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ECLI:EU:C:2017:594

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

26 July 2017 (*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Access to justice in cross-border disputes — Directive 2003/8/EC — Minimum common rules relating to legal aid granted for such disputes — Scope — Legislation of a Member State providing that the costs of translation of the supporting documents necessary for the processing of a legal aid application are not reimbursable)

In Case C-670/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesarbeitsgericht (Federal Labour Court, Germany), made by decision of 5 November 2015, received at the Court on 15 December 2015, in the proceedings brought by

Jan Šalplachta,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, A. Tizzano (Rapporteur), Vice-President of the Court, M. Berger, E. Levits and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 9 November 2016,

after considering the observations submitted on behalf of:

– Mr Šalplachta, by K. Jurisch and P. Probst, Rechtsanwälte,

- the German Government, by M. Hellmann, T. Henze and J. Mentgen, acting as Agents,
- the Czech Government, by L. Březinová, M. Smolek and J. Vláčil, acting as Agents,
- the Spanish Government, by M. Sampol Pucurull, acting as Agent,
- the European Commission, by M. Heller and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 February 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1 and 2 of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ 2003 L 26, p. 41, and corrigendum at OJ 2003 L 32, p. 15).

2 The request has been made in proceedings brought by Mr Jan Šalplachta concerning the payment of arrears of wages by Elektroanlagen & Computerbau GmbH, his former employer.

Legal context

EU law

3 According to recitals 5, 6, 18 and 23 of Directive 2003/8:

‘(5) This Directive seeks to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. The generally recognised right to access to justice is also reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union.

(6) Neither the lack of resources of a litigant, whether acting as claimant or as defendant, nor the difficulties flowing from a dispute’s cross-border dimension should be allowed to hamper effective access to justice.

...

(18) The complexity of and differences between the legal systems of the Member States and the costs inherent in the cross-border dimension of a dispute should not preclude access to justice. Legal aid should accordingly cover costs directly connected with the cross-border dimension of a dispute.

...

(23) Since legal aid is given by the Member State in which the court is sitting or where enforcement is sought, except pre-litigation assistance if the legal aid applicant is not domiciled or habitually resident in the Member State where the court is sitting, that Member State must apply its own legislation, in compliance with the principles of this Directive.’

4 Article 1 of Directive 2003/8, entitled ‘Aims and scope’, is worded as follows:

- ‘1. The purpose of this Directive is to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid in such disputes.
2. It shall apply, in cross-border disputes, to civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.
3. In this Directive, “Member State” shall mean Member States with the exception of Denmark.’

5 Article 2 of that directive, entitled ‘Cross-border disputes’, states:

- ‘1. For the purposes of this Directive, a cross-border dispute is one where the party applying for legal aid in the context of this Directive is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced.
2. The Member State in which a party is domiciled shall be determined in accordance with Article 59 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [(OJ 2001 L 12, p. 1)].
3. The relevant moment to determine if there is a cross-border dispute is the time when the application is submitted, in accordance with this Directive.’

6 Article 3 of Directive 2003/8, entitled ‘Right to legal aid’, is worded as follows:

- ‘1. Natural persons involved in a dispute covered by this Directive shall be entitled to receive appropriate legal aid in order to ensure their effective access to justice in accordance with the conditions laid down in this Directive.
2. Legal aid is considered to be appropriate when it guarantees:
 - (a) pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings;

(b) legal assistance and representation in court, and exemption from, or assistance with, the cost of proceedings of the recipient, including the costs referred to in Article 7 and the fees to persons mandated by the court to perform acts during the proceedings.

In Member States in which a losing party is liable for the costs of the opposing party, if the recipient loses the case, the legal aid shall cover the costs incurred by the opposing party, if it would have covered such costs had the recipient been domiciled or habitually resident in the Member State in which the court is sitting.

...’

7 Article 5 of Directive 2003/8, entitled ‘Conditions relating to financial resources’, states, in its paragraphs 1 and 2:

‘1. Member States shall grant legal aid to persons referred to in Article 3(1) who are partly or totally unable to meet the costs of proceedings referred to in Article 3(2) as a result of their economic situation, in order to ensure their effective access to justice.

