorities of the Slovak Republic in relation to the competent authorities of the issuing State is subject to Article 15 of the Act on Recognition and Enforcement of Decisions on Financial Penalties and corresponds in principle to the information obligations under Framework Decision 2005/214/JHA, in particular those covered by Article 14.

Within the framework of common, transitional and final provisions, the act regulates mainly the manner of contact and sending of documents; translations; proceeds from enforcement of a decision on a financial penalty and costs of proceedings; the competence to review the decision on financial penalty in the Slovak Republic; provision of cooperation and information of the Ministry and subsidiarity of the Criminal Procedure Code.[82]

4. Nature of decisions on financial penalties in terms of extraterritorial effects

The decision on financial penalties issued under Framework Decision 2005/214/JHA has been the subject of our previous research in terms of its

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[78] The exception is perhaps § 6 (2) (f) of the Act on Recognition and Enforcement of Decisions on Financial Penalties, which, according to some authors, has its legal basis in the Preamble in conjunction with Art. 3 of the Framework Decision 2005 /214/JHA. See e.g. Ligeti, K., *Mutual recognition of financial penalties in the European Union*, „Revue Internationale de Droit Penal”, no. 77, 2006, pp. 145-154.

[79] Similarly, in English *'may refuse'*, in French *'peuvent refuser'*, in Czech *'může odmítnout'*.

[80] Compare Ligeti, K., *op. cit.*, pp. 151 and Klimek, L., *op. cit.*, 2017, p. 353.

[81] Judgment of the Court of Justice of the European Union of 14th November 2013, case C-60/12, Marián Baláž, p. 29.

[82] See §§ 16 to 23 of the Act on Recognition and Enforcement of Decisions on Financial Penalties.

extraterritorial effects,[83] so we will confine ourselves here to summarizing the conclusions we have reached.

The aim of previous research was to examine whether specific administrative forms, including the decision on financial penalties, are transterritorial administrative acts. Although there is no unified definition of such term,[84] in principle legal scholars generally agree on its basic conceptual features.[85] Based on current state of legal theory, we considered transterritorial administrative acts to be those that have certain exhaustively defined features (positive definition) and at the same time do not have any of the exhaustively defined features (negative definition). From the point of view of the positive definition as the transterritorial administrative act, we considered an administrative form which had extraterritorial effects, i.e. in addition to the State where the act was issued, it also had effects in the territory of another State; the legal basis for these effects stemmed from an act of international law or the law of an international organisation, i.e. in particular EU law; the extraterritorial effects were reciprocal and such an administrative form of activity having extraterritorial effects was an act of the issuing State. From the point of view of negative definition, we did not consider as the transterritorial administrative act a national intraterritorial act; an administrative act of an authority of the State giving rise to the effects of a foreign administrative form of activity on its territory without being bound to an international legal or Union legal basis; an act of a State as a

[83] Jakab, R., Seman, T., Jančát, L., *Transteritoriálne správne akty v podmienkach Európskej únie a Slovenskej republiky*, Košice: ŠafárikPress, 2020, pp. 112-117.

[84] Even legal scholars do not use the same term to denote the same phenomenon. For example some of them use the notion "transnational" rather than "transterritorial". For comparison see Eliantonio, M., Vogiatzis, N., *Judicial and Extra-judicial Challenges in the EU Multi- and Cross-level Administrative Framework*, „German Law Journal" 22, no. 3 (2021), pp. 315-324; Pernas Garcia, J.J., *The EU's Role in the Progress Towards the Recognition and Execution of Foreign Administrative Acts: The Principle of Mutual Recognition and the Transnational Nature of Certain Administrative Acts*, „Recognition of foreign administrative acts, Ius Comparatum-Global Studies in Comparative Law" 10, 2016, p. 15; Seman, T., "Pojem a účinky transteritoriálnych aktov orgánov verejnej správy", *Extrateritoriálne účinky činnosti orgánov verejnej moci*, 2018, pp. 33-48.; Handrlica, J, *International administrative law and administrative acts: Transterritorial decision making revisited*, „Czech Yearbook of Public and Private International Law" 7, 2016, pp. 86-98 and Gerontas, A. "διασυνοριακή διοικητική πράξη (The transterritorial administrative act)", *Dioikitiki Diki (Administrative process)*, 2004, pp. 281–305.

