Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 7 May 2015 [1]

Case C-216/14

Criminal proceedings
against
Gavril Covaci

(Request for a preliminary ruling from the Amtsgericht Laufen (Germany))

(Judicial cooperation in criminal matters — Directive 2010/64/EU — Right to interpretation and translation in criminal proceedings — Possibility of bringing an appeal against a judgment delivered in criminal proceedings in a language other than the language of the proceedings — Directive 2012/13/EU — Right to information in criminal proceedings — Judgment delivered in criminal proceedings served on a person authorised to accept service and sent by ordinary post to the person accused — Period for bringing an appeal against that judgment running from the service of the judgment on the person authorised to accept service)

1. This reference for a preliminary ruling gives the Court a first opportunity to interpret two directives adopted on the basis of Article 82(2) TFEU. That provision forms the legal basis for the adoption of minimum rules to facilitate the mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. In particular, point (b) of the second subparagraph of Article 82(2) TFEU permits the European Parliament and the Council of the European Union to adopt minimum rules concerning the rights of individuals in criminal procedure.

2. The two directives whose interpretation is being sought are 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 [2] and Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings. [3]

3. The first question will give the Court an opportunity to clarify the scope of the right to interpretation and translation where an appeal is brought against a penalty order in a language other than the language of the proceedings.

4. The second question seeks to ascertain whether or not German legislation which provides for a mechanism by which penalty orders are served on a person authorised to accept service, after which they are forwarded by ordinary post to the person accused, [4] satisfies the requirements laid down by Directive 2012/13 and in particular the right to be informed of the accusation, provided for in Article 6 of that directive.

1 — Original language: French.
2 — OJ 2010 L 280, p. 1.
3 — OJ 2012 L 142, p. 1.
4 — Hereinafter, the concept of accused person includes those who are convicted and are able to bring an appeal against their conviction.

I – **Legislative framework**

A – *EU law*

1. Directive 2010/64

5. Directive 2010/64 establishes the right to interpretation and translation in criminal proceedings. It is the first instrument adopted in the European Union to strengthen the procedural safeguards available to suspected or accused persons in criminal matters by establishing minimum rules in accordance with point (b) of the second subparagraph of Article 82(2) TFEU.

6. Recitals 14, 17 and 33 in the preamble to that directive state:

'(14) The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950],[5] as interpreted in the case-law of the European Court of Human Rights. This Directive facilitates the application of that right in practice. To that end, the aim of this Directive is to ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial.

...

(17) This Directive should ensure that there is free and adequate linguistic assistance, allowing suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their rights of defence and safeguarding the fairness of the proceedings.

...

(33) The provisions of this Directive that correspond to rights guaranteed by the ECHR or the Charter [of Fundamental Rights of the European Union][6] should be interpreted and implemented consistently with those rights, as interpreted in the relevant case-law of the European Court of Human Rights and the Court of Justice of the European Union.'

7. Article 1 of Directive 2010/64, headed 'Subject-matter and scope', reads as follows:

'1. This Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

2. The right referred to in paragraph 1 shall apply to persons from the time that they are 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.

...'

5 — ECHR.

6 — 'The Charter'.

8. Article 2 of that directive, headed ‘Right to interpretation’, provides:

‘1. Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

...

8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their rights of defence.’

9. Article 3 of that directive, headed ‘Right to translation of essential documents’, reads as follows:

‘1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their rights of defence and to safeguard the fairness of the proceedings.

2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

3. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.

...’

2. Directive 2012/13

10. Directive 2012/13 is the second instrument adopted to strengthen the procedural safeguards available to persons suspected or accused of a criminal offence in the European Union. It establishes the right to information in criminal proceedings.

11. Recitals 27, 28, 40 and 41 in the preamble to that directive state:

‘(27) Persons accused of having committed a criminal offence should be given all the information on the accusation necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings.

(28) The information provided to suspects or accused persons about the criminal act they are suspected or accused of having committed should be given promptly, and at the latest before their first official interview by the police or another competent authority, and without prejudicing the course of ongoing investigations. A description of the facts, including, where known, time and place, relating to the criminal act that the persons are suspected or accused of having committed and the possible legal classification of the alleged offence should be given in

sufficient detail, taking into account the stage of the criminal proceedings when such a description is given, to safeguard the fairness of the proceedings and allow for an effective exercise of the rights of the defence.

...

(40) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR as interpreted in the case-law of the European Court of Human Rights.(41) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the rights of the defence. It should be implemented accordingly.'

12. Article 1 of Directive 2012/13 defines its subject-matter as follows:

'This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. ...'

13. Article 2(1) of Directive 2012/13 defines the scope of the directive as follows:

'This Directive applies from the time persons are made aware by the competent authorities of a Member State 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 the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.'

14. Article 3 of that directive defines the right to information about rights as follows:

'1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

...

(c) the right to be informed of the accusation, in accordance with Article 6;

...'

15. Article 6 of the directive, headed ‘Right to information about the accusation’ provides:

‘1. Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

...

3. Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

...’

B – *German law*

16. Paragraph 184 of the Law on the judicial system (Gerichtsverfassungsgesetz, ‘GVG’) provides that the language of the courts is German.