2. The economic situation of a person shall be assessed by the competent authority of the Member State in which the court is sitting, in the light of various objective factors such as income, capital or family situation, including an assessment of the resources of persons who are financially dependent on the applicant.’

8 Article 7 of that directive, entitled ‘Costs related to the cross-border nature of the dispute’, provides:

‘Legal aid granted in the Member State in which the court is sitting shall cover the following costs directly related to the cross-border nature of the dispute:

(a) interpretation;

(b) translation of the documents required by the court or by the competent authority and presented by the recipient which are necessary for the resolution of the case; and

(c) travel costs to be borne by the applicant where the physical presence of the persons concerned with the presentation of the applicant’s case is required in court by the law or by the court of that Member State and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.’

9 Article 8 of Directive 2003/8, entitled ‘Costs covered by the Member State of the domicile or habitual residence’, provides:

‘The Member State in which the legal aid applicant is domiciled or habitually resident shall provide legal aid, as referred to in Article 3(2), necessary to cover:

- (a) costs relating to the assistance of a local lawyer or any other person entitled by the law to give legal advice, incurred in that Member State until the application for legal aid has been received, in accordance with this Directive, in the Member State where the court is sitting;
- (b) the translation of the application and of the necessary supporting documents when the application is submitted to the authorities in that Member State.’

10 Article 12 of that directive, entitled ‘Authority granting legal aid’, states:

‘Legal aid shall be granted or refused by the competent authority of the Member State in which the court is sitting, without prejudice to Article 8.’

11 Article 13 of Directive 2003/8, entitled ‘Introduction and transmission of legal aid applications’, is worded as follows:

‘1. Legal aid applications may be submitted to either:

- (a) the competent authority of the Member State in which the applicant is domiciled or habitually resident (transmitting authority); or
- (b) the competent authority of the Member State in which the court is sitting or where the decision is to be enforced (receiving authority).

2. Legal aid applications shall be completed in, and supporting documents translated into:

- (a) the official language or one of the languages of the Member State of the competent receiving authority which corresponds to one of the languages of the [European Union] institutions; or
- (b) another language which that Member State has indicated it can accept in accordance with Article 14(3).

...

4. The competent transmitting authority shall assist the applicant in ensuring that the application is accompanied by all the supporting documents known by it to be required to enable the application to be determined. It shall also assist the applicant in providing any necessary translation of the supporting documents, in accordance with Article 8(b).

The competent transmitting authority shall transmit the application to the competent receiving authority in the other Member State within 15 days of the receipt of the application duly completed in one of the languages referred to in paragraph 2, and the supporting documents, translated, where necessary, into one of those languages.

...

6. The Member States may not charge for services rendered in accordance with paragraph 4. ... ’

German law

12 Paragraph 114(1) of the Zivilprozessordnung (Code of Civil Procedure), in the version applicable at the time of the facts in the main proceedings (‘the ZPO’), provides:

‘A party who, because of his personal and economic circumstances, cannot pay the costs of the proceedings, or can pay them only in part or only in instalments, shall receive legal aid, on application, if his intended action or defence has sufficient prospects of success and does not appear to be frivolous. For cross-border legal aid within the European Union, Paragraphs 1076 to 1078 shall also apply.’

13 Paragraph 117 of the ZPO states:

‘(1) The application for the grant of legal aid must be made to the court hearing the case; ...

(2) A declaration by the party concerning his personal and economic circumstances (family circumstances, occupation, assets, income and obligations) and corresponding supporting documents are to be annexed to the application. ...’

14 Paragraph 1076 of the ZPO provides:

‘For cross-border legal aid within the European Union in accordance with [Directive 2003/8], Paragraphs 114 to 127a shall apply unless provided otherwise below.’

15 Paragraph 1078 of the ZPO is worded as follows:

‘(1) The court hearing the case or the court enforcing the decision shall have jurisdiction to deal with incoming requests for cross-border legal aid. Applications must be completed in German and supporting documents must be accompanied by a translation into German. ...

...’

16 The first sentence of Paragraph 184 of the Gerichtsverfassungsgesetz (Law on the court system), in the version applicable to the facts at issue in the main proceedings, is worded as follows:

‘The official language of the courts is German.’

