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LEGAL EFFECTS OF PREVIOUS CONVICTIONS PROVIDED IN ANOTHER MEMBER STATE OF THE EUROPEAN UNION AND THEIR ROLE IN A NEW CRIMINAL TRIAL

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Abstract

In the context of a person having committed a large number of offences sharing the same generic legal object, on the territory of several Member States of the European Union, the question has arisen as to how these offences should be interpreted within a new criminal proceeding. The difficulty in determining the effects of prior convictions stems not only from the differing legal regulations governing offences in each Member State, but also from the category into which each state places the violations of legal provisions, namely criminal or administrative.

An important role in identifying appropriate solutions to the legal issue examined in this study is played by the use of instruments concerning mutual legal assistance, without which Member States would be unable to determine whether *those prior convictions handed down in another Member State would constitute offences under national law.*

In addition to analyzing the relevant European legislation, the paper also considers aspects addressed in recent case-law of the Court of Justice of the European Union, as well as the jurisprudence of the European Court of Human Rights.

The study aims to highlight the importance that the national court must attach to the sentencing process, ensuring that it does not give prior convictions handed down in other Member States harsher legal effects than if those convictions had been issued by the national court itself, and, at the same time, that it does not reclassify the offence underlying the conviction delivered in another Member State.

Keywords: *legal effects; European legislation; mutual legal assistance; conviction; equal treatment*

INTRODUCTION

Criminal courts within the European area face significant difficulties when, in proceedings concerning offences committed on the territory of the state of residence, they discover that the defendant has previously committed, on the territory of other European states, either offences sharing the same generic legal object as those in the pending case or offences with a different generic object. Consequently, the courts must determine what legal effects should be attributed to those prior convictions, or whether they produce any legal consequences at all in the process of establishing criminal sanctions.

The importance of correctly solving this controversy—encountered with increasing frequency in judicial practice—directly affects the rights of the person under criminal investigation. Specifically, the court seised of a case in a Member State must be certain that it does not attribute to the offence that resulted in a prior conviction delivered in another Member State, or to the penalty imposed, legal effects that would be more severe for the defendant than if the conviction had been handed down by a national court.

Accordingly, respect for the right to a fair trial and the right to defense[1] during the adjudication of the case is essential to the delivery of a correct conviction in this legal context.

An important role in identifying appropriate solutions to the legal issue examined in this study is played by the use of instruments concerning mutual legal assistance, without which Member States would be unable to determine whether all or only some of the prior convictions delivered in another Member State would constitute offences under national law.

[1] Article 6 of the European Convention on Human Rights, document available online at https://www.echr.coe.int/documents/d/echr/convention_ENG, accessed on 28.12.2025.

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I. LEGAL CONTEXT

Whether we refer to the provisions of Article 13(1) of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959[2], Article 6(1) of the Convention drawn up by the Council on the basis of Article 34 of the Treaty on European Union on mutual legal assistance in criminal matters between the Member States of the European Union[3], or bring into focus the provisions of Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings[4], we can observe that Member States have at their disposal functional legal mechanisms that facilitate the exchange of information for the purpose of verifying existing convictions handed down in other Member States.

Likewise, Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records between Member States[5], consolidated by Directive (EU) 2019/884 of the European Parliament and of the Council of 17 April 2019 amending Council Framework Decision 2009/315/JHA[6] as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA, completes the legal framework to which Member States refer when adjudicating a case that also requires an assessment of the defendant's substantial criminal history.

As noted by the Council of the European Union in the Programme of measures to implement the principle of mutual recognition of decisions in criminal matters[7], the practice of European courts required the implementation of mechanisms enabling courts to access other final criminal judgments delivered by judicial authorities in other Member States concerning a particular offender. The purpose of introducing such mechanisms was to allow an assessment of the "offender's criminal record" and to determine "any possible recidivism", as well as to establish "the type of sentence to be imposed and the conditions for its execution"[8].

