



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

13 June 2019\*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2012/13/EU – Right to information in criminal proceedings – Article 6(4) – Right to be informed of the accusation – Information about any change in the information given where this is necessary to safeguard the fairness of the proceedings – Modification of the legal classification of the acts on which the accusation is based – No possibility for the accused to apply for the negotiated penalty established in national law during the trial proceedings – Difference where there is modification of the acts on which the accusation is based)

In Case C-646/17,

concerning a request for a preliminary ruling under Article 267 TFEU from the Tribunale di Brindisi (District Court, Brindisi, Italy), made by decision of 20 October 2017, received at the Court on 17 November 2017, in the criminal proceedings against

**Gianluca Moro,**

intervening parties:

**Procura della Repubblica presso il Tribunale di Brindisi,**

**Francesco Legrottaglie,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader, A. Rosas, L. Bay Larsen and M. Safjan (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 14 November 2018,

after considering the observations submitted on behalf of:

- Mr Legrottaglie, by D. Vitale, avvocato,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Palatiello, avvocato dello Stato,
- the Hungarian Government, by M. Z. Fehér, G. Koós and G. Tornyai, acting as Agents,

\* Language of the case: Italian.

- the Netherlands Government, by M. K Bulterman and A. M. de Ree, acting as Agents,
  - the Polish Government, by B. Majczyna, acting as Agent,
  - the European Commission, by C. Cattabriga and by R. Troosters and C. Zadra, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 5 February 2019,  
gives the following

### **Judgment**

- 1 The request for a preliminary ruling concerns the interpretation of Article 2(1), Article 3(1)(c) and Article 6(1) to (3) 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) and of Article 48 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 This request was made in criminal proceedings against Gianluca Moro ('the defendant'), who was accused of 'handling' stolen jewellery, within the meaning of Italian law, an accusation that was subsequently reclassified, during the trial proceedings, as a 'theft' of that jewellery.

### **Legal context**

#### *EU law*

##### *The Charter*

- 3 Article 48 of the Charter, entitled 'Presumption of innocence and right of defence', states as follows:
  - '1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
  - 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.'

##### *Directive 2012/13*

- 4 According to recitals 3, 4, 9, 10, 14, 27 to 29, 40 and 41 of Directive 2012/13:
  - '(3) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other's criminal justice systems. The extent of mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.
  - (4) Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied.

...

- (9) Article 82(2) [TFEU] provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. That Article refers to “the rights of individuals in criminal procedure” as one of the areas in which minimum rules may be established.
- (10) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the field of information in criminal proceedings.
- ...
- (14) This Directive ... lays down common minimum standards to be applied in the field of information about rights and about the accusation to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States. This Directive builds on the rights laid down in the Charter, and in particular Articles 6, 47 and 48 thereof, by building upon Articles 5 and 6 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the ECHR’)] as interpreted by the European Court of Human Rights. In this Directive, the term “accusation” is used to describe the same concept as the term “charge” used in Article 6(1) ECHR.
- ...
- (27) Persons accused of having committed a criminal offence should be given all the information on the accusation necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings.
- (28) The information provided to suspects or accused persons about the criminal act they are suspected or accused of having committed should be given promptly, and at the latest before their first official interview by the police or another competent authority, and without prejudicing the course of ongoing investigations. A description of the facts, including, where known, time and place, relating to the criminal act that the persons are suspected or accused of having committed and the possible legal classification of the alleged offence should be given in sufficient detail, taking into account the stage of the criminal proceedings when such a description is given, to safeguard the fairness of the proceedings and allow for an effective exercise of the rights of the defence.
- (29) Where, in the course of the criminal proceedings, the details of the accusation change to the extent that the position of suspects or accused persons is substantially affected, this should be communicated to them where necessary to safeguard the fairness of the proceedings and in due time to allow for an effective exercise of the rights of the defence.
- ...
- (40) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR as interpreted in the case-law of the European Court of Human Rights.
- (41) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the rights of the defence. It should be implemented accordingly.’

5 Article 1 of that directive, entitled ‘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.’

6 Article 2 of that directive, entitled ‘Scope’, provides in paragraph 1:

‘This Directive applies from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.’

7 Article 3 of the same directive, entitled ‘Right to information about rights’, provides in paragraph 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.’

