

**Case C-242/22 PPU****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

6 April 2022

**Referring court:**Tribunal da Relação de Évora – Secção Criminal – 2.<sup>a</sup> Subsecção  
(Portugal)**Date of the decision to refer:**

8 March 2022

**Appellant:**

TL

**Other party to the proceedings:**

Estado Português

**Subject matter of the main proceedings**

Appeal brought in criminal proceedings by TL before the Tribunal da Relação de Évora (Court of Appeal, Évora, Portugal) against the order of the Tribunal Judicial da Comarca de Beja (District Court, Beja, Portugal) dismissing TL's application for review of the nullity derived from the failure to appoint an interpreter and the lack of translation (TL is a Moldovan national who does not understand or speak Portuguese) at the time of the coercive measure of a declaration of identity and residence, the summons to appear in court to be heard under Article 495(2) of the Código de Processo Penal (Code of Criminal Procedure; 'CPP'), and the notification of the order revoking the suspension of execution of the sentence.

**Subject matter and legal basis of the request for a preliminary ruling**

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 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).

### **Question referred for a preliminary ruling**

‘Is it possible to interpret Articles 1 to 3 of [Directive 2010/64/EU] and Article 3 of [Directive 2012/13/EU] of the European Parliament and of the Council, 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?’

### **Provisions of European Union law relied on**

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: Articles 1 to 3.

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings: Articles 3 and 6.

### **Provisions of national law relied on**

Código de Processo Penal (Code of Criminal Procedure; ‘CPP’): Article 92(1) and (2), Article 120(1), (2)(c), and (3)(a) and (d), Article 122 and Article 196.

‘Article 92

Language of acts and appointment of interpreter

1. The Portuguese language shall be used in both written and oral procedural acts; failure to do so shall result in nullity.
2. Where a person who has no knowledge or command of the Portuguese language must take part in proceedings, a suitable interpreter shall be appointed, at no cost that person, including where the person presiding over the act or any of the participants in the proceedings have knowledge of the language used by that person.

...

Article 120

Nullity which must be pleaded

1. Any nullity other than that referred to in the previous article must be pleaded by the persons concerned and shall be subject to the rules laid down in this and the following article.

2. In addition to the nullity provided for in other statutory provisions, the following constitute nullity which must be pleaded:

...

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

...

3. The nullity referred to in the previous 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 concluded.

...

d) In the case of special proceedings, at the start of the hearing.

Article 122

Effects of a declaration of nullity

1. Nullity shall lead to the invalidity of the act in which it occurs and of all acts which flow from and may be affected by it.

2. A declaration of nullity shall determine which acts must be regarded as invalid and, where necessary and possible, shall direct that those acts be repeated ...

3. When a court makes a declaration of nullity, it shall order the preservation of all acts which may be excluded from the effects of such nullity.

Article 196

Declaration of identity and residence

...

3. The declaration must state that [the person under investigation] has been informed:

a) about the obligation to appear before the competent authority or to remain at that authority's disposal where the law stipulates this or where the person has been duly summoned for that purpose;

- b) about the obligation not to change residence or be absent from that residence for more than five days without notifying a new residence or the place where he may be located;
- c) that subsequent notifications will be effected by ordinary post to the address indicated in paragraph 2, unless the person under investigation notifies another address by request delivered or sent by certified post to the registry of the court in which the proceedings are being heard at that time;
- d) that failure to comply with the provisions of the previous paragraphs will legitimise his representation by a lawyer in all the procedural acts in which he is entitled or required to participate in person, and the holding of the trial in his absence ...;
- e) that, if he is convicted, the declaration of identity and residence will cease to produce effects only when the punishment is terminated.’

#### **Provisions of international law relied on**

Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950 (‘ECHR’): Article 6(3).

#### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 TL is of Moldovan nationality and does not understand or speak Portuguese. On 10 July 2019, TL was placed under judicial investigation. The relevant record was drawn up in Portuguese and translated into Romanian, the official language of Moldova. On the same date, the coercive measure of a declaration of identity and residence (‘DIR’) was adopted against him, in accordance with Article 196 of the CPP, and his address was stated in the relevant document.
- 2 TL was not provided with a translation of the DIR into Romanian, the official language of Moldova, and no interpreter was appointed when TL was officially placed under investigation and when he provided the DIR. At the trial, TL was assisted by a lawyer, and an interpreter, who swore to carry out her duties faithfully, was appointed to translate the proceedings at the trial.
- 3 By judgment given on 11 July 2019, which became final on 26 September 2019, TL was sentenced, with the imposition of concurrent punishments, for the offences of resisting and coercing an official, contrary to Article 347(2) of the Criminal Code, reckless driving of a motor vehicle, contrary to Articles 291(a) and (b) and 69(1)(a) of the Criminal Code, and driving without legal authorisation, contrary to Article 3(1) and (2) of Decree-law No 2/98, to a single punishment of three years’ imprisonment, the execution of which was conditionally suspended for three years, to an additional punishment of a ban on driving motor vehicles for

a period of 12 months, and to a fine of 80 days, at a daily rate of EUR 6, in the total amount of EUR 480.