In practice, all these legal instruments share a single overarching aim: "overcoming the incompatibilities or complexities of national judicial and

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[2] Published in ETS No. 30 of 20.04.1959.
[3] Published in the OJ of 12.07.2000.
[4] Published in the OJ of 15.08.2008.
[5] Published in the OJ of 07.04.2009.
[6] Published in the OJ of 07.06.2019
[7] Published in the OJ of 15.01.2001.
[8] Programme of measures for the implementation of the principle of mutual recognition of decisions in criminal matters of 2001, p.10, document available online at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001Y0115(02), accessed on 29.12.2025.

administrative systems in order to establish criminal judicial continuity" *(Cheptene-Micu, 2025, p. 102)*. Specifically, they represent the expression of the principle of mutual trust and the principle of mutual recognition, which constitute the foundations of judicial cooperation. It is worth noting that the case-law of national courts, as well as that of the Court of Justice of the European Union (CJEU), has elevated the concept of "mutual trust" to the status of a principle, the Court being supported in this regard by national courts through the preliminary ruling procedure, in which some of these courts have sought clarifications concerning the effects and limits of mutual trust *(Lorincz, 2025, p. 140).*

However, the mentioned instruments do not concern the enforcement, in one Member State of judicial decisions delivered in other Member States, but rather, they refer to the possibility that a prior conviction handed down in one Member State may be associated with certain consequences in the context of new criminal proceedings in another Member State. Such consequences are attached to previous national convictions under the legislation of that other Member State[9].

Therefore, such instruments should ultimately ensure the establishment of equivalent effects between judgments delivered in another Member State and those delivered at national level.

II. CONCEPTUAL DISTINCTIONS IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The difficulty in determining these effects arises when the legislative systems governing the incrimination of offences in the Member States—and, implicitly, the penalties—are heterogeneous.

Difficulties may also emerge in the interpretation of the very notion of "offence" and of the categories of punishable acts that fall within this sphere, as well as in relation to the classifications that each national legal system attributes to offences based on various criteria (gravity, the manner in which judicial authorities are seized, etc.).

Thus, in light of these differences, the same act may constitute an administrative offence in the legislation of one Member State, attracting an administrative sanction that may or may not appear in the criminal record, while in another Member State it may constitute a criminal offence, to which a penalty—classified as a criminal sanction—is applied and recorded in the criminal record.

By way of example, the Bulgarian criminal legislation distinguishes between criminal violations and administrative violations of the law; administrative violations are recorded in the criminal record only when they are established by the Criminal Code, whereas those established by other normative acts are not recorded.

[9] Point 6 of the Preamble to Framework Decision 2008/675/JHA.

Furthermore, offences are divided into "general offences"[10], for which criminal proceedings are initiated by the prosecutor, and "private offences," for which proceedings are initiated upon the prior complaint of the victim[11].

In German law, punishable acts are divided into "crimes" and "misdemeanors"[12], while Belgian legislation classifies them into "crimes," "delicts," and "contraventions"[13].

In Romanian law, the protection of values that the legislator considers to be of the utmost importance for the proper functioning of social relations is achieved by incriminating the acts of a criminal nature as "offences" *(Iancu, 2021, p. 638).*

Since the data provided through the ECRIS system cannot specify the typology to which each punishable act belongs, and since paragraph (3) of Framework Decision 2008/675/JHA provides that "in the course of new criminal proceedings, such convictions shall be given equivalent effects to those given to previous national convictions", courts in the Member States face difficulties in classifying the acts into one category or another. They are therefore required to identify means by which they can attribute (or not) appropriate legal effects to prior convictions, without reclassifying or revising the sanction already imposed by the authority of the other Member State.

It is well known that, in EU law, the expression "in criminal matters" has a broader meaning than that attributed in domestic legislation (including Romanian law) *(Lorincz, 2023, p. 196).*

In this regard, through its case-law[14], the European Court of Human Rights (ECtHR) has, over time, developed criteria on the basis of which the notion of "criminal matters" may be defined, distinguishing it from the administrative, regulatory, or fiscal spheres by analyzing factors relating to domestic classification, the nature of the incriminated act, and the purpose and severity of the sanction.

The first benchmark identified by the ECtHR—domestic classification—refers to the assessment that the court must carry out with respect to the legal provision in which the alleged act is found, namely whether it is or is not regulated under the criminal law provisions of the state; in fact, this first criterion led to an

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[10] Article 78a(1)(b) of the Bulgarian Criminal Code, available online at https://www.refworld.org/legal/legislation/natlegbod/1968/en/37489, accessed 03.01.2026.

[11] Article 247 Bulgarian Code of Criminal Procedure, available online at https://www.wipo.int/wipolex/en/legislation/details/21804, accessed 03.01.2026.

