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Provisional text

## JUDGMENT OF THE COURT (Fifth Chamber)

22 March 2017 (\*)

(References for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2012/13/EU — Right to information in criminal proceedings — Right to be informed about the charge — Service of a penalty order — Procedures — Mandatory appointment of person authorised to accept service — Non-resident accused person with no fixed place of residence — Period for lodging an objection running from service on the person authorised to accept service)

In Joined Cases C-124/16, C-188/16 and C-213/16,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Amtsgericht München (Local Court, Munich, Germany), made by decisions of 19 February 2016 (C-124/16) and of 12 April 2016 (C-213/16), received at the Court, respectively, on 29 February and on 18 April 2016, and from the Landgericht München I (Regional Court, Munich I, Germany), made by decision of 23 March 2016 (C-188/16), received at the Court on 4 April 2016, in the criminal proceedings against

**Ianos Tranca** (C-124/16),

**Tanja Reiter** (C-213/16)

and

**Ionel Opria** (C-188/16),

intervening party:

**Staatsanwaltschaft München I,**

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, A. Borg Barthet and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Staatsanwaltschaft München I, by H. Kornprobst, acting as Agent,
- the German Government, by T. Henze and M. Hellmann, acting as Agents,
- the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

**Judgment**

- 1 The requests for a preliminary ruling concern the interpretation of Article 2, Article 3(1)(c) and Article 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 (OJ 2012 L 142, p. 1).
- 2 The requests have been made in criminal prosecution proceedings brought against Messrs Ianos Tranca and Ionel Oproia, for theft, and against Ms Tanja Reiter, for assault and resisting a police officer in the performance of his duties.

**Legal context**

*European Union law*

- 3 Article 2(1) of Directive 2012/13 defines its scope 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.’

4 Article 3(1) of that directive defines the right to information about rights as follows:

‘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;

...’

5 Article 6(1) to (3) of that 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.’

*German law*

6 Paragraph 44 of the Strafprozessordnung (Criminal Procedure Code, ‘the StPO’) provides:

‘If a person has been prevented from complying with a period through no fault of his own, his position shall, upon request, be restored to *the status quo ante*. Failure to comply with a period for lodging an appeal shall be regarded as being without fault if the information provided for in the first and second sentences of Paragraph 35a has not been provided ...’

7 Paragraph 116 of the StPO provides:

‘(1) The court shall suspend the execution of an arrest warrant justified only by a risk of flight when there is sufficient support for the expectation that the purpose of

the detention on remand can also be achieved by less severe measures. Potential alternatives include in particular ...

...

4. the furnishing of an appropriate security by the accused or another person.’

8 Paragraph 116a(3) of the StPO reads as follows:

‘An accused person who requests that enforcement of the arrest warrant be suspended in return for the provision of a security and who is not resident within the territorial scope of this law is obliged to authorise a person resident within the district of the court having jurisdiction to accept service.’

9 Paragraph 127a of the StPO provides:

‘(1) If an accused person has no fixed domicile or residence within the territorial jurisdiction of this Law and if the requirements for issuing an arrest warrant are satisfied only because of a risk of flight, the court may dispense with ordering or maintaining his arrest if

1. the offence is not expected to attract the imposition of a custodial sentence or the order of a custodial measure for reformation [of the offender] and protection [of the public] and
2. the accused person furnishes an appropriate security for the anticipated fine and the costs of the proceedings.

(2) Paragraph 116a(1) and (3) shall apply *mutatis mutandis*.’

10 Paragraph 132(1) of the StPO states:

‘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, an order may be made, so as to ensure that the course of justice is not impeded, that the accused person

1. provide appropriate security for the anticipated fine and the costs of the proceedings, and
2. authorise a person residing within the jurisdiction of the competent court to accept service.’

11 Paragraph 410 of the StPO is worded 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. ...

(2) The objection may be limited to certain points.

(3) Where no objection has been lodged timeously against a penalty order, that order shall be equivalent to a judgment having the force of *res judicata*.’