8 Article 6 of Directive 2012/13, entitled ‘Right to information about the accusation’, is worded as follows:

‘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.

4. Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings.’

*Italian law*

- 9 Article 61 of the codice penale (Criminal Code), entitled ‘General aggravating circumstances’, states in paragraph 7 that:

‘Where the following circumstances are neither constitutive elements of the offence nor special aggravating circumstances, they aggravate the offence:

...

(7) in the case of offences against property and offences with a view to making a profit, where major economic loss has been caused to the victim’.

- 10 Under Article 624 of the Criminal Code, entitled ‘Theft’:

‘A person who takes movable property belonging to another, thereby depriving the holder of that property, with a view to making a profit for him or herself or for another will be punished with imprisonment of between six months and three years and a fine of between EUR 154 and EUR 516. ...’

- 11 Article 648 of the Criminal Code, entitled ‘Handling’, provides:

‘Save in the case of participation in an offence, a person who, with a view to making a profit for him or herself or for another, acquires, receives, conceals or acts as intermediary in the purchase, receipt or concealment of sums of money or property that are the proceeds of any other offence will be punished with imprisonment of between two and eight years and a fine of between EUR 516 and EUR 10 329. ...’.

- 12 Article 444 of the Codice di procedura penale (Code of Criminal Procedure), in the version applicable at the time of the facts in the main proceedings (‘the Code of Criminal Procedure’, ‘CPP’), entitled ‘Imposition of a penalty negotiated between the parties’, provides as follows:

‘1. The accused and the public prosecutor may ask the court to apply an alternative sanction, of a kind and duration that is appropriate, a financial penalty, reduced by up to one third, or a sentence of imprisonment which, taking into account the circumstances and reduced by up to one third, does not exceed five years, including if a financial penalty is imposed in addition to that sentence. ...

2. If there is consent, including by the party that has not made the request, and provided no judgment of acquittal has been handed down under Article 129, the court will, on the basis of the documents in the case, assuming that the classification of the acts and the application and comparison of the circumstances set out by the parties are correct and that the penalty indicated is appropriate, order that the penalty indicated be imposed, stating in the operative part that the parties have requested that penalty. Where there is a civil party to the proceedings, the court will not rule on that request; the accused person will however be ordered to pay the costs of the civil party, unless there are good grounds to order full or partial compensation. Article 75(3) will not apply.

3. In the request, a party may make its efficacy conditional on the grant of a suspended penalty. In such a case the court will dismiss the request if it considers that the penalty cannot be suspended.’

- 13 Paragraph 1 of Article 516 CPP, entitled ‘Change to the accusation’, is worded as follows:

‘If in the course of the trial proceedings (*istruzione dibattimentale*), the acts prove to be different from how they are described in the summons to appear, and not to fall within the jurisdiction of a higher court, the public prosecutor shall amend the accusation and proceed with the relevant prosecution.’

14 Article 521 CPP, entitled ‘Correlation between the accusation and the judgment’, provides:

‘1. In its judgment, the court may give the acts a legal classification different from that set out in the accusation, provided the offence is not outside its jurisdiction and does not fall within the jurisdiction of a collegiate formation instead of a single judge.

2. If it establishes that the acts differ from those described in the summons to appear, or in the accusation filed under Articles 516, 517 and Article 518(2), the court will order that the documents in the case be remitted back to the public prosecutor.

3. The court will proceed likewise if the public prosecutor relies on a new accusation other than under Articles 516, 517 and Article 518(2).’

15 Article 552 CPP, entitled ‘Summons to appear’, states in paragraph 1:

‘The summons to appear will contain:

...

(c) a statement of the offence, in clear and precise terms, of aggravating circumstances and of those that may require the application of preventive measures, citing the relevant provisions of law;

...’

16 Article 555 CPP, entitled ‘Hearing in court following a direct summons’, states in paragraph 2:

‘The accused person or the public prosecutor may make the request provided for by Article 444(1) CPP before the trial proceedings have been opened; the accused person may also apply for an expedited procedure or apply to pay a “settlement fine”.’

### **The main proceedings and the question referred for a preliminary ruling**

17 On 11 March 2015, Francesco Legrottaglie lodged a complaint with the police headquarters in Ostuni (Italy) against the defendant, alleging that the latter had received from an unknown person a number of items of gold jewellery stolen from the Legrottaglie family, and had passed that jewellery to a shop in Ostuni with a view to making a profit from it.

