

CJEU: Lack of Translation Can Be Refusal Ground to Execute Financial Penalty

News

Thomas Wahl

On 6 October 2021, the [CJEU delivered an important judgment](#) on the implications of fundamental rights in the mutual recognition scheme. The case concerned the question of whether an executing authority may refuse the recognition of a financial penalty (on the basis of Framework Decision 2005/214/JI) if the issuing authority did not notify the decision to the person concerned in a language he/she understands.

Facts of the case

In the case at issue ([C-338/20](#)), the Centraal Justitiele Incassobureau, Ministerie van Veiligheid en Justitie (CJIB) (Central Fine Collection Agency, Ministry of Justice and Security) of the Netherlands wished to enforce a financial penalty in Poland that was imposed on Polish citizen *D.P.* in the Netherlands in respect of a road traffic offence. The CJIB confirmed that the decision imposing the financial penalty had not been notified to the addressee along with a translation into Polish. The 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. *D.P.* explained that he received the letter of the CJIB but he was unable to understand its content, so that he was unable to reply. The referring District Court of Łódź, Poland had doubts whether it can refuse the request by the CJIB on the basis of the provisions implementing Art. 20(3) of Framework Decision 2005/214 on the grounds of a breach of the right to a fair trial.

Findings of the CJEU

The CJEU decided that the person concerned against whom a financial penalty is imposed must be notified in a language he/she understands. It is important that the addressee of the order understands the charge against him/her and the way how to exercise his/her defence rights, at least in a case where the addressee has not been afforded the opportunity to obtain the necessary translation on request.

The CJEU on the one hand stressed its standing case law on the effectiveness on which the mechanism of mutual recognition of judicial decisions in the EU is based (i.e. cross-border enforcements without formality, limited and restrictively interpreted refusal grounds, etc.). On the other hand, the CJEU acknowledges that the mutual recognition instruments include the clauses that they “shall not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the

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[EU] Treaty". In this context, the CJEU makes reference to the ECtHR case law and states that the financial penalty for the offence at issue falls within the scope of Art. 6(1) and (3) ECHR. Therefore, the authorities must ensure that the fundamental rights enshrined in Art. 6 ECHR and the correspondent rights in Art. 47 and Art. 48(2) CFR are respected.

According to the CJEU, 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, 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. Hence, adequate information on a language the defendant understands is required. It is up to 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. If the translation is missing, the executing authority is entitled to oppose the recognition and execution on the basis of Art. 20(3) of FD 2005/214. The CJEU clarified, however, that the executing authority is obliged to examine if the addressee had understand the language in which that decision was notified to him or her.

Put in focus

In its judgment, the judges in Luxembourg partly deviate from the [Advocate General's opinion](#) (presented on 2 September 2021). AG *Bobek* mainly focused on whether the essential information had already been communicated to the driver on the spot by the Dutch police in a language he could understand, which would mean that the violation of Art. 6 ECHR could not have consequences due to the lack of translation. The AG accepted refusals only in exceptional cases, such as full *in absentia* procedures. In contrast, the CJEU primarily focuses on the lack of translation of the served criminal decision. Thus, while the AG's main line of argument is based on the responsibility of the individual, the CJEU sees the responsibility with the issuing authority. Overall, the judgment strengthens fundamental rights in the system of mutual recognition of judicial decisions, because the CJEU explicitly recognises that the requirement of effectiveness of (criminal) prosecution must be reconciled with respect for fundamental rights of the person concerned.

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