- 4 A number of attempts by the Direção-Geral de Reinserção e Serviços Prisionais (Directorate General of Rehabilitation and Prison Services; ‘DGRSP’) to contact TL at the address stated in the DIR were unsuccessful, and there is no notification of change of address in the case file.
- 5 Following a decision of 7 January 2021, TL was, on 12 January 2021, issued with a summons, pursuant to Article 495(1) and (2) of the CPP, sent by ordinary post with a certificate of delivery through the letterbox to the address in the DIR, to appear in court in order to be heard in relation to the breach of the duties, rules of conduct and obligations which were imposed on him in the judgment referred to. On 6 April 2021, the summons was sent again, setting a new date, to the same address, by ordinary post with a certificate of delivery through the letterbox. The summonses were in Portuguese. TL failed to appear in court on the date indicated.
- 6 On 9 June 2021, an order was made revoking the suspension of execution of the sentence imposed on TL and it was decided to issue a warrant for arrest and imprisonment. That order was notified to TL’s lawyer and to TL, by ordinary post with a certificate of delivery through the letterbox, at the address stated in the DIR, on 25 June 2021, and it became final on 20 September 2021. The order was notified to TL in Portuguese but he was not provided with the relevant translation into the official language of Moldova, which is Romanian.
- 7 On 30 September 2021, TL was arrested for the purpose of serving a three-year prison sentence. The warrant was executed at his new address. TL has been in prison since that date.
- 8 On 11 October 2021, TL appointed a lawyer in the proceedings. Subsequently, he applied to the Tribunal Judicial da Comarca de Beja, Juízo de Competencia Genérica de Cuba (District Court, Beja, Court of General Jurisdiction, Cuba; ‘the lower court’) for a review of the nullity derived from the failure to appoint an interpreter and the failure to provide a translation of the following procedural acts:
  - Provision of Declaration of Identity and Residence (DIR).
  - Summons to be heard in person, under Article 495(2) of the CPP, in connection with the necessary conditions for revocation of the suspension of the prison sentence imposed on him in the proceedings.
  - Notification of the order adopted, revoking the suspension of execution of the sentence.
- 9 By order of 20 November 2021, the lower court dismissed the application lodged by TL, arguing that, since the failure to appoint an interpreter and the lack of a translation of the procedural documents in question constitute relative nullity

which must be pleaded, that nullity was rectified by the failure to plead it within the statutory periods laid down in Article 120(3)(a) and (d) of the CPP.

- 10 TL disagreed with that judgment and he therefore brought an appeal before the Tribunal da Relação de Évora (Court of Appeal, Évora; ‘the referring court’), claiming that the judgment under appeal should be quashed and replaced by another judgment declaring that the order placing him under judicial investigation, the DIR, the order revoking suspension of the execution of the sentence and the notification of that order are non-existent, and a declaration that all subsequent procedural documents are ineffective.

### **Essential arguments of the parties in the main proceedings**

#### *Arguments put forward by TL*

- 11 TL submits that, as regards the hierarchy of sources of law, the majority view in national academic legal writing and case-law is that the ECHR occupies an intermediate position between the Constitution of the Portuguese Republic (‘the Constitution’) and ordinary laws. Accordingly, although the ECHR is applicable in domestic Portuguese law with infra-constitutional force, it has, pursuant to Article 8(2) of the Constitution, greater force than ordinary laws and therefore, in the event of conflict with the CPP, the ECHR takes precedence.
- 12 The measures and minimum rules laid down in the ECHR, which are applied by European Union courts, were the basis for Directives 2010/64 and 2012/13. Thus, Directive 2010/64, which was published in the Official Journal of the European Union on 26 October 2010 and in respect of which the period for transposition in Portugal expired on 27 October 2013, has been directly applicable in that Member State since 28 October 2013, and therefore, in the light of the material date, it is applicable to this case.
- 13 The fact that Portugal has not transposed that directive does not mean that it is not in force in the Portuguese and European Union legal systems, regard being had to the principle of conforming interpretation. According to the case-law of the Court of Justice, even if such conforming interpretation is not possible, a directive may be directly applicable without having been transposed, provided that the transposition period has elapsed, the directive confers rights and the wording of the provision conferring those rights is sufficiently clear, precise and unconditional, as occurs in this case. Thus, despite the fact that it has not been transposed in Portugal, all the conditions are fulfilled for Directive 2010/64 to be directly effective in national law and to produce direct effect, specifically vertical direct effect, so that its direct applicability may be relied on before any court of the Union.
- 14 Accordingly, it is essential to define clearly the applicability and the guarantee of the right to an interpreter throughout the proceedings, since that right was

