



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

1 August 2022\*

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – Directive 2010/64/EU – Right to interpretation and translation – Article 2(1) and Article 3(1) – Concept of an ‘essential document’ – Directive 2012/13/EU – Right to information in criminal proceedings – Article 3(1)(d) – Scope – Not implemented in domestic law – Direct effect – Charter of Fundamental Rights of the European Union – Article 47 and Article 48(2) – European Convention for the Protection of Human Rights and Fundamental Freedoms – Article 6 – Suspended prison sentence with probation – Breach of the probation conditions – Failure to translate an essential document and absence of an interpreter when that document was being drawn up – Revocation of the suspension of the prison sentence – Failure to translate the procedural acts relating to that revocation – Consequences for the validity of that revocation – Procedural defect resulting in relative nullity)

In Case C-242/22 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação de Évora (Court of Appeal, Évora, Portugal), made by decision of 8 March 2022, received at the Court on 6 April 2022, in the criminal proceedings against

**TL,**

intervening parties:

**Ministério Público,**

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, K. Lenaerts, President of the Court, L. Bay Larsen, Vice-President of the Court, acting as Judges of the First Chamber, I. Ziemele (Rapporteur) and A. Kumin, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 June 2022,

\* Language of the case: Portuguese.

after considering the observations submitted on behalf of:

- TL, by L.C. Esteves, advogado,
- the Portuguese Government, by P. Almeida, P. Barros da Costa and C. Chambel Alves, acting as Agents,
- the European Commission, by B. Rechená and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 July 2022,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 1 to 3 of 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) and of Article 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 request has been made in proceedings between TL and the Ministério Público (Public Prosecutor’s Office, Portugal) concerning the consequences of the lack of assistance of an interpreter and the failure to translate various documents relating to the criminal proceedings against TL.

### **Legal context**

#### ***European Union law***

##### *Directive 2010/64*

- 3 Recitals 5 to 7, 9, 14, 17, 22 and 33 of Directive 2010/64 state:
  - ‘(5) Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950, (“the ECHR”)] and Article 47 of the Charter of Fundamental Rights of the European Union [(“the Charter”)] enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the rights of the defence. This Directive respects those rights and should be implemented accordingly.
  - (6) Although all the Member States are party to the ECHR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

(7) Strengthening mutual trust requires a more consistent implementation of the rights and guarantees set out in Article 6 of the ECHR. It also requires, by means of this Directive and other measures, further development within the Union of the minimum standards set out in the ECHR and the Charter.

...

(9) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the fields of interpretation and translation in criminal proceedings.

...

(14) The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the ECHR, as interpreted in the case-law of the European Court of Human Rights. This Directive facilitates the application of that right in practice. To that end, the aim of this Directive is to ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial.

...

(17) This Directive should ensure that there is free and adequate linguistic assistance, allowing suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their rights of defence and safeguarding the fairness of the proceedings.

...

(22) Interpretation and translation under this Directive should be provided in the native language of the suspected or accused persons or in any other language that they speak or understand in order to allow them fully to exercise their right of defence, and in order to safeguard the fairness of the proceedings.

...

(33) The provisions of this Directive that correspond to rights guaranteed by the ECHR or the Charter should be interpreted and implemented consistently with those rights, as interpreted in the relevant case-law of the European Court of Human Rights and the Court of Justice of the European Union.'

4 Article 1 of Directive 2010/64, entitled 'Subject matter and scope', provides, in paragraphs 1 and 2 thereof:

'1. This Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

2. The right referred to in paragraph 1 shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, 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 they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.’

5 Article 2 of that directive, entitled ‘Right to interpretation’, provides:

‘1. Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

...

5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

...’

6 Article 3 of that directive, entitled ‘Right to translation of essential documents’, provides:

‘1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

3. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.

...

5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

...’

*Directive 2012/13*

7 Recitals 5, 7, 8, 10, 19, 25 and 40 to 42 of Directive 2012/13 state:

‘(5) Article 47 of the [Charter] and Article 6 of the [ECHR] enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the rights of the defence.

...

(7) Although all the Member States are party to the ECHR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

(8) Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees arising from the Charter and from the ECHR.

...

(10) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the field of information in criminal proceedings.

...

(19) The competent authorities should inform suspects or accused persons promptly of [their] rights ... In order to allow the practical and effective exercise of those rights, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person ...

...

(25) Member States should ensure that, when providing information in accordance with this Directive, suspects or accused persons are provided, where necessary, with translations or interpretation into a language that they understand, in accordance with the standards set out in Directive [2010/64].

...

(40) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the [ECHR] as interpreted in the case-law of the European Court of Human Rights.

(41) This Directive respects fundamental rights and observes the principles recognised by the Charter. 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.

(42) The provisions of this Directive that correspond to rights guaranteed by the ECHR should be interpreted and implemented consistently with those rights, as interpreted in the case-law of the European Court of Human Rights.’

