

The Framework Decision on the enforcement of fines in the light of national constitutional laws and the European Convention on Human Rights (ECHR)

Recommendations

1. The Framework Decision on the enforcement of fines is part of the ongoing development of European criminal law and criminal traffic law, which is primarily based on framework decisions.
2. In terms of its intention, the Framework Decision should be welcomed because the EU-wide enforceability of fines for traffic offences is a reasonable objective, which so far, however, has been achieved to a limited extent only. In particular, the Framework Decision puts an end to the widespread view that “other European countries” are unlegislated areas for motorists domiciled in another EU Member State.
3. The implementation of the standards in the various Member States of the European Union (EU) must take into consideration the constitutional standards applying in each Member State. This suggests that when Member States adopt legislation that translates the Framework Decision into national law, they exercise their own sovereign power.
4. In addition, however, national laws that are adopted by Member States to implement the Framework Decision must also comply with the European Convention on Human Rights (ECHR), in particular Art. 6 of said Convention. The provisions contained in the ECHR constitute something like the common European quintessence of generally recognised legal principles.
5. Under Art. 6 ECHR, all Member States have the duty to take into consideration the following points when they transpose the Framework Decision into national law:
 - The person charged with an offence must be informed, in the language of his home country, of the nature of the accusation against him, as well as the remedies available to him and the associated prescribed periods.
 - The person charged with an offence must be granted an adequate opportunity to defend himself, which must courts must ensure in practice.
 - The right to inspect files must be implemented in a practicable manner.

- Rules on service, notification and summons should be practically oriented so as to ensure that the person charged with an offence will not be deprived of the right to defend himself.
- Furthermore, it must be ensured that the person charged with an offence may obtain legal assistance whatever the case may be.

6. Finally, Art. 6 ECHR stipulates that any judicial review of a decision taken by a public authority must be all-embracing, i.e. it must include a review of both the facts and the legal aspects of the decision.

7. Compliance with these fundamental standards of the rule of law will also ensure acceptance of the Framework Decision within the EU.

8. In the medium term, however, it will be impossible to do without an EU-wide harmonisation of substantive criminal law and the law governing non-criminal offences.