18 On 1 April 2016, by a summons issued by the public prosecutor under Article 552 CPP, the defendant was ordered to appear before the Tribunale di Brindisi (District Court, Brindisi, Italy) to answer charges of the crime of ‘handling’, under Article 648 of the Criminal Code.

19 On 15 September 2016, at a hearing held in the defendant’s absence, Mr Legrottaglie claimed damages as a civil party.

20 On 13 October 2017, at a hearing held in the presence of the defendant, the latter spontaneously made statements in which he confessed that he himself had stolen the jewellery in question.

21 At that stage of the case, the court informed the defendant that the acts of which he was accused could be reclassified as the offence under Article 624 and Article 61(7) of the Criminal Code, that is to say, ‘theft’, with the aggravating circumstance that the victim suffered major economic loss.

- 22 The defendant authorised his lawyer to request imposition of a negotiated penalty (known as a ‘patteggiamento’), under Article 444 CPP, in respect of that offence as legally reclassified. That request was found to be inadmissible on the grounds that the time limit under Article 555(2) CPP had expired.
- 23 The court invited the public prosecutor to amend the accusation, under Article 516 CPP, to allow the defendant to benefit from a negotiated penalty under Article 444 of that code. The public prosecutor declined to make that amendment and left it to the court, in this instance the Tribunale di Brindisi (District Court, Brindisi), to decide on the precise legal classification of the acts at issue.
- 24 The referring court notes that the Corte costituzionale (Constitutional Court, Italy) has declared Article 516 CPP to be unconstitutional in so far as that article does not entitle the accused person to request the trial court to impose the negotiated penalty, under Article 444 of that code, in relation to a different act that has come to light in the course of trial proceedings and is the subject matter of a new accusation.
- 25 Accordingly, in the view of the referring court, it is apparent from the case-law of the Corte costituzionale (Constitutional Court) on Article 516 CPP that, during the trial proceedings, the accused person is entitled to request the imposition of a negotiated penalty under Article 444 of that code, since the period for lodging the request is recommenced, where the acts on which the accusation is based are modified, whether as the result of error or where the proceedings have been conducted correctly, whereas there is no such possibility to request imposition of a negotiated penalty where the modification relates only to the legal classification of the acts to which the accusation relates.
- 26 The referring court questions whether EU law precludes the accused person being given different rights of the defence depending on whether the modification relates to the acts on which the accusation is based or to the legal classification of the acts to which the accusation relates.
- 27 Where the modification of the accusation concerns issues of fact, the accused person enjoys full rights of the defence, including the possibility of requesting imposition of a negotiated penalty under Article 444 CPP, whereas, where that modification concerns the legal classification of the acts concerned, only the accused person’s right to submit arguments in defence is guaranteed.
- 28 In those circumstances, the Tribunale di Brindisi (District Court, Brindisi) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 2(1), Article 3(1)(c) and Article 6(1), (2) and (3) of Directive [2012/13], and Article 48 of the [Charter] be interpreted as precluding procedural rules under the criminal law of a Member State on the basis of which the safeguards for the rights of the defence following a change to the charge are guaranteed in terms that differ, both in quality and in quantity, depending on whether that change relates to the factual elements of the charge or to its legal classification, in particular allowing the accused person to request the alternative and beneficial procedure of the imposition of a negotiated penalty (the “patteggiamento” procedure) only if the change is of a factual nature?’

### **The question referred for a preliminary ruling**

#### ***Admissibility***

- 29 The Italian Government submits that the request for a preliminary ruling is inadmissible, arguing that Directive 2012/13 was adopted on the basis of Article 82(2) TFEU, which relates only to criminal matters having a cross-border dimension. The scope of application of Directive 2012/13 should therefore be limited only to offences that have a cross-border dimension.