The dispute in the main proceedings and the question referred for a preliminary ruling

17 It is apparent from the order for reference that, by documents of 24 September 2013 and 21 October 2013, Mr Šalplachta, who is domiciled in the Czech Republic, brought proceedings before the Arbeitsgericht Zwickau (Labour Court, Zwickau, Germany) seeking that Elektroanlagen & Computerbau be ordered to pay him arrears of wages. In his application, the applicant in the main proceedings also sought to obtain legal aid for the proceedings at first instance.

18 By a document of 27 November 2013, the applicant in the main proceedings requested that the legal aid sought be extended to cover the costs of translation into German of the documents relating to his income and capital circumstances, carried out by a commercial translation agency based in Dresden (Germany).

19 By order of 8 April 2014, the Arbeitsgericht Zwickau (Labour Court, Zwickau) granted legal aid for the proceedings at first instance but refused to extend that aid to cover the costs of translation of those documents.

20 The action brought by the applicant in the main proceedings against that refusal was dismissed by the Landesarbeitsgericht Chemnitz (Higher Labour Court, Chemnitz, Germany) by decision of 15 April 2015. That court found, in particular, that, in accordance with the provisions of Directive 2003/8, assistance with the costs of translation of the supporting documents for a legal aid application is to be granted when that application is lodged with the transmitting authority within the meaning of Article 13(1)(a) of that directive, that is to say, the competent authority of the Member State in which the applicant is domiciled or habitually resident. However, those provisions do not provide for assistance with those costs when the application is lodged, as in the present case, directly with the receiving authority within the meaning of Article 13(1)(b) of that directive, that is to say, the competent authority of the Member State of the court hearing the case or in which the decision is to be enforced.

21 Furthermore, according to that court, pursuant to Paragraphs 114 and 1078 of the ZPO, legal aid includes only the costs connected with the court proceedings. That aid, it found, therefore does not cover the costs of translation of documents intended to be produced in the course of the procedure for examining the legal aid application in so far as those costs are deemed to be incurred outside of the dispute proceedings.

22 The applicant in the main proceedings brought an appeal against that decision before the Bundesarbeitsgericht (Federal Labour Court, Germany). That court takes the view that it cannot be deduced with the requisite clarity from Directive 2003/8 whether, and to what extent, the Member State of the court hearing the case must cover the costs of translation of the supporting documents relating to a legal aid application when, as in the main proceedings in the present case, the legal aid applicant has himself arranged for those documents to be translated and has lodged his application directly with the court having jurisdiction as to the substance of the dispute, which also has jurisdiction in

respect of that application in its capacity as the receiving authority within the meaning of Article 13(1)(b) of that directive. It notes, however, that the refusal to extend legal aid to cover the costs of translation of those documents, assuming that this constitutes a restriction on the effective access to justice, pursues a legitimate objective, namely to relieve the public purse of the Member State of the court hearing the case of costs which should instead be borne by the Member State in which the applicant is domiciled or habitually resident.

23 In those circumstances, the Bundesarbeitsgericht (Federal Labour Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Does the right of a natural person to effective access to justice in a cross-border dispute within the meaning of Articles 1 and 2 of Directive 2003/8 require that legal aid granted by the Federal Republic of Germany must extend to the costs incurred by the applicant for the translation of the declaration and supporting documents annexed to the legal aid application, where the applicant, at the same time as bringing the action, applies for legal aid to the court hearing the case, which is also the competent receiving authority within the meaning of Article 13(1)(b) of [that] directive, and he has himself arranged for the translation to be made?’

Consideration of the question referred

24 By its question, the referring court asks, in essence, whether Articles 3, 8 and 12 of Directive 2003/8, read together, must be interpreted as meaning that legal aid granted by the Member State of the court hearing the case, in which a natural person domiciled or resident in another Member State has made an application for legal aid in the context of a cross-border dispute, also covers the costs paid by that person for the translation of the supporting documents necessary for the processing of that legal aid application.

25 In order to answer that question, it should be recalled that, according to recital 5 of Directive 2003/8, that directive seeks to promote the application of legal aid in cross-border disputes in civil and commercial matters in order to ensure that persons who lack sufficient resources have effective access to justice in accordance with the third paragraph of Article 47 of the Charter of Fundamental Rights.

26 As stated in recital 6 of that directive, neither the lack of resources of a litigant nor the difficulties flowing from a dispute’s cross-border dimension should be allowed to hamper effective access to justice.

