

CJEU: Consequences of the Lack to Interpretation/Translation to Acts Ancillary to Criminal Proceedings

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In its judgment in *Case C-242/22 PPU (criminal proceedings against TL)*, the CJEU clarified the interpretation of the need to translate essential documents and to ensure the presence of an interpreter when that document is being drawn up (Art. 2(1) and Art. 3(1) of Directive 2010/64). In addition, the case addresses the right to be informed on the right to interpretation and translation (Art. 3(1)(d) of Directive 2012/13).

Facts of the case

The case was referred by the Court of Appeal, Évora, Portugal, which has doubts on the compliance of the Portuguese criminal procedure rules with the aforementioned Directives. In the case at hand, TL, a Moldovan national who only understands Romanian, was placed under criminal investigation in connection with the offences of resisting and coercing an official, reckless driving of a road vehicle and driving without a valid licence. The criminal court sentenced TL to three years of imprisonment, but ordered that the execution of the sentence be suspended on certain conditions. One of the conditions was that it must be possible to locate TL at the address he had given in the so-called “declaration of identity and residence” (*Termo de Identidade e Residência*; the “DIR”), a procedure that was carried out prior to the trial at the time of placing TL under investigation. As he was not found at that address, the suspension was revoked and TL was sent to prison to serve his sentence. TL was assisted by a lawyer and interpreter during the trial, but not at the DIR procedure. Neither the DIR nor subsequent acts, i.e. the order summoning TL to a hearing in respect of the failure to comply with the conditions of the probation scheme and the order which revoked the suspension of the prison sentence, were translated into Romanian. Another peculiarity of the cases referred to the provision of “relative nullity”, i.e. Portuguese law stipulates that the act linked to the defects of assistance by an interpreter and of translation of essential documents into the language understood by the person concerned must be invoked within prescribed periods by the beneficiary of the rights, failing which the challenge will be time-barred.

The CJEU's decision

Since the referring court argued that Arts. 2 and 3 of Directive 2010/64 and Art. 3(1)(d) of Directive 2012/13 have not been transposed or have not been fully transposed into Portuguese law, the CJEU emphasised first that the Directives' provisions fulfil the criteria of direct effect. As a result, any person benefiting from those rights may rely on them against a Member State before the national courts.

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Second, the CJEU clarified that the three procedural acts in question, i.e. the DIR, the order summoning TL to appear and the order revoking the suspension of the prison sentence, constitute, *inter alia*, “essential documents” of which a written translation should have been provided to TL under Art. 3(1) of Directive 2010/64. The CJEU pointed out that these three procedural acts are an integral part of the procedure which established TL’s criminal liability and the application of Directive 2010/64 (and Directive 2012/13) to those acts is fully justified by the objectives pursued by this Union law.

Third, the CJEU examined the consequences of the relative nullity, i.e. the legal situation that Portuguese law (Art. 120 CCP) places nullity of the violation of the right to an interpreter and to translation under the double condition that (i) the request for a declaration of nullity is made by the person concerned, and (ii) this request is made before the finalisation of the act in question.

The judges in Luxembourg clarified that neither Directive 2010/64 nor Directive 2012/13 specify the consequences of an infringement of the rights provided in the Directives. Therefore, these arrangements are a matter for the domestic legal order of the Member States in accordance with the principle of procedural autonomy of the Member States, provided that they respect the principle of equivalence and the principle of effectiveness.

In this context, the CJEU argued that the principle of effectiveness is not maintained. It means that national law cannot undermine the objectives pursued by the procedural rights 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. Contrary to the principle of effectiveness is in particular the national procedural provision under which the time-limit to invoke an infringement of the rights granted by Art. 2(1) and Art. 3(1) of Directive 2010/64 began to run even before the person concerned was informed in a language which he speaks or understands (Art. 120 CCP). The CJEU stressed that the person concerned must be aware first of the existence and scope of his/her right to interpretation and translation, and second of the existence and content of the essential document in question as well as its effects. This is not guaranteed if one applies Art. 120 CCP to the current situation.

If the Portuguese court is unable to interpret this provision in conformity with Union law, it must disapply of its own motion this national legislation without the need for that court to request or await the prior setting aside of such national legislation or practice by the legislature or other constitutional means.

Put in focus

The CJEU first clarified in the judgment TL that the scope of Directives 2010/64 and 2012/13 conferring the rights to interpretation, translation and information also extends to procedural acts that are ancillary to the sentencing of the person concerned and form part of the criminal proceedings.

The second main issue concerned the need for the person concerned to plead the nullity of procedural acts that failed to guarantee procedural safeguards. It should be stressed in this regard that the CJEU did not rule that any such need would be *per se* impermissible according to Union law. This is especially because the Directives under examination do say nothing about the implementation of consequences of their infringements, which is left to the national legal systems of the EU Member States. By contrast, it was the Portuguese provision that connected the necessity to plead with a very short time limit, which was hardly to fulfil for the person concerned and rendered the exercise of his rights to interpretation and translation almost meaningless in the present situation.

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