L.N. 268 of 2009

CRIMINAL CODE
(CAP. 9)
Financial Penalties (Execution in the European Union) Regulations, 2009

IN exercise of the powers conferred by article 628A of the Criminal Code, the Minister for Justice and Home Affairs has made the following regulations:-

Citation.

1. The title of these regulations is the Financial Penalties (Execution in the European Union) Regulations, 2009.

Definitions.

2. In these regulations, unless the context otherwise requires-

"the Arrangement" means the Council Framework Decision 2005/214/JHA of the 24th February, 2005 on the application of the principle of mutual recognition to financial penalties;

"the certificate" means the form, as contained in the Annex to the Arrangement, purporting to reproduce details setting out the information required by the same form;

Cap. 9.

"the Code" means the Criminal Code;

"decision" means a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:

(a) a court of the issuing State in respect of a criminal offence under the law of the issuing State;

(b) 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 criminal matters;

(c) 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;

(d) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in paragraph (c);

"the European Union" means the European Union as referred to in the Treaty;

"executing State" means the Member State of the European Union to which a decision has been transmitted for the purpose of enforcement;

"financial penalty" means the obligation to pay:

(a) a sum of money on conviction of an offence imposed in a decision;

(b) compensation imposed in the same decision for the benefit of victims even where the victim is not a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction;

(c) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;

(d) a sum of money to a public fund or a victim support organization, imposed in the same decision;

"issuing authority" means the authority which issued a decision within the meaning of the Arrangement;

"issuing State" means the Member State of the European Union in which a decision within the meaning of the Arrangement was issued;

"offence" means conduct which is punishable under national law by virtue of being an infringement of the rules of law;

"scheduled country" means a country listed in Schedule 1;

"scheduled offence" is any offence in the list of offences set out in Schedule 2;

"the Treaty" shall have the same meaning assigned to it by article 2 of the European Union Act. Cap. 460.

3. These regulations shall be limited to the transmission between Malta and a scheduled country of a decision imposing a financial penalty, and shall apply to decisions issued after the 22nd March, 2007. Scope.

Competent authorities.

4. For the purposes of these regulations:

(a) the Attorney General shall be competent to receive decisions issued in the issuing State and to transmit to the executing State decisions issued in Malta by the courts of criminal justice;

(b) the courts of criminal justice shall be competent to issue a decision.

Transmission of a decision.

5. (1) A decision shall be transmitted with the certificate containing the information prescribed therein, by any means capable of producing a written record under conditions permitting the ascertainment of its authenticity.

(2) If so required by the executing State, the original of the decision or a certified copy of it, and the original of the certificate, shall be sent to the executing State.

Details of incoming decisions.

6. A decision shall contain a statement that the financial penalty relates to:

(a) conduct which is a scheduled offence:

Provided that in such cases there shall be no verification whether the conduct is a criminal offence in Malta; or

(b) conduct which would constitute an offence under the law of Malta if it occurred in Malta:

Provided that the description of the offence shall not be regarded as material if the offence under the law of Malta and the law of the issuing State are substantially of the same nature.

Certificate by Attorney General.

7. Where the Attorney General receives a decision within the meaning of these regulations the Attorney General shall, in his own individual discretion and subject to the provisions of regulation 8, issue a certificate to the effect that the decision is one referred to in the Arrangement and such certificate shall be conclusive of its contents.

Grounds for non-recognition and non-execution.

8. (1) A decision shall not be recognized by the Attorney General if:-

(a) the certificate is not produced, is incomplete or manifestly does not correspond to the decision;

(b) the decision against the sentenced person in respect of the same acts has:

(i) been delivered in Malta, or

(ii) in any State other than Malta or in the issuing State, provided the decision has been executed;

(c) the act on which the decision is based is not one falling within the list of scheduled conduct and does not constitute an offence under the law of Malta;

(d) the execution of the decision is barred by prescription according to the law of Malta and the decision relates to acts which fall within the jurisdiction of the Maltese criminal courts whether at first instance or on appeal;

(e) the decision relates to acts which:

(i) are regarded by the laws of Malta as having been committed in whole or in part on Maltese territory or in a place treated as such, or

(ii) have been committed outside the territory of the issuing State and the law of Malta does not allow prosecution for the same offences when committed outside its territory;

(f) there is an immunity under the law of Malta which makes it impossible to execute the decision;

(g) the decision has been imposed on a person with regard to acts for which he would have been exempted from criminal responsibility under the criminal law of Malta by reason of his age;

(h) according to the certificate the person concerned:

(i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or through a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy; or

(ii) did not appear personally at the trial resulting in the decision, unless the said certificate states that the person, in accordance with procedural requirements defined in the law of the issuing State:

(a) in due time was summoned in person and thereby informed of the scheduled date and place of

the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he was aware of the scheduled trial and was informed that a decision may be handed down if he does not appear for the trial; or

(b) being aware of the scheduled trial, had given a mandate to his legal counsel appointed by the said person or by the State, to defend him at his trial, and was indeed defended by the said legal counsel at the trial; or

(c) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which he has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original decision being reversed, he expressly stated that he does not contest the decision or he did not request a retrial or an appeal within the applicable time-frame; or

(iii) the person did not appear in person, unless the certificate states that the said person, having been expressly informed about the proceedings and the possibility to appear in person in the trial, expressly waived his right to an oral hearing and has expressly indicated that he does not contest the case.