8 Article 1 of Directive 2012/13, entitled ‘Subject matter’, is worded as follows:

‘This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. ...’

9 Article 2 of that directive, entitled ‘Scope’, provides, in paragraph 1:

‘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.’

10 Article 3 of that directive, entitled ‘Right to information about rights’, provides:

‘1. 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:

...

(d) the right to interpretation and translation;

...

2. Member States shall ensure that the information provided for under paragraph 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.’

### ***Portuguese law***

11 Article 92 of the Código do processo penal (Code of Criminal Procedure; ‘the CCP’), entitled ‘Language of acts and appointment of an interpreter’, provides, in paragraphs 1 and 2 thereof:

‘1. The Portuguese language is to be used in both written and oral procedural acts, on pain of nullity.

2. Where a person with no knowledge or command of Portuguese is required to take part in proceedings, a suitable interpreter must be appointed, free of charge for that person.’

12 Under Article 120 of the CCP:

‘1. Any nullity other than those referred to in the preceding article must be pleaded by the parties concerned and shall be subject to the rules laid down in the present article and in the following article.

2. In addition to those penalised in other legal provisions, the following situations shall constitute nullities which must be pleaded:

...

(c) failure to appoint an interpreter, in cases where the law deems it mandatory.

...

3. The nullities referred to in the preceding paragraphs must be pleaded:

(a) in the event of the nullity of an act at which the person concerned is present, before that act is finalised;

...'

13 Article 122 of the CCP, entitled 'Effects of nullity' provides, in paragraph 1 thereof:

'Nullities shall entail the invalidity of the act in which they are found, as well as that of ancillary acts which they may affect'.

14 Article 196 of the CCP, relating to the 'declaration of identity and residence' (*Termo de Identidade e Residência*; 'the DIR'), is worded as follows:

'1. The judicial authority or criminal police body must, in the course of the procedure, require any person under investigation to make a [DIR], even if that person has already been identified ...

2. The person under investigation shall indicate his or her place of residence, place of work or any other address of his choice.

3. The declaration must indicate that the following information and obligations have been communicated to the person whose criminal liability is being determined:

(a) the obligation to appear before the competent authority or to remain at that authority's disposal where required by law or where the person has been duly notified;

(b) the obligation not to change residence or to be absent from that residence for more than five days without notifying the new address or the place where he or she may be located;

(c) that subsequent notifications will be effected by ordinary post to the address mentioned in paragraph 2, unless the person whose criminal liability is being determined notifies another address by an application delivered or sent by registered post to the registry where the case file is being held at that time;

(d) failure to comply with the provisions of the previous paragraphs will legitimise his or her representation by a lawyer in all the procedural acts in which he or she is entitled or required to participate in person, and the holding of the trial in his or her absence ...;

(e) in the event of a conviction, the [DIR] shall lapse only when the sentence is spent.

...'

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 15 On 10 July 2019, TL, a Moldavian citizen who does not have a command of the Portuguese language, was placed under judicial investigation, in Portugal, in connection with the offences of resisting and coercing an official, reckless driving of a road vehicle and driving without a valid licence. The formal record of the placement under investigation was translated into Romanian, the official language of Moldova.
- 16 On the same day, the DIR was adopted by the competent authorities, without an interpreter being appointed and without that document being translated into Romanian.
- 17 By judgment of 11 July 2019, which became final on 26 September 2019, TL was sentenced to 3 years' imprisonment, suspended for the same period with probation, an additional penalty prohibiting TL from driving motor vehicles for a period of 12 months and a fine of EUR 6 per day for 80 days, that is to say, a total of EUR 480. During the trial, TL was assisted by a lawyer and an interpreter.
- 18 With a view to implementing the probation scheme prescribed by the judgment of 11 July 2019, the competent authorities tried unsuccessfully to contact TL at the address stated in the DIR.
- 19 TL was then summoned to appear by an order of the Tribunal Judicial da Comarca de Beja (District Court, Beja, Portugal) of 7 January 2021, notified on 12 January 2021 to the address indicated in the DIR, in order to be heard in respect of his failure to comply with the conditions of the probation scheme prescribed by the judgment of 11 July 2019. On 6 April 2021, a further notification of that order was made at the same address. Those two notifications were made in Portuguese.
- 20 Since TL did not appear on the date indicated, that court, by order of 9 June 2021, revoked the suspension of the prison sentence. That order, which was notified on 25 June 2021 in Portuguese to TL at the address indicated in the DIR and to his lawyer, became final on 20 September 2021.
- 21 On 30 September 2021, TL was arrested at his new address for the purpose of enforcing his sentence. He has been imprisoned since that date.
- 22 On 11 October 2021, TL appointed a new lawyer and, on 18 November 2021, he brought an action seeking a declaration of the nullity of, inter alia, the DIR, the order of 7 January 2021 summoning him to appear and the order of 9 June 2021 revoking the suspension of the prison sentence.
- 23 In support of that action, TL claimed that, because of a change of residence after the DIR was drawn up, he could not have been contacted at the address indicated in the DIR and, consequently, he could not have received the notifications of those orders. He submitted that he had not disclosed that change of residence because he had not been aware of the obligation to do so or of the consequences of a failure to comply with that obligation, since the DIR, in which that obligation and those consequences were set out, had not been translated into Romanian. In addition, he had not been assisted by an interpreter either on that occasion or when the formal record of his placement under investigation was being drawn up. Lastly, neither the order of



7 January 2021 summoning him to appear following the failure to comply with the conditions of the probation scheme nor the order of 9 June 2021 revoking the suspension of the prison sentence had been translated into a language which he speaks or understands.