[85] See Jakab, R. *Defence of an EU member state against the effects of transnational administrative acts*, „Juridical Tribune - Tribuna Juridica" 10, Special Issue, 2020, pp. 32-33, Chatzigagios, T, Mavridis, S., "Forms of action by the administration: Administrative acts, administrative contracts and material actions", *Economic and social development (ESD 2018): 28th international scientific conference on economic and social development*, 2018, pp. 314-320, Handrlica, J., *Vybrané problémy spojené s aplikací modelu transteritoriálních správních aktů*, „Studia Iuridica Cassoviensia" 5, no. 2. 2017, pp. 49-59, Handrlica, J., *Transteritoriální správní akty. Studie z mezinárodního správního práva*, Národohospodářsky ústav Josefa Hlávky, Prague, 2016, p. 63, Ruffert, M., *Personality under EU Law: A Conceptual Answer towards the Pluralisation of the EU*, „European Law Journal" 20, no. 3, 2014, pp. 346-367, De Lucia, L., *Administrative Pluralism, Horizontal Cooperation and Transnational Administrative Acts*, „Review of European Administrative Law", 2012; Da Silva, S. T., "The transnational administrative act", *Direito Administrativo Europeu*, University Coimbra, Coimbra, 2010, pp. 91-97 or Ruffert, M., "Der transnationale Verwaltungsakt", *Die Verwaltung*, 2001, pp. 453-470.

subject of international law and an act of international organizations and an act issued by a foreign state body serving as the bearer of the evidence and to be carried out in the context of ongoing administrative proceedings. Since the legal theory was not uniform in the case of administrative forms, which had extraterritorial effects only because of an act of recognition, we considered such acts, otherwise fulfilling the criteria, as transterritorial administrative acts, but not having direct effects. Thus, in our research they received the designation 'acts per recognitionem'.[86]

Based on the abovementioned criteria, after the analysis carried out in relation to the decision on financial penalties, we conclude that it is not the transterritorial administrative act with direct effects, but it is the act per recognitionem, since its effects in the territory of a Member State other than the issuing State take place only when they are recognized by the competent authority of that Member State. In other words, the effects of the decision on financial penalties are not automatic in the executing State, but arise only when the decision on recognition and enforcement of the decision on financial penalties issued by the competent authority of the executing State becomes final.

5. Conclusion

We consider that through the analysis carried out, we managed systematically describe the special regime for the recognition of decisions on financial penalties, and we have reached the following findings.

In the historical development of the special regime, we identified six key milestones. Proceeding chronologically, it was the 'finding' of the principle of mutual recognition in European Communities' law; the establishment of the so-called third pillar, the essence of which was intergovernmental cooperation in the field of justice and interior; declaration of political will to extend the scope of the principle of mutual recognition to criminal matters; adoption of Framework Decision 2005/214/14/JHA; the amendment of the Framework Decision and, finally, the explicit enshrinement of the principle of mutual recognition in the field of criminal matters in the TFEU after the Treaty of Lisbon.

The legal basis on which the Framework Decision 2005/214/JHA was adopted remains even after the entry into force of the Treaty of Lisbon Art. 31 (a) and 34 (2) (b) TEU, as amended before the Treaty of Lisbon. In the event of a decision by the competent authorities of the EU to repeal the Framework Decision 2005/214/JHA and to regulate the special regime for the recognition of decisions on financial penalties under a completely new act, in the future such a legal basis at the level of primary EU law will become Art. 67 (3) and Art. 82 (1) TFEU, and at the level of secondary law, it will be an act in the form of a directive.

The objective of the Framework Decision 2005/214/JHA is to establish a harmonized procedure for mutual recognition and enforcement of decisions on financial penalties for offences falling within the scope of the Framework Decision

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[86] Jakab, R., Seman, T., Jančát, L., *op. cit.*, pp. 65-69.

between Member States in order to accelerate and streamline their circulation in the Union or, at the maximum dose of simplification, the application of the principle of mutual recognition to financial penalties.

The essence of the special regime follows, in principle, from the Art. 6 of the Framework Decision, in conjunction with the provisions to which it refers. In simple terms, the essence of the regime can be understood as follows: where a decision on a financial penalty issued by the issuing State has been duly transmitted to the competent authority of the executing State, the executing State is obliged to recognize it in principle. It does not need to do so only if one of the grounds set out in the Framework Decision is given.