**The disputes in the main proceedings and the questions referred for a preliminary ruling**

*Cases C-124/16 and C-213/16*

- 12 In Case C-124/16, Mr Tranca, accused of theft, is liable to a fine of 20 to 30 day-fines. In Case C-213/16, Ms Reiter, charged with assault and resisting a police officer in the performance of his duties, is liable to a fine of 50 and 70 day-fines. It is apparent from the orders for reference that neither Mr Tranca nor Ms Reiter has a fixed place of domicile or residence in Germany or in their country of origin.
- 13 The Munich Public Prosecutor’s Office applied to the investigating judge with jurisdiction at the Amtsgericht München (Local Court, Munich, Germany) for arrest warrants to be issued against them, in order to keep them in detention on remand due to risk of their fleeing.
- 14 In that regard, the referring court states that, in the examination of that application, the investigating judge must, in accordance with German law, determine in particular the proportionality of the detention and, for that purpose, determine whether less severe measures than detention may be envisaged.
- 15 In cases such as those in the main proceedings, Paragraphs 116, 116a and 127a of the StPO provide, inter alia, for a judge to suspend the execution of an arrest warrant based solely on the risk of flight where the person prosecuted may provide an appropriate security covering the foreseeable amount of the fine which may be imposed on him.
- 16 It is also apparent from those provisions that a person prosecuted who is not residing on German territory, against whom such an arrest warrant has been issued, is required to appoint an agent for the purpose of receiving service of the measures or acts concerning him.
- 17 However, in the context of the examination which precedes the issue or execution of an arrest warrant, the investigating judge must also determine whether such alternative measures ensure that proceedings are promptly closed under the same conditions as if the accused had been remanded in custody.

- 18 That would be the case only if it were possible to notify an accused person of a penalty order so as to enable it to become final. In particular, when the accused person's residence is unknown, that supposes that the penalty order may be served on the accused person's agent and that that service causes the period for bringing an objection to run, at the end of which that penalty order acquires the force of *res judicata* and becomes enforceable.
- 19 The referring court, however, doubts whether the criminal procedure provided for by German law is compatible with Directive 2012/13, as interpreted by the Court in the judgment of 15 October 2015, *Covaci* (C-216/14, EU:C:2015:686).
- 20 In that judgment, the Court held that Article 2, Article 3(1)(c) and Article 6(1) and (3) of Directive 2012/13 must be interpreted as not precluding legislation of a Member State which, in criminal proceedings, makes it mandatory for an accused person not residing in that Member State to appoint a person authorised to accept service of a penalty order concerning him, provided that that accused person does in fact have the benefit of the whole of the prescribed period for lodging an objection against that order, that is to say, without that period being reduced by the time needed by the authorised person to transmit the penalty order to its addressee.
- 21 According to the referring court, that solution, applied to the proceedings pending before it, in which the place of residence of the accused persons is unknown, results in preventing the penalty order from becoming final. Since the penalty order cannot be delivered personally to its addressee, the objection period cannot start to run.
- 22 Accordingly, the question that arises, according to that court, is whether German law is compatible with EU law, as interpreted by the Court, in so far as that national law is interpreted as meaning that service of a penalty order on an agent of an accused person who has no known place of residence gives rise to the period for lodging an objection to the order starting to run, but that, if that accused person finds himself out of time, he nevertheless retains the right to apply to have his position restored to the *status quo ante* for lodging an objection against that order.
- 23 The referring court submits that the alternative to that option of having recourse to an agent in circumstances in which the accused person has no known address, which would then consist in executing the arrest warrant issued against him and to detain him, so that it would be possible to serve him with the penalty order, would seem more restrictive than the suggested interpretation of the national law. The referring court is also of the view that that interpretation respects the principle of procedural fairness, in so far as the accused person knows the name and address of the agent, that the accused person has been informed of the role of the agent and remains free to ask the agent about the service of a penalty order issued against him.
- 24 In those circumstances, the Amstgericht München (Local Court, Munich) decided to stay its decisions as to issuing the arrest warrants concerned and to refer the

following questions to the Court of Justice for a preliminary ruling, couched in identical terms in Cases C-124/16 and C-213/16:

‘1. Do Article 2 and Article 6(1) and (3) of Directive 2012/13 preclude a provision of law enacted by a Member State:

under which, in criminal proceedings, an accused person who has no place of residence in that Member State must nominate a person authorised to accept service of a penalty order made against him,

even though the accused person does not, as a result, have the benefit of the whole of the period for lodging an objection to that penalty order,

but he also has no address at which the penalty order can demonstrably be notified to him, and the nomination of a person authorised to accept service and in possession of an address enables him to keep the authorised person informed of where a penalty order can be sent to him with proof of notification?

2. Do Article 2(1) and Article 6(1) and (3) of Directive 2012/13 preclude a provision of law enacted by a Member State:

under which, in criminal proceedings, an accused person who has no place of residence in that Member State must nominate a person authorised to accept service of a penalty order made against him,

and service on a person authorised to accept service is automatically sufficient for the purpose of calculating the period within which an objection may be lodged,

where, in the event of failure to comply with the period calculated in this way, the accused person can apply to have his position restored to the *status quo ante* and, in those circumstances, an adequate excuse for such failure is that the penalty order was forwarded to him and, after it had been forwarded, he lodged an objection within the prescribed period, that is to say where, by having his position restored to the *status quo ante*, he can retroactively rely on the unreduced period for lodging an objection,

even though, by law, a penalty order is generally declared enforceable in the event of failure to comply with the period for lodging an objection?’

*Case C-188/16*

25 Mr Opria, a Romanian national, is accused of theft in Germany. It appears from the order for reference that that person has no fixed domicile or residence in German territory or in his country of origin.

- 26 Mr Opria has appointed an agent for the purpose of receiving service of any penalty measures affecting him. At the request of the Public Prosecutor's Office, on 13 October 2015 the Amtsgericht München (Local Court, Munich) issued a penalty order against him and imposed a fine of EUR 300 on him. That penalty order was served on the designated agent who acknowledged receipt of those documents on 27 October 2015.
- 27 Since no statement by the accused person was received by the referring court within the prescribed period for lodging an objection, on 11 November 2015, the records clerk of that court affixed to that order the statement that it had acquired the force of *res judicata*.
- 28 Referring to the judgment of 15 October 2015, *Covaci* (C-216/14, EU:C:2015:686), the Public Prosecutor's Office, as the competent authority for the enforcement of the sentence, after losing several other actions seeking to establish the lawfulness of the execution of the sentence, requested the records clerk to delete that statement. That request was refused by a decision of 2 February 2016. The Public Prosecutor's Office then brought an appeal before the Amtsgericht München (Local Court, Munich), which, by an order of 17 February 2016, rejected it as inadmissible. On 22 February 2016, it then brought an appeal at last instance before the Landgericht München I (Regional Court, Munich I, Germany) for an 'immediate appeal' (sofortige Beschwerde) against that order.
- 29 The referring court takes the view that resolution of the dispute pending before it concerning the legality of adding to the penalty order at issue the statement of it having the force of *res judicata*, depends on the question whether the period for lodging an objection started to run from the date of service of that penalty order on the agent.
- 30 Having found that, in accordance with the judgment of 15 October 2015, *Covaci*, (C-216/14, EU:C:2015:686), the obligation, in certain circumstances, for a person accused in criminal proceedings to appoint an agent for the purposes of receiving service of the penalty order concerning him is admissible on condition that that person does in fact have the benefit of the whole of the prescribed period for lodging an objection against the penalty order, the referring court examines different interpretations of the German law at issue that would enable that condition to be satisfied.
- 31 According to the referring court, a first interpretation is that the period for lodging an objection should run only from the moment when the accused person was actually aware of the penalty order concerning him. However, that interpretation is, in essence, *contra legem*, since the applicable German law clearly provides that that period runs from service of that order on the agent.