- 24 At first instance, the Tribunal Judicial da Comarca de Beja (District Court, Beja) dismissed the action on the ground that, although the procedural defects invoked by TL were established, they had been rectified, since TL had not invoked them within the periods laid down in Article 120(3) of the CCP.
- 25 The referring court, hearing an appeal against that decision at first instance, has doubts as to whether that national provision is compatible with Directives 2010/64 and 2012/13, read in conjunction with Article 6 ECHR.
- 26 First, that court notes that those directives have not yet been transposed into Portuguese law, even though the periods for transposition have expired. It considers, however, that the relevant provisions of those directives must be deemed to have direct effect and therefore apply directly to the dispute in the main proceedings, since they are unconditional, sufficiently clear and precise and confer on individuals a right to interpretation, translation and information in criminal proceedings.
- 27 Secondly, the referring court considers that the acts at issue in the main proceedings, namely the DIR, the order of 7 January 2021 summoning TL to appear and the order of 9 June 2021 revoking the suspension of the prison sentence, constitute ‘essential documents’ within the meaning of Article 3(1) and (2) of Directive 2010/64, given the importance of such acts for the rights of defence of persons whose criminal liability is being determined and having regard to the procedural information provided therein. In that context, it emphasises, in particular, that the DIR is the means by the which the person concerned is informed of the information relating to his or her residence obligations and, in particular, the obligation to inform the authorities of any change of address.
- 28 In the light of those considerations, the referring court questions whether it is necessary to set aside the national legislation at issue in the main proceedings, since it provides that, as in the present case, procedural defects linked to the lack of assistance by an interpreter and the failure to translate essential documents into a language understood by the person concerned must be invoked within prescribed periods, failing which the challenge will be time-barred.
- 29 In those circumstances, the Tribunal da Relação de Évora (Court of Appeal, Evora, Portugal) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is it possible to interpret Articles 1 to 3 of [Directive 2010/64] and Article 3 of [Directive 2012/13], alone or in conjunction with Article 6 of the ECHR, as meaning that they do not preclude a provision of national law which imposes a penalty of relative nullity, which must be pleaded, for failure to appoint an interpreter and to translate essential procedural documents for an accused person who does not understand the language of the proceedings, and which permits the rectification of that type of nullity owing to the passage of time?’

### **The request that the reference be dealt with under the urgent preliminary ruling procedure**

- 30 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.
- 31 In the present case, it must be found that the conditions laid down for the application of that procedure have been satisfied.
- 32 First, the request for a preliminary ruling concerns the interpretation of provisions of Directives 2010/64 and 2012/13, which fall within the fields covered by Title V of Part Three of the TFEU on the area of freedom, security and justice. Accordingly, that request may be dealt with under the urgent preliminary ruling procedure.
- 33 Secondly, as regards the criterion relating to urgency, it follows from settled case-law that that criterion is satisfied where the person concerned in the case in the main proceedings is, at the time when the request for a preliminary ruling is made, deprived of his or her liberty and that the question whether he or she may continue to be held in custody depends on the outcome of the dispute in the main proceedings (judgment of 28 April 2022, *C and CD (Legal obstacles to the execution of a decision on surrender)*, C-804/21 PPU, EU:C:2022:307, paragraph 39 and the case-law cited).
- 34 It is apparent from the description of the facts provided by the referring court that TL, the person concerned in the main proceedings, was in fact deprived of his liberty at the time when the request for a preliminary ruling was made.
- 35 In addition, the referring court asks the Court about the compatibility with EU law of the application, in circumstances such as those at issue in the main proceedings, of national legislation that makes the possibility of invoking certain defects which vitiate criminal proceedings and which have led, inter alia, to the revocation of the suspension of the prison sentence imposed on the person concerned subject to compliance with prescribed time limits, with the result that that court could, depending on the answer given by the Court to the question referred, be led to annul the vitiated acts and consequently, order that TL be released.
- 36 In those circumstances, on 12 May 2022 the First Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent procedure.

### **Consideration of the question referred**

- 37 Under the cooperation procedure provided for in Article 267 TFEU, even if, formally, the referring court has limited its question to the interpretation of a particular provision of EU law, that does not prevent the Court from providing the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is, in this regard, for the Court to extract from all the information provided by the national court, in particular

from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings (judgment of 15 July 2021, *DocMorris*, C-190/20, EU:C:2021:609, paragraph 23 and the case-law cited).

