Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

14 May 2020 [*] [i]

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Right to information in criminal proceedings – Directive 2012/13/EU – Article 6 – Right to information about the accusation – Criminal prosecution for driving a vehicle without a driving licence – Driving ban resulting from an earlier penalty order of which the person concerned was unaware – Service of that order on the person concerned solely by way of a person compulsorily appointed to accept service – Acquisition of the force of *res judicata* – Possible negligence on the part of the person concerned)

In Case C-615/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Kehl (Local Court, Kehl, Germany), made by decision of 24 September 2018, received at the Court on 28 September 2018, in the criminal proceedings against

UY

Other party:

Staatsanwaltschaft Offenburg,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis, E. Juhász, M. Ilešič and C. Lycourgos (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 16 October 2019,

after considering the observations submitted on behalf of:

– the German Government, by M. Hellmann, T. Henze and A. Berg, acting as Agents,

– the European Commission, by S. Grünheid, R. Troosters and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 January 2020,

[*] Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6 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) and of Articles 21, 45, 49 and 56 TFEU.

2 The request has been made in criminal proceedings brought in Germany against UY for driving negligently without a driving licence.

Legal framework

EU law

3 Recitals 14, 27 and 41 of Directive 2012/13 are worded as follows:

'(14) This Directive relates to measure B [(measure regarding the right to information on rights and information about the charges)] of the Roadmap [for strengthening procedural rights of suspected or accused persons in criminal proceedings]. It lays down common minimum standards to be applied in the field of information about rights and about the accusation to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States. This Directive builds on the rights laid down in the Charter [of Fundamental Rights of the European Union], and in particular Articles 6, 47 and 48 thereof, by building upon Articles 5 and 6 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950,] as interpreted by the European Court of Human Rights. In this Directive, the term "accusation" is used to describe the same concept as the term "charge" used in Article 6(1) [of that Convention].

…

(27) Persons accused of having committed a criminal offence should be given all the information on the accusation necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings.

…

(41) This Directive respects fundamental rights and observes the principles recognised by the Charter [of Fundamental Rights]. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the rights of the defence. It should be implemented accordingly.'

4 Article 6 of Directive 2012/13, entitled '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.

2. Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

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.

4. Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings.'

German law

5 Paragraph 44 of the Strafgesetzbuch (Criminal Code), in the version applicable to the facts in the main proceedings ('the StGB'), entitled 'Driving ban', provides:

'(1) If a person has been sentenced to imprisonment or to a fine for an offence which he committed whilst or in connection with the driving of a motor vehicle or in breach of the duties of a driver of a motor vehicle, the court may prohibit him from driving any type of motor vehicle, or any specific type, on public roads for a period of between one and three months. A driving ban shall typically be imposed in cases of a conviction under Paragraph 315c(1), No 1(a), (3), or Paragraph 316 if there has been no withdrawal of permission to drive pursuant to Paragraph 69.

(2) A driving ban shall take effect when the judgment becomes final. Throughout the period of its application, national and international driving licences shall be kept by a German authority. This shall also apply if the driving licence was issued by an authority of a Member State of the European Union or of another State party to the Agreement on the European Economic Area, as long as the holder's habitual residence is in Germany. The driving ban shall be endorsed on other foreign driving licences.

(3) If a driving licence is to be kept by the official services or the driving ban is to be endorsed on a foreign driving licence, the duration of the ban shall be calculated only from the day on which this takes place. The duration of the ban shall not include the period during which the person accused was held in custody in an establishment by order of the authorities.'

6 Paragraph 44 of the Strafprozessordnung (Code of Criminal Procedure; 'the StPO') is worded as follows:

'If a person was prevented from observing a time limit through no fault of his own, he shall be granted restoration of the *status quo ante* upon application. Failure to observe the time limit for lodging an appeal shall not be considered a fault if instructions pursuant to Paragraph 35a, first and second sentences, Paragraph 319, subparagraph (2), third sentence, or Paragraph 346, subparagraph (2), third sentence, have not been given.'

