ECLI:EU:C:2021:949

JUDGMENT OF THE COURT (Grand Chamber)

23 November 2021 (*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2010/64/EU – Article 5 – Quality of the interpretation and translation – Directive 2012/13/EU – Right to information in criminal proceedings – Article 4(5) and Article 6(1) – Right to information about the accusation – Right to interpretation and translation – Directive 2016/343/EU – Right to an effective remedy and to a fair trial – Article 48(2) of the Charter of Fundamental Rights of the European Union – Article 267 TFEU – Second subparagraph of Article 19(1) TEU – Admissibility – Appeal in the interests of the law against a decision ordering a reference for a preliminary ruling – Disciplinary proceedings – Power of the higher court to declare the request for a preliminary ruling unlawful)

In Case C-564/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Pesti Központi Kerületi Bíróság (Central District Court, Pest, Hungary), made by decision of 11 July 2019, received at the Court on 24 July 2019, supplemented by a decision of 18 November 2019, received at the Court on the same date, in the criminal proceedings against

IS,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, K. Jürimäe, C. Lycourgos, E. Regan, S. Rodin and I. Jarukaitis (Rapporteur), Presidents of Chambers, J.-C. Bonichot, P.G. Xuereb, N. Piçarra, L.S. Rossi and A. Kumin, Judges,

Advocate General: P. Pikamäe,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 18 January 2021,

after considering the observations submitted on behalf of:

– IS, by A. Pintér and B. Csire, ügyvédek,

– the Hungarian Government, par M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the Netherlands Government, by M.K. Bulterman, P. Huurnink and J. Langer, acting as Agents,

– the Swedish Government, initially by H. Eklinder, C. Meyer-Seitz, H. Shev, J. Lundberg and A. Falk, and subsequently by O. Simonsson, H. Eklinder, C. Meyer-Seitz, H. Shev, J. Lundberg, M. Salborn Hodgson, A.M. Runeskjöld and R. Shahsavan Eriksson, acting as Agents,

– the European Commission, initially by A. Tokár, H. Krämer and R Troosters, and subsequently by A. Tokár, M. Wasmeier and P.J.O. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 April 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(2) 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), Article 4(5) and Article 6(1) 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), Article 6(1) and the second subparagraph of Article 19(1) TEU, Article 267 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in criminal proceedings brought against IS, a Swedish national of Turkish origin, for infringement of the provisions of Hungarian law governing the acquisition or transport of firearms or ammunition.

Legal context

EU law

Directive 2010/64

3 Recitals 5, 12 and 24 of Directive 2010/64 state:

‘(5) Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [, signed at Rome on 4 November 1950,] and Article 47 of the [Charter] enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the right of defence. This Directive respects those rights and should be implemented accordingly.

…

(12) This Directive … lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States.

…

(24) Member States should ensure that control can be exercised over the adequacy of the interpretation and translation provided when the competent authorities have been put on notice in a given case.’

4 Article 2 of that directive, entitled ‘Right to interpretation’, reads as follows:

‘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.

…

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.

…

8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.’

5 Article 3 of Directive 2010/64, 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.

…

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.

…

9. Translation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.’

6 Article 5 of that directive, entitled ‘Quality of the interpretation and translation’, provides:

‘1. Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).

2. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.

…’

Directive 2012/13

7 Recitals 5, 30 and 34 of Directive 2012/13 are worded as follows:

‘(5) Article 47 of the [Charter] and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the ECHR”) enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the rights of the defence.

…

(30) Documents and, where appropriate, photographs, audio and video recordings, which are essential to challenging effectively the lawfulness of an arrest or detention of suspects or accused persons in accordance with national law, should be made available to suspects or accused persons or to their lawyers at the latest before a competent judicial authority is called to decide upon the lawfulness of the arrest or detention in accordance with Article 5(4) ECHR, and in due time to allow the effective exercise of the right to challenge the lawfulness of the arrest or detention.

…

(34) Access to the materials of the case, as provided for by this Directive, should be provided free of charge, without prejudice to provisions of national law providing for fees to be paid for documents to be copied from the case file or for sending materials to the persons concerned or to their lawyer.'

8 Article 1 of that directive, which defines its subject matter, provides:

'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. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.'

9 Article 3 of Directive 2012/13, entitled 'Right to information about rights', is worded as follows:

'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:

(a) the right of access to a lawyer;

(b) any entitlement to free legal advice and the conditions for obtaining such advice;

(c) the right to be informed of the accusation, in accordance with Article 6;

(d) the right to interpretation and translation;

(e) the right to remain silent.

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.'

10 Article 4 of that directive, entitled 'Letter of Rights on arrest', provides:

'1. Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.

…

5. Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.'

11 Article 6 of Directive 2012/13, entitled 'Right to information about the accusation', provides:

‘1. Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

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

3. Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

…’

12 Article 7 of that directive, entitled ‘Right of access to the materials of the case’, provides:

‘1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.

2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.

…’

13 Under Article 8 of Directive 2012/13, entitled ‘Verification and remedies’:

‘1. Member States shall ensure that when information is provided to suspects or accused persons in accordance with Articles 3 to 6 this is noted using the recording procedure specified in the law of the Member State concerned.

2. Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.’

Directive (EU) 2016/343

14 Recitals 1 and 9 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1), state:

‘(1) The presumption of innocence and the right to a fair trial are enshrined in Articles 47 and 48 of the [Charter], Article 6 of the [ECHR], Article 14 of the International Covenant on Civil and Political Rights (the ICCPR) and Article 11 of the Universal Declaration of Human Rights.

…

(9) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.'

15 Article 8 of that directive, entitled 'Right to be present at the trial', provides:

'1. Member States shall ensure that suspects and accused persons have the right to be present at their trial.

2. Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:

(a) the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or

(b) the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.

…

4. Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of this Article because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9.

…'

16 Article 9 of Directive 2016/343, entitled 'Right to a new trial', provides:

'Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.'

Hungarian law

17 Article 78(1) of the büntetőeljárásról szóló 2017. évi XC. törvény (Law XC of 2017 establishing the Code of Criminal Procedure, *Magyar Közlöny* 2017/90.; 'the Code of Criminal Procedure') provides, in essence, that if a party to criminal proceedings wishes, for the purposes of those proceedings, to use a language other than Hungarian, he or she is entitled to use his or her mother tongue and to be assisted by an interpreter.

18 Under Article 201(1) of the Code of Criminal Procedure, only an interpreter with an official qualification may be appointed in that capacity in criminal proceedings, but if it is not possible to

make such an appointment, an interpreter with sufficient knowledge of the language concerned may be appointed.

19 Article 490(1) and (2) of that code provides, in essence, that a national court may, of its own motion or at a party's request, stay proceedings and make a request for a preliminary ruling to the Court of Justice of the European Union.

20 Article 491(1)(a) of the Code of Criminal Procedure provides, in essence, that the stayed criminal proceedings must be resumed if the grounds for the stay have ceased to exist.

21 Article 513(1)(a) of that code provides that an order for reference is not subject to an ordinary appeal.

22 Under Article 667(1) of the Code of Criminal Procedure, the legfőbb ügyész (Prosecutor General, Hungary) may bring an appeal before the Kúria (Supreme Court, Hungary), known as 'an appeal in the interests of the law', seeking a declaration that a judgment or order delivered by a lower court is unlawful.

23 Article 669 of that code provides:

'1. If the Kúria [(Supreme Court)] considers the appeal in the interests of the law to be well founded, it shall find, in a judgment, that the decision being appealed against is unlawful and, otherwise, it shall dismiss the appeal by way of order.

2. If the Kúria [(Supreme Court)] finds the decision at issue unlawful, it may acquit the accused person, rule out forced medical treatment, terminate the proceedings, impose a lighter penalty or apply a lighter measure, set aside the contested decision and, if appropriate, refer the case back to the competent court with a view to new proceedings being initiated.