- 30 In the present case, it claims, the main proceedings concern an offence committed by an Italian national, on Italian territory, causing loss to another Italian national. That offence therefore has no cross-border dimension and Directive 2012/13 does not apply to a case such as that in the main proceedings.
- 31 Nor is Article 48 of the Charter applicable, according to the Italian Government, because, under Article 51(1) of the Charter, where a legal situation does not come within the scope of EU law, the Court of Justice has no jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction.
- 32 It should be noted in that respect that, under the first subparagraph of Article 82(2) TFEU, ‘to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.’
- 33 As regards the wording of Directive 2012/13, neither Article 1, which defines the subject matter of the directive, nor Article 2, on its scope of application, restrict application of the directive to situations having a cross-border dimension.
- 34 As regards the objectives of Directive 2012/13, it is apparent from recitals 10 and 14 of that directive that its aim is, by means of the establishment of common minimum rules governing the right to information in criminal proceedings, to increase the mutual confidence of the Member States in their respective criminal justice systems. As stated, in essence, in recital 14 and also in recital 41 of that directive, to that end the directive builds on the rights laid down in, inter alia, Articles 47 and 48 of the Charter and seeks to promote those rights (judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 88).
- 35 In the same vein, recitals 3 and 4 of Directive 2012/13 are based on the idea that the principle of mutual recognition implies that the decisions of the judicial authorities, even in a purely internal situation, should be based on common minimum rules. In that context, as the Advocate General emphasised in essence in point 41 of his Opinion, when the need for a specific instance of cross-border cooperation arises, the police and judicial authorities of a Member State can then regard the decisions of the judicial authorities of the other Member States as equivalent to their own.
- 36 Directive 2012/13 therefore contributes to establishing minimal harmonisation of criminal proceedings in the European Union, and the application, in a Member State, of the rules laid down by that directive is independent of the existence of any cross-border situation in the context of a dispute arising in that Member State.
- 37 The request for a preliminary ruling is therefore admissible.

### ***Substance***

#### *Preliminary remarks*

- 38 Mr Legrottaglie and the Italian, Hungarian, Netherlands and Polish governments contend primarily that the subject matter of the question referred to the Court in this case falls outside the scope of Directive 2012/13 and, therefore, the Court cannot examine that question.

- 39 It should be noted in that respect that in the procedure that Article 267 TFEU lays down for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court by those courts (judgment of 19 December 2018, *AREX CZ*, C-414/17, EU:C:2018:1027, paragraph 34 and the case-law cited).
- 40 Accordingly, even if, formally, the referring court has limited its questions to the interpretation of certain provisions of EU law, that does not prevent the Court from providing it with all the elements of interpretation of EU law that may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is, in that regard, for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings (see, to that effect, judgment of 19 December 2018, *AREX CZ*, C-414/17, EU:C:2018:1027, paragraph 35 and the case-law cited).
- 41 In its question, the referring court refers to Article 2(1), Article 3(1)(c), and Article 6(1) to (3) of Directive 2012/13 and Article 48 of the Charter.
- 42 According to Article 1 of Directive 2012/13, the 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.
- 43 As is apparent from a reading of Article 3 in conjunction with Article 6 of Directive 2012/13, the right mentioned in Article 1 of the directive concerns at least two separate rights. First, in accordance with Article 3 of that directive, suspects or accused persons must be informed, at least, of certain procedural rights, which are listed in that provision, including the right of access to a lawyer, any entitlement to free legal advice and the conditions for obtaining such advice, the right to be informed of the accusation, the right to interpretation and translation and the right to remain silent. Secondly, that directive establishes, in Article 6, rules concerning the right to information about the accusation (judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraphs 54 to 56).
- 44 In the present case, the main proceedings concern whether, where the legal classification of the acts on which the accusation is based are modified, it is possible to request the imposition of a negotiated penalty under Article 444 CPP during the trial proceedings, as a result of recommencement of the period in which to submit the request.
- 45 A legal issue of that nature must therefore be examined in the light of Article 6 of Directive 2012/13, on the right to be informed of the accusation.
- 46 It is not necessary to analyse that legal issue in the light of Article 6(1) to (3) of that directive. Indeed, in the light of the wording of Article 6(1) to (3), it is common ground, first, that the defendant was provided with information about the criminal act he is accused of having committed, secondly, that he was not arrested or detained, and, thirdly, that the information he received about the accusation, in particular about its legal classification, was given to him before the merits of the accusation were submitted to the court.
- 47 In contrast, it should be noted that Article 6(4) of Directive 2012/13 does appear to be relevant to a case such as that in the main proceedings.

