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Provisional text

JUDGMENT OF THE COURT (First Chamber)

6 October 2021 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Mutual recognition – Financial penalties – Framework Decision 2005/214/JHA – Grounds for non-recognition and non-execution – Article 20(3) – Decision imposing a financial penalty – Observance of the rights of the defence – Notification of documents in a language not understood by the sentenced person – Translation of the essential elements of the decision)

In Case C-338/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for Łódź-Śródmieście, Łódź, Poland), made by decision of 7 July 2020, received at the Court on 22 July 2020, in the proceedings relating to the recognition and execution of a financial penalty imposed on

D.P.,

intervening parties:

Prokuratura Rejonowa Łódź-Bałuty,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, L. Bay Larsen, M. Safjan and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Prokuratura Rejonowa Łódź-Bałuty, by J. Szubert, Prokurator Regionalny,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Netherlands Government, by K. Bulterman, P. Huurnink and J. Langer, acting as Agents,
- the European Commission, by M. Rynkowski and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 September 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 20(3) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ 2005 L 76, p. 16), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2005/214').

2 The request has been made in proceedings brought by the Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB) (Central Fine Collection Agency, Ministry of Justice and Security (CJIB), the Netherlands) for the purposes of obtaining recognition and enforcement, in Poland, of a financial penalty imposed on D.P. in the Netherlands in respect of a road traffic offence.

Legal context

European Union law

3 Recitals 1 and 2 of Framework Decision 2005/214 state:

'(1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the [European] Union.

(2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.'

4 Article 1 of the Framework Decision, headed 'Definitions', provides:

'For the purposes of this Framework Decision:

(a) "decision" shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:

...

(ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

(iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

...;

(b) “financial penalty” shall mean the obligation to pay:

(i) a sum of money on conviction of an offence imposed in a decision;

...’

5 Article 3 of the Framework Decision, headed ‘Fundamental rights’, provides:

‘This Framework Decision shall not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the [EU] Treaty.’

6 Article 4 of the Framework Decision, entitled ‘Transmission of decisions and recourse to the central authority’, provides in paragraph 1 thereof:

‘A decision, together with a certificate as provided for in this Article, may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.’

7 Article 5 of Framework Decision 2005/214, headed ‘Scope’, provides in paragraph 1 thereof:

‘The following offences, if they are punishable in the issuing State and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of decisions:

...

– conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods,

...’

8 Article 6 of the Framework Decision is worded as follows:

‘The competent authorities in the executing State shall recognise a decision which has been transmitted in accordance with Article 4 without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7.’

9 Article 7 of the Framework Decision, headed ‘Grounds for non-recognition and non-execution’, provides:

‘...’

2. The competent authority in the executing State may also refuse to recognise and execute the decision if it is established that:

...

(g) according to the certificate provided for in Article 4, the person concerned, in case of a written procedure, was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his/her right to contest the case and of the time limits for such a legal remedy;

...

3. In the cases referred to in paragraphs 1 and 2(c), (g), (i) and (j), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.’

10 Under Article 20(3) of the Framework Decision:

‘Each Member State may, where the certificate referred to in Article 4 gives rise to an issue that fundamental rights or fundamental legal principles as enshrined in Article 6 of the Treaty may have been infringed, oppose the recognition and the execution of decisions. The procedure referred to in Article 7(3) shall apply.’

Polish law

11 Article 611ff(1) of the Kodeks postępowania karnego (Code of Criminal Procedure), in the version applicable to the dispute in the main proceedings, provides:

‘In the event that a Member State of the European Union, referred to in this chapter as the “issuing State”, has submitted a request for execution of a final decision on financial penalties, such decision shall be subject to execution by the district court in the district where the offender has property or income, or has permanent or temporary residence’

12 Article 611fg(1)(9) of the Code of Criminal Procedure, in the version applicable to the dispute in the main proceedings, entitles a Polish court to refuse to execute the decision if the content of the certificate shows that the person to whom the decision relates has not been duly instructed about the possibility of appealing against that decision and his or her right to do so.

