



Corte costituzionale



JUDGMENT NO. 254 OF 2007

FRANCO BILE, PRESIDENT

MARIA RITA SAULLE, AUTHOR OF THE JUDGMENT



JUDGMENT No. 254 YEAR 2007

In this case the Court heard a reference from the Tribunale di Venezia questioning presidential decree No. 115 of 2002 insofar as it did not provide for the appointment of an interpreter by the accused and their remuneration from public funds where the accused was receiving legal aid. The Court considered that an interpreter was necessary in order for the accused to be able to satisfy his defence requirements, whilst the state authorities argued that the activity carried on by interpreters was “not typical of the legal aid regime”. The Court held that the right of non-Italian speakers to appoint an interpreter fell under the constitutional guarantee of the right to a defence, also citing the ECHR and other international law instruments, holding also that interpreters should be remunerated under legal aid arrangements. The Court therefore declared the contested provisions unconstitutional insofar as challenged.

THE CONSTITUTIONAL COURT

Composed of: President: Franco BILE; Judges: Giovanni Maria FLICK, Francesco AMIRANTE, Ugo DE SIERVO, Paolo MADDALENA, Alfio FINOCCHIARO, Alfonso QUARANTA, Franco GALLO, Luigi MAZZELLA, Gaetano SILVESTRI, Sabino CASSESE, Maria Rita SAULLE, Giuseppe TESAURO, Paolo Maria NAPOLITANO,

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 102 of presidential decree No. 115 of 30 May 2002 (Consolidated text of legislative provisions and regulations in matters relating to the costs of the administrative of justice), commenced pursuant to the referral order of 4 May 2006 by the judge for preliminary investigations at the *Tribunale di Venezia* in the proceedings initiated by B. L., registered as No. 605 in the Register of Orders 2006 and published in the *Official Journal of the Republic* No. 2, first special series 2007.

Considering the entry of appearance by B. L., as well as the intervention by the President of the Council of Ministers;

having heard the Judge Rapporteur Maria Rita Saulle in the public hearing of 8 May 2007;

having heard Luciano Faraon, barrister, for B. L. and the *Avvocato dello Stato* Giovanni Lancia for the President of the Council of Ministers.

The facts of the case

1.- By order of 4 May 2006, the judge for preliminary investigations at the *Tribunale di Venezia* raised, with reference to Article 24 of the Constitution, the question of the constitutionality of Article 102 of presidential decree No. 115 of 30 May 2002 (Consolidated text of legislative provisions and regulations in matters relating to the costs of the administrative of justice), insofar as it does not allow foreigners who have been granted legal aid and who do not understand Italian to appoint their own interpreter.

Regarding the facts of the case, the referring judge finds that following a request for the payment of fees for services rendered as a translator between A. Y., accused of the crime of murder, and his defence counsel, B. L.'s application was rejected since, although the accused had been granted legal aid, the defence counsel had not appointed her as a consultant.

On the question of relevance and non-manifest groundlessness, the referring judge, seized of proceedings challenging the dismissal measure mentioned above, notes that presidential decree No. 115 of 2002 does not provide for “the appointment of an interpreter by the accused or, in any case, a private intervention by such an assistant, nor less the payment of remuneration to the same by the state”, limiting itself to providing for the possibility of appointing a substitute defence counsel, an investigator and an expert acting on behalf of the accused (Articles 101 and 102), going on to specify that the judge for preliminary investigations shall pay fees to the judge's assistant and not to others (Article 105).

In the opinion of the judge, this legislation is of an exceptional nature in that it imposes costs on the state, and cannot be applied by analogy. This means that whilst the institution of legal aid is informed by the principles contained in Article 24(1) and (3) of the Constitution, it is not possible to award any payment to an interpreter appointed by the accused, with the resulting violation of the latter's rights to a defence.

In particular, the referring judge notes that once foreigners have also been granted the possibility of receiving legal aid, they must accordingly be given the opportunity to appoint an interpreter in order to satisfy their defence requirements, consisting both in the translation of writs and documents as well as the ability to confer with their own defence counsel.

2.- B. L., the claimant in the principal proceedings, entered an appearance and, arguing that the full exercise of the right to a defence must also be guaranteed to foreigners through cognisance of the procedural writs which concern them, requested that the court declare the question of constitutionality raised to be well founded.

In particular, the representative of B. L. argues that, under the terms of international law – Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, ratified and implemented by law No. 848 of 4 August 1955; and Article 14(3)(f) of the United Nations Pact on Civil and Political Rights, adopted in New York on 19 December 1966, ratified and implemented by law No. 881 of 25 October 1977 – foreigners must be guaranteed the free assistance of a defence interpreter. This is all the more necessary in cases, such as that before the court, in which the interpreter appointed by the court is not competent to perform his duties, as the mistaken translation of procedural writs meant that the party assisted by B. L. turned from being a witness into a person accused of the offence contained in Article 575 of the Criminal Code.

3.- The President of the Council of Ministers intervened in proceedings, represented and advised by the *Avvocatura Generale dello Stato*, requesting that the court declare the question inadmissible, or in the alternative groundless.

As a preliminary point, the state authorities argue that the referral order fails to comply with the requirement of relevance, since the referring judge did not indicate whether the activity carried out by the interpreter appointed by the accused's defence counsel was necessary.

On the merits, the *Avvocatura Generale dello Stato* argued that, by providing for the right of the accused to appoint a defence counsel, a substitute, a private investigator and an expert acting on behalf of the accused, Articles 101 and 102 of presidential decree No. 115 of 2002 comply with Article 24(3) of the Constitution.