- 32 A second interpretation would be to consider automatically as being inadmissible any service of penalty orders on agents, which would involve substantial infringements of the German legal order.
- 33 Pursuant to the third possible interpretation of that law, the national provisions relating to an accused person having his position restored to the *status quo ante* for lodging an objection against an order could be read in the light of Article 6 of Directive 2012/13. Thus, the objection to the penalty order should be regarded *ex officio* as having been lodged within the period when it was made, in writing, within two weeks from the moment when the person concerned actually became aware of that order.
- 34 The Landgericht München I (Regional Court, Munich I), however, doubting that the latter interpretation complies with Directive 2012/13, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 2, Article 3(1)(c) and Article 6(1) and (3) of Directive 2012/13 be interpreted as precluding legislation of a Member State under which, in criminal proceedings against an accused person with no fixed domicile or residence in that Member State, a penalty order made against the accused can be served on a person appointed by him as being authorised to accept service on his behalf, with the result that the penalty order acquires the force of *res judicata* upon expiry of the (two-week) period for lodging an objection, which begins to run from the time of service on the authorised person, even where, in accordance with the legislation of [that] Member State, any such accused person who lodges a written objection against the penalty order with the court having jurisdiction within two weeks of actually becoming aware of that order must *ex officio* have his position restored to the *status quo ante*, with the result that, following the adoption of the decision to restore the *status quo ante*, proceedings must continue as they would in the case of an objection lodged in good time?’

### **Consideration of the questions referred**

- 35 By their questions, which may appropriately be answered together, the referring courts ask, in essence, whether Article 2, Article 3(1)(c) and Article 6(1) and(3) of Directive 2012/13 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, in criminal proceedings, provides that the accused person who does not reside in that Member State and has no fixed place of residence in that Member State or in his Member State of origin is required to appoint an agent for the purposes of service of a penalty order concerning him, and that the period for lodging an objection to that order, before it becomes enforceable, runs from service of that order on that agent, the person concerned being however able to request having his position restored to the *status quo ante* if he has not had actual knowledge of the penalty order in question.

- 36 In order to answer those questions, it must be stated that the Court has already held that, having regard in particular to Articles 2, 3 and 6 of Directive 2012/13, the service of a penalty order, such as that laid down by the German law at issue in the cases in the main proceedings, must be considered to be a form of communication of the accusation against the person concerned, with the result that it must comply with the requirements set out in Article 6 (judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 61).
- 37 It is true that Directive 2012/13 does not regulate the procedures whereby information about the accusation, in accordance with Article 6 of that directive, must be given to that person (judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 62).
- 38 However, those procedures cannot undermine the objective referred to in, inter alia, that article, which, as is also apparent from recital 27 of that directive, consists in enabling suspects or persons accused of committing a criminal offence to prepare their defence and in safeguarding the fairness of the proceedings (judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 63).
- 39 It is apparent from the orders for reference that the national legislation at issue in the main proceedings provides that the penalty order is to be served on the person authorised by the accused person, and that the latter has a period of two weeks in which to lodge an objection against that order, that period running from the service of that order on that authorised person. Upon expiry of that period, the order is to acquire the force of *res judicata*.
- 40 In that regard, the Court has already observed that both the objective of enabling the accused person to prepare his defence and the need to avoid any kind of discrimination between (i) accused persons with a residence within the jurisdiction of the national law concerned and (ii) accused persons whose residence does not fall within that jurisdiction, who alone are required to appoint a person authorised to accept service of judicial decisions, require the whole of that period for lodging an objection to be available to the accused person (judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 65).
- 41 In that context, admittedly, if the period of two weeks at issue in the main proceedings began to run from the time when the accused person actually became aware of the penalty order, it would be certain that the whole of that period is available to that person (judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 66).
- 42 However, Article 6 of Directive 2012/13 does not require that period to begin to run from the moment when the person accused was actually aware of the penalty order concerning him. On the other hand, the procedure must be fair and the effective exercise of the rights of the defence must be guaranteed.