available to TL only at the trial. As regards the translation of procedural documents, Directive 2010/64 clearly sets out a list of documents which must be translated, which are defined as ‘minimum rights’, similar to Article 6(3) of the ECHR, expressed as a minimum number of documents which EU law considered it appropriate and reasonable to stipulate.

- 15 In that connection, in the judgment of 12 October 2017, *Sleutjes* (C-278/16, EU:C:2017:[757]), the Court of Justice held that ‘Article 3 of Directive 2010/64 must be interpreted as meaning that a measure, such as an order provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a “document which is essential”, within the meaning of Article 3(1) of that directive, of which a written translation must, in accordance with the formal requirements laid down in that provision, be provided to suspected or accused persons who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus of safeguarding the fairness of the proceedings.’
- 16 The Portuguese legislation on criminal procedure contains no provision laying down a similar list of minimum rights or documents that must be translated; nor does it stipulate the documents which must be translated as a minimum. However, the Portuguese State and Portuguese courts are directly required to respect that right to the translation of essential documents, and have the obligation to order, as a general rule, the translation of ‘any decision depriving a person of his liberty, any charge or indictment, and any judgment’, together with the additional documents stipulated by Article 3(3) of that directive.
- 17 Accordingly, the following procedural documents should have been translated: the order placing TL under judicial investigation, the DIR, the order revoking the suspension of execution of the sentence, on the ground that it is a decision imposing a penalty and depriving a person of his liberty, and the notification of that order; those translations were not carried out.
- 18 In addition, the judgment of 12 October 2017, *Sleutjes* (C-278/16, EU:C:2017:[757]) held that where a decision imposing a penalty ‘... 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, and cannot therefore exercise his rights of defence effectively if he is not provided with a translation of that order in a language which he understands.’
- 19 On the other hand, Directive 2012/13 on the right to information in criminal proceedings has been directly applicable in Portugal since 2 June 2014 and is also applicable to the present proceedings in the light of the material date.
- 20 An accused person’s right to information in a language which he understands is a practical and effective right, as stated in the judgment of the European Court of

Human Rights of 19 December 1989 in the case of *Kamasinski v. Austria*; therefore, it is not sufficient for the judicial authorities merely to appoint an interpreter and instead there must be some subsequent supervision of the performance of the interpreter's duties.

- 21 Article 6[(3)](a) and (e) of the ECHR provide that an accused person has, as a minimum, the right 'to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him' and 'to have the free assistance of an interpreter if he cannot understand or speak the language used in court.'
- 22 Given that the legal provisions are clear and exhaustive, guaranteeing that the accused person must have an interpreter and translations from the start to the end of the proceedings, the usual practice of appointing an interpreter only at the trial, as occurred in this case, is not sufficient.
- 23 Since the appellant's rights to interpretation, to the translation of procedural documents and to information under those directives have been breached, the duties and obligations imposed on the Portuguese State, including Portuguese courts, by those directives have also been breached.
- 24 In view of the fact that TL is a foreign citizen who has no knowledge or command of Portuguese, an interpreter should be appointed for him for any procedural act at which he is present, in particular where he is informed of his rights and obligations, as stipulated by Article 92(2) of the CPP.
- 25 In order to be held responsible for the failure to comply with the obligations to which he was subject by virtue of the DIR, TL should have been aware of those obligations, which was absolutely not the case since no translation was provided to him. Indeed, there is no certainty that TL had even the minimum understanding of the meaning of those obligations and duties, much less that he was in a position to plead the nullity derived from the failure to appoint an interpreter and the lack of translation of a number of procedural documents before the order revoking the suspension of execution of the sentence became final.
- 26 Therefore, the order placing TL under judicial investigation and the DIR, together with other later procedural documents, including the notification of the order revoking the suspended sentence, cannot have any procedural relevance, in view of the appellant's fundamental right of defence and of the constitutional right to a fair trial, which is only possible if he is provided with the proper opportunities to defend himself without being placed, directly or indirectly, at a disadvantage in relation to the parties on the opposing side, particularly the Public Prosecutor's Office as the prosecuting authority.
- 27 None of the grounds of nullity pleaded by the appellant, namely, the failure to appoint an interpreter and to provide translations of the order placing him under judicial investigation, the DIR, the order revoking the suspension of execution of the sentence and the notification of that order, are capable of rectification (see the