3. Except in the cases referred to in paragraph 2, the decision of the Kúria [(Supreme Court)] shall be limited to a finding of illegality.

…'

24 Under Article 755(1)(a)(aa) of the Code of Criminal Procedure, where an accused person, residing at a known address abroad, is duly summoned and fails to appear at a hearing, the criminal proceedings must be continued *in absentia* if it is not appropriate to issue a European or international arrest warrant, or if such a warrant is not issued, if the prosecutor does not propose that the accused person be sentenced to a custodial sentence or placement in a correctional education facility.

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

25 The referring court, sitting as a single-judge formation at the Pesti Központi Kerületi Bíróság (Central District Court, Pest, Hungary) ('the referring judge'), is hearing criminal proceedings brought against IS, a Swedish national of Turkish origin, for an alleged infringement of the provisions of Hungarian law governing the acquisition, possession, manufacture, marketing, import, export or transport of firearms or ammunition. The language of the judicial proceedings is Hungarian, which the accused does not speak. It is apparent from the request for a preliminary ruling that the accused can communicate only as a result of the services of an interpreter.

26 IS was arrested in Hungary on 25 August 2015 and questioned as a ‘suspect’ on the same day. Before that questioning, IS requested the assistance of a lawyer and an interpreter and, during the questioning, which the lawyer was unable to attend, was informed of the suspicions against him. IS refused to give a statement, on the ground that he could not consult his lawyer.

27 During the questioning, the officer in charge of the investigation had recourse to a Swedish-language interpreter. However, according to the referring judge, there is no information as to how the interpreter was selected, how that interpreter’s competence was verified, or whether the interpreter and IS understood each other.

28 IS was released after the questioning. He is, it is stated, currently resident outside Hungary and the letter sent to the address previously communicated was returned marked ‘unclaimed’. The referring judge states that, at the stage of the judicial proceedings, the presence of the accused person is, however, mandatory at the pre-trial hearing and that the issuing of a national arrest warrant or a European arrest warrant is possible only where the accused person may receive a custodial sentence. He notes that in the present case, however, the prosecutor seeks a fine and that, consequently, if the accused person does not appear on the date indicated, the referring judge is required to continue the proceedings *in absentia*.

29 In those circumstances, the referring judge observes, in the first place, that Article 5(1) of Directive 2010/64 provides that Member States must take concrete measures to ensure that the interpretation and translation provided meet the quality required under Article 2(8) and Article 3(9) of that directive, which means that the interpretation must be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspects or accused persons have knowledge of the case against them and are able to exercise their right of defence. He also points out that Article 5(2) of that directive provides that, in order to promote the adequacy of interpretation and translation and efficient access thereto, Member States must endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified.

30 In addition, the referring judge states that Article 4(5) and Article 6(1) of Directive 2012/13 provide that suspects or accused persons must be immediately informed in writing of their rights in a language which they understand and of the criminal act they are suspected or accused of having committed.

31 In that context, the referring judge states that Hungary does not have an official register of translators and interpreters and that Hungarian law does not specify who may be appointed in criminal proceedings as an ad hoc translator or interpreter, nor according to what criteria, as only the certified translation of documents is regulated. In the absence of such law, neither the lawyer nor the court is able to verify the quality of the interpretation. A suspect or accused person who does not speak Hungarian is informed, through an interpreter, of the suspicions against him or her and of his or her procedural rights at his or her first questioning in that capacity, but if the interpreter does not have the appropriate expertise, the right of the person concerned to be informed of his or her rights and his or her rights of defence could, in the referring judge’s view, be infringed.

32 Thus, according to the referring judge, the question arises whether Hungarian law and practice are compatible with Directives 2012/13 and 2010/64 and whether it follows from EU law that, if they are not compatible, a national court may not continue the criminal proceedings *in absentia*.

33 In the second place, the referring judge states that since the entry into force on 1 January 2012 of a judicial reform, responsibility for the central administration and management of the judicial system has lain with the President of the Országos Bírósági Hivatal (National Office for the Judiciary ('NOJ'), Hungary, 'the President of the NOJ'), who is appointed by the Hungarian National Assembly for a nine-year term. That president has extensive powers, which include deciding on judicial appointments, making senior judicial appointments and commencing disciplinary proceedings against judges.

34 The referring judge adds that the Országos Bírói Tanács (National Judicial Council, 'NJC') – whose members are elected by the judiciary – is responsible for overseeing the actions of the President of the NOJ and approving his or her decisions in certain cases. Further, on 2 May 2018, the NJC adopted a report stating that the President of the NOJ had infringed the law through the practice of declaring vacancy notices for judicial appointments and appointments to the presidency of courts unsuccessful without sufficient explanation and then, in many cases, appointing on a temporary basis court presidents who were the choice of the NOJ President. According to the referring judge, on 24 April 2018 the President of the NOJ stated that the NJC's functioning did not comply with the law and has since refused to cooperate with that body and its members. The NJC has already pointed out, on several occasions, that the NOJ President and the court presidents appointed by the latter disregard that body's powers.

35 The referring judge further states that the President of the Fővárosi Törvényszék (Budapest High Court, Hungary), which is the appellate court for the referring court, was thus appointed on a temporary basis by the President of the NOJ. In order to underline the relevance of that information, the referring judge specifies the influence which the President of the NOJ may exert on the work and career advancement of judges, including with regard to the allocation of cases, disciplinary power and working environment.

36 In that context, while referring, first, to a number of international opinions and reports which have noted the excessive concentration of powers in the hands of the President of the NOJ and the absence of any counterbalance thereto and, secondly, to the case-law of the Court of Justice and the European Court of Human Rights, the referring judge asks whether such a situation is compatible with the principle of judicial independence enshrined in Article 19 TEU and Article 47 of the Charter. He also enquires whether, in such a context, the proceedings pending before him may be regarded as fair.

37 In the third place, the referring judge states that by a legislative amendment which entered into force on 1 September 2018, certain additional remuneration of prosecutors was increased, whereas the rules on the remuneration of judges were not amended. Consequently, for the first time in decades the salaries of judges are now lower than those of prosecutors of the same level and with the same grade and length of service. The NJC reported that situation to the Hungarian Government, which promised a salary reform by 1 January 2020 at the latest, but the draft law to that effect has still not been introduced, with the result that judicial salaries have remained unchanged since 2003. The referring judge is, therefore, uncertain whether, having regard in particular to inflation and the increase in the average salary in Hungary over the years, the failure to adjust judicial salaries over the long term is not tantamount to a salary reduction and whether that consequence is not the result of a deliberate intention on the part of the Hungarian Government, with the aim of placing judges at a disadvantage in relation to prosecutors. Moreover, the practice of granting bonuses and rewards, which are sometimes very high in relation to the basic judicial salary, to some judges, on a discretionary basis by the President of the NOJ and by the presidents of the courts would amount to a general and systematic infringement of the principle of judicial independence.

38 In those circumstances the Pesti Központi Kerületi Bíróság (Central District Court, Pest, Hungary) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) (a) Must Article 6(1) TEU and Article 5(2) of [Directive 2010/64] be interpreted as meaning that, in order to guarantee the right to a fair trial for accused persons who do not speak the language of the proceedings, a Member State must create a register of properly qualified independent translators and interpreters or – failing that – ensure by some other means that it is possible to review the quality of language interpretation in judicial proceedings?

(b) If the previous question is answered in the affirmative and if, in the specific case, since the language interpretation is not of adequate quality, it is not possible to establish whether the accused person has been informed of the subject matter of the charge or indictment against him or her, must Article 6(1) TEU and Article 4(5) and [Article] 6(1) of [Directive 2012/13] be interpreted as meaning that, in those circumstances, the proceedings cannot continue in his or her absence?