Speaking of the scope *ratione materiae* of the Framework Decision 2005/214/JHA, it covers the recognition and enforcement of two categories of decisions on financial penalties. The first category refers to those decisions on financial penalties that are imposed for offences, which are exhaustively defined in Art. 5 (2) of the Framework Decision 2005/214/JHA and for which the assessment of double criminality is not required. The second category concerns decisions on financial penalties imposed for any offences other than those referred to in paragraph 2. For these offences, the assessment of double criminality is required. However, it appears that the formal interpretation of the term *'decision'* for the purposes of the Framework Decision, namely the term *'court having jurisdiction in particular in criminal matters'* used in its Art. 1 (a) (iii) has impact on its scope *ratione materiae*. We consider that, in view of the purpose of the Framework Decision and the case-law of the CJEU, the substantive approach to the interpretation of that concept should prevail. In accordance with this approach each *'court',* irrespective of its formal designation and quantity of cases dealt with and adjudicated by it, must be regarded as a *'court having jurisdiction in particular in criminal* matters', if the proceedings concerning a criminal matters within the meaning of the Engel criteria are based on basic criminal-procedural principles which give such a court sufficient authority to hear the case and rule as a criminal court *stricto sensu*. In terms of scope *ratione personae*, the Framework Decision 2005/214/JHA is addressed to the Member States. The local scope is substantially limited to the territories of the Member States, which have transposed the Framework Decision, and the scope *ratione temporis* shall begin to run fundamentally from the date of its transposition. The exceptions are the effects lie in the obligation of national authorities, including national courts, conformably interpret national law in such a way as to ensure the purpose of the Framework Decision and the outcome of the Framework Decision, even if the Framework Decision was not transposed in a Member State, although it should have been.

The transposition of Framework Decision 2005/214/JHA into the national legal order of the Slovak Republic was implemented by the Act on Recognition and Enforcement of Decisions on Financial Penalties, which entered into force on August 1, 2011. This Act has been amended three times since its transposition and now consists of four parts. In the first part, general provisions are regulated, namely the subject of the act, the definition of basic concepts and the scope of application. The

subject of the second part is the procedure of the Slovak authorities as authorities of the issuing State in transmitting a decision on financial penalty to the executing State and the subject of the third part is the procedure of the Slovak authorities as executing judicial authorities. Finally, part four regulates common, transitional and final provisions. Within the second chapter of this paper, the individual parts of the act were analyzed in more detail. The finding that emerged from the analysis and in our opinion, it is necessary to highlight consists in unjustified narrowing of the subject of the act as a result of staying on the formal interpretation of the notion *'court having jurisdiction in particular in criminal matters'* used in Art. 1 (a) (iii) of the Framework Decision 2005/214/JHA. The consequence of this approach is that the subject of the act is limited only to decisions of courts issued in criminal proceedings *stricto sensu* in the event of the transmission of the decision on financial penalty to another Member State by the Slovak Republic. The transmission of the decision on financial penalty to another Member State issued by the administrative authority of the Slovak Republic pursuant to this act is not permissible. We consider that, in that regard, the subject of the act should be extended to decisions of the administrative authorities on financial penalties, since such decisions are reviewed by the administrative court in administrative court proceedings on administrative action in matters of administrative punishment, which fulfil the essential characteristics of criminal proceedings. This means that the administrative court in the Slovak Republic in relation to the examination of these decisions is the '*court having jurisdiction in particular in criminal matters'* for the purposes of Art. 1 (a) (iii) of the Framework Decision.

Finally, the decision on financial penalties in terms of its extraterritorial effects is not the transterritorial administrative act with direct effects, but is the act per recognitionem, since its effects in the territory of a Member State other than that which issued the decision take place only when the competent authority of that Member State recognizes them.

In view of the abovementioned conclusions, taking into account, on the one hand, the smoldering effect of integration and the material perception of the concept of '*criminal'* in the case-law of the ECtHR and the CJEU and, on the other hand, the continuing fundamental lack of harmonization of substantive and procedural rules of criminal law and administrative criminal law in the European Union, we do not see the prospect of deepening an integration in the direction of accelerating the circulation of decisions on financial penalties by changing the nature of such an act from the act per recognitionem to the transteritorial administrative act with direct effects. However, we believe that integration could be deepened within the scope *ratione materiae* of the specific regime for the recognition of decisions on financial penalties. We see such a possibility primarily in the direction of defining a new category of offences, where assessment of double criminality would not be required. At the same time, such offences could be typically qualified in national law as administrative rather than criminal. Finally, the need to ensure also in proceedings on administrative offences that have a criminal character according to Art. 6 of the ECHR, the application of the rights arising from the right to a fair trial, guarantees

that fundamental rights should not be fundamentally affected by such an extension of the substantive scope, which is also one of the key postulates on which Framework Decision 2005/214/JHA is based.

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