17. Paragraph 187 of the GVG, as amended following the transposition of Directives 2010/64 and 2012/13, provides:

‘1. The court shall provide an accused or convicted person who does not have a command of German or who is hearing impaired or speech impaired with an interpreter or a translator in so far as that is necessary for the exercise of his rights in criminal proceedings. The court shall inform the accused person in a language which he understands that he may, to that end, request the free assistance of an interpreter or a translator for the entire duration of the criminal proceedings.

2. For the exercise of the procedural rights of an accused person who does not have a command of German, as a general rule, a written translation of orders depriving a person of his liberty, charges and indictments, penalty orders and judgments which are not final shall be required ...

...’

18. Under Paragraph 132(1) of the Code of Criminal Procedure (Strafprozessordnung, ‘StPO’), the appointment of persons authorised to accept service is organised as follows:

‘If an accused person who is strongly suspected of having committed a criminal offence has no fixed domicile or residence within the territorial jurisdiction of this law but the requirements for issuing an arrest warrant are not satisfied, it may be ordered, in order to ensure that the course of justice is not impeded, that the accused person

1. provides appropriate security for the anticipated fine and the costs of the proceedings, and

2. authorises a person residing within the territorial jurisdiction of the competent court to accept service.’

19. Paragraph 410 of the StPO, which concerns objections to a penalty order, reads as follows:

‘1. The accused person may lodge an objection to a penalty order at the court which made the penalty order within two weeks of service, in writing or by making a statement recorded by the registry ...

...

3. Where no objection has been lodged against a penalty order in due time, that order shall be equivalent to a judgment having the force of *res judicata*.'

II – **The main proceedings and the questions referred for a preliminary ruling**

20. At a police check conducted on 25 January 2014 in the Federal Republic of Germany, it was determined that Mr Covaci, a Romanian citizen, was driving a vehicle without valid civil liability insurance and that the proof of insurance provided, the green card, was a forgery.

21. Mr Covaci was subsequently questioned on those matters by the police with the assistance of an interpreter.

22. On that occasion, Mr Covaci, who had no fixed domicile or residence within the territorial jurisdiction of German law, granted an irrevocable written authorisation, in Romanian, for three officials of the Amtsgericht (Local Court) Laufen (Germany) to accept service. That document stated that all court documents would be served on those authorised persons and that the periods for bringing appeals would begin to run from their service on those authorised persons.

23. On 18 March 2014, at the end of the investigation, the Staatsanwaltschaft Traunstein (Traunstein Public Prosecutor's Office, Germany) lodged an application for a penalty order against Mr Covaci at the Amtsgericht Laufen, claiming that a fine should be imposed.

24. A penalty order is a simplified form of criminal proceedings, allowing a penalty to be imposed unilaterally, without a hearing. Issued by a judge upon application by the Public Prosecutor's Office in the case of minor offences that do not require the physical appearance of the accused person, a penalty order is a provisional decision. It acquires the status of a judgment having force of *res judicata* upon the expiry of the period for lodging an objection of two weeks from the service of that order, where appropriate on the persons authorised to accept service for the accused person. An objection may be lodged within the prescribed period in writing or by making a statement recorded by the registry and results in a court hearing being held.

25. In its application, the Traunstein Public Prosecutor's Office requested that the penalty order should be served on the accused person through the persons authorised to accept service and, moreover, that any written observations, including an appeal brought against the penalty order, should be in German.

26. The Amtsgericht Laufen, to whom the application for the penalty order has been made, is uncertain whether the requests of the Traunstein Public Prosecutor's Office are compatible with Directives 2010/64 and 2012/13. First, the referring court seeks to ascertain whether the obligation to bring an appeal against the penalty order in German under Paragraph 184 of the GVG is consistent with the provisions of Directive 2010/64, under which free linguistic assistance is to be provided to accused persons in criminal proceedings. Second, that court has doubts as to the compatibility of the procedure by which the penalty order is served on a person authorised to accept service, and then forwarded by ordinary post, with Directive 2012/13, and in particular with the right to be informed of the accusation.

27. The Amtsgericht Laufen therefore decided to stay the proceedings concerning the penalty order and to refer the following questions to the Court for a preliminary ruling:

'(1) Are Articles 1(2) and 2(1) and (8) of Directive 2010/64 ... to be interpreted as precluding a court order that requires, under Paragraph 184 of the [GVG], accused persons to bring an appeal only in the language of the court, here in German, in order for it to be effective?

2. Are Articles 2, 3(1)(c) and 6(1) and (3) of Directive 2012/13 ... to be interpreted as precluding the accused from being required to appoint a person authorised to accept service, where the period for bringing an appeal begins to run upon service on the person authorised and ultimately it is irrelevant whether the accused is at all aware of the offence of which he is accused?'

III – **My analysis**

A – *Preliminary remarks*

28. Directives adopted on the basis of Article 82 TFEU must be interpreted having regard to the objectives of the area of freedom, security and justice, in particular the objectives of judicial cooperation in criminal matters.

29. Under Article 82(1) TFEU, judicial cooperation in criminal matters is based on the principle of mutual recognition of judgments and judicial decisions. It is also clear from point (b) of the second subparagraph of Article 82(2) TFEU that, in order to facilitate mutual recognition and police and judicial cooperation in criminal matters, the Union legislature may enact minimum rules concerning the rights of individuals in criminal procedure.