(i) the financial penalty is less than seventy euro (€70);

(j) if the certificate gives rise to an issue that fundamental rights or fundamental legal principles enshrined in the Treaty have been infringed.

(2) Before making a decision refusing to recognise and execute a decision on any of the grounds mentioned in sub-regulation (1)(a), (d) and (h), whether totally or in part, the Attorney General shall consult the competent authorities of the issuing State by any appropriate means, and where appropriate, shall ask them to supply any necessary information without delay.

Execution after issue of certificate

9. (1) Where a certificate has been issued by the Attorney General under regulation 7, the provisions of this regulation shall apply.

(2) Without the need of any further authority other than that conferred by this regulation, the decision shall be transmitted to the Registrar of Courts for execution and shall be served on the sentenced person.

Attorney General may direct Court Registrar to apply to Court requesting reduction of financial penalty.

10. Where the decision relates to acts which were not carried out within the territory of the issuing State and refers to acts which fall within the jurisdiction of the Maltese criminal courts, the Attorney General may direct the Registrar of Courts to apply to the court requesting the reduction of the amount of the financial penalty to the maximum amount provided for such acts under Maltese law.

Effect of decision.

11. (1) The following provisions shall apply where a decision is executed by the Registrar of Courts under regulation 9.

(2) The decision shall have the same effect as a sentence ordering the payment of a financial penalty under the Code as the case may be, and the provisions of the Code shall *mutatis mutandis* apply to the said decision, sohowever that any reference to a financial penalty as defined in these regulations shall be construed as a reference to the payment of a financial penalty in that Code.

Determination of amount to be enforced.

12. (1) The financial penalty imposed in the decision may be converted into Euro currency, provided that the rate of exchange applied must be that of the date on which the penalty was imposed in the issuing State.

(2) Where the sentenced person is able to furnish proof of payment, totally or in part, in any State, any part of the penalty recovered in whatever manner in any State, shall be deducted in full from the amount which is to be enforced:

Provided that the State wherein it is claimed that payment has been made, shall be consulted as to the veracity of the claim of payment.

Conversion of pecuniary penalties into imprisonment.

13. (1) Where it is not possible to enforce a decision, either totally or in part, and the issuing State has allowed for the application of alternative sanctions in the certificate referred to in regulation 5, the Criminal Court may convert the financial penalty in accordance with the provisions of the Code relating to the conversion of financial penalties into imprisonment under that Code.

(2) The provisions of the Code dealing with the conversion of

financial penalties shall *mutatis mutandis* apply to the conversion of a financial penalty under these regulations, sohowever that any reference to the conversion of a financial penalty in that Code shall be construed as a reference to a financial penalty under these regulations.

(3) Any conversion which takes place under this regulation shall not exceed the maximum amount stated in the certificate.

Termination of enforcement.

14. The enforcement of a decision shall be terminated in any of the following cases:

(a) when information is received from the issuing State of any measure as a result of which the decision ceases to be enforceable or is withdrawn for any reason;

(b) when amnesty or pardon has been granted under the law of Malta or under the law of the issuing State.

Information to issuing authority.

15. The issuing authority shall be informed by any means which leaves a written record of:

(a) the transmission of a decision to the authority competent to recognise and take measures to execute a decision when the decision has been received by an authority which does not have the said competence;

(b) any decision not to recognise and execute a decision, for the reasons referred to in regulation 8;

(c) the total or partial non-execution of the decision, for the reasons referred to in sub-regulations (11) and (13);

(d) the execution of the decision as soon as execution is completed;

(e) the application of alternative sanctions in terms of regulation 13.

Issue of a decision by Court in Malta.

16. (1) The provisions of this regulation shall apply where a person has been sentenced by a court of criminal justice to the payment of a financial penalty, and the said person is a resident, has property or income or, in the case of a body corporate, is registered in another State.

(2) The court shall issue a decision, and such decision shall have the same effect as a sentence ordering the payment of a financial penalty, as applicable, under the Code, and the provisions of the said

Code shall *mutatis mutandis* apply to a decision issued by virtue of this regulation.

Details of outgoing decision.

17. (1) A decision issued under regulation 16 shall contain:

(a) a statement indicating whether the conduct to which the decision refers to is scheduled conduct; or

(b) a statement of the offence.

(2) A decision shall only be transmitted to one executing State at any one time.

Appendices to the decision.

18. (1) Upon the issue of a decision by a court of criminal justice, the decision shall be sent to the Attorney General.

(2) The Attorney General shall append the certificate to a decision received under regulation 16.

(3) The Attorney General shall sign and certify as authentic the contents of the certificate.

Effects when decision transmitted.

19. (1) If a decision issued under regulation 16 has been transmitted to the foreign authorities, the execution of the decision may not continue before the courts of criminal justice.

(2) The right of execution shall revert to the courts if information is received from the executing State of the total or partial non-execution of the decision in that State for any of the following reasons:

(a) the grounds referred to in regulation 8(1)(a), (c) to (j), both inclusive;

(b) if amnesty, pardon or review of sentence has been granted;

(c) termination of enforcement of the decision.

Schedule 1
(Regulation 3)

Austria

Czech Republic

Denmark

Estonia

Finland

France

Latvia

Lithuania

Hungary

Romania

Slovenia

Spain

United Kingdom.

Schedule 2
(Regulation 6)

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;

- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage;
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;
- smuggling of goods;
- infringements of intellectual property rights;
- threats and acts of violence against persons, including violence during sport events;
- criminal damage;
- theft;
- offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.