7 Paragraph 45 of the StPO provides:

'(1) The application for restoration of the *status quo ante* shall be filed within one week after the reason for non-compliance no longer applies with the court before which the time limit should have been observed. To observe the time limit, it shall be sufficient that the application be filed in time with the court which is to decide on the application.

(2) The facts justifying the application shall be substantiated at the time when the application is filed, or during the proceedings concerning the application. The omitted act shall subsequently be undertaken within the time limit for filing the application. Where this is done, restoration of the *status quo ante* may also be granted without an application being filed.'

8 Paragraph 132 of the StPO provides:

'(1) 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, it may be ordered, in order 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 district of the competent court to accept service.

Paragraph 116a(1) shall apply *mutatis mutandis*.

(2) The order may be made only by a court and, in the event of imminent danger, by the Public Prosecutor's Office and its investigators (Paragraph 152 of the Gerichtsverfassungsgesetz [(Law on the Constitution of the Courts)]).

(3) If the accused person fails to comply with the order, means of transportation and other objects which the accused has on his person and which belong to him may be seized. Paragraphs 94 and 98 shall apply *mutatis mutandis*.'

9 Paragraph 407 of the StPO provides:

'(1) In proceedings before the criminal court and in proceedings within the jurisdiction of a court with lay judges, the legal consequences of the offence may, in the case of less serious offences, be established, upon written application by the Public Prosecutor's Office, by means of a written penalty order without a main hearing. The Public Prosecutor's Office shall make such an application if, given the outcome of the investigations, it does not consider a hearing to be necessary. The application must propose specific legal consequences. It shall initiate the public prosecution.

…

(3) Prior hearing of the accused by the court (Paragraph 33, subparagraph (3)) is not required.'

10 Under Paragraph 410 of the StPO:

'(1) The accused person may lodge an objection against a penalty order, within two weeks of notification, with the court which has made the order, in writing or by making a statement recorded by the registry. Paragraphs 297 to 300 and Paragraph 302(1), first sentence, point (2), shall apply *mutatis mutandis*.

(2) The objection may be limited to certain heads of complaint.

(3) Where no objection has been lodged against a penalty order in due time, it shall be equivalent to a judgment with binding effect.'

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

11 UY is a professional heavy-goods-vehicle driver who is a Polish national and is permanently resident in Poland.

12 By a penalty order dated 21 August 2017, the Amtsgericht Garmisch-Partenkirchen (Local Court, Garmisch-Partenkirchen, Germany) ordered UY to pay a fine and imposed on him a three-month driving ban in respect of an offence committed on 11 July 2017 when he unlawfully left the scene of an accident.

13 On 30 August 2017, that order, together with a translation into Polish, was served on the person authorised to accept service of documents on UY's behalf. Pursuant to Paragraph 132 of the StPO and by order of the Public Prosecutor's Office, UY had granted authorisation to accept service. The use of the person authorised to accept service on behalf of UY, an official at the Amtsgericht Garmisch-Partenkirchen (Local Court, Garmisch-Partenkirchen), had been imposed on him by the police.

14 It is apparent from the order for reference that the form granting authorisation to accept service, which was drafted in German and had been translated for UY over the telephone by one of his relatives, contained the name and official address of the authorised person and a note that the statutory periods started to run from the date of service on the authorised person of any criminal decision which might be made. By contrast, the form did not include any other details regarding the legal and factual consequences of that authority to accept service, in particular concerning any duties on the part of the accused person to seek information from the person authorised to accept service on his behalf. UY was provided with a German-language copy of the authorisation to accept service.

15 The person authorised to accept service forwarded the penalty order by ordinary letter post to the known address of UY in Poland. It is not possible to determine whether that letter was received by UY.

16 As no objection was lodged against the penalty order, it acquired the force of *res judicata* on 14 September 2017.

17 On 14 December 2017, UY was stopped and questioned by German police while driving a heavy-goods vehicle in the municipality of Kehl (Germany).

18 Following that stopping and questioning, the Staatsanwaltschaft Offenburg (Public Prosecutor's Office, Offenburg, Germany) brought an action before the Amtsgericht Kehl (Local Court, Kehl, Germany), requesting that UY be convicted of driving negligently without a driving licence on the ground that he had been driving a heavy-goods vehicle within Germany territory at a time when he could and should have known that he was banned from driving within that territory.