30. It is plain that these rules, which are referred to as 'minimum' but actually relate to major principles governing, inter alia, the rights of the defence and respect for the right to a fair hearing, from which the Member States may not derogate, are intended to establish or strengthen mutual trust, the basis for mutual recognition, which has itself been elevated to become a cornerstone of the construction of the area of freedom, security and justice.

31. With regard to the interpretation of such 'minimum' rules, and more generally the wording of the directives containing those rules, three consequences can be identified.

32. First, the expression 'minimum rules', to which I personally prefer the expression 'non-derogable rules', must not be interpreted, as is too often the case, and not without ulterior motives, in a simplistic manner as referring to minor rules. As has just been explained, they are in fact an essential foundation for procedural principles which, in criminal proceedings, ensure the application of and respect for fundamental rights which are the underlying shared values that make the European Union a system founded on the rule of law.

33. Second, and in the light of the above, rules adopted on the basis of Article 82(2) TFEU must be interpreted in such a way that they are fully effective in so far as such an interpretation, which will strengthen the protection of the rights, will also strengthen mutual trust and accordingly facilitate mutual recognition. Reducing the scope of these rules by a literal reading of the provisions may stand in the way of mutual recognition and thus the construction of the area of freedom, security and justice.

34. Third, the obligation on the European Union legislature, as set out in the last sentence of the first subparagraph of Article 82(2) TFEU, to take into account the legal traditions and systems of the Member States, means that a single procedural system cannot be imposed. Nevertheless, in their diversity, national procedural systems will have to comply with the principles in question in the course of their implementation, otherwise they will be regarded as invalid. Responsibility for reviewing this point lies, first and foremost, with the national courts, which have the option of making a request for a preliminary ruling to the Court if problems arise. I note in this regard that matters of criminal law, particularly in the strict sense, fall within the competence of the ordinary courts of law and that the constitutional traditions of the Member States make them the guardians of individual freedoms.

35. The directives in question undoubtedly fall, according to their subject-matter and their provisions, as indicated by their recitals, within the purview of Article 82 TFEU and are therefore subject to the method of interpretation which I have just described and which I propose that the Court adopt.

B – *The first question*

36. By its first question, the referring court essentially asks the Court to rule whether Articles 1(2) and 2(1) and (8) of Directive 2010/64 are to be interpreted as precluding an individual against whom a penalty order has been made and who does not have a command of the language of the proceedings of the court which made that order being prevented from bringing an appeal against that judgment in his own language.

37. As a preliminary point, it is necessary to dispel any ambiguity that might be created by the wording of this first question in respect of the freedom enjoyed by the Member States to determine the language of the proceedings.

38. Directive 2010/64 has neither as its object nor as its effect to impair the Member States' freedom to choose the language of the proceedings, that is to say the language in which pleadings and procedural documents are written and in which the courts communicate. On the contrary, the aim of that directive is to safeguard that freedom, whilst reconciling it with the protection of the rights of the person suspected or accused of having committed a criminal offence, by guaranteeing him the right to be provided free and adequate linguistic assistance if he does not speak or understand the language of the proceedings. [7]

39. Consequently, the provisions of Paragraph 184 of the GVG, which require that German be respected as the language of the proceedings, are not contrary to Directive 2010/64. [8]

40. Nevertheless, it is physically impossible for suspected or accused persons to communicate in a language of which they have no command. Their effective participation in criminal proceedings and the exercise of their rights of defence inevitably requires interpretation or translation. That was the case, moreover, in this instance during the police investigation phase, as Mr Covaci was provided with assistance from an interpreter when questioned by the police.

41. This linguistic obstacle is encountered throughout the proceedings. Thus, interpretation or translation services cannot be dispensed with when an appeal is brought against a judicial decision, so that the intention to object, expressed in the language known to the accused person, is stated in the language of the proceedings.

42. It should be stated at the outset that, contrary to what might be suggested by the order for reference and as is clear from the observations of the German Government, German law would appear to permit an accused person like Mr Covaci to lodge an objection to a penalty order in a language of which he has a command. Furthermore, German law, in particular Paragraph 187 of the GVG, seems to guarantee such an individual adequate linguistic assistance in having such an appeal translated into the language of the proceedings.

43. It will be for the referring court to establish whether German law complies with the relevant provisions of Directive 2010/64, in the light of what is said below.

7 — See recital 17 in the preamble to that directive.

8 — In my view, that conclusion is confirmed by *Runevič-Vardyn and Wardyn* (C-391/09, EU:C:2011:291), in which the Court found, more generally, that '[a]ccording to the fourth subparagraph of Article 3(3) TEU and Article 22 of the Charter ..., the Union must respect its rich cultural and linguistic diversity' (paragraph 86) and that 'Article 4(2) TEU provides that the Union must also respect the national identity of its Member States, which includes protection of a State's official national language' (idem).

44. Directive 2010/64 establishes the right to free and adequate linguistic assistance in order to allow suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their right of defence and to safeguard the fairness of the proceedings. As is rightly noted by the German Government, the point to be assessed is therefore whether that linguistic assistance applies where an appeal is brought.[9] More specifically, it must be determined whether the costs incurred in respect of translation or interpretation in this context should be borne by the defence, obliging the defence to lodge an appeal in German, or by the prosecution, allowing the defence to submit an appeal in a language other than the language of the proceedings.