(2) (a) Must the principle of judicial independence referred to in the second subparagraph of Article 19(1) TEU, Article 47 of the [Charter] and the case-law of the Court of Justice be interpreted as meaning that that principle is infringed where the [President of the NOJ], who is responsible for the central administration of the courts and who is appointed by the parliament, the only body to which he or she is accountable and which may remove him or her from office, fills the post of president of a court – a president who, inter alia, has powers in relation to organisation of the allocation of cases, commencement of disciplinary procedures against judges, and assessment of judges – by means of a direct temporary nomination, circumventing the applications procedure and constantly disregarding the opinion of the competent self-governance bodies of judges?

(b) If Question 2(a) is answered in the affirmative and if the court hearing the specific case has reasonable grounds to fear that that case is being unduly prejudiced as a result of the president’s judicial and administrative activities, must the principle of judicial independence be interpreted as meaning that a fair trial is not guaranteed in that case?

(3) (a) Must the principle of judicial independence referred to in the second subparagraph of Article 19(1) TEU, Article 47 of the [Charter] and the case-law of the Court of Justice be interpreted as precluding a situation in which, since 1 September 2018 – unlike the practice followed in previous decades – Hungarian judges receive by law lower remuneration than prosecutors of the equivalent category who have the same grade and the same length of service, and in which, in view of the country’s economic situation, judges’ salaries are generally not commensurate with the importance of the functions they perform, particularly in the light of the practice of discretionary bonuses applied by holders of high level posts?

(b) If the previous question is answered in the affirmative, must the principle of judicial independence be interpreted as meaning that, in such circumstances, the right to a fair trial cannot be guaranteed?’

39 By decision of 18 November 2019 (‘the supplementary request for a preliminary ruling’), the referring judge submitted a request seeking, inter alia, to supplement his initial request for a preliminary ruling.

40 It is apparent from the supplementary request for a preliminary ruling that, on 19 July 2019, the Prosecutor General brought an appeal in the interests of the law before the Kúria (Supreme Court), on the basis of Article 667 of the Code of Criminal Procedure, which was directed against

the initial request for a preliminary ruling. It is also apparent from the supplementary request that, by decision of 10 September 2019, the Kúria (Supreme Court) held that the initial request for a preliminary ruling was unlawful on the ground, in essence, that the questions referred were not relevant for the resolution of the dispute in the main proceedings ('the Kúria decision').

41 The referring judge states that it is to be inferred from the Kúria decision that the purpose of the preliminary ruling system established by Article 267 TFEU is to ask the Court of Justice to rule on questions relating not to the constitutional order of a Member State, but rather to EU law, in such a way as to ensure that EU law is interpreted consistently within the European Union. According to the referring judge, under the Kúria decision criminal proceedings may, moreover, be stayed only for the purposes of giving a final decision on an accused person's guilt. In the referring judge's view, the Kúria (Supreme Court) considers that the questions referred, as formulated by him in his initial request for a preliminary ruling, are irrelevant for the purposes of assessing IS's guilt, with the result that that request is unlawful. The Kúria decision also refers to that court's own earlier decisions of principle, according to which a request for a preliminary ruling should not be submitted in order to obtain a declaration that the applicable Hungarian law is inconsistent with the fundamental principles protected by EU law.

42 According to the referring judge, even though the Kúria decision merely declares the initial request for a preliminary ruling unlawful without setting aside the order for reference itself, that decision, given in the context of an appeal in the interests of the law, will have a fundamental impact on the subsequent case-law of the lower courts, since the purpose of such appeals is to harmonise national case-law. Accordingly, the Kúria decision might, in the future, have a deterrent effect on judges in the lower courts contemplating making a request for a preliminary ruling to the Court under Article 267 TFEU.

43 Moreover, the referring judge is uncertain as to the action to be taken upon the criminal proceedings pending before him, which are currently stayed, and considers that that action depends on whether or not the Kúria decision is unlawful.

44 If that decision is lawful, then the Kúria (Supreme Court) was fully entitled to examine the request for a preliminary ruling and to declare it unlawful. In that case, the referring judge would have to consider resuming the case in the main proceedings, since, under Article 491(1)(a) of the Code of Criminal Procedure, if the grounds for the stay have ceased to exist, the court is to resume its handling of the case. Admittedly, according to the referring judge, there is no provision of Hungarian law that provides for what is to be done if a case has been unlawfully stayed. However, on the basis of reasoning by analogy, the abovementioned provision of the Code of Criminal Procedure could be interpreted as meaning that the court should, in such circumstances, be required to resume its handling of the case.

45 Alternatively, the Kúria (Supreme Court) was wrong to declare that request for a preliminary ruling unlawful and, in that case, the lower court should disregard the decision of that supreme court as being contrary to EU law, notwithstanding that court's constitutional jurisdiction to ensure the uniformity of national law.

46 In addition, the Kúria decision is based on national case-law according to which the conformity of Hungarian law with EU law cannot be the subject of a preliminary ruling procedure. Such case-law would be contrary to the principle of the primacy of EU law and to the case-law of the Court of Justice.

47 The referring judge adds that, on 25 October 2019, the President of the Fővárosi Törvényszék (Budapest High Court) instituted disciplinary proceedings against him, on the same grounds as those set out in the Kúria decision.

48 Following information communicated by the Hungarian Government to the effect that those proceedings had been brought to an end, the Court of Justice sent a question to the referring judge. In his reply of 10 December 2019, the referring judge confirmed that, by a document dated 22 November 2019, the President of the Fővárosi Törvényszék (Budapest High Court) had withdrawn the decision requesting that those disciplinary proceedings be commenced.

49 However, the referring judge also stated that he did not intend to amend in that regard the supplementary request for a preliminary ruling, given that his concern stems not from the fact that he himself is the subject of disciplinary proceedings, but rather from the fact that such proceedings may be commenced in such circumstances.

50 According to the referring judge, the quality of his work as a judge has not been called into question either by his direct superior or by the Head of the Criminal Division of the Pesti Központi Kerületi Bíróság (Central District Court, Pest), with the result that the only reason for those disciplinary proceedings is the content of the initial order for reference.

51 In those circumstances the Pesti Központi Kerületi Bíróság (Central District Court, Pest) decided to refer the following two supplementary questions to the Court of Justice for a preliminary ruling:

(4) (a) Must Article 267 [TFEU] be interpreted as precluding a national practice whereby the court of last instance, in proceedings to harmonise the case-law of the Member State, declares as unlawful a decision by which a lower court makes a request for a preliminary ruling, without altering the legal effects of the decision in question?

(b) If [Question 4(a)] is answered in the affirmative, must Article 267 [TFEU] be interpreted as meaning that the referring court must disregard contrary decisions of the higher court and positions of principle adopted in the interest of harmonising the law?

(c) If [Question 4(a)] is answered in the negative, in that case can the suspended criminal proceedings be continued given that the preliminary ruling proceedings are pending?

(5) Must the principle of judicial independence, established in the second subparagraph of Article 19(1) TEU, in Article 47 of the Charter and in the case-law of the Court of Justice, read in the light of Article 267 TFEU, be interpreted as meaning that that principle precludes disciplinary proceedings being brought against a judge for having made a request for a preliminary ruling?'

The request for an expedited procedure

52 By his supplementary request for a preliminary ruling, the referring judge also requested that the present case be determined pursuant to an expedited procedure under Article 105 of the Rules of Procedure of the Court of Justice. In support of that request, he states that the commencement of such a procedure is justified, in particular, in view of the fact that the Kúria decision and the disciplinary proceedings brought against him are likely to have an extremely negative deterrent effect, which could have an impact on all decisions whether or not to initiate a preliminary ruling procedure under Article 267 TFEU in Hungary in the future.