- 43 The Court has already accepted that that is the case where, if national legislation provides that that period for lodging an objection begins to run from the service of the penalty order on the person authorised by the accused person, the duration of that period is not reduced by the time needed by the authorised person to transmit the penalty order to its addressee, so that the addressee benefits from that period in its entirety (see judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 67).
- 44 It is thus for the internal legal system of each Member State to determine the legal consequences of the expiry of such a period, including, in particular, the conditions under which a decision in criminal matters becomes final and enforceable.
- 45 That being said, the objective of Article 6 of Directive 2012/13, set out at paragraph 38 of the present judgment, is manifestly infringed if the addressee of a penalty order such as those at issue in the main proceedings, which has become final and enforceable, could no longer object to it, even though he had not been aware of the existence and content of that order at a time when he could have exercised his rights of defence, in so far as, for want of a known place of residence, it was not served on him personally.
- 46 In such a situation, the addressee of such an order, far from benefiting from the whole of the period for lodging an objection against it, would be deprived of it completely.
- 47 Accordingly, Member States must ensure that persons accused or suspects in the context of criminal proceedings, who, in circumstances such as those at issue in the main proceedings, are not notified of the charge against them at the stage of execution of the final decision on conviction, nevertheless retain the right to exercise fully their rights of defence. To that end, once an accused person has actually been informed of a criminal decision concerning him, he must be placed in the same situation as if that decision had been served on him personally and he must, in particular, have the benefit of the whole of the prescribed period for lodging an objection.
- 48 As the referring courts makes clear, although national law provides that a penalty order becomes final on expiry of the period for lodging an objection, which begins to run from service of the order on the agent of the accused person, it also allows that person to apply to have his position restored to the *status quo ante* and therefore to benefit accordingly from a period of the same duration to lodge an objection to that order, from the time when the accused person became aware of the penalty order.
- 49 It is thus for the referring courts to interpret national law, in particular the procedure for a person's position being restored to the *status quo ante* and the conditions to which the exercise of that procedure is subject, in accordance with the requirements laid down in Article 6 of Directive 2012/13.

- 50 Having regard to the foregoing considerations, the answer to the questions referred is that Article 2, Article 3(1)(c), and Article 6(1) and (3) of Directive 2012/13 must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which, in criminal proceedings, provides that the accused person who neither resides in that Member State nor has a fixed place of residence in that State or in his Member State of origin is required to appoint an agent for the purposes of service of a penalty order concerning him, and that the period for lodging an objection to that order, before it becomes enforceable, runs from service of that order on that agent.
- 51 Article 6 of Directive 2012/13, however, requires that, when the penalty order is enforced, as soon as the person concerned has actually become aware of the order, he should be placed in the same situation as if that order had been served on him personally and, in particular, that he have the whole of the prescribed period for lodging an objection, where necessary, benefiting from having his position restored to the *status quo ante*.
- 52 It is for the referring court to ensure that the national procedure for the accused person's position being restored to the *status quo ante* and the conditions to which the exercise of that procedure is subject are applied in a manner consistent with those requirements and that that procedure thus permits the effective exercise of the rights provided for in Article 6.

### **Costs**

- 53 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 2, Article 3(1)(c), and Article 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 must be interpreted to the effect that they do not preclude legislation of a Member State, such as that at issue in the main proceedings, which, in criminal proceedings, provides that the accused person who neither resides in that Member State nor has a fixed place of residence in that State or in his Member State of origin is required to appoint an agent for the purposes of service of a penalty order concerning him and that the period for lodging an objection to that order, before it becomes enforceable, runs from service of that order on that agent.**

**Article 6 of Directive 2012/13, however, requires that when the penalty order is enforced, as soon as the person concerned has actually become aware of the**

order, he should be placed in the same situation as if that order had been served on him personally and, in particular, that he have the whole of the prescribed period for lodging an objection, where necessary, benefiting from having his position restored to the *status quo ante*.

It is for the referring court to ensure that the national procedure for the accused person's position being restored to the *status quo ante* and the conditions to which the exercise of that procedure is subject are applied in a manner consistent with those requirements and that that procedure thus permits the effective exercise of the rights provided for in Article 6.

[Signatures]

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\* Language of the cases: German.