45. I consider it important, at this stage, to state that my answer cannot be confined to cases of penalty orders. The possibility that the language of the proceedings and the language of the accused person may be different and need to be reconciled is not a difficulty peculiar to that form of simplified procedure.

46. The simplified judgment procedure represented by the penalty order does have some peculiarities with respect to the exercise of the rights of the defence. For example, the fact that the accused person does not appear at a hearing deprives him of any opportunity to present his version of events to a court before an appeal is brought against the penalty order adopted against him. These specific features of the penalty order were highlighted by the European Commission in support of the view that the absence of a hearing deprived the defence of the possibility to exercise its right to interpretation and that only the possibility of submitting an appeal in his own language therefore gave the accused person the opportunity to defend himself, subsequently, before a court, with the assistance of an interpreter at a hearing.[10]

47. I will not adopt the same rationale as has been proposed by the Commission. It would be too simplistic to envisage an appeal against a penalty order as a means of being able to benefit from the right to interpretation at a hearing. First, the right to interpretation, as protected by Directive 2010/64, has a much broader scope than the court hearing. Second, contrary to the view apparently taken by the Commission, the court hearing is not the only stage which guarantees the fairness of the proceedings. Procedural safeguards are applied throughout the criminal procedure. As bringing an appeal is a fully separate procedural step, it seems wrong to envisage the judicial appeal as a means of achieving the exercise of the rights of the defence at a hearing and not, in itself, as a means for the defence to exercise the rights it enjoys throughout the proceedings.

48. In my view, it is therefore essential to examine the first question in general terms and to determine whether, in any criminal proceedings, whether simplified or conventional, the accused person is able to benefit from free interpretation or translation when he brings an appeal. It is immaterial in this regard whether or not such a person has already had recourse to interpretation or translation services at a hearing prior to the bringing of an appeal.

49. A document which initiates an appeal such as the objection to a penalty order at issue in the main proceedings has the particular feature of being a document of criminal procedure produced by the accused person for the competent courts, and not a document produced by those courts for the accused person. The question raised by the referring court therefore requires us to assess the extent to which the right to linguistic assistance applies to this kind of document.

9 — Paragraphs 24 and 29 of the German Government's written observations.

10 — Paragraph 44 et seq. of the Commission's written observations.

50. Article 1 of Directive 2010/64 establishes the right to linguistic assistance in criminal proceedings. More precisely, that directive protects, on the one hand, the right to the assistance of an interpreter and, on the other, the right to the assistance of a translator, and devotes a specific article to each of them, with the aim of consolidating protection. [11] This approach differs from that taken by the ECHR which, in Article 6(3)(e) thereof, establishes only the right to the assistance of an interpreter, the European Court of Human Rights having extended that right to the translation of certain procedural documents. [12]

51. There is no doubt, in my view, that a document which initiates an appeal falls within the scope of Directive 2010/64, which the European Union legislature intended to be particularly broad, that is to say, covering the entire duration of criminal proceedings.

52. It should be noted that, under Article 1(2) of that directive, the right to interpretation and translation applies 'to persons from the time that they are made aware by the competent authorities of a Member State ... 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'. [13]

53. As I have pointed out, the right to linguistic assistance is broken down in Directive 2010/64 into two complementary rights, namely the right to interpretation under Article 2 of the directive and the right to the translation of essential documents, as defined in Article 3 of the directive.

54. One of the difficulties raised by the question under consideration is determining which of these two articles is the relevant provision in a situation like that in the main proceedings. That difficulty means that, although it is agreed that the right to lodge an objection or an appeal against a criminal conviction is an essential right of the defence, the accused person may be denied the practical possibility of exercising that right, thereby depriving him of the legal remedy provided for in national law. Consequently, as I stated in my preliminary remarks, a broad interpretation must be given to the articles of Directive 2010/64, in accordance with the objective of strengthening the rights of individuals in criminal procedure. With this in mind, it must be determined which of Articles 2 or 3 of that directive, the number of gaps in which is surprising given the importance of its provisions, best guarantees the accused person the right of effective recourse to the legal remedies available under national law.

55. With regard to a document initiating an appeal, the application of Article 2 of that directive should, in my opinion, be preferred to any application of the right to translation as protected by Article 3 of Directive 2010/64.

56. Under Article 3(1) of that directive, the accused person in criminal proceedings must be provided with a written translation of all documents which are essential for the exercise of his rights of defence, with a view to safeguarding the fairness of the proceedings. Aside from decisions depriving a person of his liberty, charges and indictments, and judgments, which are expressly mentioned in Article 3(2) of Directive 2010/64, the essential documents requiring a written translation may be freely determined by the competent authorities.

11 — See Monjean-Decaudin, S., *La traduction du droit dans la procédure judiciaire — Contribution à l'étude de la linguistique juridique*, Dalloz, Paris, 2012, p. 149 et seq.

12 — See the judgment in *Luedicke, Belkacem and Koç v. Germany*, 28 November 1978, § 48, Series A No 29.

13 — My italics.