53 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure.

54 It must be borne in mind, in that regard, that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency. Furthermore, it is also apparent from the Court's case-law that the expedited procedure may not be applied where the sensitive and complex nature of the legal problems raised by a case does not lend itself easily to the application of such a procedure, in particular where it is not appropriate to shorten the written part of the procedure before the Court (judgment of 18 May 2021, *Asociaţia "Forumul Judecătorilor din România" and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 103 and the case-law cited).

55 In the present case, by decision of 19 December 2019, the President of the Court, after hearing the Judge-Rapporteur and the Advocate General, refused the request that the present be determined pursuant to an expedited procedure. As is apparent from paragraph 48 above, the decision requesting that disciplinary proceedings be brought against the referring judge has been withdrawn. Furthermore, the criminal case in the main proceedings does not concern an individual who is subject to a measure involving deprivation of liberty.

56 In those circumstances, it did not appear, on the basis of the information and explanations thus provided by the referring court, that the present case, which, as is apparent from paragraph 52 above, also raises questions that are of a high degree of sensitivity and complexity, was so urgent that it would be justified to derogate, exceptionally, from the ordinary rules of procedure applicable to requests for a preliminary ruling.

Consideration of the questions referred

The fourth question

57 By his fourth question, which it is appropriate to examine in the first place, the referring judge asks, in essence, whether Article 267 TFEU must be interpreted as precluding the supreme court of a Member State from declaring, following an appeal in the interests of the law, that a request for a preliminary ruling which has been submitted under Article 267 TFEU to the Court of Justice by a lower court is unlawful, without, however, altering the legal effects of the decision containing that request, and, if that is the case, whether the principle of the primacy of EU law must be interpreted as requiring that lower court to disregard such a decision of the supreme court.

Admissibility

58 The Hungarian Government submits that the fourth question is inadmissible, since the grounds set out in the supplementary request for a preliminary ruling concerning the need for an interpretation of EU law are irrelevant to the outcome of the main proceedings, having regard in particular to the fact that the Kúria decision has no legal effect on the order for reference. In addition, the referring judge's assumptions concerning the effect that that decision might in the future have on preliminary ruling procedures are based on future and hypothetical events and, as such, those assumptions are also irrelevant for the outcome of the main proceedings.

59 It must be recalled, at the outset, that the procedure for referring questions for a preliminary ruling under Article 267 TFEU establishes a relationship of close cooperation between the national courts and the Court of Justice based on the assignment to each of different functions and constitutes an instrument by means of which the Court provides the national courts with the criteria for the interpretation of EU law which they need in order to dispose of disputes which they are called upon to resolve (see, to that effect, judgment of 21 June 2007, *Omni Metal Service*, C-259/05, EU:C:2007:363, paragraph 16 and the case-law cited).

60 In accordance with the Court's settled case-law, in the context of that cooperation, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953 paragraph 25 and the case-law cited).

61 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 26 and the case-law cited).

62 In the present case, since the referring judge is uncertain as to the action to be taken upon the criminal proceedings before him if the Kúria decision were to be considered contrary to EU law, it must be held that, even though that decision neither sets aside nor alters the order for reference, nor requires the referring judge to withdraw or amend that request, the Kúria decision is not without consequences for that judge and the criminal proceedings before him.

63 Where that supreme court classifies a request for a preliminary ruling made by a lower court as unlawful, such a classification necessarily has consequences for that court, even in the absence of direct effects on the validity of the order for reference. Thus, in the present case, the referring judge must, in particular, decide whether or not he maintains his questions submitted for a preliminary ruling and, therefore, at the same time, decide whether or not he maintains his decision to stay the proceedings, which the Kúria (Supreme Court) has, in essence, held to be unlawful, or whether, on the contrary, he withdraws his questions in the light of that latter decision and continues the criminal proceedings before him.

64 Moreover, as is apparent from the order for reference, the Kúria decision was published in the official reports of decisions of principle, with a view to ensuring the harmonisation of national law.

65 Furthermore, in such circumstances, the referring judge must also assess whether, by maintaining his initial request for a preliminary ruling, he does not cause his decision on the merits of the case in the main proceedings to be open to appeal on the ground that, in the course of the proceedings, he made an order submitting a request for a preliminary ruling which was declared unlawful by the Kúria (Supreme Court).

66 In the light of the foregoing considerations, it must be held that the fourth question cannot be regarded as irrelevant to the outcome of the main proceedings and that it is, therefore, admissible.

Substance

67 As regards, in the first place, the question whether Article 267 TFEU must be interpreted as precluding the supreme court of a Member State from declaring, following an appeal in the interests of the law, that a request for a preliminary ruling which has been submitted under Article 267 TFEU to the Court of Justice by a lower court is unlawful, without, however, altering the legal effects of the decision containing that request, it should be recalled that the keystone of the judicial system established by the Treaties is the preliminary ruling procedure provided for in Article 267 TFEU, which, by setting up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, has the object of securing uniformity in the interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 90 and the case-law cited).

68 In that regard, the Court has repeatedly held that national courts have the widest discretion in referring questions to the Court involving interpretation of relevant provisions of EU law, that discretion being replaced by an obligation for courts of final instance, subject to certain exceptions recognised by the Court's case-law (judgment of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 32 and the case-law cited).

69 Both that discretion and that obligation are an inherent part of the system of cooperation between the national courts and the Court of Justice established by Article 267 TFEU and of the functions of the court responsible for the application of EU law entrusted by that provision to the national courts (judgment of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 33).

70 As a consequence, where a national court before which a case is pending considers that a question concerning the interpretation or validity of EU law has arisen in that case, it has the discretion, or is under an obligation, to request a preliminary ruling from the Court of Justice, and national rules imposed by legislation or case-law cannot interfere with that discretion or that obligation (judgment of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 34).

71 In the present case, even though the Kúria decision simply declares the initial request for a preliminary ruling unlawful and does not set aside the decision containing that request nor require the referring judge to withdraw the request and continue the main proceedings, the Kúria (Supreme Court), by reviewing the legality of that request in the light of Article 490 of the Code of Criminal Procedure, carried out – as the Advocate General also observed in point 43 of his Opinion – a review of the initial request for a preliminary ruling similar to the review carried out by the Court of Justice in order to determine whether a request for a preliminary ruling is admissible.

72 Even though Article 267 TFEU does not preclude an order for reference from being subject to a judicial remedy under national law, a decision of a supreme court, by which a request for a preliminary ruling is declared unlawful on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings is incompatible with that article, since the assessment of those factors falls within the exclusive jurisdiction of the Court to rule on the admissibility of the questions referred for a preliminary ruling, as is apparent from the case-law of the Court set out in paragraphs 60 and 61 above (see, to that effect, judgment of 16 December 2008, *Cartesio*, C-210/06, EU:C:2008:723, paragraphs 93 to 96).

73 In addition, as the Advocate General also observed in point 48 of his Opinion, the effectiveness of EU law would be in jeopardy if the outcome of an appeal to the highest national

court could have the effect of deterring a national court hearing a case governed by EU law from exercising the discretion conferred on it by Article 267 TFEU to refer to the Court of Justice questions concerning the interpretation or validity of EU law in order to enable it to decide whether or not a provision of national law was compatible with that EU law (see, to that effect, judgment of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 45 and the case-law cited).

74 Indeed, even though the Kúria (Supreme Court) did not require the referring judge to withdraw the initial request for a preliminary ruling, the fact remains that, by its decision, that supreme court held that that request was unlawful. Such a finding of illegality is liable to weaken both the authority of the answers that the Court will provide to the referring judge and the decision which he will give in the light of those answers.

