

Case C-338/20**Request for a preliminary ruling****Date lodged:**

22 July 2020

Referring court:

Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (Poland)

Date of the decision to refer:

7 July 2020

Party in proceedings which ended in the imposition of a penalty, the enforcement of which is the subject of the main proceedings:

D. P.

[...]

DECISION

On 7 July 2020,

Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi, Sekcja Wykonania Orzeczeń V Wydziału Karnego (District Court for Łódź-Śródmieście in Łódź, Section for the Enforcement of Judgments of the 5th Criminal Division, Poland)

[...][composition of the chamber]

having examined at a hearing on 7 July 2020

the case of **D. P.**

on an application from the Centraal Justitiele Incassobureau

concerning enforcement of a decision imposing a financial penalty

under Article 267 of the Treaty on the Functioning of the European Union [...] [Reference to the *Official Journal of the European Union*] and Article 15(2) of the Kodeks karny wykonawczy (Criminal Enforcement Code)**decides**

- I. to refer the following question to the Court of Justice of the European Union for a preliminary ruling on the interpretation of Union law:

‘Does the service on a sentenced person of a decision imposing a financial penalty, without providing a translation into a language which the addressee understands, entitle the authority of the enforcing State to refuse to enforce the decision on the basis of the provisions implementing Article 20(3) of Framework Decision 2005/214/JHA on the grounds of a breach of the right to fair trial?’

- II. [...] [references to procedure] [Or. 1]

Statement of Reasons

1. EU law

- 1.1** Under Article 6(1) of the Treaty on European Union [...] [Reference to the *Official Journal of the European Union*], the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, [...] which are to have the same legal value as the Treaties. The provisions of the Charter are not to extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter are to be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions. [Article] 6(3) TEU provides that fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, are to constitute general principles of the Union’s law.
- 1.2** In recital 5 of the Framework Decision of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA, ‘the framework decision’), it is indicated that the framework decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof.
- 1.3** [Article] 3 of the framework decision stipulates that it is not to have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.
- 1.4** [Article] 20(3) of the framework decision provides for the possibility of opposing the recognition and the execution of a decision where the certificate sent by the issuing State gives rise to an issue that fundamental rights or fundamental legal principles as enshrined in Article 6 of the Treaty may have been infringed.

2. Polish law [Or. 2]

- 2.1** Pursuant to Article 611ff(1) of the Kodeks Postępowania Karnego (Code of Criminal Procedure, 'the CCP'), in the event that a Member State of the European Union, 'the State in which the decision is issued', has submitted a request for enforcement of a final decision on financial penalties, such decision shall be enforced by the district court in the district where the offender has property or income, or has his or her permanent or temporary place of residence.
- 2.2** Article 611fg(1)(9) of the CCP entitles a Polish court to refuse enforcement of the decision if the content of the certificate shows that the person to whom the decision relates has not been duly instructed about the possibility of appealing against that decision and his or her right to do so; [.]

3. Dutch law

- 3.1** The Centraal Justitieel Incassobureau (Central Fine Collection Agency, the Netherlands) is the central administrative authority responsible for the collection and recovery of claims resulting from penalty notices issued in connection with offences committed in the territory of the Kingdom of the Netherlands. ¹
- 3.2** A penalty notice issued by the Centraal Justitieel Incassobureau may be appealed against within six weeks at the Public Prosecutor's Office in L.

4. Facts of the case

- 4.1** By decision of 22 July 2019, D. P. was fined EUR 210 for an offence under Article 2 of the Dutch Law on Administrative and Legal Enforcement of Traffic Regulations, committed on 11 July 2019, which consisted in driving a vehicle with two tyres that did not meet profile requirements. The decision became final on 2 September 2019[9].

5. Proceedings before the national court

- 5.1** On 21 January 2020, the District Court for Łódź-Śródmieście in Łódź received an application from the Dutch authorities for enforcement of the financial penalty imposed on D. P. **[Or. 3]**
- 5.2** That court asked the Centraal Justitieel Incassobureau to indicate whether the decision imposing a financial penalty was delivered together with a translation into Polish.

¹ Information from the website: <https://www.cjib.nl/pl>.

- 5.3** The Dutch authority replied in the negative and indicated that the decision was drawn up in Dutch and included additional explanations in English, French and German as well as a reference to the www.cjib.nl website where information in Polish is provided.
- 5.4** The sentenced person appeared at the hearing on 9 June 2020 and explained that in late November/early December 2019, he had received a letter from the Netherlands which did not include a translation into Polish. He added that he was unable to respond to the letter because he did not understand its contents. The sentenced person receives a disability pension of around PLN 1 000 (equivalent to EUR 240) per month.