57. It is true that a document initiating an appeal is essential for the exercise of the rights of the defence. However, the defence could not require its translation into the language of the proceedings on the basis of Article 3 of that directive. It is clear from the wording of Article 3 that that provision is intended to govern only the translation of essential documents from the language of the proceedings into a language understood by the accused person. This is shown by the fact that the essential documents listed in Article 3(2) of Directive 2010/64, although that list is not exhaustive, are documents produced by the competent judicial authority. In addition, it can be clearly inferred from Article 3(4) of that directive that the translation of essential documents is seen within the scheme of that directive as, inter alia, pursuing the objective of 'enabling suspected or accused persons to have knowledge of the case against them'.

58. Suspected or accused persons may invoke the right to the translation of an essential document only if they do not understand the language in which it has been written. Understanding a document, grasping its meaning, implies that it is received by the defence and not produced by the defence. Consequently, Article 3 of Directive 2010/64 concerns only the translation of documents produced by the competent judicial authorities which must be understood by the accused person, such as decisions depriving a person of his liberty and judgments.

59. The problem of linguistic assistance for the purposes of an appeal being brought by an individual against whom a judgment has been delivered in criminal proceedings should therefore be examined in the light of Article 2 of that directive.

60. Article 2 establishes the right to interpretation. It provides for the assistance of an interpreter during the entire criminal proceedings where the suspected or accused person does not speak or understand the language of the proceedings. Unlike Article 3 of Directive 2010/64, linguistic assistance under Article 2 of that directive may be requested by the defence 'not only in order to understand, but also to be understood'.

61. Where the accused person is unable to communicate in the language of the proceedings, he is therefore entitled to interpretation services so that statements made in a language of which he has a command, whether orally, in writing, or possibly in sign language, if he is hearing impaired or speech impaired, are translated into the language of the proceedings.

62. Consequently, Article 2 of Directive 2010/64 is applicable both in respect of statements or documents intended for the defence and in respect of statements or documents produced by the defence addressed to the competent judicial authorities.

63. Furthermore, as has been explained, it is clear from the wording of Article 1(2) of that directive that the right to linguistic assistance has broad application and that free interpretation services may be requested by the defence throughout the duration of the proceedings, including when an appeal is brought.

64. In addition, although assistance may be provided by an interpreter at hearings, the wording of Article 2(1) of Directive 2010/64 makes clear that such assistance is certainly not confined to that oral stage of criminal proceedings. The assistance of an interpreter can therefore be requested at the procedural stage where an appeal is brought against a judgment delivered in criminal proceedings.

65. This interpretation is confirmed by the wording of Article 2(2) of that directive, which provides for interpretation being freely available for communication between suspected or accused persons and their legal counsel.

66. Under that provision, in so far as necessary for the purpose of safeguarding the fairness of the proceedings, suspected or accused persons may be provided with interpretation services for communication with their legal counsel in connection with 'the lodging of an appeal or other procedural applications'.

67. I cannot see any reason to prevent an accused person who does not have a lawyer from also being able to benefit from interpretation for the purposes of bringing an appeal against a judgment delivered in criminal proceedings.

68. A penalty order, which is issued after a simplified criminal procedure, is a judicial decision against which the accused person may lodge an objection without the assistance of legal counsel, in writing or by making a statement recorded by the registry of the court which made the order. If conventional proceedings had been brought against Mr Covaci, in which he had the assistance of a lawyer, he could have been provided with free interpretation services for the purposes of bringing an appeal against the judgment delivered against him.

69. In my view, if the right to free interpretation when an appeal is brought were to be contingent on assistance being provided by a lawyer that would seriously impair the exercise of the rights of defence of an accused person who wishes himself to carry out procedural acts.

70. The purpose of Directive 2010/64 is conducive to an interpretation to the effect that an accused person who does not have a command of the language of the proceedings must be able to bring an appeal in a language of which he has a command against a judgment delivered in criminal proceedings and to be provided with the assistance of an interpreter with a view to the translation of that appeal into the language of the proceedings.

71. In that regard, recital 17 in the preamble to that directive clearly states that the directive seeks to 'ensure that there is free and adequate linguistic assistance, allowing suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their rights of defence and safeguarding the fairness of the proceedings'.

72. From that perspective, the full exercise of the rights of the defence requires, first, that the accused person is able to lodge an appeal in a language of which he has a command against a judgment delivered in criminal proceedings and, second, that he is provided with the assistance of an interpreter to translate that appeal into the language of the proceedings. In other words, in connection with bringing an appeal, the interpretation of the intention of the accused person to challenge his conviction is achieved by the translation of that appeal into the language of the proceedings.

73. The intervention of an interpreter will allow the accused person to set out to the competent judicial authority his arguments and his grounds of defence or, in the words of the European Court of Human Rights, 'to defend himself, notably by being able to put before the court his version of the events'.[14] The lodging of an appeal against a judgment delivered in criminal proceedings permits the accused person to explain the reasons why that judgment is open to challenge. To deny him the assistance of an interpreter in bringing such an appeal would impair, or even nullify, the exercise of the rights of defence enjoyed by that person.

74. At the hearing, the French Government supported the interpretation that Directive 2010/64 does not preclude a Member State from requiring an individual to bring an appeal in the language of the proceedings of the competent court, in order for it to be effective, if it provides that individual with the assistance of an interpreter or a translator at a prior stage. In my view, such a position is symptomatic of the misunderstanding created by the concept of minimum rules. The French

14 — See the judgment in *Kamasinski v. Austria*, 19 December 1989, § 74, Series A No 168.