[12] See the German Criminal Code published in Federal Law Gazette I of 13.11.1998, available online at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html, accessed 03.01.2026.

[13] See the Belgian Criminal Code entered into force on 15.10.1867, document available online at https://legislationline.org/sites/default/files/documents/6e/BELG_CC_fr.pdf, accessed on 03.01.2026, as well as Article 8 of the Belgian Code of Criminal Procedure adopted in November 1808, document available online at https://legislationline.org/sites/default/files/documents/5d/Belgium_CPC_1808_am2019_fr.pdf, accessed on 11.01.2026.

[14] The ECtHR Judgment of 8 June 1976 - Engel and others v. the Netherlands, document available online at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57479%22]}, accessed on 06.01.2026.

expansion of the Court's *ratione materiae* jurisdiction "through an objective assessment" *(Bahceci, 2020, p. 867).*

If the provision does not form part of criminal law, the analysis then focuses on the nature of the incriminated act, distinguishing acts classified as criminal from those of a disciplinary or administrative nature by examining the addressees of the rule. Specifically, the aim is to determine whether the provision applies to the general public or only to a specific category of persons. The importance of this distinction lies in the fact that disciplinary sanctions generally aim to ensure compliance, by certain groups (e.g., lawyers, doctors, military personnel), with rules specific to their profession or status (*Bîrsan, 2005, p. 449*). Additionally, since many offences require a special active subject, the ECtHR has supplemented its analysis with another indicator: the seriousness of the act.

The final criterion highlighted in ECtHR case-law[15] concerns the purpose and severity of the sanction. Essentially, where the purpose of the sanction is compensatory, the case falls outside the scope of criminal law; however, if the purpose is punitive or preventive, the act clearly has a criminal character *(Chiriță, 2008, p. 217).*

The sanction is highly relevant in the court's assessment, as a custodial penalty is the distinctive feature of criminal law. On the other hand, the absence of a custodial sanction does not necessarily mean that the act cannot fall under criminal law, since numerous pecuniary criminal sanctions—whose amounts may be extremely high—can be converted into custodial penalties in the event of non-payment.

These criteria are repeatedly invoked by the European Court of Human Rights in its judgments, making them readily applicable by national courts in their own reasoning when delivering solutions.

III. THE LEGAL EFFECTS OF PRIOR CONVICTIONS IN THE CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Equally, in light of Article 2 and Article 3(1) of Framework Decision 2008/675/JHA, as well as Article 2(a) of Framework Decision 2009/315/JHA, even the simple definition of the notions of "conviction," "offence," or "equivalent" may constitute an obstacle in the analysis carried out by the courts. It is therefore necessary to delineate the scope of each term so that courts may determine whether prior convictions exist, whether they can recognize their effects, and whether they may attribute to those convictions consequences equivalent to those conferred on prior national convictions.

[15] The ECtHR Judgment of 23 October 1984 - Öuztürk v. Germany, document available online at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-94467%22]}, accessed on 06.01.2026.

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A number of controversies surrounding this topic have been clarified by the recent judgment delivered by the Court of Justice of the European Union (CJEU) on 3 July 2025 in Case C-263/24, Smiliev[16] (hereinafter "the Judgment"), in response to two preliminary questions referred by the District Court of Tutrakan, Bulgaria.

Specifically, in the context of the case brought before the court, a Bulgarian national had committed, both in his country of residence and in two other Member States of the European Union, several punishable acts relating to road traffic regulations. The national court faced difficulties in determining how the convictions from other countries should be regarded—namely, whether they should be taken into account when establishing a new penalty, or whether they should be treated as administrative or criminal sanctions, given the legislative differences and the lack of information in ECRIS.

One of the preliminary questions concerned the interpretation of Article 3(1) of Framework Decision 2008/675/JHA, specifically whether it conflicted with national provisions under which the competent court could not consider prior convictions handed down in another Member State because the acts in question would not constitute offences under national law.

The second question concerned whether Article 3(1) and (2) of Framework Decision 2008/675/JHA and Article 2(a) of Framework Decision 2009/315/JHA should be interpreted as meaning that, in order to consider prior convictions handed down in other Member States when delivering a judgment, the national court must assess whether the committed acts fall within the categories regulated under the national law.

