



According to Advocate General Pikamäe, on the basis of the primacy of EU law, a national judge must disapply any national legislation or judicial practice which undermines its power to refer questions to the Court of Justice

Hungarian legislation enabling the public prosecutor to bring an action before the Supreme Court (Kúria) for a declaration of unlawfulness of an order for reference made by a lower criminal court and the decision of the Supreme Court establishing that unlawfulness, which undermine that power, are incompatible with EU law

In August 2015, a Swedish national was arrested and subsequently, as a suspect, questioned by the Hungarian authorities for an alleged infringement of the law on firearms and ammunition. At the hearing, following which the defendant was released, he was informed through an interpreter of the suspicions against him. Since then, he has been living outside Hungary and the summons sent to him by the Hungarian authorities was returned marked 'unclaimed'.

Since the prosecution of the offence in question relates to a mere fine, the Pesti Központi Kerületi Bíróság (Central District Court, Pest, Hungary), before which the criminal proceedings relating to that offence are pending, is required under national law to continue the proceedings *in absentia*, that is to say in the absence of the suspected person, who is nevertheless represented by a lawyer appointed by the State.

Since, according to that court, there is no information about how the interpreter who participated in the questioning of the suspected person was selected, and how that interpreter's competence was verified, or whether the interpreter and the accused person understood each other well, that court has doubts as to whether the Hungarian authorities have complied with the directives on the rights of accused persons in criminal proceedings in the European Union.¹ Thus, that court requests from the Court of Justice an interpretation of the provisions of those directives as to the scope of the right to interpretation of a sufficient quality and of the right of accused persons to be informed of the accusations against them, in the specific case of a trial *in absentia*.

Moreover, the national court asks the Court of Justice whether the direct appointment by the President of the Országos Bírósági Hivatal (National Office of Justice (NOJ), Hungary), who is appointed by the Hungarian National Assembly, of temporary senior judges and the alleged insufficient remuneration of Hungarian judges in relation to their responsibilities constitute a breach of the principle of judicial independence enshrined in EU law.

Lastly, the Hungarian court also wishes to ascertain whether (i) the declaration, at the request of the public prosecutor, by the Kúria (Supreme Court, Hungary) of the unlawfulness of the order for reference, without the effects of that order being called into question in the present case, on the ground that the questions referred were not relevant for the purposes of the decision to be given in

¹ 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), 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) and Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

the proceedings in question, and (ii) the initiation, on the same grounds, of disciplinary proceedings against the referring judge are in breach of EU law.

In his Opinion delivered today, Advocate General Priit Pikamäe recalls that the admissibility of a question referred for a preliminary ruling implies that the decision sought from the Court of Justice must be necessary to enable the referring court to give judgment in the case before it. He takes the view, first of all, that **the questions relating to the direct appointment by the President of the NOJ of temporary senior judges and to judges' pay** are irrelevant to the outcome of the criminal proceedings at issue and **are therefore inadmissible**.

For the same reason, the Advocate General proposes that the Court should declare inadmissible the question relating to the initiation of disciplinary proceedings against the referring judge, since the decision triggering those proceedings has since been withdrawn and the proceedings have been terminated.

Next, the Advocate General is of the view that **the contested decision of the Kúria and the national legislation underlying it undermine** the power of the national court to refer questions to the Court for a preliminary ruling and therefore undermine **the operation of the preliminary ruling mechanism**. In that regard, the Advocate General recalls that that mechanism is based on a dialogue between the national court and the Court, **the initiation of which depends entirely on the referring court's assessment as to whether its request is appropriate and necessary**. In that regard, the Advocate General states that **the Court alone is empowered to evaluate the merits of that assessment** when ascertaining whether the questions referred to it are admissible. Consequently, the Advocate General observes that, in accordance with the principle of the primacy of EU law, **the referring judge is required to set aside that decision and disapply the national legislation underlying it**.

Lastly, the Advocate General takes the view that although EU law places Member States under a precise obligation as to the result to be achieved in terms of the quality of interpretation, it does not require them to establish a register of independent interpreters who are appropriately qualified. However, suspected or accused persons must be able to call in question the quality of the interpretation service which was provided to them in the criminal proceedings.

Similarly, where suspects or accused persons are arrested or detained, EU law requires that they must be informed in a language that they understand about the criminal offence which they are suspected or accused of having committed. Where a suspected person, who has been informed beforehand that his or her trial is to be held and is represented by a lawyer, is judged in his or her absence, that lawyer must be able to challenge before the competent court the manner in which the right to information, including the notification to the suspected person, in a language which he or she understands, of the suspicions and accusations against him or her was applied in the course of the criminal proceedings.

As regards whether it is possible to remedy, at a more advanced stage of the criminal proceedings, the failure, during the investigation stage of the proceedings, to disclose to the suspected person information on the accusation, the Advocate General states that that disclosure may reasonably be addressed to the lawyer representing the suspected person no later than the point in time when the hearing of argument on the merits of the accusation in fact commences before the national court.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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