Government based its stance on the argument that the directive concerns only the adoption of minimum rules, applying a narrow interpretation of that directive. As I stated in my preliminary remarks, I consider this rationale to be wrong. On the contrary, the objective of more effective judicial cooperation in criminal matters, which is achieved by strengthening the procedural rights of suspected and accused persons in criminal proceedings, calls for a broad interpretation of Directive 2010/64 guaranteeing the best protection of the rights of defence of the persons concerned.

75. There is no doubt, in my mind, that, in a situation like that in the main proceedings, where there is a relatively short period for bringing an appeal, namely 15 days, the individual against whom a penalty order has been made must be permitted first to lodge an objection against it, so as to suspend the running of that period, the interpreter being brought in only later to provide the translation of the appeal into the language of the proceedings. The approach advocated by the French Government, which is satisfied with the intervention of an interpreter at a stage prior to the lodging of an appeal, could, in a situation like that in the main proceedings, make it excessively difficult, or even impossible, to bring the appeal within the prescribed period. In addition to this problem, there is the question of the language in which the individual against whom a judgment has been delivered in criminal proceedings should make his request to be assisted by an interpreter in order to be able to lodge his appeal. When questioned on this subject at the hearing, the French Government provided no answer.

76. Lastly, it should be noted that Directive 2010/64 allows the Member States discretion in choosing the form to be taken by the interpretation services provided, as long as they are free and of a quality sufficient to safeguard the fairness of the proceedings and to permit the defence to exercise its rights.

77. The assistance provided by an interpreter can take various forms depending on the specific features of the proceedings. The assistance can obviously be oral, where the interpreter is physically present and simultaneously interprets the statements made by the defence or those addressed to him. It can also take the form of signs where, for example, an individual is hearing impaired or speech impaired and cannot communicate orally. In addition, where the physical presence of the interpreter is not required, Article 2(6) of Directive 2010/64 provides for the use of communication technology such as videoconferencing, telephone or the internet. It is also conceivable that linguistic assistance could take the form of a translated or bilingual appeal form, as the Commission suggests.[15] It would then be possible to enclose with the criminal conviction itself — which, as is not disputed, must be translated, there being a clear legal basis for this — when it is served on or sent to the convicted person, a printed form in that person's language, which he would have to do no more than fill in, if he considered it necessary, and return to the address of the court at which the appeal must be lodged.

78. It should also be stated that the right to interpretation is not only manifested in the form of assistance provided orally for an individual who does not speak the language of the proceedings. That right can also take the form of a written translation of the statements made by the defence in a document such as a notice of appeal.

79. Conversely, as is expressly stated in Article 3(7) of Directive 2010/64, the translation of essential documents may be in oral form.

80. In the present case, the assistance of an interpreter in connection with an objection lodged against a penalty order can take both oral and written form. Under Paragraph 410(1) of the StPO, an objection to a penalty order may be lodged in writing or by making a statement recorded by the registry of the court which made that order. In my view, there is no doubt that in so far as the assistance of an interpreter is guaranteed in an appeal brought orally at the registry of the competent court, such assistance must equally be guaranteed where the appeal is lodged in writing.

15 — Paragraph 52 of the Commission's written observations.

81. I therefore conclude that Articles 1(2) and 2(1) and (8) of Directive 2010/64 are to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which provides for the use of a certain language as the language of the proceedings before the courts of that State. However, those same provisions are to be interpreted as permitting an individual against whom a judgment has been delivered in criminal proceedings and who does not have a command of the language of the proceedings to bring an appeal in his own language against such a judgment, while it is the responsibility of the competent court, pursuant to the right to interpretation enjoyed by the accused person under Article 2 of that directive, to provide appropriate resources for the translation of the appeal into the language of the proceedings.

C – *The second question*

1. Preliminary remarks

82. In criminal procedure, the enforcement of a conviction requires that conviction to be enforceable. This concept differs from the concept of a final decision in some circumstances, in particular in the following cases.

83. The enforcement of a conviction requires that legal remedies have been exhausted, a situation which is not of concern to us here, or that the convicted person has refrained from availing himself of those remedies.

84. That second scenario requires that the convicted person was aware of the conviction and that he made a fully informed decision to refrain from challenging it.

85. Where the convicted person was present when the conviction was delivered, there is no difficulty and, upon expiry of the period for bringing an appeal, the decision becomes enforceable and, in this case, also final.

86. Where the convicted person was not present when the conviction was delivered, he must be made aware of that conviction, as it becomes enforceable only once the individual is notified and after the expiry of the period for bringing an appeal, which begins to run when that procedural requirement has been met.

87. The convicted person might also not be notified for reasons attributable to him (if he has absconded, for example) or not (a failure on the part of the services responsible for notification, for example). In such cases, the judgment must still be enforced and it must therefore be enforceable. That quality will be conferred on it by a formal method of service, in this case on a person authorised to accept service, which must not make the judgment final and thus allow an appeal to be brought where, at the enforcement stage, the individual concerned has been found and/or informed of the existence of a judgment delivered in criminal proceedings.

88. As regards the method of service, which I have described as ‘formal’, Member States are free to determine that method as they consider most appropriate.