In fact, the failure to mention the interpreter in the provisions mentioned above is justified by the fact that the activity carried on by interpreters is intended to make the respective languages understandable to the defence counsel and to the accused, and is accordingly not typical of the legal aid regime. As a result of this, each time it is necessary to appoint an interpreter, the defence counsel should pay the latter's fees and subsequently seek reimbursement of the relevant amount under the terms of Article 82 of presidential decree No. 115 of 2002.

Conclusions on points of law

1.- The judge for preliminary investigations at the of the *Tribunale di Venezia* questions, with reference to Article 24 of the Constitution, the constitutionality of Article 102 of presidential decree No. 115 of 30 May 2002 (Consolidated text of legislative provisions and regulations in matters relating to the costs of the administrative of justice), insofar as it does not allow foreigners who have been granted legal aid and who do not understand Italian to appoint their own interpreter.

The referring judge argues that this legislative omission causes the breach of the Constitution averred in that it does not guarantee foreigners who do not understand Italian the full exercise of their defence rights.

In fact, the judge complains that whilst on the one hand the provisions governing legal aid also apply to foreigners, in accordance with the principles contained in Article 24 of the Constitution, on the other hand they cannot be denied the right to appoint a defence interpreter precisely out of respect for those principles.

2.- The question of well founded.

Article 102(1) of presidential decree No. 155 of 2002 provides that “Any person who has been granted legal aid may appoint an expert acting on behalf of the accused who is resident in the court of appeal district before which proceedings are pending”, whilst it does not on the other hand allow foreigners who have been granted legal aid and who do not understand Italian to avail themselves of an interpreter, a figure distinct both from the expert acting on behalf of the accused as well as from interpreters appointed by the court.

On this point it should be pointed out that Articles 143 *et seq* of the the Code of Criminal Procedure make provision for the figure of the interpreter, granting the court

the relative power of appointment where the parties to the trial do not understand the official language (which under the terms of Article 109 of the Code of Criminal Procedure is Italian), or do not understand it sufficiently well in order to follow the development of the trial satisfactorily. Such appointments are justified by the need to guarantee to a defendant who does not understand and/or speak Italian the right to understand the charges brought against him and to understand the proceedings to which he is party in such a way as to ensure his effective participation. The accused has the right to informed participation which places him in a position to understand the semantic meaning of the assertions of other individuals involved in the trial, including his own defence counsel, as well as to express himself and in turn be understood by such persons.

The personal and informed participation of the accused in proceedings, through the recognition of the right of a foreign accused who does not understand Italian to appoint an interpreter falls under the constitutional guarantee of the right to a defence, as well as the right to a fair trial, since the accused must be able to understand the meaning of the procedural writs and activities in a language understood by him for the purposes of a concrete and effective exercise of his right to a defence (Article 24(2) of the Constitution). Moreover, Article 111 of the Constitution requires that the law provide guarantees that “the accused may rely on the assistance of an interpreter if he does not understand or speak the language of the proceedings”.

The constitutional principles mentioned above are recognised in certain rules of international law which include amongst the rights of the accused that “to have the free assistance of an interpreter if he cannot understand or speak the language used in court” (Article 6(3)(e) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, ratified and implemented by law No. 848 of 4 August 1955; the rule is reiterated in a similar manner by Article 14(3)(f) of the United Nations Pact on Civil and Political Rights of 19 December 1966, adopted in New York on 19 December 1966, ratified and implemented by law No. 881 of 25 October 1977).

On account of these principles, this court (judgments No. 10 of 1993 and No. 341 of 1999), albeit with reference to the different position of interpreters appointed by the court, has found that insofar as it provides that an accused who does not understand

Italian “has the right to have the free assistance of an interpreter in order to be able to understand the charges brought against him and to follow the process of reaching decisions which concern him”, Article 143 of the Code of Criminal Procedure conceptualises “the use of interpreters not simply as a mere technical instrument available to the court in order to enable or facilitate the development of the trial in the presence of persons who do not speak or understand Italian, but as the object of an individual right of the accused, which is intended to allow his informed participation in proceedings which, as mentioned above, is an indispensable element of the right to a defence”.

The recognition of the right of a foreign accused who does not understand Italian to appoint his own interpreter cannot, in accordance with the principles mentioned above, be subject to any limitation. Indeed, through aiming to guarantee implementation of the constitutional principle contained in Article 24(3) of the Constitution also to impoverished individuals, the institution of legal aid requires that such persons be guaranteed the means to sue and defend themselves before any court in accordance with the principle contained in Article 24(1), which provides that all persons may initiate court action in order to protect their own rights and legitimate interests.

Accordingly, Article 102 of presidential decree No. 115 of 2002 must be declared unconstitutional insofar as it does not allow foreigners who have been granted legal aid and who do not understand Italian to appoint their own interpreter. This is without prejudice to the requirement incumbent upon Parliament to make comprehensive provision for matters pertaining to interpreters.

on those grounds

THE CONSTITUTIONAL COURT

declares that Article 102 of presidential decree No. 115 of 30 May 2002 (Consolidated text of legislative provisions and regulations in matters relating to the costs of the administrative of justice) is unconstitutional insofar as it does not allow foreigners who have been granted legal aid and who do not understand Italian to appoint their own interpreter.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 20 June 2007.

Signed:

Franco BILE, President

Maria Rita SAULLE, Author of the judgment

Giuseppe DI PAOLA, Registrar

Deposited in the Court Registry on 6 July 2007.

The Director of the Registry

Signed: DI PAOLA