27 In that regard, it follows from that directive that language barriers cannot preclude a person who is domiciled or habitually resident in a Member State other than the Member State of the court hearing the case from fully defending his or her rights before the courts of another Member State when the language of the proceedings of the latter Member State is different from that of the first Member State. That requirement also relates to the documents and supporting evidence which, due to the cross-border

dimension of the dispute, are drafted in a language other than the language of the proceedings and must consequently be translated.

28 In that context, Article 3(1) and (2) of Directive 2003/8 ensures the right of natural persons involved in a cross-border dispute in civil or commercial matters to be entitled to receive ‘appropriate’ legal aid.

29 With regard to the procedure for the introduction of legal aid applications in order to ensure effective access to justice, Article 13(1) of Directive 2003/8 provides that a legal aid applicant has two options in so far as he may submit the legal aid application either to the competent authority of the Member State in which he is domiciled or habitually resident, which is designated, under Article 13(1)(a) of that directive, as the transmitting authority, or to the competent authority of the Member State in which the court dealing with the case is sitting or where the decision is to be enforced, which is designated, under Article 13(1)(b) of that directive, as the receiving authority.

30 With regard to the extent of the legal aid, in the first place, Article 3(2) of Directive 2003/8 provides that that aid is to be considered ‘appropriate’ when it ensures that the applicant receives pre-litigation advice, legal assistance and representation in court, as well as an exemption from, or assistance with, the cost of proceedings, which includes, where applicable, the costs that would be incurred by the opposing party in the situation where the recipient of legal aid were to lose the case.

31 Next, in accordance with Article 7 of that directive, legal aid granted in the Member State in which the court dealing with the case is sitting covers the costs directly connected to the cross-border dimension of the dispute, namely interpretation costs, the cost of translation of the documents required by the court or by the competent authority and presented by the recipient, which are necessary for the resolution of the case, as well as any travel costs to be borne by the applicant.

32 Lastly, Article 8 of that directive, entitled ‘Costs covered by the Member State of the domicile or habitual residence’, provides that that Member State is to cover the costs incurred in its territory relating to the assistance of a local lawyer or any other person entitled by law to give legal advice until the application for legal aid has been received in the Member State in which the court dealing with the case is sitting, as well as the costs of translation of the legal aid application and the necessary supporting documents for processing that application when it is submitted to the authorities of the Member State of domicile or habitual residence.

33 In the present case, the referring court justifies the present request for a preliminary ruling on the basis of the doubts which it has concerning the identification of the Member State responsible for ensuring coverage of the costs of translation of the supporting documents necessary for processing a legal aid application when the legal aid applicant has made use of the option provided for under Article 13(1)(b) of Directive 2003/8, namely by addressing that application directly to the receiving authority.

34 It must be stated, in the first place, that legal aid, which all natural persons involved in a cross-border dispute must be entitled to receive, must, according to the terms used in Article 3(2) of that directive, be ‘appropriate’ in order to ensure effective access to justice.

35 The submission of a legal aid application, either before the transmitting authority or before the receiving authority, is, as the Advocate General has noted, essentially, in point 42 of his Opinion, a precondition for ensuring effective access to justice, which that directive seeks to ensure, in accordance with the third paragraph of Article 47 of the Charter of Fundamental Rights.

36 In that context, it must be recalled that the supporting documents for a legal aid application are, within the scheme of Directive 2003/8, of particular importance. In accordance with Article 5(1) of that directive, legal aid is granted to persons who are partly or totally unable to meet the costs of proceedings as a result of their economic situation. Pursuant to Article 5(2) of that directive, the economic situation of a person is to be assessed by the competent authority of the Member State of the court hearing the case, in the light of various objective factors such as income, capital or family situation. Thus, if the applicant fails to present certain documents demonstrating his personal and financial circumstances, the legal aid application cannot be accepted. Those documents therefore constitute a prerequisite for obtaining that aid.

37 In the second place, it should be recalled that, pursuant to Article 12 of Directive 2003/8, read in conjunction with recital 23 thereof, legal aid is granted or refused by the Member State of the court hearing the case and ‘without prejudice to Article 8’ of that directive.