19 The referring court assumes that, up to 14 December 2017, the date on which he was stopped by the police, UY was not aware of the penalty order issued by the Amtsgericht Garmisch-Partenkirchen (Local Court, Garmisch-Partenkirchen) and, consequently, of the driving ban imposed on him.

20 The referring court states that, under Paragraph 44(2) of the StGB, a driving ban comes into effect when the judgment acquires the force of *res judicata* and notes in this regard that a penalty order is equivalent to a judgment that has the force of *res judicata* unless an objection is lodged against it within two weeks of that order being served, and that service may be effected on a person who is appointed by the person concerned to accept service.

21 It also states that, under German law, the fact, as in the present case, that the police have stipulated the person on whom service is to be effected and that the form granting authority to accept service does not contain any information regarding the possibility of contacting the authorised person by telephone, or instructions as to the obligation imposed on the person concerned to make enquiries with the person authorised to accept service, as a general rule, does not impede the effectiveness of the authority. The same is true of the fact that that form is drafted exclusively in German, provided that, if the accused person does not have a command of that language, the content of that form is explained to him orally.

22 Moreover, according to the referring court, an accused person who is aware that criminal proceedings have been instituted against him may be accused of negligence if he does not attempt to obtain specific information about the outcome of those proceedings from the person authorised to accept service on his behalf. In such circumstances, that person cannot rely on the fact that the documents forwarded to him by that authorised person have not reached him.

23 The referring court, however, has doubts as to whether the force of *res judicata*, which, under German law, must be accorded to the penalty order issued by the Amtsgericht Garmisch-Partenkirchen (Local Court, Garmisch-Partenkirchen), is compatible with Directive 2012/13, as interpreted by the Court in its judgments of 15 October 2015, *Covaci* (C-216/14, EU:C:2015:686), and of 22 March 2017, *Tranca and Others* (C-124/16, C-188/16 and C-213/16, EU:C:2017:228), as well as with Articles 21, 45, 49 and 56 TFEU. According to the referring court, it follows from those judgments that the accused person cannot, in general, by reason of the obligation on him to grant authorisation to accept service of the order concerning him, suffer any disadvantages linked to the fact that his place of residence is not in Germany but in another Member State. In the present case, UY is said to have suffered such disadvantages, which could not be offset.

24 In the referring court's view, since the penalty order is served through a person who is authorised to accept service, it is likely that the person who is the subject of that order and who lives outside Germany will not become aware of that order or will become aware of it at a much later stage than if he had been resident in Germany.

25 In that regard, the referring court states that penalty orders may indeed be served in Germany by means of an authorisation sent by post and that, in such a situation, it is not necessary for the penalty order to be presented to the addressee in person since service may be effected at that person's address by handing the penalty order to an adult family member, a person employed by the family or an adult who permanently shares the accommodation, by placing that order in the addressee's letterbox or by depositing it, provided that an official certificate is completed as proof of service. According to the referring court, the strict conditions governing that procedure, the adherence to which must be assessed by the court of its own motion, as well as the geographical and personal proximity of the place of service and of the actual recipient to the person concerned ensure, however, as a general rule, that, in the event of any doubt as to whether due process has been followed, the service will be regarded as ineffective.

26 By contrast, in the case where the penalty order is served on the person authorised by the accused person to accept service, the accused person, as a general rule, will not be able to influence how that order will be forwarded to him, even if the authorised person is a court official. The person authorised to accept service is not legally obliged to forward that order in a manner that guarantees that it will actually reach the accused person, for example by way of a registered letter. The forwarding of a penalty order to another country may also take significantly longer and there is a greater risk that the letter may get lost.

27 According to the referring court, those disadvantages are not offset, in German law, by the procedure for restoration of the *status quo ante* provided for in Paragraph 44 of the StPO, which, under certain conditions, allows the force of *res judicata* to be removed from the penalty order and the period for lodging an objection against it to be reopened.

