



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 207/21
Luxembourg, 23 November 2021

Judgment in Case C-564/19
IS (Illegality of the order for reference)

EU law precludes a national supreme court, following an appeal in the interests of the law brought by the Prosecutor General, from declaring a request for a preliminary ruling submitted by a lower court unlawful on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings

On the basis of the primacy of EU law, a national court must disregard any national judicial practice which is prejudicial to its right to make a reference to the Court of Justice

A judge of the Pesti Központi Kerületi Bíróság (Central District Court, Pest, Hungary) ('the referring judge') is seised of criminal proceedings brought against a Swedish national. At the first interview with the investigative authority, the accused, who does not speak Hungarian and was assisted by a Swedish-language interpreter, was informed of the suspicions against him. However, there is no information as to how the interpreter was selected, how that interpreter's competence was verified, or whether the interpreter and the accused understood each other. Indeed, Hungary does not have an official register of translators and interpreters and Hungarian law does not specify who may be appointed in criminal proceedings as a translator or interpreter, nor according to what criteria. Consequently, according to the referring judge, neither the lawyer nor the court is in a position to verify the quality of the interpretation. In those circumstances, he considers that the accused's right to be informed of his rights could be infringed, as well as his rights of defence.

Accordingly, the referring judge decided to ask the Court of Justice whether Hungarian law was compatible with Directive 2010/64¹, on the right to interpretation and translation in criminal proceedings, and Directive 2012/13², on the right to information in such proceedings. In the event of incompatibility, he also asks whether the criminal proceedings may be continued in the absence of the accused, as such proceedings are provided for under Hungarian law, in certain cases, where the accused is not present at the hearing.

Following that initial reference to the Court, the Kúria (Supreme Court, Hungary) ruled on an appeal in the interests of the law brought by the Hungarian Prosecutor General against the order for reference and held that order to be unlawful, without, however, altering its legal effects, on the ground, in essence, that the questions referred were not relevant and necessary for the resolution of the dispute concerned. On the same grounds as those underlying the decision of the Kúria (Supreme Court), disciplinary proceedings, which have in the meantime been discontinued, were brought against the referring judge. Since he was uncertain as to whether such proceedings and the decision of the Kúria (Supreme Court) are compatible with EU law and as to the impact of that decision on the action to be taken upon the criminal proceedings before him, the referring judge made a supplementary request for a preliminary ruling in that regard.

¹ 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, p. 1).

² Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

Findings of the Court

First of all, the Court, sitting as the Grand Chamber, holds that **the system of cooperation between the national courts and the Court of Justice**, established by Article 267 TFEU, **precludes a national supreme court from declaring**, following an appeal in the interests of the law, **that a request for a preliminary ruling submitted by a lower court is unlawful**, without, however, altering the legal effects of the order for reference, **on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings. Such a review of legality is similar to the review carried out in order to determine whether a request for a preliminary ruling is admissible. for which the Court of Justice has exclusive jurisdiction.** Furthermore, such a finding of illegality is liable, first, to weaken the authority of the answers that the Court will provide and, secondly, to limit the exercise of the national courts' jurisdiction to make a reference to the Court for a preliminary ruling and, consequently, is liable to restrict the effective judicial protection of the rights which individuals derive from EU law.

In such circumstances, **the principle of the primacy of EU law requires the lower court to disregard the decision of the supreme court of the Member State concerned.** That conclusion is in no way undermined by the fact that, subsequently, the Court may find that the questions referred for a preliminary ruling by that lower court are inadmissible.

In the second place, the Court holds that **EU law precludes disciplinary proceedings from being brought against a national judge on the ground that he or she has made a reference for a preliminary ruling to the Court of Justice**, since the mere prospect of being the subject of such proceedings can undermine the mechanism provided for in Article 267 TFEU and judicial independence, which independence is essential to the proper working of that mechanism. Moreover, such proceedings are liable to deter all national courts from making references for a preliminary ruling, which could jeopardise the uniform application of EU law.

Lastly, in the third place, the Court examines the obligations of the Member States under Directive 2010/64 with regard to interpretation and translation in criminal proceedings. In that regard, the Member States must take specific measures ensuring, first, that the quality of the interpretation and translations is sufficient to enable the suspect or accused person to understand the accusation against him or her. The creation of a register of independent translators or interpreters is, in that regard, one of the means of pursuing that objective. Secondly, the measures adopted by the Member States must enable the national courts to ascertain that the interpretation was of sufficient quality, so that the fairness of the proceedings and the exercise of the rights of the defence are safeguarded.

Following that verification, a national court may conclude that, either because the interpretation provided was inadequate or it is impossible to ascertain its quality, a person has not been informed, in a language which he or she understands, of the accusation against him or her. In such circumstances, Directives 2010/64 and 2012/13, read in the light of the rights of the defence, within the meaning of Article 48(2) of the Charter of Fundamental Rights of the European Union, preclude the criminal proceedings from being continued *in absentia*.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106