- 38 Since the question referred for a preliminary ruling refers to Articles 1 to 3 of Directive 2010/64 and Article 3 of Directive 2012/13, considered in isolation or in conjunction with Article 6 ECHR, it should be borne in mind, first, that the latter provision guarantees the right to a fair trial and respect for the rights of the defence, which includes, in accordance with Article 6(3) ECHR, the right of every accused person to be informed promptly, in a language which he or she speaks or understands and in detail, of the nature and cause of the accusation against him or her and to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court.
- 39 In addition, Article 52(3) of the Charter states that, in so far as that charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights must be the same as those laid down by the ECHR. In addition, according to the explanations relating to Article 47 and Article 48(2) of the Charter – which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into consideration for the interpretation of the Charter – those provisions corresponds to Article 6(1) and Article 6(2) and (3) ECHR (see, to that effect, judgment of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 101).
- 40 Furthermore, as regards the interpretation of the directives at issue in the main proceedings, it must be borne in mind that, in accordance with recitals 5 to 7, 9 and 33 and Article 1 of Directive 2010/64 and recitals 5, 7, 8, 10 and 42 and Article 1 of Directive 2012/13, those directives are intended to establish common minimum rules on the protection of the procedural rights and guarantees arising from Article 47 and Article 48(2) of the Charter and from Article 6 ECHR, in particular in the fields of interpretation, translation and information in criminal proceedings, and that those rules should be interpreted and implemented consistently with those rights and guarantees, in order to strengthen mutual trust in the criminal justice systems of Member States and thus increase the efficiency of judicial cooperation in that area.
- 41 Thus, Article 2(1) of Directive 2010/64 requires Member States to ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with the assistance of an interpreter during criminal proceedings before investigative services and judicial authorities, while Article 3(1) of that directive requests them to ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings. As regards Article 3(1)(d) of Directive 2012/13, it requires Member States to ensure that suspects or accused persons are provided promptly with information on their right to interpretation and translation, in order to allow for that right to be exercised effectively.
- 42 Accordingly, it must be held, first, that the dispute at issue in the main proceedings concerns, in particular, Article 2(1) and Article 3(1) of Directive 2010/64 and Article 3(1)(d) of Directive 2012/13 and, secondly, that those provisions give specific expression to the fundamental rights to a fair trial and to respect for the rights of the defence, as enshrined in particular in Article 47 and Article 48(2) of the Charter and must be interpreted in the light of those provisions.

- 43 In those circumstances, it must be noted that the referring court asks, in essence, whether Article 2(1) and Article 3(1) of Directive 2010/64 and Article 3(1)(d) of Directive 2012/13, read in the light of Article 47 and Article 48(2) of the Charter, must be interpreted as precluding national legislation under which, first, the infringement of the rights laid down in those provisions of those directives may be effectively invoked only by the beneficiary of those rights and, secondly, that infringement must be pleaded within a prescribed period, failing which the challenge will be time-barred.
- 44 In that regard, it should be noted, first of all, that it is apparent from the order for reference that TL was not assisted by an interpreter when the DIR was being drawn up and that that document was not translated for him into a language which he speaks or understands. Furthermore, neither the order of 7 January 2021 summoning him to appear following the alleged failure to comply with the probation conditions, nor the order of 9 June 2021 revoking the suspension of the prison sentence was translated into a language understood by TL.
- 45 Next, although the order for reference does not expressly state that TL was not informed, when he was placed under judicial investigation, of his right to an interpreter and to the translation of the essential documents of the criminal proceedings against him, it appears that the referring court proceeds on the implicit basis that that information was not provided, which is why it is asking the Court not only about the interpretation of Directive 2010/64 but also that of Directive 2012/13.
- 46 Lastly, the order for reference states that Article 92(2) of the CCP, which is applicable to the facts in the main proceedings, requires the appointment of an interpreter in proceedings concerning a person who is not familiar with or who does not have a command of the Portuguese language and that, in accordance with Article 120 of the CCP, the failure to appoint an interpreter during the drawing up of an act at which the person concerned is present may entail the nullity of that act, subject to the double condition that (i) the request for a declaration of nullity is made by that person and (ii) that request is made before the finalisation of that act.
- 47 Accordingly, it is in the light of that context that the question, as reformulated in paragraph 43 of the present judgment, must be examined.
- 48 In order to answer that question, it should be noted, in the first place, that, even if Article 2(1) and Article 3(1) of Directive 2010/64 and Article 3(1) (d) of Directive 2012/13 have not been transposed or have not been fully transposed into the Portuguese legal system – a situation which the referring court considers to be established, whereas the Portuguese Government appears to dispute it – TL may rely on the rights arising from those provisions, since, as observed by the referring court as well as by all of the parties which intervened before the Court, those provisions have direct effect.
- 49 It should be recalled that, whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the Member State concerned, where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (judgment of 14 January 2021, *RTS infra and Aannemingsbedrijf Norré-Behaegel*, C-387/19, EU:C:2021:13, paragraph 44 and the case-law cited).

