



Reports of Cases

Case C-564/19

IS

(Request for a preliminary ruling from the Pesti Központi Kerületi Bíróság)

Judgment of the Court (Grand Chamber), 23 November 2021

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2010/64/EU – Article 5 – Quality of the interpretation and translation – Directive 2012/13/EU – Right to information in criminal proceedings – Article 4(5) and Article 6(1) – Right to information about the accusation – Right to interpretation and translation – Directive 2016/343/EU – Right to an effective remedy and to a fair trial – Article 48(2) of the Charter of Fundamental Rights of the European Union – Article 267 TFEU – Second subparagraph of Article 19(1) TEU – Admissibility – Appeal in the interests of the law against a decision ordering a reference for a preliminary ruling – Disciplinary proceedings – Power of the higher court to declare the request for a preliminary ruling unlawful)

1. *Questions referred for a preliminary ruling – Admissibility – Limits – Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer – Absence*
(Art. 267 TFEU; Charter of Fundamental Rights of the European Union, Art. 47)

(see paragraphs 62, 63, 65, 66, 85, 87, 88)

2. *Questions referred for a preliminary ruling – Reference to the Court – Jurisdiction of national courts – Scope – Appeal in the interests of the law against an order for reference from a lower court – Power of the higher court to declare that order unlawful, without altering its legal effects – Not permissible*
(Arts 258, 259 and 267 TFEU)

(see paragraphs 71-77, 82, operative part 1)

3. *Member States – Obligations – Jurisdiction of the national courts to refer questions to the Court – Primacy – Power of the higher court to declare an order for reference from a lower court unlawful, without altering its legal effects – Not permissible – Obligations and powers of the national courts – Obligation to disregard such a decision of the higher court contrary to EU law – Finding by the Court that the questions referred for preliminary ruling by the lower court are inadmissible – Irrelevant*
(Art. 267 TFEU)

(see paragraphs 78-82, operative part 1)

4. *Questions referred for a preliminary ruling – Reference to the Court – Jurisdiction of national courts – Scope – Disciplinary proceedings brought against a national judge for having made a request for a preliminary ruling to the Court – Not permissible (Art. 267 TFEU)*

(see paragraphs 90-93, operative part 2)

5. *Fundamental rights – Rights of the defence – Enshrinement in Article 48 of the Charter of Fundamental Rights of the European Union and in Article 6 of the European Convention on Human Rights – Identical meaning and scope – Level of protection safeguarded by the Charter not falling below that guaranteed by that convention (Art. 6(1), third subpara., TEU; Charter of Fundamental Rights of the European Union, Arts 48 and 52(3) and (7))*

(see paragraph 101)

6. *Judicial cooperation in criminal matters – Right to interpretation and translation in criminal proceedings – Quality of the interpretation and translation – Obligation of the Member States – Scope – Concrete measures ensuring that the interpretation and translation are of a sufficient quality – Measures enabling the accused person to understand the accusation against him or her and the national courts to review the quality of the interpretation (European Parliament and Council Directive 2010/64, Arts 2(5) and (8), and 5(1) and (2))*

(see paragraphs 105, 106, 110-115, 117, 138, operative part 3)

7. *Judicial cooperation in criminal matters – Right to information in criminal proceedings – Right of a person to be informed of the accusation against him or her – Right to interpretation and translation in criminal proceedings – Scope – Absence of information provided in a language understood by the person concerned – Absence of adequate interpretation or impossibility of ascertaining the quality of the interpretation – Continuation of the criminal proceedings in absentia – Not permissible (Charter of Fundamental Rights of the European Union, Art. 48(2); European Parliament and Council Directives 2010/64, Art. 2(5), 2012/13, recital 27 and Arts 4(5) and 6(1) and (3), and 2016/343, Arts 8(2) and 9)*

(see paragraphs 123, 128-132, 135-138, operative part 3)

Résumé

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 2010/64,¹ on the right to interpretation and translation in criminal proceedings, and Directive 2012/13,² 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.

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,

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).

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*.