Netherlands law

13 According to the information set out in the order for reference, the CJIB is the central administrative authority responsible for the collection and recovery of fines issued in connection with offences committed in the territory of the Kingdom of the Netherlands.

14 A penalty notice issued by the CJIB may be appealed against within six weeks at the Public Prosecutor's Office in L.

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

15 On 21 January 2020, the CJIB brought an action before the referring court, the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for Łódź-Śródmieście, Łódź, Poland), seeking recognition and execution of its decision of 22 July 2019, which became final on 2 September 2019, imposing on D. P., resident in Poland, a fine of EUR 210 in respect of a road traffic offence, namely driving a vehicle with two tyres that did not meet the necessary requirements, committed on 11 July 2019.

16 In response to a request for information sent by that court to the CJIB, the latter stated that the decision of 22 July 2019 had not been notified to the addressee thereof along with a translation into Polish. It added that that decision had been drafted in Dutch and included additional explanations in English, French and German, as well as a reference to the website www.cjib.nl, where information is provided concerning, inter alia, the ways in which the person concerned can pay the fine, appeal against it and contact the CJIB in order to ask questions or obtain further explanations.

17 At a hearing before the referring court, D.P. explained that, around the beginning of December 2019, he received a letter from the Netherlands which did not include a Polish translation, so that he was unable to reply to that letter since he did not understand its content.

18 While acknowledging that Framework Decision 2005/214 does not contain any provision explicitly stating an obligation to provide the addressee of a decision imposing a financial penalty with a translation thereof, the referring court considers, however, that, like notifications concerning offences falling within the scope of Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating the cross-border exchange of information on road-safety-related traffic offences (OJ 2015 L 68, p. 9), and 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), any decision imposing a financial penalty in the context of Framework Decision 2005/214 is to be served on the sentenced person in a language he or she understands so that he or she can exercise his or her rights of the defence and so as to guarantee his or her right to a fair trial.

19 In that context, the referring court refers to the case-law of the European Court of Human Rights relating to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), and, in particular, to the judgments of the ECtHR of 28 August 2018, *Vizgirda v. Slovenia* (CE:ECHR:2018:0828JUD005986808) and of 21 February 1984, *Öztürk v. Germany* (CE:ECHR:1984:1023JUD000854479), from which it is apparent that (i) the right to obtain a translation of the court decision and information concerning the possibility of appealing against that decision are essential aspects of the right to a fair hearing, and (ii) the rights guaranteed in Article 6 ECHR also apply in minor cases, including those involving minor offences. The referring court also observes that the Court itself held, in the judgment of 12 October 2017, *Sleutjes* (C-278/16, EU:C:2017:757), that there is a translation requirement even in cases concerning minor offences.

20 In those circumstances, the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for Łódź-Śródmieście, Łódź, Poland) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does the service on a sentenced person of a decision imposing a financial penalty, without providing a translation into a language which the addressee understands, entitle the authority of the executing State to refuse to enforce the decision on the basis of the provisions implementing Article 20(3) of Framework Decision [2005/214] on the grounds of a breach of the right to a fair trial?’

Consideration of the question referred

21 By its question, the referring court is asking, in essence, whether Article 20(3) of Framework Decision 2005/214 must be interpreted as allowing the authority of the executing Member State to refuse to execute a decision, within the meaning of Article 1(a) of that framework decision, imposing a financial penalty, where that decision was delivered to the addressee thereof without a translation of that decision into a language which the addressee understands.

22 As a preliminary point, it should be recalled that, as is apparent in particular from Articles 1 and 6 together with recitals 1 and 2 of Framework Decision 2005/214, the latter is intended to establish an effective mechanism for cross-border recognition and execution of final decisions requiring a financial penalty to be paid by a natural person or a legal person following the commission of one of the offences listed in Article 5 of the decision (judgment of 4 March 2020, *Bank BGŻ BNP Paribas*, C-183/18, EU:C:2020:153, paragraph 48 and the case-law cited).