28 In that regard, it notes, in the first place, that, in order to remove retroactively the force of *res judicata* from the order to which he is subject, the person concerned must, even if he does not contest the infringement and the legal consequences resulting from it, submit a reasoned application for restoration of the *status quo ante* and lodge an objection against the penalty order, in order then to withdraw his objection once the *status quo ante* has been restored.

29 The referring court notes, in the second place, that the application for restoration of the *status quo ante* must be lodged within one week after the obstacle which prevented the person concerned from respecting the procedural deadline imposed on him ceases to exist.

30 That court states, in the third place, that the person concerned must demonstrate that he is not responsible for the failure to respect the deadline. In that regard, he cannot simply argue that he was not aware that the penalty order concerning him had been served on the person authorised to accept service, since he is expected to contact that authorised person without undue delay in order to enquire whether any letters have been sent to him, regardless of whether account must be taken of any language difficulties which may arise when communicating with the person authorised to accept service. Moreover, restoration of the *status quo ante* may be granted automatically only if it is clear from the documents before the court that the person accused was not at fault for the failure to respect the deadline.

31 In the fourth place, the referring court further submits that the application for restoration of the *status quo ante* does not have suspensory effect.

32 In those circumstances, the referring court considers that it should be in a position to find that, notwithstanding its national law, the penalty order issued by the Amtsgericht Garmisch-Partenkirchen (Local Court, Garmisch-Partenkirchen) against UY acquired the force of *res judicata* only after the expiry of the two-week period starting from the day on which UY actually became aware of the order, and thus after he had been questioned in respect of driving negligently without a driving licence.

33 In the alternative, the referring court considers that, in order to avoid an unjustified difference in treatment resulting solely from the fact that UY is resident in Poland, he must not be subject to any obligation of due diligence in respect of being aware of the documents relevant to the procedure that are addressed to him and the infringement of which forms the basis of the proceedings before the referring court, which goes beyond the obligations to which he would have been subject if the penalty order had been served on him in Germany by way of a standard authority to accept service.

34 In those circumstances, the Amtsgericht Kehl (Local Court, Kehl) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is EU law, in particular Directive 2012/13 and Articles 21, 45, 49 and 56 TFEU, to be interpreted as meaning that it precludes legislation of a Member State which makes it possible, in the course of criminal proceedings, solely because the accused is not resident in that State but in another Member State, to make an order that the accused has to appoint a person authorised to accept service of a penalty order made against him, with the result that the penalty order would acquire the force of *res judicata* and thus form the legal prerequisite for the criminal liability of any later action taken by the accused ("Tatbestandswirkung") even if the accused was not actually aware of the penalty order and the accused actually learning of the penalty order is not guaranteed to the same extent as it would have been if the penalty order been served on the accused had he been resident in that Member State?

(2) In the event that the first question is answered in the negative: is EU law, in particular Directive 2012/13 and Articles 21, 45, 49 and 56 TFEU, to be interpreted as meaning that it precludes legislation of a Member State which makes it possible, in the course of criminal proceedings, solely because the accused is not resident in that State but in another Member State, to make an order that the accused has to appoint a person authorised to accept service of a penalty order made against him, with the result that the penalty order would acquire the force of *res judicata* and thus form the legal prerequisite for the criminal liability of any later action taken by the accused ("Tatbestandswirkung") and, given that he has to make sure that he actually learns of the penalty order, the accused is subject to more stringent subjective obligations in the prosecution of that criminal offence than he would have been had he been resident in that Member State, resulting in a possible prosecution for negligence on the part of the accused?'

The questions referred for a preliminary ruling

35 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 21, 45, 49 and 56 TFEU and Article 6 of Directive 2012/13 must be interpreted as precluding legislation of a Member State under which a person residing in another Member State incurs a criminal penalty if, from the date on which it acquires the force of *res judicata*, that person does not comply with an order which has imposed a driving ban on him,

even though, first, the period of two weeks within which an objection may be lodged against that order starts to run from the date on which that order was served, not on the person concerned, but on the person authorised to accept service on his behalf, and, secondly, the person concerned is unaware of the existence of such an order on the date on which he breached the driving ban resulting from it.

