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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

12 October 2017 (*)

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2010/64/EU — Article 3(1) — Right to interpretation and translation in criminal proceedings — Translation of ‘essential documents’ — Definition of essential documents — Penalty order issued following a simplified unilateral procedure and imposing on the addressee a fine for a minor offence)

In Case C-278/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Aachen (Regional Court, Aachen, Germany), made by decision of 6 May 2016, received at the Court on 19 May 2016, in the criminal proceedings against

Frank Sleutjes,

intervening parties:

Staatsanwaltschaft Aachen,

THE COURT (Fifth Chamber),

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

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Frank Sleutjes, by C. Peters, Rechtsanwalt,

- the German Government, by M. Hellmann and T. Henze, acting as Agents,
- the Czech Government, by J. Vláčil and M. Smolek, acting as Agents,
- the Netherlands Government, by M. Bulterman and M. de Ree, acting as Agents,
- the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2017,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3 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 (OJ 2010 L 280, p. 1).

2 The request has been made in criminal proceedings brought against Mr Frank Sleutjes for failure to stop at the scene of an accident.

Legal context

EU law

3 Recitals 14, 17 and 30 of Directive 2010/64 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], 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.

...

(30) Safeguarding the fairness of the proceedings requires that essential documents, or at least the relevant passages of such documents, be translated for the benefit of suspected or accused persons in accordance with this Directive. Certain documents should always be considered essential for that purpose and should therefore be translated, such as any decision depriving a person of his liberty, any charge or indictment, and any judgment. It is for the competent authorities of the Member States to decide, on their own motion or upon a request of suspected or accused persons or

of their legal counsel, which other documents are essential to safeguard the fairness of the proceedings and should therefore be translated as well.’

4 Article 1 of that directive, headed ‘Subject matter and scope’, provides, in paragraphs 1 and 2:

‘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 Article 3 of the directive, headed ‘Right to translation of essential documents’, provides, in paragraphs 1 and 2:

‘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 right 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.’

German law

The GVG

6 Paragraph 187(1) of the Gerichtsverfassungsgesetz (Law on the Judicial System, ‘the GVG’) provides that, for an accused who does not have a command of the German language, recourse must be had to an interpreter or translator in so far as that is necessary for the exercise of his rights of defence in criminal proceedings.

7 In addition, Paragraph 187(2) of the GVG provides that, as a rule, a written translation of custodial orders as well as of indictments, penalty orders and non-final judgments is necessary for the exercise of the rights of defence of an accused who does not have a command of the German language.

The StPO

8 Paragraph 37(3) of the Strafprozessordnung (Code of Criminal Procedure, ‘the StPO’) provides that, for an accused without a command of the German language, only the ‘judgment’ (*Urteil*) must be served, together with its translation into a language the accused understands.

9 Paragraphs 407 et seq. of the StPO govern penalty orders (*Strafbefehle*).

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

10 On 2 November 2015, at the request of the Staatsanwaltschaft Aachen (Public Prosecutor's Office, Aachen, Germany), the Amtsgericht Düren (Local Court, Düren, Germany) issued a penalty order under Paragraphs 407 et seq. of the StPO against Mr Frank Sleutjes, a Netherlands national, imposing on him, in particular, a fine for failure to stop at the scene of an accident.

11 That penalty order contained information on the legal remedies available, stating that it would become legally binding and enforceable only if, within two weeks of its service, Mr Sleutjes did not lodge an opposition, in German, before the Amtsgericht Düren (Local Court, Düren), in writing or by making a statement recorded at the court registry.

12 Mr Sleutjes was served with the penalty order in question on 12 November 2015. The penalty order was drawn up in German and delivered with a translation into Dutch only of the information on the legal remedies.

13 By emails sent to the Amtsgericht Düren (Local Court, Düren) on 24 and 26 November 2015, Mr Sleutjes set out his case with regard to the penalty order issued against him in Dutch. By letter of 1 December 2015, that court informed the accused that letters lodged at the court must be written in German.

14 At the same time, Mr Sleutjes's lawyer lodged an objection to the penalty order by fax of 1 December 2015 and requested restoration of the status quo ante. By order of 28 January 2016, the court dismissed that objection as inadmissible on account of its late submission and also rejected the request for restoration of the status quo ante.

15 Mr Sleutjes immediately brought an appeal against that order, which is currently pending before the referring court, the Landgericht Aachen (Regional Court, Aachen, Germany).

16 That court considers that Mr Sleutjes's two emails of 24 and 26 November 2015, although received at the Amtsgericht Düren (Local Court, Düren) within the period prescribed for opposition, do not amount to a valid opposition. Even assuming that the emails satisfy the requirement of form laid down in German law that an opposition must be drawn up in writing, those emails were not, in any event, written in German. On that ground, Mr Sleutjes's opposition was not therefore to be declared admissible, since he had been informed in Dutch that he must write such an objection in German.

17 However, the referring court recalls, first, that Paragraph 37(3) of the StPO provides that, for an accused without a command of the German language, the 'judgment' must be served on him, together with a translation in a language he understands. Second, Paragraph 187(2) of the GVG provides that it is, as a rule, necessary for a written translation to be provided, inter alia, of penalty orders and non-final judgments.