- 50 In that regard, the Court has stated that a provision of EU law is, first, unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the institutions of the European Union or by the Member States and, secondly, sufficiently precise to be relied on by an individual and applied by a court where it sets out an obligation in unequivocal terms (judgment of 14 January 2021, *RTS infra and Aannemingsbedrijf Norré-Behaegel*, C-387/19, EU:C:2021:13, paragraph 46 and the case-law cited).
- 51 Furthermore, the Court has held that, even though a directive leaves the Member States a degree of latitude when they adopt rules in order to implement it, a provision of that directive may be regarded as unconditional and precise where it imposes on Member States in unequivocal terms a precise obligation as to the result to be achieved, which is not coupled with any condition regarding application of the rule laid down by it (judgment of 14 January 2021, *RTS infra and Aannemingsbedrijf Norré-Behaegel*, C-387/19, EU:C:2021:13, paragraph 47 and the case-law cited).
- 52 Since, as noted by the Advocate General in points 58 to 62 of his Opinion, Article 2(1) and Article 3(1) of Directive 2010/64 and Article 3(1)(d) of Directive 2012/13 state, in a precise and unconditional manner, the content and scope of the rights of every suspected or accused person to receive interpretation services and the translation of essential documents, and to be informed of those rights, those provisions must be regarded as having direct effect, with the result that any person benefiting from those rights may rely on them against a Member State, before the national courts.
- 53 In the second place, it should be noted that the three procedural acts at issue in the main proceedings, namely the DIR, the order of 7 January 2021 summoning TL to appear and the order of 9 June 2021 revoking the suspension of the prison sentence, fall within the scope of Directives 2010/64 and 2012/13 and constitute, inter alia, essential documents of which a written translation should have been provided to TL under Article 3(1) of Directive 2010/64.
- 54 In that regard, it should be borne in mind that, in accordance with Article 1(2) of Directive 2010/64 and Article 2(1) of Directive 2012/13, the rights conferred therein apply to persons from the time they 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.
- 55 Thus, it follows from the provisions cited in the previous paragraph that that directive applies to criminal proceedings in so far as the purpose of those proceedings is to determine whether the suspect or accused person has committed a criminal offence (see, to that effect, judgment of 16 December 2021, *AB and Others (Revocation of an amnesty)*, C-203/20, EU:C:2021:1016, paragraph 69).
- 56 However, proceedings the purpose of which is not to determine a person's criminal liability, such as a legislative procedure relating to the revocation of an amnesty or to a judicial procedure the purpose of which is to review the compliance of that revocation with the national constitution, cannot come within the scope of Directive 2012/13 (see, to that effect, judgment of 16 December 2021, *AB and Others (Revocation of an amnesty)*, C-203/20, EU:C:2021:1016, paragraphs 70 and 71).

- 57 Similarly, a special procedure, such as a procedure which has as its purpose the recognition of a final judicial decision handed down by a court of another Member State, of which the person concerned has already obtained a translation in accordance with Article 3 of Directive 2010/64, does not fall within the scope of that directive, since, first, such a procedure takes place, by definition, after the final determination of whether the suspected or accused person committed the offence in question and, where applicable, after the sentencing of that person and, secondly, a new translation of that judicial decision is not necessary for the purpose of ensuring the right to a fair hearing or the right to effective judicial protection of the person concerned and is not, therefore, justified in the light of the objectives pursued by Directive 2010/64 (see, to that effect, judgment of 9 June 2016, *Balogh*, C-25/15, EU:C:2016:423, paragraphs 37 to 40).
- 58 In that context, as, inter alia, recitals 14, 17 and 22 of Directive 2010/64 state, that directive seeks to ensure, for suspected or accused persons who do not speak or understand the language of the proceedings, the right to interpretation and translation by facilitating the application of that right with a view to ensuring that those persons have a fair trial. Thus, Article 3(1) and (2) of that directive provide that Member States are to ensure that those persons are, within a reasonable period of time, provided with a written translation of all essential documents, including, inter alia, any decision depriving them of liberty, any charge or indictment, and any judgment handed down in their regard, so as to allow them to exercise their rights of defence and to safeguard the fairness of the proceedings (see, to that effect, judgment of 9 June 2016, *Balogh*, C-25/15, EU:C:2016:423, paragraph 38).
- 59 It should be pointed out that, unlike the situations at issue in the cases that gave rise to the judgments of 16 December 2021, *AB and Others (Revocation of an amnesty)* (C-203/20, EU:C:2021:1016) and of 9 June 2016, *Balogh* (C-25/15, EU:C:2016:423), the three procedural acts at issue in the main proceedings are, as noted, in essence, both by the referring court and all the interested parties who intervened in the proceedings before the Court, an integral part of the procedure which established the criminal liability of TL and the application of Directives 2010/64 and 2012/13 to those acts is fully justified by the objectives pursued by those directives.
- 60 Thus, as regards, first, the DIR, it is apparent from the order for reference and from Article 196 of the CCP that that declaration, which is drawn up when a person is placed under investigation as a step in the criminal proceedings, constitutes a preliminary coercive measure which sets out a series of obligations for that person and the procedural consequences in the event of non-compliance with those obligations and, in particular, informs the competent authorities of the address at which that person is supposed to be available, that person being required, inter alia, to declare any change in that respect. In the event of a conviction, that coercive measure remains in force until the sentence is spent. Thus, failure to comply with that coercive measure may lead to the revocation of the suspension of a sentence. In view of the obligations and significant consequences which the DIR entails for the person concerned throughout the criminal proceedings and the fact that that person is informed of that obligation and of those consequences by that declaration, that document constitutes, as the referring court rightly notes, an ‘essential document’, within the meaning of Article 3(1) and (2) of Directive 2010/64, and paragraph 3 of that article states, moreover, that ‘the competent authorities shall, in any given case, decide whether any other document is essential’.
- 61 Accordingly, under Article 2(1) and Article 3(1) of Directive 2010/64, TL was entitled to a written translation of the DIR and to the assistance of an interpreter when that declaration was being drawn up. In addition, in accordance with Article 3(1)(d) of Directive 2012/13, TL had the right to be informed of those rights. In that regard, it is apparent from recital 19 of Directive 2012/13