75 Furthermore, that decision of the Kúria (Supreme Court) is likely to prompt the Hungarian courts to refrain from referring questions for a preliminary ruling to the Court, in order to preclude their requests for a preliminary ruling from being challenged by one of the parties on the basis of the Kúria decision or from being the subject of an appeal in the interests of the law.

76 It should be recalled, in that regard, that, as regards the preliminary ruling procedure, 'the vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by Articles [258 and 259 TFEU] to the diligence of the Commission and the Member States' (judgment of 5 February 1963, *van Gend & Loos*, 26/62, EU:C:1963:1, p. 13). Limitations on the exercise by national courts of the jurisdiction conferred on them by Article 267 TFEU would have the effect of restricting the effective judicial protection of the rights which individuals derive from EU law.

77 Consequently, the Kúria decision is prejudicial to the prerogatives granted to national courts and tribunals by Article 267 TFEU and, therefore, to the effectiveness of the cooperation between the Court and the national court and tribunals established by the preliminary ruling mechanism (see, by analogy, judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 25).

78 As regards, in the second place, the question whether the principle of the primacy of EU law requires the national court which has made a reference for a preliminary ruling to the Court of Justice – the unlawfulness of which has been found by the supreme court of the Member State concerned without, however, altering the legal effects of the national court's decision to make a reference – to disregard such a decision of the supreme court, it should be noted, first, that, in accordance with the Court's settled case-law, the principle of the primacy of EU law establishes the pre-eminence of EU law over the law of the Member States. That principle therefore requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (judgment of 18 May 2021, *Asociaţia "Forumul Judecătorilor din România" and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 244 and the case-law cited).

79 Thus, the Court has repeatedly held that, by virtue of the principle of the primacy of EU law, a Member State's reliance on rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of EU law. In accordance with settled case-law, the effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without, inter alia, provisions of domestic law relating to the attribution of jurisdiction, including constitutional provisions, being able to prevent that (judgment of 18 May 2021, *Asociaţia*

"Forumul Judecătorilor din România" and Others, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 245 and the case-law cited).

80 Secondly, as is apparent from settled case-law, a provision of national law which prevents the procedure laid down in Article 267 TFEU from being implemented must be set aside without the court concerned's having to request or await the prior setting aside of that provision of national law by legislative or other constitutional means (judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 141 and the case-law cited).

81 It follows that the principle of the primacy of EU law requires a lower court to disregard a decision of the supreme court of the Member State concerned if it considers that the latter is prejudicial to the prerogatives granted to that lower court by Article 267 TFEU and, consequently, to the effectiveness of the cooperation between the Court and the national court and tribunals established by the preliminary ruling mechanism. It should be pointed out that, in view of the extent of those prerogatives, the possibility that, in its decision ruling on the request for a preliminary ruling, the Court may find that the questions referred to it for a preliminary ruling by that lower court are inadmissible in whole or in part, cannot provide grounds for maintaining the decision of the supreme court concerned.

82 In the light of the foregoing considerations, the answer to the fourth question is, first, that Article 267 TFEU must be interpreted as precluding the supreme court of a Member State from declaring, following an appeal in the interests of the law, that a request for a preliminary ruling which has been submitted to the Court under Article 267 TFEU by a lower court is unlawful on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings, without, however, altering the legal effects of the decision containing that request, and, secondly, that the principle of the primacy of EU law requires that lower court to disregard such a decision of the national supreme court.

The fifth question

83 By his fifth question, which it is appropriate to examine in the second place, the referring judge asks, in essence, whether the second subparagraph of Article 19(1) TEU, Article 47 of the Charter and Article 267 TFEU must be interpreted as precluding disciplinary proceedings from being brought against a national judge on the ground that he or she made a request for a preliminary ruling to the Court under Article 267 TFEU.

Admissibility

84 The Hungarian Government and the Commission contend that the fifth question is inadmissible. The Hungarian Government contends, in essence, that the disciplinary proceedings that were brought against the referring judge, but subsequently withdrawn and closed, are irrelevant since their effects on the referring judge's task of adjudication cannot be determined. For its part, the Commission contends, in essence, that the fifth question is irrelevant for the purposes of resolving the dispute in the main proceedings and that, in any event, the referring judge has not provided any information concerning the effect of the commencement of the disciplinary proceedings on the continuation of the criminal proceedings before him.

85 In that regard, in the light of the case-law already referred to in paragraphs 60 and 61 above, it should be noted that, in his reply of 10 December 2019 to the request for information sent to him by the Court, the referring judge stated that, notwithstanding the withdrawal of the disciplinary

proceedings against him, his question remained relevant since it stems from the very fact that disciplinary proceedings may be brought in such circumstances and is, therefore, independent of the continuation of those proceedings.

86 Furthermore, it should be noted that the fourth and fifth questions referred for a preliminary ruling are closely connected. Indeed, it is apparent from the supplementary request for a preliminary ruling that it was because of the Kúria decision declaring the initial request for a preliminary ruling unlawful that the President of the Fővárosi Törvényszék (Budapest High Court) adopted the measure requesting that disciplinary proceedings be commenced against the referring judge. Thus, by his fifth question, the referring judge seeks, in essence, to ascertain whether he will be able to refrain from complying with the Kúria decision when he rules on the substance of the case in the main proceedings without having to fear that, in so doing, the disciplinary proceedings that were brought against him, based on the Kúria decision, will be reopened.

87 Consequently, as in the case of the fourth question, the referring judge is faced with a procedural obstacle, arising from the application of national legislation against him, which he must address before he can decide the main proceedings without external interference, and therefore, in accordance with Article 47 of the Charter, in complete independence (see, to that effect, judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 46 and the case-law cited). He is uncertain as to the conditions for the continuation of the main proceedings following the Kúria decision declaring the initial request for a preliminary ruling unlawful and which also served as a ground for commencing disciplinary proceedings against him. In that regard, the present case is distinguishable from those which gave rise to the judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny* (C-558/18 and C-563/18, EU:C:2020:234), in which the answers to the questions of interpretation of EU law referred to the Court would not have been necessary for the referring courts concerned in order to resolve procedural questions of national law before being able to rule on the substance of the disputes before them.

88 It follows that the fifth question is admissible.

Substance

89 As a preliminary point, it should be noted that the fifth question refers to the interpretation of the second subparagraph of Article 19(1) TEU, Article 47 of the Charter and Article 267 TFEU. However, it is apparent from the grounds of the order for reference that, as has already been pointed out in essence in paragraphs 86 and 87 above, that question arises in relation to a procedural difficulty, which must be resolved before a decision can be taken on the substance of the main proceedings and which calls into question the powers of the referring judge in the context of the procedure laid down in Article 267 TFEU. Thus, the fifth question must be examined only in the light of Article 267 TFEU.

90 In that regard, in the light of the case-law of the Court referred to in paragraphs 68 to 70 and 72 above, it must be pointed out that the Court has already held that provisions of national law which expose national judges to disciplinary proceedings as a result of the fact that they have made a reference for a preliminary ruling to the Court of Justice cannot be permitted. Indeed, the mere prospect of being the subject of disciplinary proceedings as a result of making such a reference, or deciding to maintain that reference after it was made, is likely to undermine the effective exercise by the national judges concerned of their discretion to make a reference to the Court and of their role as judges responsible for the application of EU law (see, to that effect, judgments of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234,

paragraph 58 and the case-law cited, and of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 227).

91 The fact that those judges may not be exposed to disciplinary proceedings or measures for having exercised that discretion to make a reference for a preliminary ruling to the Court, which is exclusively within their jurisdiction, also constitutes a guarantee that is essential to judicial independence, which independence is, in particular, essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 59 and the case-law cited).