judgment of the Tribunal da Relação de Évora (Court of Appeal, Évora, Case No 55/2017.9GBLGS.EI).

- 28 Accordingly, *inter alia*, the order placing the appellant under judicial investigation, the DIR, the order revoking the suspension of execution of the sentence and the notification of that order should have been translated into the appellant's mother tongue. Furthermore, the appellant should have had an interpreter from the time when he was placed under judicial investigation and provided the DIR, who should have been appointed by the police or the Public Prosecutor's Office at the time of his arrest or, at least, when he was required to sign the documents presented to him by the authorities, so that it could be ensured that he understood the obligations he was entering into as a result of the DIR.
- 29 Under current criminal procedural legislation, the DIR is an essential document which falls within the scope of Article 3(1) of Directive 2010/64 and which, therefore, must be translated into the language of origin of the person under investigation, since it is the document which sets out the obligations laid down in Article 196(3) of the CPP.
- 30 Moreover, given that the Portuguese State has a positive obligation to perform certain acts, the failure to perform those acts is solely the responsibility of the Portuguese State and, therefore, the procedural nullity pleaded cannot be treated as rectifiable, in the absence of a challenge by the person to whom the act is addressed, especially because that nullity is attributable to the judicial authorities. Furthermore, the obligations imposed on the judicial authorities require derogation from all provisions of national law that are contrary to the provisions of the directives cited, which lay down a common body of Community rules, including a system for pleading nullity aimed at correcting omissions attributable to the State.
- 31 Accordingly, the procedural documents at issue in this case – namely, the order placing the appellant under judicial investigation, the DIR, the order revoking the suspension of execution of the sentence imposed on the appellant, and the relevant notification of that order – are non-existent, because they are invalid from the outset, and therefore, in so far as those documents are incapable of producing legal effects, they must be declared null and void and be drawn up again, which means the annulment of any subsequent acts.
- 32 The assertion that the appellant's right to be heard was safeguarded because he was represented by a court-appointed lawyer throughout the proceedings is also challenged. In addition to the fact that the lawyer appointed did not represent him at the formal procedure to place him under judicial investigation or when he gave the DIR, that lawyer merely assisted the appellant at the trial and at the hearing referred to in Article 495(2) of the CPP, and with the application for payment by instalments of the fine imposed on him. The lawyer did not state her view in advance on any decision which might personally affect the appellant and left all the rulings seriously affecting his fundamental rights to become final. In that connection, it cannot be said that the appellant's right to be heard was exercised

through his court-appointed lawyer and therefore that right granted to him under the CPP was also breached.

- 33 The unsuccessful attempts by the authorities to contact the appellant in order to implement the conditional suspension of execution of the sentence – which was the only ground for revocation of that suspension – and the fact that the appellant did not actually receive the summonses to appear before the court for the purposes of Article 495(2) of the CPP and the order revoking the suspension of execution of the prison sentence were due to the appellant’s change of address, and the appellant submits that he did not receive those notifications because he had ceased living at the address on the DIR and that, since the DIR had not been translated, he did not know that he had to notify the court of that change of address.

***Reasoning in the order of the Tribunal Judicial da Comarca de Beja (District Court, Beja), which dismissed the appellant’s application***

