

Communication concerning the decision of the Curia of Hungary  
in criminal case number Bt.III.1.105/2021

The Curia remedied the infringement of the law by imposing a four and a half years' imprisonment instead of a fourteen years' imprisonment.

The Kingston Crown Court in the United Kingdom sentenced the accused to fourteen years' imprisonment for violent disorderly conduct, six counts of wounding with intent, assault causing actual bodily harm, carrying sharp or pointed instruments and carrying offensive weapons.

Subsequently, the competent Hungarian court held that the conviction of the accused person by a national court of the United Kingdom, being another Member State of the European Union, could be taken into account in Hungary and that the criminal offences determined could be requalified as the crime of public nuisance committed in a gang [section 339, subsection (1) and subsection (2), point a) of the Criminal Code], the crime of attempted battery committed in a gang and as a co-perpetrator in six counts [section 164, subsections (1) and (3) of the Criminal Code] and the crime of battery committed in a gang and as a co-perpetrator [section 164, subsections (1) and (3) of the Criminal Code], and the cumulative sentence for the commission of the aforementioned criminal offences could be a fourteen-year long term of imprisonment.

The Prosecutor General submitted a remedy petition in the interest of legality against the order of the competent Hungarian court to the Curia of Hungary with the aim of requesting the supreme judicial forum to establish the unlawfulness of the court order and, on that basis, to impose a shorter sentence of imprisonment than the one imposed by the national court of the United Kingdom in respect of the accused person.

Unless an exception is provided by law, the judgment of the national court of another EU Member State delivered in a criminal case shall be equivalent to the judgment of a Hungarian court in such a case, and the competent Hungarian court, prosecution service and investigating authority shall take the judgment of the national court of another EU Member State into account in the course of the criminal proceedings initiated in Hungary after the delivery of such foreign judgment [section 109, subsection (1) of Act number CLXXX of 2012 on Cooperation in Criminal Matters between the Member States of the European Union, hereinafter referred to as the EU Criminal Justice Cooperation Act].

The purpose of the process of conversion is to ensure that the provisions of a foreign criminal judgment, delivered by the national court of another EU Member State, the criminal sentence or measure imposed therein and the legal consequences thereof be compatible with Hungarian law [section 111, subsection (1) of the EU Criminal Justice Cooperation Act].

In the course of the process of conversion, the court shall determine the requalification of the criminal offence, established by the foreign judgement, under the provisions of the Criminal Code of Hungary and shall examine whether the provisions of the foreign judgment and the sentence or measure imposed therein are compatible with Hungarian law [section 111/D, subsection (1) of the EU Criminal Justice Cooperation Act].

If the provisions of the judgment of the national court of another EU Member State, the criminal sentence or measure imposed therein or the legal consequences thereof are not compatible with Hungarian law, then the competent Hungarian court shall modify or supplement the provisions of such foreign judgment and the criminal sentence or measure imposed therein in accordance with Hungarian law. The provisions of such foreign judgment that have not been converted shall be taken into account in accordance with the foreign judgment.

The competent Hungarian court shall convert the custodial sentence imposed by the judgement of the national court of another EU Member State to reach the maximum length of imprisonment that may be imposed under Hungarian law, if the term of imprisonment imposed by the foreign judgment is longer than the term of imprisonment that could be imposed under Hungarian law [section 111/E, subsection (1) of the EU Criminal Justice Cooperation Act].

In the present case, it has been established that the order of the competent Hungarian court is unlawful with regard to the length of the converted custodial sentence.

Given that some of the criminal offences requalified by the competent Hungarian court, namely the crime of public nuisance committed in a gang and the crime of attempted battery committed in a gang are both punishable by imprisonment of up to three years, the lower limit of the applicable criminal sentence for the process of conversion is three months, while the upper limit is four years and six months in accordance with the rules of cumulation.

It follows from the foregoing that, in the present case, the fourteen-year long custodial sentence imposed by the judgement of the national court of another EU Member State is not compatible with Hungarian law, therefore, the foreign sentence should have been converted, on the basis of the second phrase of section 111/D, subsection (1) of the EU Criminal Justice Cooperation Act, in accordance with Hungarian law.

Thus, the Curia of Hungary, acting upon the Prosecutor General's remedy petition in the interest of legality, held that the sentence of imprisonment imposed on the accused person by the Kingston Crown Court was equivalent to four years' and six months' imprisonment as a cumulative sentence.

Budapest, 20 April 2022

Criminal Department of the Curia of Hungary