92 Furthermore, it should be noted that disciplinary proceedings commenced on the ground that a national judge has decided to make a reference for a preliminary ruling to the Court are liable to deter all national courts from making such references, which could jeopardise the uniform application of EU law.

93 In the light of the foregoing, the answer to the fifth question is that Article 267 TFEU must be interpreted as precluding disciplinary proceedings from being brought against a national judge on the ground that he or she has made a reference for a preliminary ruling to the Court of Justice under that provision.

The first question

Admissibility

94 According to the Hungarian Government, the case in the main proceedings is, as the Kúria (Supreme Court) found, one which is straightforward to assess in fact and in law and which, fundamentally, does not require an interpretation of EU law. Referring to the Kúria decision, the Hungarian Government submits, in general terms, that the criminal proceedings before the referring judge do not disclose any facts or circumstances from which it may be concluded that there was a breach of the provisions governing the use of languages during those proceedings or a failure on the part of the authorities responsible for the case from which the referring judge could have inferred the need for an interpretation of EU law. Since no real issue actually arises in the main proceedings with regard to the quality of interpretation, the first part of the first question is hypothetical and, accordingly, it is neither necessary nor possible for the Court to answer it. Similarly, an answer to the second part of that question is also unnecessary in view of the facts of the case in the main proceedings, given that, according to the Hungarian Government, it is possible to find, on the basis of the facts established by the Kúria (Supreme Court) from the investigation file, that the accused person understood the charges against him.

95 In that regard, in the light of the case-law of the Court referred to in paragraphs 60 and 61 above, it should be noted that the referring judge clearly sets out, in the initial request for a preliminary ruling, the circumstances in which he decided to refer the first question and the grounds for doing so. As is apparent from paragraphs 25 to 28 above, the case in the main proceedings concerns criminal proceedings *in absentia* brought against a Swedish national born in Turkey, who is being prosecuted for an infringement of the Hungarian legislation on firearms and ammunition; this follows an investigation during which he was questioned by the police in the presence of a Swedish-language interpreter, but without the assistance of a lawyer, even though this was the interview at which he was informed that he was suspected of having committed offences under that national legislation. Thus, the dispute in the main proceedings has a clear connection with the provisions of Directives 2010/64 and 2012/13 to which the first question relates.

96 Moreover, as regards the Hungarian Government's argument that the case in the main proceedings is one which is straightforward to assess in fact and in law and consequently does not require an interpretation of EU law by the Court, with the result that the reference for a preliminary ruling was unnecessary, it is sufficient, first, to point out, as is apparent from the case-law of the Court mentioned in paragraph 60 above, that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Secondly, such a circumstance cannot prevent a national court from referring a question for a preliminary ruling to the Court, and does not have the effect of rendering the question referred inadmissible (see, to that effect, judgment of 29 April 2021, *Ubezpieczeniowy Fundusz Gwarancyjny*, C-383/19, EU:C:2021:337, paragraph 33 and the case-law cited).

97 Accordingly, it must be held that the first question is admissible.

Substance

98 As a preliminary point, it should be noted that the first question refers to Article 6(1) TEU. However, apart from a general reference to the applicability of the Charter, that provision does not assist the referring judge's reasoning, as is evidenced from the grounds of the initial request for a preliminary ruling. Moreover, it is a general provision by which the European Union recognises that the Charter has the same legal value as the Treaties, makes clear that the provisions of the Charter are not in any way to extend to the competences of the European Union as defined in the Treaties and provides details of the method of interpreting the rights, freedoms and principles in the Charter. In those circumstances, that provision appears irrelevant for the purposes of analysing the first question.

99 However, in accordance with its settled case-law, the Court may find it necessary to consider provisions of EU law which the national court has not referred to in its question (judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 34 and the case-law cited).

100 In accordance with Article 48(1) of the Charter, everyone who has been charged must be presumed innocent until proved guilty according to law. Moreover, Article 48(2) of the Charter states that respect for the rights of the defence of anyone who has been charged must be guaranteed.

101 In that regard, it should be noted that 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. As is apparent from the explanations relating to Article 48 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, Article 48 corresponds to Article 6(2) and (3) ECHR. The Court must, accordingly, ensure that its interpretation of Article 48 of the Charter ensures a level of protection which does not disregard that guaranteed by Article 6 ECHR, as interpreted by the European Court of Human Rights (see, to that effect, judgment of 29 July 2019, *Gambino and Hyka*, C-38/18, EU:C:2019:628, paragraph 39 and the case-law cited).

102 In those circumstances, by the first part of his first question, the referring judge asks, in essence, whether Article 5 of Directive 2010/64 must be interpreted as requiring Member States to create a register of independent translators and interpreters or to ensure that the adequacy of the interpretation provided in judicial proceedings can be reviewed.

103 In that regard, it should be noted that Article 5(2) of Directive 2010/64 provides that 'Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified'.

104 According to the Court's settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 2 September 2015, *Surmačs*, C-127/14, EU:C:2015:522, paragraph 28, and of 16 November 2016, *DHL Express (Austria)*, C-2/15, EU:C:2016:880, paragraph 19).

105 It is apparent from the very wording of Article 5(2) of Directive 2010/64, which uses the verb 'endeavour', that the creation of a register of independent translators or interpreters who are appropriately qualified constitutes more a programmatic requirement than an obligation to achieve a certain result, which, moreover does not, in itself, have any direct effect.

106 That literal interpretation is borne out by the context of that provision and by the objectives pursued by Directive 2010/64.

107 As set out in recital 12 thereof, Directive 2010/64 lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings

108 In accordance with recital 17 of that directive, such rules should ensure that there is free and adequate linguistic assistance, allowing suspects or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their right of defence and safeguarding the fairness of the proceedings.

109 Recital 24 of Directive 2010/64, for its part, states that Member States should ensure that control can be exercised over the quality of the interpretation and translation provided, when the competent authorities have been put on notice in a given case of a deficiency in that regard. In addition, Article 5(1) of Directive 2010/64 provides that Member States must take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) of that directive, with that latter provision specifying that interpretation must be 'of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence'.

110 It is apparent from those provisions and recitals, irrespective of the specific methods of implementing Article 5 of Directive 2010/64, that that directive requires Member States to adopt 'concrete measures' to ensure the 'sufficient quality' of the interpretation, so as to guarantee, first, that the persons concerned have knowledge of the case against them and are able to exercise their right of defence and, secondly, the sound administration of justice. In that regard, the creation of a register of independent translators or interpreters is one of the means likely to contribute to the attainment of such an objective. Although the establishment of such a register cannot, therefore, be regarded as being required of Member States by that directive, the fact remains that Article 5(1) of Directive 2010/64 provides, in a sufficiently precise and unconditional manner in order to be relied upon by an individual and applied by the national court, that Member States are to adopt concrete measures to ensure the quality of the interpretation and translation provided and to promote, to that end, the adequacy of those services and efficient access thereto.

111 Article 2(5) of Directive 2010/64 provides, in that regard, in unconditional and precise terms, that Member States are to ensure that, in accordance with procedures in national law, suspects or

accused persons have ‘the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings’.

112 However, such a possibility does not relieve Member States of their obligation, referred to in Article 5(1) of Directive 2010/64, read in conjunction with, inter alia, Article 2(8) thereof, to take ‘concrete measures’ to ensure that the interpretation provided is of a ‘sufficient quality’, in particular in the absence of a register of independent translators or interpreters.