23 Framework Decision 2005/214, while not harmonising the legislation of the Member States in the field of criminal law, seeks to ensure the enforcement of financial penalties in those States by virtue of the principle of mutual recognition (judgment of 4 March 2020, *Bank BGŻ BNP Paribas*, C-183/18, EU:C:2020:153, paragraph 49).

24 The principle of mutual recognition, which underpins Framework Decision 2005/214, means that, in accordance with Article 6 of that decision, the Member States are, as a rule, obliged to recognise a decision requiring payment of a financial penalty which has been transmitted in accordance with Article 4 of the framework decision without any further formality being required, and to take without delay all the measures necessary for its enforcement, with the result that the grounds for refusal to recognise or enforce such a decision must be interpreted restrictively (judgment of 4 March 2020, *Bank BGŻ BNP Paribas*, C-183/18, EU:C:2020:153, paragraph 50 and the case-law cited).

25 As regards, in particular, such grounds for refusal, Article 7 of Framework Decision 2005/214 expressly sets out, in paragraphs 1 and 2 thereof, the grounds for non-recognition and non-execution of decisions falling within its scope.

26 Furthermore, in accordance with Article 3 of Framework Decision 2005/214, that decision may not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU, which is why Article 20(3) of that framework decision also provides that the competent authority of the Member State of execution may refuse to recognise and execute a decision requiring payment of a financial penalty in the event of infringement of fundamental rights or fundamental legal principles defined by Article 6 TEU (judgment of 5 December 2019, *Centraal Justitieleel Incassobureau (Recognition and enforcement of financial penalties)*, C-671/18, EU:C:2019:1054, paragraph 37).

27 It is true that, in the case where the certificate referred to in Article 4 of Framework Decision 2005/214, which accompanies the decision requiring payment of a financial penalty, suggests that fundamental rights or fundamental legal principles as enshrined in Article 6 TEU may have been

infringed, the competent authorities of the executing State may refuse to recognise and execute such a decision where one of the grounds for non-recognition and non-execution listed in Article 7(1) and (2) of the framework decision arises, and may also so refuse under Article 20(3) of that decision (judgment of 5 December 2019, *Centraal Justitieel Incassobureau (Recognition and enforcement of financial penalties)*, C-671/18, EU:C:2019:1054, paragraph 30 and the case-law cited).

28 Those fundamental rights include, first, the right to a fair hearing, which is an integral part of the right to effective judicial protection, and, second, the rights of the defence, enshrined, respectively, in the second paragraph of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union which, according to the Explanations relating to the charter (OJ 2007 C 303, p. 17), correspond to Article 6(1) and (3) ECHR, respectively.

29 As the Advocate General observes in point 75 of his Opinion, the Court has recognised that a road traffic offence constitutes a ‘criminal offence’ (see, to that effect, judgment of 22 June 2021, *Latvijas Republikas Saeima (Penalty points)*, C-439/19, EU:C:2021:504, paragraphs 86 to 93 and the case-law cited). Consequently, and as is apparent from the case-law of the European Court of Human Rights concerning Article 6 ECHR, which must be taken into consideration, by virtue of Article 52(3) of the Charter of Fundamental Rights, for the purposes of interpreting the second paragraph of Article 47 and Article 48(2) thereof, proceedings relating to a financial penalty imposed for such an offence, including the stage prior to the trial stage, falls within the scope of Article 6(1) and (3) ECHR (see, to that effect, ECtHR, 19 October 2004, *Falk v. Netherlands*, CE:ECHR:2004:1019DEC006627301, and 20 October 2015, *Dvorski v. Croatia*, CE:ECHR:2015:1020JUD0025, § 76 and the case-law cited).

