

ECJ: Information on the Detention Grounds Must Be Prompt and Specific



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News

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In a [judgment of 25 May 2023](#), the ECJ clarified the applicability of Directive 2012/13 on the right to information in criminal proceedings as well as the modalities, timing and the level of detail of information, which must be given to suspects.

Facts of the case and questions referred

The case (*C-608/21, XN v Politseyski organ pri 02 RU SDVR*) is based on questions referred by the Sofia District Court (Bulgaria), which had to examine the legality of a police detention order on suspicion of “disturbance of public order” against the plaintiff (XN). XN participated in protests and was detained by police officers from the Bulgarian Ministry of Interior. As grounds for detention, the police officers merely referred to “Article 72(1) of the Law on the Ministry of the Interior” and “disturbance of public order”. Other written police reports were only submitted at a later stage in the criminal proceedings. The referring court pointed out that the detention constituted an administrative coercive measure with the purpose of preventing the person concerned from absconding or committing an offence. Furthermore, the Supreme Administrative Court of Bulgaria considers permissible to provide information of factual and legal grounds for this detention in accompanying documents drawn up beforehand or afterwards, and it is seen sufficient to provide these information in the event the person concerned challenges the legality of the detention before courts. The referring court had doubts as to whether the Bulgarian legislation and case law is in line with Directive 2012/13, in particular its Art. 6(2) and asked:

- Is it permissible that information concerning the grounds for detaining a suspect, including information concerning the criminal offence of which he/she is suspected, is not contained in the written detention order, but in other accompanying documents (originating before or after that order) and which are not provided to him/her immediately?
- Which details must the information to the detained person contain?

ECJ's ruling on the applicability of Directive 2012/13 to the administrative coercive measure

The judges in Luxembourg first clarified that, even though the detention is considered an individual administrative act under Bulgarian law, the plaintiff was suspected of a criminal offence and he was informed as a criminal suspect. Therefore, Directive 2012/13 is applicable in the present case, the requirements of its Art. 2(1) are met.

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ECJ's reply to the first question referred

The ECJ concedes that Art. 6(2) of Directive 2012/13, according to which arrested or detained persons must be informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed, does neither indicate the timing nor the modalities of the information. However, Art. 6(2) must be read in the context of Art. 6(1), which lays down a general obligation to provide information on the criminal act, and the objective pursued by the Directive, which is to enable persons suspected or accused of a criminal offence to prepare their defence and to safeguard the fairness of the proceedings. These persons must be able to obtain a review of the detention or to apply for provisional release in an effective manner. Against this background, grounds for the detention of suspected/accused persons may be set out in documents other than the detention order, however, such information must be given "promptly", i.e., at the time of the deprivation of liberty or within a short period after it has begun. It is insufficient if the information is given, as in the present case, only during an appeal that challenged the lawfulness of detention.

ECJ's reply to the second question referred

With regard to the further question on the required detail of information, the ECJ points to the need to take account of the stage of the proceedings in the individual case. In order to guarantee the rights of the defense, in particular the right to effectively challenge detention, the relevant information must include a description of the relevant facts known to the competent authorities (time, place and nature of the person's actual participation in the alleged offence) as well as the legal classification provisionally adopted. It must also be ensured that the person concerned understands the reasons for his/her arrest or detention and is able to effectively challenge the lawfulness of that arrest or detention.

The ECJ also doubts whether the Bulgarian legislation is in line with EU law since it conferred the rights to information under Art. 6(2) of the Directive only to persons with the status of "accused person" and not to "suspects".

Put in focus

The ECJ made an important clarification that the Directives guaranteeing procedural safeguards in criminal proceedings apply irrespective of the definition of a measure restricting a person's liberty in national law (here: detention seen as an *administrative* measure under Bulgarian law). In addition, the judges in Luxembourg clarified the objective of the Directive on the right to information in criminal proceedings, which is to guarantee the effective use of defence rights against national law enforcement. It was less a problem that all necessary information to exercise these rights effectively were not contained in the written detention order, but rather that the information was not given promptly to the detained person.

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