6. Admissibility of the question referred and grounds for the reference for a preliminary ruling

- 6.1** [...] [information relating to the admissibility of the request and the right of appeal under Polish law]
- 6.2** The Court's answer to the question referred for a preliminary ruling by the referring court is essential for the correct interpretation and application of the national provisions transposing Framework Decision 2005/214/JHA in the case pending before this court.

7. Position of the referring court regarding the answer to the question referred

- 7.1** Pursuant to recital 5 thereof, Framework Decision 2005/214/JHA respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. A reference to **[Or. 4]** respect for fundamental rights is made in Article 3 of the framework decision, and Article 20(3) provides for the possibility to refuse to recognise and execute a decision if there is a suspicion that it was issued in violation of fundamental rights.
- 7.2** In *Pupino*,² the Court of Justice of the European Union explicitly stated that the framework decision must be interpreted in such a way that fundamental rights, including in particular the right to a fair trial as set out in Article 6 of the Convention and interpreted by the European Court of Human Rights, are respected.
- 7.3** It should be pointed out that the question of the fairness of the proceedings conducted in the Member State which issued the decision transmitted for enforcement under Framework Decision 2005/214/JHA is of fundamental

² [Judgment of 16 June 2005, *Pupino* (C-105/03, EU:C:2005:386, paragraph 59)]

importance in guaranteeing the rights of the person sentenced to a financial penalty, since this decision is transmitted as final and the authority enforcing it is not entitled to remedy any procedural defects that have occurred in the State of origin.

- 7.4** An analysis of the provisions relating to the issue of translation, which are contained in EU legislation in force, does not [...], however, provide a clear and unambiguous answer to the question whether the Member State which has issued the decision imposing a financial penalty is obliged to serve it with together a translation into a language which the addressee understands.
- 7.5** Framework Decision 2005/214/JHA does not contain any provision explicitly stating an obligation to provide the addressee with a translation of the decision imposing a financial penalty, but it should be stressed that the framework decision refers to the stage when a decision which is already valid is enforced in another Member State. The preceding stage is governed by the law of the issuing State and, inter alia, by the provisions of Directive 2015/413/EU of the European Parliament and of the Council [of 11 March 2015] facilitating cross-border exchange of information on road-safety-related traffic offences.
- 7.6** In addition to provisions of a technical nature relating to the exchange of data between the competent authorities of the Member States, the directive contains provisions that are meant to guarantee certain rights. As indicated in recital 25, the directive upholds the fundamental rights and principles [Or. 5] recognised by the Charter of Fundamental Rights of the European Union, including respect for private and family life, the protection of personal data, the right to a fair trial, the presumption of innocence and the right of defence. Recital 15 states that Member States should be able to contact the owner, the holder of the vehicle or the otherwise identified person suspected of committing the road-safety-related traffic offence in order to keep the person concerned informed of the applicable procedures and the legal consequences under the law of the Member State of the offence. Further, recital 16 states that Member States should provide equivalent translation with respect to the information letter sent by the Member State of the offence, as provided for in Directive 2010/64/EU of the European Parliament and of the Council.³
- 7.7** Article 5(2) of the enacting terms of Directive 2015/413/EU stipulates that where a Member State decides to initiate proceedings in relation to an offence, it is to, in accordance with its national law, inform the owner, the holder of the vehicle or the otherwise identified person suspected of committing the road-safety-related traffic offence. This information is to, as applicable under national law, include the legal consequences thereof within the territory of the Member State of the offence under the law of that Member State. In addition, the information is to include any

³ Directive 2010/64/EU of the European Parliament and of the Council [of 20 October 2010] on the right to interpretation and translation in criminal proceedings [OJ 2010 L 280, 'Directive 2010/64/EU'].

relevant information, notably the nature of this road-safety-related traffic offence, the place, date and time of the offence, the title of the texts of the national law infringed and the sanction and, where appropriate, data concerning the device used for detecting the offence. For that purpose, the Member State of the offence may use the template set out in the annex to the directive.