36 As a preliminary point, it should be noted, first, that the Amtsgericht Garmisch-Partenkirchen (Local Court, Garmisch-Partenkirchen) imposed on UY a temporary driving ban by way of an order adopted under Paragraph 407 of the StPO.

37 As the Court has already had occasion to note, the procedure laid down in respect of the issuing of such a penalty order is simplified and does not require a hearing or a trial *inter partes*. Issued by the court upon application by the Public Prosecutor's Office in the case of minor offences, that order is a provisional decision. In accordance with Paragraph 410 of the StPO, a penalty order acquires the force of *res judicata* upon expiry of a period of two weeks from its service, where appropriate, on the persons authorised to accept service on behalf of the person concerned, unless the latter lodges an objection against that order before the expiry of that period (see, to that effect, judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 20).

38 In the specific case where the person concerned has no fixed domicile or residence within German territory, he may be ordered, pursuant to Paragraph 132(1) of the StPO, to appoint a person on whom the order concerning him will be served, with such service constituting the start of the period for lodging an objection.

39 Under Paragraph 44(2) of the StGB, the driving ban imposed by such an order is to take effect on the date on which the order becomes final.

40 It should be noted, secondly, that the case in the main proceedings concerns a new criminal prosecution brought against UY for driving negligently without a driving licence. It is clear from the order for reference that the material element of that offence is the failure to comply with a driving ban imposed by an order that had acquired the force of *res judicata* and that its subjective element is characterised by the negligence of the person concerned.

41 In the present case, as regards, first of all, the material element of the offence in respect of which UY has been brought before it, the referring court states that UY was stopped and questioned on German territory while driving a heavy-goods vehicle on 14 December 2017, that is to say, after the first sentence imposed on him by the Amtsgericht Garmisch-Partenkirchen (Local Court, Garmisch-Partenkirchen) had become final given that UY had not lodged an objection against that penalty order within two weeks of it being served on the person authorised to accept service on his behalf.

42 The referring court states, secondly, with regard to the subjective element of the offence in respect of which UY has been brought before it, that the person authorised to accept service on behalf of UY, an official at the Amtsgericht Garmisch-Partenkirchen (Local Court, Garmisch-Partenkirchen), forwarded the penalty order concerning UY, by ordinary letter post, to his known address in Poland. Taking the view that it cannot be established that that letter actually reached UY, the referring court proceeds on the premiss that UY in fact became aware of that order only when he was stopped and questioned by the police on 14 December 2017.

43 Against that background, it is necessary to examine, in the first place, whether Article 6 of Directive 2012/13 precludes the two-week period for lodging an objection against a penalty order such as that at issue in the main proceedings from beginning to run from the date on which that order is served on the person appointed by the subject of the penalty order to accept service on his behalf.

44 In that regard, it should be noted, first, that Article 6 of Directive 2012/13 lays down specific rules on the right of all suspects and accused persons to be provided with information concerning the criminal act that they are suspected or accused of having committed, promptly and in such detail as is necessary to safeguard the fairness of the proceedings and to ensure the effective exercise of the rights of the defence. Article 6(3) of Directive 2012/13 provides further that Member States must ensure that detailed information is provided on the accusation at the latest on submission of the merits of the accusation to a court.

45 It is, admittedly, true that, because of the summary and simplified nature of the proceedings which gave rise to the penalty order at issue in the main proceedings, the service of an order of that kind is effected only after the court has ruled on the merits of the accusation.

46 However, the Court has held that, in an order of that kind, the court rules only provisionally and that the service of that order represents the first opportunity for the accused person to be informed of the accusation made against him, which is confirmed by the fact that that person is entitled to bring, not an appeal against that order before another court, but an objection making him eligible, before the same court, for the ordinary *inter partes* procedure, in which he can exercise in full his rights of defence, before that court rules again on the merits of the accusation made against him (see, to that effect, judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 60).

47 Consequently, in accordance with Article 6 of Directive 2012/13, the service of an order of that kind must be considered to be a form of communication of the accusation made against the accused person, with the result that it must comply with the requirements set out in that article (judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 61).