that the information referred to in that directive should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority, in order to allow the practical and effective exercise of his or her procedural rights.

- 62 Although the Portuguese Government indicated at the hearing before the Court that, as a general rule, the rights provided for by the provisions mentioned in the previous paragraph are respected in criminal proceedings conducted in Portugal against persons who do not understand Portuguese, it is nevertheless apparent from the order for reference that that was not the case in the situation at issue in the main proceedings, since TL was not informed of the obligation, laid down in Article 196 of the CCP, not to change his place of residence without communicating his new address and that he was therefore unable to fulfil that obligation. As a result, the authorities responsible for implementing the probation conditions attempted unsuccessfully to contact him at the address indicated in the DIR. Similarly, the order of 7 January 2021 summoning TL to appear following the failure to comply with those conditions and the order of 9 June 2021 revoking the suspension of the prison sentence were sent to that address, and not to his new address, and therefore TL could not have been aware of those orders.
- 63 Secondly, it should be noted that, as the Portuguese Government and the Commission have observed, those orders constitute procedural acts which are ancillary to the sentencing of the person concerned and which still form part of the criminal proceedings, within the meaning of Directives 2010/64 and 2012/13.
- 64 In that regard, the application of Directives 2010/64 and 2012/13 to procedural acts relating to a potential revocation of the suspension of the prison sentence imposed on the person concerned, who was not enabled to understand the essential documents drawn up in the course of the criminal proceedings, is necessary in the light of the objective of those directives of ensuring respect for the right to a fair trial, as enshrined in Article 47 of the Charter, and respect for the rights of the defence, as guaranteed in Article 48(2) of the Charter, and thus to strengthen mutual trust in the criminal justice systems of the Member States in order to increase the efficiency of judicial cooperation in that field.
- 65 Those fundamental rights would be infringed if a person, who has been sentenced for a criminal offence to a term of imprisonment suspended with probation, were deprived – because of the failure to translate the summons or the absence of an interpreter at the hearing relating to the possible revocation of that suspension – of the opportunity to be heard, *inter alia*, on the reasons for which he or she had failed to comply with the probation conditions. Thus, that opportunity presupposes, first, that the person concerned receives the summons to the hearing on the possible revocation of the suspension in a language which he or she speaks or understands, failing which he or she cannot be regarded as having been duly summoned and informed of the reason for that summons, and, secondly, that he or she may, if necessary, be assisted by an interpreter at that hearing, in order to be able to explain the reasons for his or her failure to comply with the probation conditions, which may, depending on the circumstances, be legitimate and thus justify the continued suspension of the sentence.
- 66 Furthermore, since the decision revoking the suspension entails the execution of the prison sentence imposed on the person concerned, that decision must also be translated where the person concerned does not speak or understand the language of the proceedings, in order to enable him, *inter alia*, to understand the reasons for that decision and, where appropriate, to bring an appeal against that decision.