- 7.8** Furthermore, Article 5(3) explicitly states that where the Member State of the offence decides to initiate **[Or. 6]** follow-up proceedings, the Member State of the offence, for the purpose of ensuring the respect of fundamental rights, sends the information letter in the language of the registration document of the vehicle, if available, or in one of the official languages of the Member State of registration.
- 7.9** It therefore follows from these provisions that, in the case of offences falling within the scope of the directive, there is an obligation to translate the information letter concerning the initiation of proceedings into the language of the registration document of the vehicle, and thus a language that the addressee understands. The service of a duly completed notice, which contains all the necessary information on the content of the charge and the appeal procedure, translated into a language which the addressee understands, enables that person to defend himself or herself effectively against the charges. Therefore, the fulfilment by the Member States' authorities of the information obligations set out in Directive 2015/413/EU has an important function in guaranteeing certain rights.
- 7.10** Here, reference should also be made to the rules contained in Directive 2010/64/EU of the European Parliament and of the Council [of 20 October 2010]. This right to translation is to apply from the time a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.
- 7.11** However, Article 1(3) of the enacting terms of Directive 2010/64/EU stipulates that where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, the directive is to apply only to the proceedings before that court following such an appeal. Therefore, it might initially appear that Member States have been exempted from the obligation to translate documents at the pre-litigation stage of proceedings in minor cases where the decision is not made by a judicial authority, which also appears to be confirmed by recital 16 of the directive. As is clear from the aforementioned provision, the obligation to translate **[Or. 7]** therefore only arises in proceedings before a court with which an appeal has been lodged against a decision issued by a non-judicial authority.
- 7.12** Despite the inclusion of this reservation in Article 1(3) of Directive 2010/64/EU, it should be remembered that it only sets a certain minimum standard. Member

States, on the other hand, are able to extend the rights set out therein in order to ensure a higher level of protection. The directive also explicitly stipulates that the level of protection should never fall below the standards provided by the European Convention on Human rights or the Charter of Fundamental Rights of the European Union as interpreted in the case-law of the European Court of Human Rights⁴ or the Court of Justice of the European Union. Furthermore, the provisions of the directive that correspond to rights guaranteed by both aforementioned legal acts should be interpreted and implemented consistently with those rights, as interpreted in the relevant case-law of both aforementioned courts.⁵

7.13 In this context, it is worth mentioning that the case-law of the ECtHR concerning Article 6 ECHR provides some guidance in this respect, and that Court has also already had the opportunity to present its view on translations [...]. According to the case-law of the ECtHR, the right to obtain a translation of a judgment and of the instruction on the legal remedies available is an essential element of the right to a fair trial.⁶ The Strasbourg Court also makes it clear that the rights guaranteed by Article 6 ECHR apply to minor cases as well, including minor offences.⁷ In its judgment in *Sleutjes* (C-278/16), the Court of Justice of the European Union also held that there is an obligation to translate even in cases concerning minor offences; it should be noted that the judgment concerned a penalty order made by a court.⁸

7.14 In the view of the referring court, the individual's right to a fair trial entails the obligation for all Member States to translate a decision imposing a financial penalty, even in cases concerning minor offences, as effective exercise of the rights of the defence requires an understanding of the charges made and of the instruction on the legal remedies available. Therefore, the rights of the defence cannot be regarded as guaranteed [Or. 8] where a decision imposing a financial penalty is served on the sentenced person without translation, in a language which he or she does not understand, with a reference to a website where only general information on the appeal procedure available against the penalty is available. Accordingly, where the charge and the instruction on the legal remedies available are not translated, in the opinion of the referring court this makes it impossible for the sentenced person to exercise his or her rights of defence.

7.15 This problem was also recognised by the EU legislature, since Directive 2015/413/EU, adopted many years after Framework Decision 2005/214/JHA,

⁴ ['The ECtHR' or the 'Strasbourg Court'].

⁵ Recitals 32 and 33 of Directive 2010/64/EU.

⁶ [See, inter alia, the ECtHR judgment of 28 August 2018, 59868/08, *Vizgirda v Slovenia*].

⁷ ECtHR Judgment [of 21 March 1984], 8544/79, [*Oztürk v Germany*].

⁸ Judgment [of 12 October 2017], ECLI:EU:C:2017:757.

contained a number of provisions to guarantee such rights, including provisions requiring that traffic offenders be sent information letters translated into a language they understand.

7.16 It follows from the foregoing that the referring court is of the view that the service on a sentenced person of a decision imposing a financial penalty together with an appropriate instruction without providing a translation of both documents into a language which the sentenced person understands obliges the authority of the enforcing State to refuse to enforce that decision on the ground that it was issued in breach of the right to a fair trial.

7.17 The doubts presented above justify the reference to the Court of Justice of the European Union.

7.18 [...]

7.19 [...] [references to procedure]

[...][Or. 9]