48 Secondly, the Court has also held that Directive 2012/13 does not regulate the procedures whereby information about the accusation, provided for in Article 6 of that directive, must be provided to the accused person and that that article therefore does not, in principle, preclude the accused person who does not reside in the Member State concerned from being required, in criminal proceedings, to appoint a person authorised to accept service of an order such as that at issue here in the main proceedings (see, to that effect, judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraphs 62 and 68).

49 However, it also follows from the Court's case-law that the procedures for communicating information about the accusation, which are determined by the law of the Member States, cannot undermine the objective referred to in, inter alia, Article 6 of Directive 2012/13, which, as is also apparent from recital 27 of that directive, consists in enabling suspects or persons accused of having committed a criminal offence to prepare their defence and in safeguarding the fairness of the proceedings (see, to that effect, judgments of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 63, and of 22 March 2017, *Tranca and Others*, C-124/16, C-188/16 and C-213/16, EU:C:2017:228, paragraph 38).

50 Such an objective, like the need to avoid any kind of discrimination between, on the one hand, accused persons who are resident within the jurisdiction of the national law concerned and, on the other, accused persons who are not resident within that jurisdiction, who alone are required to appoint a person authorised to accept service of judicial decisions, requires that the whole of the two-week period, recognised by national law, for lodging an objection against an order such as that at issue in the main proceedings should be available to the accused person (see, to that effect, judgments of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 65, and of 22 March 2017, *Tranca and Others*, C-124/16, C-188/16 and C-213/16, EU:C:2017:228, paragraph 40).

51 Accordingly, from the date on which he actually becomes aware of such an order, the accused person must, so far as possible, be placed in the same situation as if that order 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 (see, to that effect, judgment of 22 March 2017, *Tranca and Others*, C-124/16, C-188/16 and C-213/16, EU:C:2017:228, paragraph 47).

52 In that regard, while it is true that an order such as that at issue in the main proceedings becomes final in the case where the accused person does not lodge an objection against that order within a period of two weeks, which starts when the order is served on the person authorised to accept service on his behalf, and not when the accused person actually becomes aware of it, the fact remains that, as the referring court states, Paragraphs 44 and 45 of the StPO provide for a procedure for restoration of the *status quo ante* which allows the force of *res judicata* to be removed from the order and for an opposition to be lodged against it, notwithstanding the fact that the initial period for lodging an objection has expired.

53 In those circumstances, it is necessary to examine, thirdly, whether the procedure for the restoration of the *status quo ante*, provided for in national law, and the conditions to which the exercise of that procedure is subject under that law, are consistent with the requirements laid down in Article 6 of Directive 2012/13 and, in particular, whether they allow the person concerned to have the *de facto* benefit of the two-week period within which to lodge an objection against the penalty order to which he is subject, starting from the point in time at which the accused person actually became aware of that order.

54 In that regard, it should be noted, first of all, that, in the light of the information in the order for reference and the hearing before the Court, it cannot be ruled out that, in a situation such as that at issue in the main proceedings, the relevant national law requires the accused person to lodge an objection against the penalty order within one week of actually becoming aware of that order. It appears that Paragraph 45 of the StPO may be interpreted as meaning that the objection must be lodged within the one-week period that that provision lays down for the submission of an application for restoration of the *status quo ante*.

55 Such an obligation, assuming it to be established, would be contrary to Article 6 of Directive 2012/13 since it would have the result of reducing by half the duration of the period for lodging an objection which must be accorded to the accused person, in accordance with the findings made in paragraphs 50 and 51 of the present judgment, starting from the point in time at which he actually became aware of the penalty order concerning him.

56 It must also be noted that, according to the referring court, the accused person may submit an application for restoration of the *status quo ante* only if he is able to prove that he has contacted the person authorised to accept service on his behalf without undue delay as to whether there was an order concerning him.

57 An obligation of that kind is, however, equally incompatible with the requirements resulting from Article 6 of Directive 2012/13. As the Advocate General has observed, in essence, in point 61 of his Opinion, it follows from the wording of that provision and its general scheme and from the objective pursued by that directive that it is for the authorities of the Member States to inform accused persons of the matters alleged against them and that those persons cannot be expected to seek information, without undue delay, regarding any developments in the criminal proceedings which concern them.