18 In that context, the referring court asks whether the concept of 'judgment' (*Urteil*), within the meaning of Paragraph 37(3) of the StPO, read in the light of Article 3 of Directive 2010/64, should also cover penalty orders (*Strafbefehle*). If so, it would follow that the service of the penalty order issued against Mr Sleutjes was void, in so far as it was not provided together with a complete translation into Dutch, so that the period for opposition had not even begun to run.

19 In those circumstances, the Landgericht Aachen (Regional Court, Aachen) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 3 of [Directive 2010/64] to be interpreted as meaning that the term “judgment” (*Urteil*) in Paragraph 37(3) of the [StPO] also includes penalty orders (*Strafbefehle*) within the meaning of Paragraph 407 et seq. of the [StPO]?’

Consideration of the question referred

20 Before answering the question referred for a preliminary ruling, it should be noted that, in its written observations, the German Government took the view that, contrary to the interpretation of the referring court, the applicable provisions of domestic law afford the accused a right to a translation of the penalty order and of the opposition lodged against that order, so that the outcome of the case in the main proceedings does not depend on the answer to the question referred and that that question is therefore irrelevant.

21 In that regard, it must be borne in mind that, according to the Court’s settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need of a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgments of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 19, and of 8 December 2016, *Eurosaneamientos and Others*, C-532/15 and C-538/15, EU:C:2016:932, paragraph 27).

22 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 8 December 2016, *Eurosaneamientos and Others*, C-532/15 and C-538/15, EU:C:2016:932, paragraph 28 and the case-law cited).

23 In the present case, it is not obvious from the case file submitted to the Court that the facts of the case correspond to one of those situations. In addition, it is not for the Court to call into question the interpretation of national law provided by the referring court.

24 Accordingly, the question referred must be answered.

25 By that question, the referring court asks, in essence, whether Article 3 of Directive 2010/64 must be interpreted as meaning that a measure, such as an order provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a ‘document which is essential’, within the meaning of Article 3(1) of that directive, of which a written translation must, in accordance with the formal requirements laid down in that provision, be provided to suspected or accused persons who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus of safeguarding the fairness of the proceedings.

26 In order to answer that question, it should be noted that Article 1(1) of Directive 2010/64 provides for the right to interpretation and translation in, inter alia, criminal proceedings. In

addition, Article 1(2) of that directive states that that right is to apply 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 of whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

27 Consequently, the situation of a person, such as Mr Sleutjes, who has lodged an objection, the admissibility of which is being examined in appeal proceedings, against a penalty order made pursuant to Paragraph 407 et seq. of the StPO of which he was the addressee clearly falls within the scope of Directive 2010/64, with the result that that person must be able to exercise the right to interpretation and translation guaranteed by that directive (see, to that effect, judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 27).

28 As to whether, in the present case, that right concerns the penalty order in question, it must be borne in mind that Article 3(1) of Directive 2010/64 provides for the right of suspected or accused persons who do not understand the language of the criminal proceedings in question to obtain a written translation of all ‘documents which are essential’.

29 In that regard, in the first place, Article 3(2) of Directive 2010/64 states that such documents are to include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

30 According to the documents in the case file submitted to the Court and to paragraphs 20 and 60 of the judgment of 15 October 2015, *Covaci*, (C-216/14, EU:C:2015:686), the penalty order provided for under German law is adopted on the basis of a simplified procedure, under which, in essence, service of the order is, first, effected only after the court has ruled on the merits of the accusation and, second, represents the first opportunity for the accused person to be informed of the accusation against him. Furthermore, where that person does not lodge an objection within two weeks from its service, the order acquires binding authority and the penalties provided for become enforceable.

31 In those circumstances, such a penalty order represents both an indictment and a judgment within the meaning of Article 3(2) of Directive 2010/64.

32 In the second place, as the Advocate General stated in point 33 of his Opinion, it follows both from recitals 14, 17 and 30 of Directive 2010/64 and from the very wording of Article 3 of that directive, in particular, of paragraph 1 thereof, that the right to translation provided for is designed to ensure that the persons concerned are able to exercise their right of defence and to safeguard the fairness of the proceedings (judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 43).

33 Where a penalty order such as that at issue in the main proceedings is addressed to an individual only in the language of the proceedings in question even though the individual has no command of that language, that individual is unable to understand what is alleged against him, and cannot therefore exercise his rights of defence effectively if he is not provided with a translation of that order in a language which he understands.

34 It follows from all the foregoing considerations that the answer to the question referred is that Article 3 of Directive 2010/64 must be interpreted as meaning that a measure, such as an order provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a ‘document which is essential’,

within the meaning of Article 3(1) of that directive, of which a written translation must, in accordance with the formal requirements laid down in that provision, be provided to suspected or accused persons who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus of safeguarding the fairness of the proceedings.

Costs

35 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:

Article 3 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 must be interpreted as meaning that a measure, such as an order provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a ‘document which is essential’, within the meaning of Article 3(1) of that directive, of which a written translation must, in accordance with the formal requirements laid down in that provision, be provided to suspected or accused persons who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus of safeguarding the fairness of the proceedings.

[Signatures]

* Language of the case: German.