89. Under the German procedural system, as it was explained at the hearing, if from the outset there are concerns that it will subsequently be difficult to contact the individual concerned (in this case where there is a foreign domicile), recourse is had to a person authorised to accept service who, it would seem, actually constitutes the official point of contact between the judicial authority and the

accused person. Recourse to this person authorised to accept service entails obligations for the judicial authority (the obligation to go through him for documents to be served), for the person authorised to accept service (the obligation to send documents received to the accused person) and for the accused person, who must make enquires with the authorised person to establish the status of the proceedings.

90. The procedural step from which the period upon whose expiry the conviction becomes enforceable begins to run is when the court sends to the person authorised to accept service the decision to be notified.

91. There is nothing intrinsically wrong with this procedural system, which is the one adopted by the German legislation, not least having regard to the principle laid down in the last sentence of the first subparagraph of Article 82(2) TFEU, namely that rules adopted on the basis of that paragraph must take into account the differences between the legal traditions and systems of the Member States.

92. That procedural system would also, at the stage of its implementation, have to respect the need to permit the exercise of the rights of defence of the accused person, which matter must be examined in connection with the answer to be given to the second question.

2. My analysis

93. By its second question, the Amtsgericht Laufen essentially asks the Court to rule on whether Articles 2, 3(1)(c) and 6(1) and (3) of Directive 2012/13 are to be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, under which an accused person in criminal proceedings who does not reside in that State appoints a person authorised to accept service of a penalty order made against him, after which that order is sent by ordinary post to the accused person by the person authorised to accept service, the period of two weeks for lodging an objection running from the service of the order on the authorised person.

94. In its order for reference, the Amtsgericht Laufen states that the consequence of the appointment of a person authorised to accept service, which is provided for in Paragraphs 116, 127a and 132 of the StPO, is that the period for bringing an appeal against a decision adopted in criminal proceedings begins to run from the service of such a decision on the appointed authorised person. The authorised person then forwards that decision to the accused person by ordinary post, without proof of postage and/or of receipt. It would therefore be irrelevant, in particular for the purposes of calculating the period for bringing an appeal, whether and when the accused person actually receives a decision adopted in criminal proceedings. The referring court states in this regard that, in the case of a penalty order, it is the responsibility of the accused person himself to ensure that he actually receives it, thereby giving him initial access to the courts.

95. Directive 2012/13 protects, under Article 1 thereof, 'the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them'.

96. These two aspects of the right to information are covered by two separate articles of that directive, of which the referring court is seeking an interpretation. Article 3 of the directive relates, according to its heading, to the '[r]ight to information about rights'. Article 6 of Directive 2012/13 concerns the '[r]ight to information about the accusation'.

97. Under Article 3(1) of that directive, 'Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the ... procedural rights [under (a) to (e)], as they apply under national law, in order to allow for those rights to be exercised effectively'. The procedural rights mentioned include, in Article 3(1)(c) of the directive, 'the right to be informed of the accusation, in accordance with Article 6'.

98. Under Article 6(1) of Directive 2012/13, 'Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence'.

99. Furthermore, Article 6(3) of that directive provides that 'Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed'.

100. It is clear from Article 2(1) of Directive 2012/13 that that directive has a particularly broad scope. Under that provision, the directive 'applies from the time persons are made aware by the competent authorities of a Member State 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 the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal'. [16]

101. Article 6(1) and 6(3) of Directive 2012/13 must be read in conjunction with Article 2(1) of that directive. Thus, in so far as the European Union legislature clearly provided for the application of Directive 2012/13 throughout the criminal proceedings, from the initial suspicions to the delivery of judgment, and if necessary after legal remedies have been exhausted, the right to be informed of the accusation under Article 6(1) and (3) of that directive must be considered to include the right for the accused person to be informed of a criminal conviction against him prior to and for the purposes of bringing any appeal against such a conviction.

102. Thus, the requirement laid down in Article 6(3) of Directive 2012/13, under which detailed information is to be provided on the accusation 'at the latest on submission of the merits of the accusation to a court', covers the situation where a penalty order is made against an accused person and an objection may be lodged by that person against that order, resulting once again in 'submission of the merits of the accusation to a court', but this time in conventional proceedings.

103. In such a situation, the purpose of the right to be informed of the accusation is to permit the accused person to exercise his rights of defence effectively, and in particular to bring an appeal against the judgment delivered against him in the criminal proceedings.

104. In my view, the German mechanism by which the penalty order is served on a person authorised to accept service, after which it is forwarded to the accused person by ordinary post, is not, in principle, and subject to the reservations I will set out below, contrary to the right to be informed of the accusation, as protected by Article 6(1) and (3) of Directive 2012/13.

105. It must be stated that that directive does not regulate the procedures by which documents are served during criminal proceedings.

106. Nevertheless, when they determine these procedures for service, Member States must ensure that they respect the rights of accused persons under that directive. Consequently, the approach taken by the Federal Republic of Germany for the service of penalty orders made against individuals who do not reside in that Member State would be open to criticism only if it undermined the right to be informed of the accusation, and more broadly the rights of the defence, in particular the right of appeal.

16 — My italics.

107. As I stated above, service of criminal convictions on an authorised person is the method chosen by the Federal Republic of Germany to enforce such convictions where it is to be feared that it will be difficult to contact the individual concerned after such decisions have been delivered, in particular in the case of a foreign domicile.