- 67 That interpretation is supported by the scheme of Directive 2010/64. While, first, in accordance with Article 1(2) thereof, that directive refers expressly to ‘sentencing’ and, secondly, in accordance with Article 3(2), the concept of ‘essential documents’ expressly includes ‘any decision depriving a person of his liberty’, it would be inconsistent to exclude from the scope of that directive acts relating to the potential revocation of the suspension of a sentence, since those acts may ultimately lead to the imprisonment of the person concerned and, thus to the most significant interference in his or her fundamental rights during the criminal proceedings.
- 68 Moreover, the Court has already held that where a procedural act is addressed to an individual only in the language of the proceedings in question even though the individual has no command of that language, that individual is unable to understand what is alleged against him or her, and cannot therefore exercise his or her rights of defence effectively if he or she is not provided with a translation of that act in a language which he or she understands (see, to that effect, judgment of 12 October 2017, *Sleutjes*, C-278/16, EU:C:2017:757, paragraph 33).
- 69 In the present case, it is apparent from the order for reference that neither the order of 7 January 2021 summoning TL to appear, nor the order of 9 June 2021 revoking the suspension of the prison sentence was translated into Romanian. Furthermore, it appears that TL was not informed of his right to receive a translation of those orders. Lastly, it does not appear from the documents before the Court that, at the hearing relating to the breaches of the probation conditions, TL was assisted by an interpreter or had even been informed of that right.
- 70 In those circumstances, and as follows from paragraphs 61 and 69 above, the rights that TL derives from Article 2(1) and Article 3(1) of Directive 2010/64 and Article 3(1)(d) of Directive 2012/13 were infringed in the criminal proceedings at issue in the main proceedings.
- 71 In the third place, as regards the consequences of those infringements, it follows from the findings of the referring court that the infringement of the right to interpretation constitutes, in the Portuguese legal system, a procedural defect which entails, in accordance with Article 120 of the CCP, the relative nullity of the corresponding procedural acts. However, first, under paragraph 2(c) of that article, it is for the person concerned to plead the infringement of the right in question. Secondly, under paragraph 3(a) of that article, where the act in question is drawn up in the presence of the person concerned, the procedural defect must be invoked before the finalisation of that act, failing which the challenge will be time-barred.
- 72 In response to a question put by the Court at the hearing, the Portuguese Government confirmed that Article 120 of the CCP was also applicable to the pleading of defects arising from the infringement of the right to translation of essential documents in criminal proceedings, which it is for the referring court to ascertain, as is the applicability of that provision to the infringement of the right to be informed of the rights to interpretation and to the translation of essential documents.
- 73 In that respect, it must be borne in mind that Article 2(5) and Article 3(5) of Directive 2010/64 require Member States to ensure that, in accordance with procedures in national law, the persons concerned have the right to challenge a decision finding that there is no need for interpretation or translation.



- 74 However, neither that directive nor Directive 2012/13 specifies the consequences of an infringement of the rights provided for therein, inter alia in a situation such as that at issue in the main proceedings, where the person concerned has not been informed of the existence of such a decision, of his right to obtain the assistance of an interpreter and a translation of the documents in question, or even of the establishment of some of those documents.
- 75 According to settled case-law, in the absence of specific EU rules governing the matter, the rules implementing the rights which individuals derive from EU law are a matter for the domestic legal system of the Member States in accordance with the principle of the procedural autonomy of the Member States. However, those rules must not be less favourable than those governing similar domestic actions (principle of equivalence); nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 27 and the case-law cited).
- 76 As regards the principle of equivalence, subject to the verifications to be carried out by the referring court, nothing in the file before the Court suggests that that principle would be infringed by the application of Article 120 of the CCP in the case of an infringement of rights arising from Directives 2010/64 and 2012/13. That article governs the conditions under which a nullity may be invoked, irrespective of the question whether that nullity results from the infringement of a rule which has its basis in provisions of national law or in provisions of EU law.
- 77 As regards the principle of effectiveness, although Directives 2010/64 and 2012/13 do not set out the detailed rules for the implementation of the rights which they lay down, those rules cannot undermine the objective pursued by those directives, namely safeguarding the fairness of criminal proceedings and ensuring respect for the rights of the defence of suspects and accused persons during those 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).
- 78 First, the obligation, imposed on national authorities by Article 3(1)(d) of Directive 2012/13, to inform suspects and accused persons of their rights to interpretation and translation, laid down in Article 2(1) and Article 3(1) of Directive 2010/64, is of essential importance in order effectively to guarantee those rights and, thus, to comply with Article 47 and Article 48(2) of the Charter. Without that information, the person concerned could not know the existence and scope of those rights or demand that they be respected, with the result that he or she would not be able to exercise his or her rights of defence fully and have a fair trial.
- 79 Thus, to require the person concerned by criminal proceedings conducted in a language which he or she does not speak or understand to plead that he or she has not been informed of his or her rights to interpretation and translation, laid down in Article 2(1) and Article 3(1) of Directive 2010/64, within a prescribed period, failing which that challenge will be time-barred, would have the effect of rendering meaningless the right to be informed, guaranteed by Article 3(1)(d) of Directive 2012/13, and would consequently undermine that person's rights to a fair trial, enshrined in Article 47 of the Charter, and to respect for the rights of the defence, enshrined in Article 48(2) of the Charter. In the absence of such information, that person could not be aware that his or her right to information has been infringed and would therefore be unable to plead that infringement.