113 In that regard, compliance with the requirements relating to a fair trial means ensuring that the accused person knows what is being alleged against him or her and can defend himself or herself (see, to that effect, judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraph 39 and the case-law cited). The obligation of the competent authorities is not, therefore, limited to the appointment of an interpreter. If they are put on notice in the particular circumstances, it may also extend to a degree of subsequent control over the adequacy of the interpretation provided (see, to that effect, ECtHR, 18 October 2006, *Hermi v. Italy*, CE:ECHR:2006:1018JUD001811402, § 70).

114 Failure on the part of the national courts to examine allegations that an interpreter provides inadequate services may entail an infringement of the rights of the defence (see, to that effect, ECtHR, 24 June 2019, *Knox v. Italy*, CE:ECHR:2019:0124JUD007657713, §§ 182 and 186).

115 Thus, in order to ensure that the suspect or accused person who does not speak and understand the language of the criminal proceedings has nevertheless been properly informed of the allegations against him or her, the national courts must review whether he or she has been provided with interpretation of a ‘sufficient quality’ in order to understand the accusation against him or her, so that the fairness of the proceedings is safeguarded. In order to enable national courts to carry out that verification, those courts must, inter alia, have access to information relating to the selection and appointment procedure for independent translators and interpreters.

116 In the present case, it is apparent from the file before the Court that there is no register of independent translators or interpreters in Hungary. The referring judge states that, because of gaps in the national legislation, it is in practice impossible to guarantee the quality of the interpretation provided to suspects and accused persons. The Hungarian Government contends, however, that the national legislation governing the activity of professional interpreters and translators and the rules of criminal procedure enable any person who does not speak Hungarian to receive linguistic assistance of a quality meeting the requirements of fair proceedings. Leaving aside those considerations relating to national law, it is for the referring court to carry out a specific and precise assessment of the facts of the particular case in the main proceedings, in order to ascertain that the interpretation provided in that case to the person concerned was of a sufficient quality, in the light of the requirements arising from Directive 2010/64, to enable that person to be aware of the reasons for his or her arrest or the accusations against him or her, and thus to be able to exercise his or her rights of defence.

117 Consequently, Article 5 of Directive 2010/64 must be interpreted as requiring Member States to take concrete measures in order to ensure that the quality of the interpretation and translations provided is sufficient to enable the suspect or accused person to understand the accusation against him or her and in order that that interpretation can be reviewed by the national courts.

118 The second part of the first question referred for a preliminary ruling seeks to ascertain whether, in the absence of such a register or other method of reviewing the adequacy of the interpretation and where it is impossible to establish whether the suspect or accused person has been

informed of the suspicions or accusation against him or her, Article 4(5) and Article 6(1) of Directive 2012/13, read in the light of Article 48(2) of the Charter, must be interpreted as precluding the proceedings from being continued *in absentia*.

119 That question is based upon the premiss that the absence of national measures intended to guarantee the quality of interpretation would result in the referring court's being deprived of means for it to review the adequacy of the interpretation. It must be borne in mind that, irrespective of the question whether there are general national measures which make it possible to guarantee and review the quality of the interpretation provided in criminal proceedings, it is for the referring court to carry out a specific and precise assessment of the facts of the case in the main proceedings in order to ascertain that the interpretation provided in that case to the person concerned was of a sufficient quality in the light of the requirements arising from Directive 2010/64.

120 Following that verification, the referring court may conclude that it cannot establish whether the person concerned was informed, in a language which he or she understands, of the accusation against him or her, either because the interpretation provided to that person was inadequate or because it is impossible to ascertain the quality of that interpretation. Consequently, the second part of the first question referred for a preliminary ruling must be understood as seeking to ascertain whether Article 4(5) and Article 6(1) of Directive 2012/13, read in the light of Article 48(2) of the Charter, are to be interpreted as precluding a person from being tried *in absentia* while, on account of inadequate interpretation, he or she has not been informed in a language which he or she understands of the accusation against him or her or where it is impossible to ascertain the quality of the interpretation provided and, therefore, to establish that he or she has been informed in a language he or she understands of the accusation against him or her.

121 In that regard, it should be noted that, under Article 6(3) ECHR, everyone charged with a criminal offence has 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'. The protections afforded by Article 6(1) and (3) ECHR apply to a person subject to a 'criminal charge', within the autonomous ECHR meaning of that term. A 'criminal charge' exists from the moment that an individual is officially notified by the competent authority of an allegation that he or she has committed a criminal offence, or from the point at which his or her situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him or her. Thus, for example, a person arrested on suspicion of having committed a criminal offence can be regarded as being 'charged with a criminal offence' and claim the protection of Article 6 ECHR (ECtHR, 12 May 2017, *Simeonovi v. Bulgaria*, CE:ECHR:2017:0512JUD002198004, §§ 110 and 111).

122 According to the ECtHR's case-law, in criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair. The right to be informed of the nature and the cause of the accusation must be considered in the light of the accused's right to prepare his or her defence (ECtHR, 25 March 1999, *Pélissier and Sassi v. France*, CE:ECHR:1999:0325JUD002544494, §§ 52 and 54). To inform someone of a prosecution brought against him or her is a legal act of such importance that it must be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights; vague and informal knowledge cannot suffice (ECtHR, 1 March 2006, *Sejdovic v. Italy*, CE:ECHR:2006:0301JUD005658100, § 99).

123 The fairness of the proceedings entails that everyone must be able to understand the accusation against him or her in order to be able to defend himself or herself. A person who does not speak or understand the language of the criminal proceedings to which he or she is subject and

has not been provided with linguistic assistance such as to enable him or her to understand the accusations against him or her cannot be regarded as having been in a position to exercise his or her rights of defence.

124 That fundamental guarantee is implemented, inter alia, by the right to interpretation provided for in Article 2 of Directive 2010/64, which provides, in respect of any questioning or hearing during criminal proceedings, that suspects or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation, as well as by the right to translation of essential documents, referred to in Article 3 of that directive.

125 Where suspects or accused persons are arrested or detained, Article 4 of Directive 2012/13 requires Member States to provide them with a written Letter of Rights setting out, inter alia, the procedural rights listed in Article 3 of that directive.

126 Article 4(5) of Directive 2012/13 also provides that Member States must ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons must be 'informed of their rights orally in a language that they understand'.

127 Article 6(1) of Directive 2012/13 provides that Member States must ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided 'promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence'.

128 Admittedly, Directive 2012/13 does not regulate the procedures whereby the information about the accusation, provided for in Article 6 of that directive, must be supplied to the accused person. However, those procedures cannot undermine the objective referred to, inter alia, in Article 6 of Directive 2012/13, which, as is also apparent from recital 27 of that directive, consists in enabling suspects or persons accused of having committed a criminal offence to prepare their defence and in safeguarding the fairness of the proceedings (judgment of 13 June 2019, *Moro*, C-646/17, EU:C:2019:489, paragraph 51 and the case-law cited).

129 It follows that the information which must be communicated to any person suspected or accused of having committed a criminal act, in accordance with Article 6 of Directive 2012/13, must be provided in a language understood by that person, where necessary by means of linguistic assistance from an interpreter or by means of a written translation.

130 Given that the right to be informed of the accusation against him or her is decisive for the criminal proceedings as a whole, the fact that a person, who does not speak or understand the language of those proceedings, was not provided with linguistic assistance such as to enable him or her to understand the content thereof and to defend himself or herself, is sufficient to deprive the proceedings of their fairness and to undermine the effective exercise of the rights of the defence.

131 Admittedly, Article 6(3) of Directive 2012/13 provides that Member States are to ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person. That provision therefore allows the failure to provide that information, in particular because it was not given in a language understood by the accused person, to be rectified at the criminal trial.

132 However, it also follows that a criminal court cannot, without disregarding Article 6 of Directive 2012/13, as well as the fairness of the proceedings and the effective exercise of the rights of the defence which that article seeks to safeguard, rule on the merits of the accusation in the absence of the accused person from his or her trial, where the latter has not been previously informed in a language which he or she understands of the accusation against him or her.