- 34 The lower court did not accept the arguments put forward by TL and instead upheld the arguments advanced by the Public Prosecutor’s Office in its opinion, on which the lower court based the order under appeal dismissing the appellant’s application, on the grounds that the failure to appoint an interpreter and the lack of a translation of the procedural documents concerned amount to relative nullity and that this should, therefore, have been pleaded within the statutory period, from which it followed that that nullity had already been rectified on the date on which the order was adopted.
- 35 The court ruled that the failure to appoint an interpreter and to provide translations for an accused person who does not understand or does not speak Portuguese, at the time when that person is placed under judicial investigation and notified of the order made under Article 495 of the CPP, constitutes relative nullity which must be pleaded, as provided for in Article 120(1)(c) of the CPP.
- 36 In accordance with Article 120(3)(a) and (d) of the CPP, nullity resulting from the failure to provide a translation of the order placing a person under judicial investigation and of the order adopted under Article 495 of the CPP is deemed to be rectified where that nullity was not pleaded at the time when the person was placed under judicial investigation, at the start of the trial or, at the latest, before the decision revoking suspension of a prison sentence imposed on the accused becomes final.
- 37 The lower court further states that it is aware of the wording of both Directive 2010/64 on the right to interpretation and translation in criminal proceedings and Directive 2012/13 on the right to information in criminal proceedings.
- 38 Although, generally, a directive only produces effects from the date of its transposition, according to the case-law of the Court of Justice, a directive which has not been transposed or which has been transposed incorrectly may have a particular direct effect (vertical direct effect) and individuals may rely on the

directive before a national court in the following cases: a) where the directive was not transposed into national law or was transposed incorrectly; b) where the provisions of the directive are unconditional and sufficiently clear and precise; c) where the provisions of the directive confer rights on individuals; and d) where the deadline for transposition has expired.

- 39 However, the lower court does not consider that, in the light of that EU legislation, national law has been directly and expressly repealed, in particular Article 120(1)(c) of the CPP, which provides that nullity resulting from the failure to appoint an interpreter, in the situations where the law regards this as mandatory, may be rectified; such nullity must be pleaded within the periods stipulated in Article 120(3).
- 40 The court considers that the general and abstract adoption of such an interpretation (whereby national law is repealed), without attributing any practical effect to Article 120(1)(c) of the CPP, is unlawful and incompatible with the principles of the European Union which are binding on the Portuguese State (and on the courts), in particular the principle of conforming interpretation, as TL contends.
- 41 In the light of those considerations, the court believes that failure to provide translations and failure to appoint an interpreter for a foreign accused person who does not understand Portuguese, whether for the purposes of notification of the obligations derived from the DIR or notification of the order revoking suspension of the prison sentence, constitute relative nullity which must be pleaded, in accordance with Article 120(1)(c) of the CPP. Such nullity must be pleaded in the terms set out in Article 120(3)(a) and (d) of the CPP, which sets out the time limits for that purpose; once those time limits have passed, the nullity is deemed to be rectified.
- 42 In addition, TL was present at the trial – a suitable interpreter was assigned to him and he was assisted by a lawyer – where he was able fully to exercise his right of defence, where the offences with which he was charged were presented to him, and where he was notified of the final judgment (all those procedural acts were orally translated at the trial).
- 43 The accused person's right to be heard was safeguarded in the proceedings: TL was duly and lawfully notified of all decisions and orders adopted, he was represented at all times throughout the proceedings by a lawyer, who was duly and lawfully served with all the procedural documents drawn up (judgment, decisions directing that TL be summoned to be heard and order revoking suspension of the prison sentence).
- 44 All the decisions and orders adopted in the proceedings became final because they were not the subject of any appeal or claim, and therefore any (possible) nullity arising in the course of the proceedings is now considered to be rectified. Accordingly, for the reasons stated, the lower court dismissed TL's application for

review of the nullity pleaded on the ground that there was no legal basis for that application.

### **Succinct presentation of the reasoning in the request for a preliminary ruling**

- 45 Directives 2010/64 and 2012/13 have not been transposed into Portuguese law and the periods for transposition of the directives have expired; those periods ended on 27 November 2013 and 2 June 2014, respectively.
- 46 Taking into account the arguments put forward by TL, the issues to be examined and decided on are the following:
- a) It must be determined whether Directives 2010/64 and 2012/13 are applicable in domestic law by means of ‘vertical direct effect’, thereby prevailing and taking precedence over national law, or, in the alternative, in the absence of vertical direct effect, by means of the interpretation of national law in accordance with the ‘principle of conforming interpretation’ (as laid down in the judgment of 13 November 1990, *Marleasing*, C-106/89, EU:C:1990:395, paragraph 8).
  - b) In either case – vertical direct effect or conforming interpretation – it will then be necessary to determine whether the procedural documents whose validity the appellant disputes – the order placing him under judicial investigation, the DIR, the summons for the purposes of Article 495(2) of the CPP and the notification of the order revoking the suspension of execution of the prison sentence – are covered by the term ‘essential documents’ used in Article 3 of Directive 2010/64, for the purpose of safeguarding the ‘minimum rights’ set out in Article 6(3) of the ECHR, and whether, in relation to those procedural documents, the rights to interpretation and translation referred to in Articles 1 to 3 of that directive and Article 3(1)(d) of Directive 2012/13 should have been guaranteed.
  - c) If the answer to the previous question is in the affirmative, it will be necessary to determine the legal-procedural consequences of the failure to appoint an interpreter and the failure to provide translations of those documents and, accordingly, to determine whether the interpretation of Article 120(3) of the CPP adopted by the lower court is compatible with the application of those directives; according to that interpretation, the nullity flowing from the failure to provide translations of the document placing TL under judicial investigation as an accused person, the DIR, the summons for the purposes of Article 495(2) of the CPP and the notification of the order revoking the suspension of the sentence is rectifiable because it was not pleaded when TL was placed under judicial investigation, at the start of the trial or before that order became final.
- 47 The referring court asks whether the interpretation of Article 120(3) of the CPP proposed by the lower court is compatible with the application of those directives; according to that interpretation, the nullity flowing from the failure to provide translations and the failure to appoint an interpreter for the purposes of provision of the DIR, issuing the summons to the convicted person to appear before the