30 Thus, the addressees of decisions falling within the scope of Framework Decision 2005/214 are entitled to rely on the fundamental rights enshrined in the second paragraph of Article 47 and Article 48(2) of the Charter of Fundamental Rights, and the authorities of the Member States must accordingly ensure that those rights are respected.

31 It is therefore necessary to determine the translation requirements which may be imposed on the authorities of the issuing Member State pursuant to those provisions when such a decision is to be notified to the addressee thereof.

32 In that connection, it should be observed that Framework Decision 2005/214 does not lay down the particular manner in which the addressee of a decision, within the meaning of Article 1(a) of that framework decision, imposing on him or her a financial penalty for a road traffic offence must be informed of that penalty. Article 7(2)(g) of Framework Decision 2005/214 merely states that the competent authority of the executing Member State may refuse to recognise and execute such a decision if it is established that, according to the certificate provided for in Article 4 of the framework decision, that addressee, in the case of a written procedure, has not been informed, in accordance with the law of the issuing Member State, in person or by a representative, competent under national law, of his or her right to appeal and the time limit for doing so.

33 By thus referring to the legislation of the Member States, the EU legislature left it to the Member States to decide on the manner in which the person concerned is to be informed of his or her right to contest the case, of the period for such a legal remedy and of when that period begins, provided that the notification is effective and that the right to effective judicial protection and the exercise of the rights of the defence are guaranteed (see, to that effect, judgment of 5 December 2019, *Centraal Justitieel Incassobureau (Recognition and enforcement of financial penalties)*, C-671/18, EU:C:2019:1054, paragraph 35 and the case-law cited).

34 In that context, it should be borne in mind that respect for the right to effective judicial protection requires not only the guarantee of actual and effective receipt of decisions, that is to say, the notification of those decisions to the addressees thereof (see, to that effect, judgment of 5 December 2019, *Centraal Justitiele Incassobureau (Recognition and enforcement of financial penalties)*, C-671/18, EU:C:2019:1054, paragraph 39 and the case-law cited), but also that such notification allow those addressees to ascertain the reasons upon which the decision taken in relation to them is based, as well as the legal remedies against such a decision and the time limit prescribed to that end, so as to allow them to defend their rights effectively and to decide, in full knowledge of the relevant facts, whether there is any point in challenging that decision before the courts (see, by analogy, judgment of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 100 and the case-law cited).

35 Furthermore, in accordance with Article 6(3) ECHR, respect for the rights of the defence includes the right of the person concerned to be informed promptly, ‘in a language which he understands’ and in detail, of the nature and cause of the accusation against him.

36 In that connection, the European Court of Human Rights has held that that provision confers on the accused the right to be informed not only of the cause of the accusation, that is to say, of the material facts for which he or she is accused and on which the accusation is based, but also of the legal classification given to those facts in detail, precise and complete information of the charges against a defendant, and therefore the legal classification which the court may give to the facts alleged against him or her is an essential condition of the fairness of the proceedings (see, to that effect, ECtHR, 25 March 1999, *Pélissier and Sassi v. France*, CE:ECHR:1999:0325JUD002544494, §§ 51 and 52).

37 In addition, the European Court of Human Rights has held that, although Article 6(3) ECHR does not impose an obligation to provide a foreign defendant with a translation in written form of any written evidence or official documents in the case file, that provision nevertheless requires that special attention be paid to the notification of the ‘accusation’ to the defendant. According to that court, an indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the accused is formally put on notice of the factual and legal basis of the charges against him. A defendant not familiar with the language used by the court may be at a practical disadvantage if the indictment is not translated into a language which he understands (see, to that effect, ECtHR, 28 August 2018, *Vizgirda v. Slovenia*, CE:ECHR:2018:0828JUD005986808, §§ 75 to 78).