133 In the present case, if, on the basis of the factual checks to be carried out by the referring court, it were established that the interpretation provided were not of a sufficient quality to enable the accused person to understand the reasons for his arrest and the accusations against him, this would be such as to preclude the criminal proceedings from being continued *in absentia*.

134 Moreover, as the right of suspects and accused persons to be present at their trial is enshrined in Article 8(1) of Directive 2016/343, the possibility of organising the criminal trial *in absentia* is made subject by Article 8(2) of that directive to those persons' having been informed, in due time, of the trial and the consequences of non-appearance.

135 Lastly, it is true that, under Article 9 of that directive, Member States are to ensure that suspects or accused persons who were not present at their trial, when the conditions laid down in Article 8(2) of that directive were not met, have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case. However, such a provision cannot justify a person being convicted *in absentia* when he or she has not been informed of the accusation against him or her, in accordance with the requirements of Article 8(2), where that failure to inform is the result of inadequate interpretation and therefore constitutes an infringement of other provisions of EU law.

136 Furthermore, if, in the present case, on the basis of the factual checks to be carried out by the referring court, it were to prove impossible to ascertain the quality of the interpretation provided, such a circumstance would also preclude the criminal proceedings from being continued *in absentia*. Indeed, the fact that it is impossible to ascertain the quality of the interpretation provided means that it is impossible to establish whether the accused person was informed of the suspicions or accusation against him or her. Thus, all the considerations concerning the situation examined in paragraphs 121 to 135 above are, given the decisive nature for the criminal proceedings as a whole of the accused person's right to be informed of the accusation against him or her and the fundamental nature of the rights of the defence, applicable *mutatis mutandis* to this second situation.

137 Consequently, Article 2(5) of Directive 2010/64 and Article 4(5) and Article 6(1) of Directive 2012/13, read in the light of Article 48(2) of the Charter, must be interpreted as precluding a person from being tried *in absentia* when, on account of inadequate interpretation, he or she has not been informed, in a language which he or she understands, of the accusation against him or her or where it is impossible to ascertain the quality of the interpretation provided and therefore to establish that he or she has been informed, in a language which he or she understands, of the accusation against him or her.

138 In the light of all the foregoing considerations, the answer to the first question is that:

– Article 5 of Directive 2010/64 must be interpreted as requiring Member States to take concrete measures in order to ensure that the quality of the interpretation and translations provided is sufficient to enable the suspect or accused person to understand the accusation against him or her and in order that that interpretation can be reviewed by the national courts;

– Article 2(5) of Directive 2010/64 and Article 4(5) and Article 6(1) of Directive 2012/13, read in the light of Article 48(2) of the Charter, must be interpreted as precluding a person from being tried *in absentia* when, on account of inadequate interpretation, he or she has not been informed, in a language which he or she understands, of the accusation against him or her or where it is impossible to ascertain the quality of the interpretation provided and therefore to establish that he or she has been informed, in a language which he or she understands, of the accusation against him or her.

The second and third questions

139 By his second question, the referring judge asks, in essence, whether the principle of judicial independence, enshrined in Article 19 TEU and Article 47 of the Charter, must be interpreted as precluding the President of the NOJ from appointing the president of a court, by circumventing the applications procedure for judges and having recourse to direct temporary appointments, bearing in mind that the president of a court is empowered, inter alia, to decide on the allocation of cases, to commence disciplinary proceedings against judges and to assess judicial performance and, if the answer is in the affirmative, whether the proceedings before a court so presided over are fair. By his third question, the referring judge asks, in essence, whether the principle of judicial independence must be interpreted as precluding a remuneration system which provides that judges receive lower remuneration than prosecutors of the same category and allows discretionary bonuses to be awarded to judges and, if so, whether that principle must be interpreted as meaning that the right to a fair trial cannot be guaranteed in such circumstances.

140 Since the admissibility of those questions is disputed by the Hungarian Government and by the Commission on the ground, in essence, that neither the interpretation of Article 19 TEU nor that of Article 47 of the Charter is relevant for the purposes of resolving the dispute in the main proceedings, it should be recalled that, as is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be ‘necessary’ to enable the referring court to ‘give judgment’ in the case before it (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 45 and the case-law cited).

141 The Court has thus repeatedly held that it is clear from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court by way of a request for a preliminary ruling unless a case is pending before it in which it is called upon to give a decision which is capable of taking account of the preliminary ruling (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 46 and the case-law cited).

142 In such proceedings, there must therefore be a connecting factor between that dispute and the provisions of EU law whose interpretation is sought, by virtue of which that interpretation is objectively required for the decision to be taken by the referring court (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 48 and the case-law cited).

143 In the present case, it is not apparent from the order for reference that there is a connecting factor between the provisions of EU law to which the second and third questions referred for a preliminary ruling relate and the dispute in the main proceedings, which makes it necessary to have the interpretation sought so that the referring judge may, by applying the guidance provided by such an interpretation, make the decision needed to rule on that dispute (see, by analogy, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 52 and the case-law cited).

144 First, as the Advocate General also observed in points 90 and 91 of his Opinion, the main proceedings do not concern the Hungarian judicial system as a whole, of which some aspects may undermine the independence of the judiciary and, more particularly, that of the referring court in its implementation of EU law. In that regard, the fact that there may be a material connection between the substance of the main proceedings and Article 47 of the Charter, if not more broadly with Article 19 TEU, is not sufficient to satisfy the criterion of necessity, referred to in Article 267 TFEU. In order to do so, it would be necessary for the interpretation of those provisions, as requested in the second and third questions, to be objectively required for the decision on the merits of the main proceedings, which is not the case here.

145 Secondly, although the Court has already held admissible questions referred for a preliminary ruling on the interpretation of procedural provisions of EU law which the referring court concerned is required to apply in order to deliver its judgment (see, to that effect, judgment of 17 February 2011, *Weryński*, C-283/09, EU:C:2011:85, paragraphs 41 and 42), that is not the scope of the second and third questions raised in the present case (see, by analogy, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 50).

146 Thirdly, an answer by the Court to those questions does not appear capable of providing the referring court with an interpretation of EU law which would allow it to resolve procedural questions of national law before being able to rule on the substance of the dispute before it (see, by analogy, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 51).

147 It follows from all the foregoing that the second and third questions are inadmissible.

Costs

148 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 (Grand Chamber) hereby rules:

1. **Article 267 TFEU must be interpreted as precluding the supreme court of a Member State from declaring, following an appeal in the interests of the law, that a request for a preliminary ruling which has been submitted to the Court under Article 267 TFEU by a lower court is unlawful on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings, without, however, altering the legal effects of the decision containing that request. The principle of the primacy of EU law requires that lower court to disregard such a decision of the national supreme court.**

2. **Article 267 TFEU must be interpreted as precluding disciplinary proceedings from being brought against a national judge on the ground that he or she has made a reference for a preliminary ruling to the Court of Justice under that provision.**

3. **Article 5 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 must be interpreted as requiring Member States to take concrete measures in order to ensure that the quality of the interpretation and translations provided is sufficient to enable the suspect or accused person to understand the accusation against him or her and in order that that interpretation can be reviewed by the national courts.**

Article 2(5) of Directive 2010/64 and Article 4(5) and Article 6(1) 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 48(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a person from being tried *in absentia* when, on account of inadequate interpretation, he or she has not been informed, in a language which he or she understands, of the accusation against him or her or where it is impossible to ascertain the quality of the interpretation provided and therefore to establish that he or she has been informed, in a language which he or she understands, of the accusation against him or her.

[Signatures]

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* Language of the case: Hungarian.