- 80 Furthermore, that conclusion also applies, for the same reason, as regards the rights to interpretation and translation, laid down in Article 2(1) and Article 3(1) of Directive 2010/64 respectively, where the person concerned has not been informed of the existence and scope of those rights.
- 81 In the present case, since, as noted in paragraph 45 of the present judgment, the order for reference does not expressly state that TL was not informed, when he was placed under examination, of his right to an interpreter and to the translation of the essential documents of the criminal proceedings brought against him, it is for the referring court to ascertain, if necessary, whether or not he was given that information.
- 82 Secondly, even where the person concerned has actually received that information in good time, it is also necessary, as the Advocate General observed, in essence, in points 83 to 87 of his Opinion, for that person to be aware of the existence and content of the essential document in question and of the effects arising from it, in order to be able to invoke an infringement of his or her right to the translation of that document or of his or her right to the assistance of an interpreter when that document is being drawn up, guaranteed by Article 2(1) and Article 3(1) of Directive 2010/64, and thus to be able to have a fair trial in compliance with his or her rights of defence, as required by Article 47 and Article 48(2) of the Charter.
- 83 Accordingly, that principle of effectiveness would be undermined if the period in which, under a national procedural provision, an infringement of the rights granted by Article 2(1) and Article 3(1) of Directive 2010/64 and Article 3(1)(d) of Directive 2012/13 may be invoked began to run even before the person concerned was informed, in a language which he speaks or understands, first, of the existence and scope of his or her right to interpretation and translation and, secondly, of the existence and content of the essential document in question as well as its effects (see, by analogy, judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraphs 66 and 67).
- 84 In the present case, it follows from the findings made by the referring court, which alone has jurisdiction to interpret the provisions of its national law, that the mere application of Article 120 of the CCP to the situation at issue in the main proceedings, as it appears to have been carried out by the court of first instance, was not capable of ensuring that the requirements arising from the preceding paragraph of the present judgment were respected.
- 85 In particular, it is apparent from the information before the Court that, pursuant to Article 120(3)(a) of the CCP, where an act is drawn up in the presence of the person concerned, the nullity of that act must be pleaded before the act is finalised, failing which that challenge will be time barred.
- 86 That means, in particular in respect of an act such as the DIR, that a person in a situation such as that of TL is deprived, de facto, of the possibility of pleading its nullity. Where that person, who does not know the language of the criminal proceedings, is unable to understand the meaning of the procedural act and its implications, he or she does not have sufficient information to assess the need for the assistance of an interpreter when it is drawn up or for a written translation of that document, which may appear to be a mere formality. Furthermore, the possibility of invoking the nullity of that act is subsequently prejudiced, first, by the lack of information as to the right to such a translation and to the assistance of an interpreter and, secondly, by the fact that the period for raising that nullity expires, in essence, instantaneously, solely on account of the finalisation of the act in question.

- 87 In those circumstances, it is for the referring court to ascertain whether it can arrive at an interpretation of the national legislation which makes it possible to comply with the requirements arising from paragraph 83 of the present judgment and thus to guarantee the exercise of the rights of the defence in the context of a fair trial.
- 88 In the event that the referring court were to take the view that such an interpretation of the national legislation at issue in the main proceedings is not possible, it should be borne in mind that the principle of primacy places the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law under a duty, where it is unable to interpret national legislation in compliance with the requirements of EU law, to give full effect to the requirements of that law in the dispute before it, if necessary disapplying of its own motion any national legislation or practice, even if adopted subsequently, which is contrary to a provision of EU law with direct effect, and it is not necessary for that court to request or await the prior setting aside of such national legislation or practice by legislative or other constitutional means (judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C-205/20, EU:C:2022:168, paragraph 37).
- 89 In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 2(1) and Article 3(1) of Directive 2010/64 and Article 3(1)(d) of Directive 2012/13, read in the light of Articles 47 and 48(2) of the Charter and the principle of effectiveness, must be interpreted as precluding national legislation under which the infringement of the rights provided for by those provisions of those directives must be invoked by the beneficiary of those rights within a prescribed period, failing which that challenge will be time-barred, where that period begins to run before the person concerned has been informed, in a language which he or she speaks or understands, first, of the existence and scope of his or her right to interpretation and translation and, secondly, of the existence and content of the essential document in question and the effects thereof.

### Costs

- 90 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 (First Chamber) hereby rules:

**Article 2(1) and Article 3(1) of 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 and Article 3(1)(d) 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, read in the light of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union and the principle of effectiveness, must be interpreted as precluding national legislation under which the infringement of the rights provided for by those provisions of those directives must be invoked by the beneficiary of those rights within a prescribed period, failing which that challenge will be time-barred, where that period begins to run before the person concerned has been informed, in a language which he or she speaks or understands, first, of the existence and scope of his or her right to interpretation and translation and, secondly, of the existence and content of the essential document in question and the effects thereof.**

[Signatures]