38 In addition, the verification by the national authorities of the linguistic knowledge of a defendant who is not sufficiently proficient in the language of the proceedings, for the purposes of establishing the language needs of that defendant, must be carried out on the basis of various factors, such as the nature of the offence and the communications addressed to the defendant by the domestic authorities, since a number of open-ended questions might be sufficient to establish those language needs (see, to that effect, ECtHR, 28 August 2018, *Vizgirda v. Slovenia*, CE:ECHR:2018:0828JUD005986808, § 84).

39 It thus follows from paragraphs 34 to 38 of the present judgment that respect for the right to a fair trial and the rights of the defence requires the authorities of the Member States, which impose a financial penalty within the meaning of Article 1(a) of Framework Decision 2005/214, to ensure that, upon notification of the decision containing that penalty, the person concerned is informed, in a language which he or she understands, of the elements of that decision which are essential for him or her to understand what he or she is accused of, and to be able fully to exercise his or her rights of defence or, if needed, to obtain a full translation of those elements. Those elements include, in

particular, the facts on which the notified decision is based, the offence committed, the penalty imposed, the legal remedies available against that decision, the time limit laid down for that purpose and the identification of the body before which the appeal must be lodged. Where the person concerned claims that a translation is needed, it is for the competent authorities of the issuing Member State to take all necessary steps to ensure that such a translation is prepared as soon as possible.

40 Consequently, the competent authority of the executing Member State may, on the basis of Article 20(3) of Framework Decision 2005/214, oppose the recognition and execution of a decision, within the meaning of Article 1(a) of that framework decision, imposing a financial penalty on the addressee thereof where that decision is notified to him or her without a translation of the elements referred to in the preceding paragraph into a language which he or she understands and without giving him or her, where appropriate, the possibility of obtaining such a translation.

41 In that regard, it must be pointed out that, first, it is for that authority to ascertain, specifically and precisely, having regard, in particular, to the nature of the offence, the communications addressed to the addressee by the national authorities and the factual circumstances which form the basis of the decision notified, whether that addressee understands the language in which that decision was notified to him or her.

42 As the Court has already held, the question of whether there has been an infringement of the rights of the defence and the right to effective judicial protection must be examined in relation to the specific circumstances of each case, including the nature of the act at issue, the context in which it was adopted and the legal rules governing the matter in question (judgment of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraph 41 and the case-law cited).

43 Second, as the Commission rightly notes in its written observations, before refusing to recognise and execute a decision, within the meaning of Article 1(a) of Framework Decision 2005/214, the authority in the executing Member State is required to request all necessary information from the issuing authority, pursuant to Article 7(3) of the framework decision, and the issuing authority is required to disclose that information (see, to that effect, judgment of 5 December 2019, *Centraal Justitiele Incassobureau (Recognition and enforcement of financial penalties)*, C-671/18, EU:C:2019:1054, paragraphs 44 and 45 and the case-law cited).

44 In the light of the foregoing considerations, the answer to the question referred is that Article 20(3) of Framework Decision 2005/214 must be interpreted as allowing the authority of the executing Member State to refuse to execute a decision, within the meaning of Article 1(a) of the framework decision, imposing a financial penalty for a road traffic offence, where that decision has been notified to the addressee thereof without a translation, into a language which he or she understands, of the elements of the decision which are essential in order to enable him or her to understand the charge against him or her and fully to exercise his or her rights of the defence, and without that addressee being afforded the opportunity to obtain such a translation on request.

Costs

45 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 (First Chamber) hereby rules:

Article 20(3) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as allowing the authority of the executing Member State to refuse to execute a decision, within the meaning of Article 1(a) of the framework decision, imposing a financial penalty for a road traffic offence, where that decision has been notified to the addressee thereof without a translation, into a language which he or she understands, of the elements of the decision which are essential in order to enable him or her to understand the charge against him or her and fully to exercise his or her rights of the defence, and without that addressee being afforded the opportunity to obtain such a translation on request.

[Signatures]

* Language of the case: Polish.