58 Lastly, the referring court notes that the application for restoration of the *status quo ante* does not have suspensory effect.

59 In so far as it appears to follow from Paragraph 44(2) of the StGB that, so long as the period for lodging an objection has not expired, the driving ban attached to an order such as that at issue in the main proceedings has no effect – this, however, being a matter for the referring court to establish – it follows from what has been stated in paragraph 51 of the present judgment that Article 6 of Directive 2012/13 requires that that driving ban should also be suspended during the two-week period which starts when the person concerned actually becomes aware of the order concerning him and during which that person must be able to lodge an objection against that order.

60 It follows that Article 6 of Directive 2012/13 does not preclude legislation of a Member State under which the two-week period for lodging an objection against an order such as that at issue in the main proceedings begins to run from the date on which that order is served on the person appointed by the subject of the penalty order to accept service on his behalf, provided that, as soon as the person concerned becomes aware of it, he actually has a period of two weeks in which to lodge an objection against that order, where necessary following or in the course of a procedure for the person's position to be restored to the *status quo ante*, without having to demonstrate that he has taken the necessary steps to seek information without undue delay from the person authorised to accept service on his behalf as to the existence of that order, and the effects of that order are suspended during that period.

61 In the second place, it is necessary to examine whether Article 6 of Directive 2012/13 precludes the possibility of a person being convicted for having breached a driving ban at a time when the order imposing that ban had the force of *res judicata*, in the case where, on that date, that person was unaware of the existence of that order.

62 In that regard, it should be recalled, first, that the right established in Article 6 of Directive 2012/13 seeks to safeguard the effective exercise of the rights of defence of accused persons or suspects. The effectiveness of that right would therefore be seriously compromised if it were possible to rely on a penalty order, such as that at issue in the main proceedings, in order to find that the same person has committed a new offence, at a time when, unless he has been informed of the first set of criminal proceedings brought against him, that person has not yet been able to challenge the merits of that accusation.

63 It follows that Article 6 of Directive 2012/13 precludes the possibility of a person being convicted for failure to comply with an order such as that at issue in the main proceedings even though he was not sent that order, in accordance with the requirements set out in that provision, and, where appropriate, he was not able to dispute the facts alleged against him in that order, in accordance with the legal remedies established by the law of the Member State concerned and in compliance with EU law.

64 As stated in paragraph 57 of the present judgment, it would be contrary to Article 6 of Directive 2012/13 to require the person concerned to ensure that he initiates the necessary contact with the person authorised to accept service on his behalf in order to ascertain whether that person has forwarded to him correctly the penalty order concerning him.

65 Accordingly, Article 6 of Directive 2012/13 must be interpreted as meaning that it precludes a person being convicted on account of not being aware of an order, such as that at issue in the main proceedings, on a date on which it cannot be established that the competent national authorities ensured that he had actually been made aware of the contents of that order.

66 This interpretation of Article 6 of Directive 2012/13 also applies where the penalty order has become final at the time when the person who is the subject of that order is assumed to have infringed it, even if, from the moment at which that person became aware of that order, he did not initiate a procedure for restoration of the *status quo ante* seeking to remove the force of *res judicata* from that order.

67 Such an interpretation does not undermine compliance with the principle of *res judicata*. It is sufficient to note in this regard that the force of *res judicata* accorded to the order imposing a driving ban on a person is not infringed simply because the failure of that person to comply with that ban does not necessarily lead to the imposition of a new criminal penalty.

68 Secondly, it should be noted that the principle of the primacy of EU law, which establishes the pre-eminence of EU law over the law of the Member States, requires all Member-State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (see, to that effect, judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 53 and 54, and of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraphs 157 and 158).

69 In that regard, it should, inter alia, be pointed out that the principle that national law must be interpreted in conformity with EU law, by virtue of which the national court is required, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law, is inherent in the system of the Treaties, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of EU law when it determines the dispute before it. Moreover, any national court, hearing a case within its jurisdiction, has, as a body of a Member State, the obligation to disapply any provision of national law which is contrary to a provision of EU law having direct effect in the case pending before it (judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 55 and 61, and of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraphs 159 and 161).