court pursuant to Article 495(2) of the CPP, and notification of the order revoking the suspension of execution of the prison sentence is rectified because it was not pleaded within the periods stipulated by that article.

- 48 This case concerns the application of European Union law and the issue which arises is determination of the appropriate procedural penalty for invalid criminal procedural documents governed by provisions contained in EU legal acts. Accordingly, compliance with the objectives pursued by the directives concerned is considered to be imperative because the Member States have a duty to apply EU law within their own legal systems ‘while respecting their specific characteristics’, in accordance with Article 291 TFEU. That premiss is based on the principles of good faith within the Community, sincere cooperation and the overall coherence of the EU legal system, and it follows that infringements of EU legal provisions must be still penalised if the aim is to protect the attainment of the objectives pursued by the provisions that have been breached.
- 49 The referring court takes the view that the mandatory nature of the application of the provisions of directives, in this case as a result of vertical direct effect, in the light of the principle of the primacy of EU law, means that all provisions of national law that are contrary to the provisions of those EU acts must be disapplied. However, in the opinion of the referring court, in view of the nature of the case before it, it is necessary to establish whether the rules on the rectification of nullity laid down by Article 120(3) of the CPP, as applied in the judgment under appeal, are really incompatible with the provisions of the directives that it is claimed should apply or whether those rules and provisions may co-exist.
- 50 In the European Union legal system, as expressly provided for in Article 267 of the TFEU, where a question of interpretation of EU law is raised in a case pending before a court or tribunal of a Member State, that court or tribunal may or must – depending on whether or not there is any judicial remedy against its decisions – bring the matter before the Court of Justice of the European Union. In the present case, regard being had to the fact that, pursuant to Article 400(1)(c) of the CPP, no ordinary appeal may lie against the decision to be adopted, the referring court is required, pursuant to Article 267 TFEU, to submit the question set out above to the Court of Justice for a preliminary ruling.
- 51 Furthermore, since there is an obligation to refer, none of the circumstances in which, according to the case-law of the Court of Justice, the national court is exempt from making such a reference are present in this case, because the directives which it is claimed should apply are not clear in themselves and nor is there any clarification of those directives in the case-law of the Court of Justice, as regards, specifically, the effect of those directives on the question formulated. Accordingly, none of the exemptions from the requirement to seek a preliminary ruling laid down by the case-law apply.
- 52 It is also important to note that the fourth paragraph of Article 267 TFEU expressly provides that ‘if such a question is raised in a case pending before a

court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.’ In view of the fact that the appellant in this case has been in prison since 30 September 2021 pursuant to the order revoking the suspension of execution of the prison sentence imposed on him, and since the appeal disputes the validity of that order, it is appropriate to ask that this request for a preliminary ruling be dealt with under the expedited or urgent procedure, in accordance with Article 105 et seq. of the Rules of Procedure of the Court of Justice and Article 23a of the Statute of the Court of Justice.

- 53 In the light of the foregoing considerations, and on the grounds set out, the Criminal Chamber of the Tribunal da Relação de Évora (Court of Appeal, Évora) decides:
1. To refer the question set out above to the Court of Justice for a preliminary ruling.
  2. To ask that the request for a preliminary ruling be dealt with under the expedited or urgent procedure in accordance with the fourth paragraph of Article 267 TFEU, Article 105 et seq. of the Rules of Procedure of the Court of Justice, and Article 23a of the Statute of the Court of Justice.