In its answer to the first preliminary question, the CJEU emphasized, at points 52–58 of the Judgment, that Article 3(1) of Framework Decision 2008/675/JHA does not require Member States consider, when delivering a judgment, prior convictions handed down in other Member States if the acts concerned do not constitute offences under national law, or if sufficient information regarding the prior convictions could not be obtained through instruments of mutual legal assistance or through criminal record information systems.

On the other hand, if the use of legal cooperation mechanisms provides sufficient elements to qualify the act as an offence as defined under national legislation, prior convictions handed down in other Member States must be taken into account when determining the new penalty, insofar as prior national convictions would also be taken into account. In practice, the court should establish

[16] The CJEU Judgment of 3 July 2025, C-263/24 – Smiliev, document available online at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62024CJ0263, accessed on 06.01.2026.

an equivalence between the two situations and attribute symmetrical consequences to the convictions[17].

At the same time, in its reply, the CJEU also refers to paragraphs 3, 5 and 6 of Article 3 of Framework Decision 2008/675/JHA, concluding that paragraph 1 does not preclude the national court from refraining to consider, in solving the case, a prior conviction delivered in another Member State insofar as the acts concerned are not classified as offences under national law.

As far as the other preliminary question, the Court sets out the manner in which the legal terms relevant to the situation in question, namely "conviction", "punishable act", "criminal act", must be interpreted, this being achieved "according to the general scheme and purpose of the regulation of which it forms part, in particular in the light of all the existing language versions" (point 67 of the Judgment) and not by reference to a single provision of Union law. The CJEU further notes that the notion of "conviction" refers to "a final decision of a criminal court establishing the guilt of a person as a result of having committed a 'criminal act', and not, more generally, a 'punishable act' or an 'act punishable under national law by virtue of constituting a breach of legal rules'" (point 71 of the Judgment).

Specifically, once the court has analyzed the matter and concluded that it is indeed a conviction in the sense described above, it is required to determine whether the act falls within the categories provided for under national law, using judicial cooperation instruments. If these are insufficient, the court may directly contact the court that delivered the prior conviction in order to verify whether the decision in question constitutes an actual conviction (within the meaning of Article 2 of Framework Decision 2008/675/JHA) or not.

Furthermore, with reference to the objectives of Framework Decision 2008/675/JHA and Framework Decision 2009/315/JHA, the CJEU emphasizes that it is essential for mechanisms of mutual legal assistance to provide national courts with all necessary information so that, when delivering a judgment, they may take into account any prior convictions of the same person handed down in other Member States. In practice, the use of these mechanisms is both recommended and confirmed as effective.

It is also emphasized in the Judgment that the effects conferred on prior convictions handed down in other Member States must be similar to those conferred by national courts, and any attempt to review convictions already delivered in other Member States is inadmissible. Essentially, the court seised of the criminal proceedings must make every effort to ensure that a prior conviction—and implicitly the offence underlying that conviction—does not produce more severe

[17] The CJEU Judgment of 21 September 2017 in case C-171/16, Beshkov, document available online at https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62016CJ0171, accessed on 07.01.2026.

legal consequences than it would have if the conviction had been delivered by a national court.

An exception is the situation in which the national court delivers a judgment granting the prior conviction handed down in the other Member State the same effects as those conferred on a national conviction, without, however, reclassifying the offence that formed the basis of the conviction or the penalty imposed (or ensuring that the penalty is similar in nature and degree of severity)[18].

The interpretation provided by the Court of Justice of the European Union thus complements the principles established in its own case-law and in that of the European Court of Human Rights, strengthening the guidelines that national courts must follow when delivering decisions involving prior convictions handed down in other Member States.

CONCLUSIONS

In view of the need to respect the principles of a fair trial and the right to defense, national courts seized of criminal proceedings must ensure that neither the offence underlying a prior conviction delivered in another Member State nor the penalty imposed is attributed consequences more severe than those that would arise if the conviction had been handed down by a national court.

In this regard, the usefulness of judicial cooperation instruments in criminal matters between Member States is indisputable, as they constitute the primary means through which states can obtain information on all prior convictions delivered in other Member States. This ensures that the solutions adopted by courts in such cases are fair, respect the rights of the person under investigation, and confer appropriate legal effects on prior convictions.

Moreover, the case law of the two European courts strengthens the Union's legislation, providing national courts with essential guidance for solving criminal proceedings and thereby ensuring compliance with the principles mentioned above.

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