108. Where a person authorised to accept service is appointed, that person is required to forward the criminal conviction to the individual concerned immediately, if necessary together with a translation in the language of that individual.

109. At the hearing, the German Government was asked what happens where the accused person receives the penalty order belatedly and is thus not in a position to lodge an objection against the order within the period of two weeks that runs from the service of the order on the appointed authorised person. In that situation, the penalty order can be enforced, if necessary by having recourse to mutual judicial assistance in criminal matters. It is therefore crucial to ascertain whether or not, at the stage of the enforcement of the penalty order, the individual concerned can still lodge an objection against that penalty order.

110. The German Government answered that question in the affirmative. It explained that under German law,[17] where the accused person has not been in a position to lodge an objection within the period of two weeks, he may request restoration of the *status quo ante* from the time he is informed of the existence of a penalty order made against him, including at the stage of the enforcement of the penalty order. In that case, the accused person may therefore request that the situation be rectified and that his rights of defence be respected.

111. These explanations confirm that, under German law, a penalty order may become enforceable without having become final. Thus, at the stage of the enforcement of the order, the accused person must be able to lodge an objection against the order if he has not been previously informed of its existence.

112. It should be made clear, however, that if it is to be regarded as fully consistent with the right to be informed of the accusation, one of the purposes of which is to permit the individual against whom a criminal conviction has been ordered to bring an appeal against that conviction, the German mechanism by which an authorised person is appointed to accept service of a penalty order, after which that order is sent by ordinary post to the accused person by the authorised person, cannot have the effect of shortening the irreducible period of two weeks within which that person must lodge an objection against the order.

113. In this regard, two situations are likely to arise.

114. In the first situation, the individual against whom a penalty order has been made receives the order within the period of two weeks running from the service of that order on the authorised person. In that situation, the statutory period for appeal within which the accused person may challenge the order cannot be reduced by the number of days between the service on the authorised person, who is domiciled in the place where the court is based, and the receipt by the individual concerned of the letter containing the criminal conviction against him. The mechanism by which the penalty order is served on an authorised person, after which it is forwarded by ordinary post to the accused person, would otherwise have the effect of drastically cutting the statutory period within which that person may challenge the penalty order against him, as that mechanism would then be likely to prevent him

17 — It would seem that the German Government is referring to Paragraph 44 of the StPO, which provides for relief where an individual is not in a position to observe a time-limit for bringing proceedings through no fault of his own.

from having the necessary time to prepare his defence. If it had the effect of depriving the accused person of the benefit of the entire statutory period for lodging an objection against a penalty order, such a mechanism would impair the rights of the defence which, under Article 48(2) of the Charter, must be guaranteed for anyone who has been charged.

115. The fact that an individual receives a penalty order within the period of two weeks running from the service of that order on the authorised person must not therefore prevent that individual from having the benefit of the entire statutory period to which he is entitled to lodge an objection against that order, if the purpose of the right to be informed of the accusation is not to be undermined.

116. In the second situation, the individual against whom a penalty order has been made receives the order or is notified of it, possibly at the stage of enforcement, outside the period of two weeks running from the service of that order on the authorised person. In that situation, the individual must also be able, from the time he becomes aware of that order, to benefit from the entire statutory period of two weeks for lodging an objection against the penalty order in question.

117. In other words, while, in circumstances like those in the main proceedings, a Member State is permitted to adopt a system of service of decisions in criminal matters on a person authorised to accept service and to fix a period from such service at the end of which such decisions are enforceable, that system must not, however, have the effect of depriving accused persons of the possibility of bringing their appeal, within the statutory period provided for by the legislation of that State, from the time they are made aware of those decisions.

118. In the light of these clarifications, I conclude that Articles 2, 3(1)(c) and 6(1) and (3) of Directive 2012/13 are to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which an accused person in criminal proceedings who does not reside in that State appoints a person authorised to accept service of a penalty order adopted against him, after which that order is sent by the authorised person to the accused person by ordinary post, provided that procedural mechanism does not prevent that person from benefiting from the statutory period of two weeks, provided for by the legislation of that State, for lodging an objection against that penalty order, and that period must run from the time that person becomes aware, by any manner, of that order.

IV – **Conclusion**

119. In the light of the foregoing considerations, I suggest that the Court answer the questions referred by the Amtsgericht Laufen as follows:

(1) Articles 1(2) and 2(1) and (8) of 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 are to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which provides for the use of a certain language as the language of the proceedings before the courts of that State. However, those same provisions are to be interpreted as permitting an individual against whom a judgment has been delivered in criminal proceedings and who does not have a command of the language of the proceedings to bring an appeal in his own language against such a judgment, and it is the responsibility of the competent court, pursuant to the right to interpretation enjoyed by the accused person under Article 2 of that directive, to provide appropriate resources for the translation of the appeal into the language of the proceedings.

(2) Articles 2, 3(1)(c) and 6(1) and (3) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings are to be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which an accused person in criminal proceedings who does not reside in

that State appoints a person authorised to accept service of a penalty order adopted against him, after which that order is sent by the authorised person to the accused person by ordinary post, provided that procedural mechanism does not prevent that accused person from benefiting from the statutory period of two weeks, provided for by the legislation of that State, for lodging an objection against that penalty order, and that period must run from the time that person becomes aware, by any manner, of that order.