70 Thirdly, it should be noted that, as stated, in essence, in recitals 14 and 41 of Directive 2012/13, that directive builds on the rights laid down in, inter alia, Article 47 of the Charter of Fundamental Rights ('the Charter') and seeks to promote those rights (see, to that effect, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 88).

71 In particular, as has been stated in paragraph 49 of the present judgment, the objective of Article 6 of that directive is to guarantee the effective exercise of the rights of the defence and the fairness of the proceedings. A provision of that kind therefore expressly establishes one aspect of the right to an effective remedy, enshrined in Article 47 of the Charter.

72 It follows that, like Article 47 of the Charter, which is sufficient in itself and does not need to be made more specific by provisions of EU or national law in order to confer on individuals a right which they may rely on as such, Article 6 of Directive 2012/13 must be regarded as having direct effect (see, by analogy, judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraphs 162 and 163).

73 Consequently, it is for the referring court, within the limits of its jurisdiction, to take all necessary measures to guarantee the full effectiveness of Article 6 of that directive.

74 As set out in paragraphs 62 and 63 of the present judgment, the effectiveness of Article 6 of Directive 2012/13 would be seriously compromised if a person were to be convicted on the ground that he had breached a ban imposed by a penalty order, such as that at issue in the main proceedings, which was not communicated to him in accordance with the requirements set out in that article.

75 In those circumstances, it is for the referring court, within the limits of its jurisdiction, to interpret its national law, as far as possible, in a manner that preserves the effectiveness of Article 6 of Directive 2012/13 and, failing that, to disapply any provision of national law which might be contrary to it.

76 It must be added that the German Government has stated before the Court that it was possible to adopt an interpretation of national law in conformity with the requirements of Article 6 of Directive 2012/13, in respect of the obligation on an accused person who is not resident within national territory to exercise due diligence, this, however, being a matter for the referring court to ascertain.

77 It follows from all of the foregoing considerations that Article 6 of Directive 2012/13 must be interpreted as meaning that:

– it does not preclude legislation of a Member State under which the two-week period for lodging an objection against an order which has imposed a driving ban on a person begins to run from the date on which that order is served on the person authorised to accept service on that person's behalf, provided that, as soon as that person becomes aware of it, he actually has a period of two weeks in which to lodge an objection against that order, where necessary following or in the course of a procedure for the person's position to be restored to the *status quo ante*, without having to demonstrate that he took the necessary steps to seek information without undue delay from the person authorised to accept service on his behalf as to the existence of that order, and the effects of that order are suspended during that period,

– it precludes legislation of a Member State under which a person residing in another Member State incurs a criminal penalty if, from the date on which it acquires the force of *res judicata*, that person does not comply with an order which has imposed a driving ban on him, even though that person was unaware of the existence of that order on the date on which he breached the driving ban resulting from that order.

78 In the light of the foregoing considerations, there is no need to examine whether the other provisions of EU law mentioned by the referring court preclude national legislation such as that at issue in the main proceedings.

Costs

79 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 6 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 as meaning that:

– **it does not preclude legislation of a Member State under which the two-week period for lodging an objection against an order which has imposed a driving ban on a person begins to run from the date on which that order is served on the person authorised to accept service on that person's behalf, provided that, as soon as that person becomes aware of it, he actually has a period of two weeks in which to lodge an objection against that order, where necessary following or in the course of a procedure for the person's position to be restored to the *status quo ante*, without having to demonstrate that he took the necessary steps to seek information without undue delay from the person authorised to accept service on his behalf as to the existence of that order, and the effects of that order are suspended during that period,**

– **it precludes legislation of a Member State under which a person residing in another Member State incurs a criminal penalty if, from the date on which it acquires the force of *res judicata*, that person does not comply with an order which has imposed a driving ban on him, even though that person was unaware of the existence of that order on the date on which he breached the driving ban resulting from that order.**

[Signatures]

[i] — The wording of the headwords of this document has been amended since it was first put online.