

CJEU Rules on Mechanisms to Remedy Errors in the Indictment

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News

On 21 October 2021, the [CJEU ruled](#) on the compatibility of the Bulgarian Criminal Procedure Code with Directive 2012/13 on the accused person's right to information (Case C-282/20).

Facts of the case and questions referred to

In the case at issue, criminal proceedings were conducted against ZX for the possession of counterfeit money. During the trial proceedings it came to light that the prosecutor's indictment contained errors and omissions. However, according to the referring Specialised Criminal Court, Bulgaria, following a reform in 2017, the current Bulgarian Criminal Procedure Code does not provide for a mechanism to remedy such defects in the indictment after the pre-trial hearing (where, in the case at issue, all formalities of the indictment were approved), for example by referring the case back to the prosecutor.

Against this background, the referring court first asked about the compatibility of the Bulgarian legislation with Art. 6(3) of Directive 2012/13. According to Art. 6(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.

Second, the referring court asked how it should proceed if the CJEU concluded that Union law precludes the Bulgarian rules in question.

Findings of the CJEU

As to the first question, the CJEU referred to its previous case law that dealt with the compatibility of the Bulgarian criminal procedure code with the EU's procedural rights directives, in particular its judgment of 5 June 2018 in *Kolev and Others* (Case C-612/15 → [eu crim 2/2018, 99](#)). It follows from this case law that amendments to the charge must be disclosed to the accused person or his/her lawyer at a point in time when they still have the opportunity to respond effectively, before the stage of deliberation. In addition, it follows that the rights deriving from Art. 6(3) of Directive 2012/13 must be protected throughout the criminal proceedings and thus, in the present case, also after the pre-trial hearing in a criminal case. As a consequence, national legislation that does not allow to remedy procedural defects in the indictment after the pre-trial stage of the criminal proceedings must be considered incompatible with Art. 6 of the Directive.

As to the second question, the CJEU reiterated its case law that the national court should first try to give national law an interpretation consistent with EU law. If the national court is unable to do so, it may disapply

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the national provisions in question. In the present case, the judges in Luxembourg pointed out that the referring court may interpret Article 287 of the Bulgarian Criminal Procedure Code in conformity with Art. 6(3) of Directive 2012/13 and Art. 47 CFR. Under certain circumstances, Article 287 allows the prosecutor to make amendments to the charges during a judicial investigation.

Put in focus

Although the case seems to deal with peculiarities of the Bulgarian criminal procedure, the judgment is important in two respects: First, it summarises the CJEU's case law on the accused person's right to information during criminal proceedings. Second, the judgment stresses that Art. 6(3) of Directive 2012/13 has direct effect and any national court has, as an organ of a Member State, the obligation to disapply any provision of national law which is contrary to such a provision of EU law with direct effect.

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