38 For the purposes of the case in the main proceedings, it should be noted that, in accordance with Article 8(b) of that directive, the Member State in which the legal aid applicant is domiciled or habitually resident is required to provide the legal aid necessary to cover the costs of translation of the application and of the supporting documents necessary for the processing of that application ‘when the application is submitted to the authorities in that Member State’.

39 In that context, the clarification set out in the final part of Article 8(b) of Directive 2003/8 must be interpreted as meaning that it does not give rise to a condition which must be satisfied in every case by the legal aid applicant in order for him to be entitled to have those costs covered, but rather that provision is limited to highlighting the possibility that the recipient may have those costs covered in the State in which he is domiciled or habitually resident, without, however, excluding such a coverage of the costs when, as in the dispute in the main proceedings, the application is submitted in the Member State of the court hearing the case.

40 In other words, as the Advocate General has noted, essentially, in point 53 of his Opinion, Article 8(b) of Directive 2003/8 must be understood as meaning that it provides, as an exception to the general rule requiring that the Member State of the court hearing

the case should cover the costs connected to the cross-border nature of a dispute, for the coverage by the Member State of the domicile or habitual residence of the costs of translation of the legal aid application and of the supporting documents necessary for the processing of that application.

41 In the third place, it must be held that exclusion of the coverage by the Member State of the court hearing the case of the costs connected to the translation of the supporting documents necessary for processing a legal aid application would run counter to the objectives pursued by Directive 2003/8, as referred to in paragraphs 25 to 27 above, concerning effective access to justice in cross-border disputes, given that it would penalise the legal aid applicant in the situation where he decides to submit his aid application directly to the receiving authority.

42 As is clear from paragraph 29 of the present judgment, Article 13 of Directive 2003/8 offers a legal aid applicant the choice between two alternative and non-hierarchical options by allowing him to present his legal aid application either before the transmitting authority or before the receiving authority.

43 However, if the costs connected with the translation of the supporting documents necessary for the processing of a legal aid application were covered only when the legal aid applicant addresses them to the competent authorities in the Member State in which he is domiciled or habitually resident, that would incorrectly make securing legal aid in respect of those costs dependent on the procedural option chosen by the applicant and would render meaningless Article 13(1)(b) of Directive 2003/8, which offers the possibility of presenting the legal aid application directly to the receiving authority.

44 Furthermore, as the Advocate General has noted in point 46 of his Opinion, such an exclusion would be likely to lead to a more onerous procedural solution for the legal aid applicant. Instead of submitting his legal aid application directly to the court with jurisdiction to hear the substantive dispute, that applicant would be obliged to open two separate sets of proceedings, the first being before the competent court of the Member State of the court hearing the case in order to ensure compliance with time limits, and the second being before the authorities in the Member State in which he is domiciled or habitually resident in order to obtain reimbursement of the costs incurred in connection with the legal aid application.

45 Such a situation would thus constitute an impediment to the exercise of the right to effective access to justice on the part of a litigant in a cross-border dispute who does not have at his disposal the resources necessary to meet the costs of the proceedings and who finds himself in a more difficult situation by reason of the cross-border dimension of that dispute.

46 It should further be pointed out that Directive 2003/8 is intended, as its title indicates, 'to improve access to justice in cross-border disputes' by replacing the system of cooperation in the field of legal aid instituted by the Council of Europe's European Agreement on the transmission of applications for legal aid, signed in Strasbourg on

27 January 1977, which provided notification and transmission mechanisms, without, however, addressing the issue of the extent of legal aid in the State of the court hearing the particular case.

47 In the light of the foregoing, the reply to the question referred is that Articles 3, 8 and 12 of Directive 2003/8, read together, must be interpreted as meaning that legal aid granted by the Member State of the court hearing the particular case, in which a natural person domiciled or resident in another Member State has submitted a legal aid application in the context of a cross-border dispute, also covers the costs paid by that person for the translation of the supporting documents necessary for the processing of that application.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Articles 3, 8 and 12 of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, read together, must be interpreted as meaning that legal aid granted by the Member State of the court hearing the particular case, in which a natural person domiciled or resident in another Member State has submitted a legal aid application in the context of a cross-border dispute, also covers the costs paid by that person for the translation of the supporting documents necessary for the processing of that application.

[Signatures]

* Language of the case: German.