

# ECJ Clarifies Obligation to Inform Accused Person of Reclassification of Offence

## News

**Thomas Wahl**

On 9 November 2023, the [ECJ decided](#) that Union law obliges a criminal court to inform the accused person of a new envisaged legal classification of the criminal act in due time ([Case C-175/22, BK](#)). As a result, Bulgarian case-law contradicts Art. 6(4) of Directive 2012/13 on the right of information in criminal proceedings. According to that national case law, Bulgarian criminal procedure law empowers the criminal court to declare a defendant guilty if the classification differs from the one initially used in the prosecutor's indictment, on the condition, first, that that new classification does not involve making substantial amendments to the factual aspect of the charges and, second, that it does not entail a more severe penalty than the offence arising from the classification initially used by the public prosecutor. A prior information of the change of legal classification is not foreseen.

In the underlying case, the Bulgarian public prosecutor classified the acts committed by the defendant as corruption while the referring court planned to use the classification of fraud or of exercise of undue influence. The referring court found itself prevented from proceeding in accordance with Bulgarian procedural criminal law in view of the EU Directive.

The ECJ emphasised that communicating the legal classification is of decisive importance to effectively exercising the rights of the defence. This already results from the fact that, according to Art. 6(4) of Directive 2012/13, the defendant must have the opportunity to put forward his arguments in relation to the elements of the new offences and he must have the opportunity to re-organise his defence.

The fact that the new classification cannot entail the application of a more severe penalty is entirely irrelevant, according to the judges in Luxembourg. Indeed, the fairness of the proceedings requires that the accused person be able fully to exercise his rights of defence. The greater or lesser degree of severity of the penalty incurred has no bearing on the question whether it has been possible to exercise those rights.

Lastly, the ECJ clarified that communicating a reclassification of the offence by the trial court does not conflict with the presumption of innocence and the right not to incriminate oneself (Arts. 3 and 7 of Directive 2016/343). A decision to reclassify an offence is not an acknowledgement of the person's guilt, the Court argued.

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