- 48 According to that article, Member States are to ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with Article 6 of that directive, where that is necessary to safeguard the fairness of the proceedings.
- 49 It is therefore necessary, in the main proceedings, to ascertain the scope of the accused person's right to information in the light of that article where the legal classification of the acts to which the accusation relates is modified.
- 50 Under those circumstances, the question should be understood as enquiring, in essence, whether Article 6(4) of Directive 2012/13 and Article 48 of the Charter must be interpreted as meaning that they preclude national legislation according to which the accused person can, during the trial proceedings, request imposition of a negotiated penalty where the acts on which the accusation is based have been modified, but not where the legal classification of the acts to which the accusation relates has been modified.

*Directive 2012/13*

- 51 According to the case-law of the Court of Justice, Directive 2012/13 does not regulate the procedures whereby the information about the accusation, provided for in Article 6 of that directive, must be provided 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 in the preamble to 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 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686, paragraphs 62 and 63).
- 52 The requirement that the accused person, or his or her lawyer, must be able to participate properly in the hearing of argument with due regard for the adversarial principle and equality of arms, enabling the accused person's position to be stated effectively, does not preclude the possibility that information in relation to the charges sent to the defence may be the subject of later amendments, in particular as regards the legal classification of the alleged acts, or the possibility that new evidence may be added to the file in the course of argument. Such amendments and such evidence must however be disclosed to the accused person or his or her lawyer at a point in time when they still have the opportunity to respond effectively, before the stage of deliberation. That possibility is moreover envisaged in Article 6(4) of Directive 2012/13, which provides that suspects or accused persons must be informed promptly of any changes in the information given in accordance with that article in the course of criminal proceedings where this is necessary to safeguard the fairness of the proceedings (see, to that effect, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 95).
- 53 In any event, whenever the point in time when detailed information of the charges is provided, the person and his lawyer must have, *inter alia*, with due regard for the adversarial principle and the principle of equality of arms, sufficient time to become acquainted with that information, and must be placed in a position to prepare the defence effectively, submit any observations and, when necessary, to make any application, such as an application for further investigation, that they are entitled to make under national law. That requirement dictates that the case should, where necessary, be stayed and the case postponed to a subsequent date (see, to that effect, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 96).
- 54 Furthermore, according to recital 40 of Directive 2012/13, that directive sets minimum rules and Member States may extend the rights set out in it in order to provide a higher level of protection also in situations not explicitly dealt with in it, with the proviso that the level of protection should never fall below the standards provided by the ECHR as interpreted in the case-law of the European Court of Human Rights.

- 55 According to that court's case-law on 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 defence (ECtHR, 25 March 1999, *Pélissier and Sassi v. France*, CE:ECHR:1999:0325JUD002544494, §§ 52 and 54). Although, when they have such a right under national law, the trial courts can reclassify acts duly put before them, they must ensure that accused persons have had an opportunity to exercise their rights of the defence specifically and effectively on that point, having been informed, in good time, of the cause of the accusation, that is to say, not only of the material acts of which they are accused and on which the accusation is based, but also, in detail, of the legal classification given to those acts (ECtHR, 11 December 2007, *Drassich v. Italy*, CE:ECHR:2007:1211JUD002557504, § 34, and ECtHR, 22 February 2018, *Drassich v. Italy*, CE:ECHR:2018:0222JUD006517309, § 65).
- 56 As can be seen from the case-law cited in paragraphs 51 to 53 and 55 of this judgment, the information about any change affecting the accusation, provided in accordance with Article 6(4) of Directive 2012/13, must relate inter alia to the modification of the legal classification of the acts to which the accusation relates, so that the accused person can exercise his or her rights of defence specifically and effectively.
- 57 It is apparent from the decision to refer that the national legislation at issue in the main proceedings draws a distinction depending on whether the modification relates to the acts on which the accusation is based or the legal classification of the acts to which the accusation relates. It is only where the acts have been changed that the accused person is entitled, during the trial proceedings, to request imposition of a negotiated penalty, as a result of the period for submitting the request being recommenced.
- 58 In the present case, according to the referring court, the fact that the defendant confessed to a theft of jewellery, thereby giving rise to a reclassification of the offence from 'handling' to 'theft', within the meaning of national law, constitutes a modification of the legal classification of the acts on which the accusation is based.
- 59 As can be seen from the decision to refer, and as stated in paragraph 21 of this judgment, the defendant was informed, during the trial proceedings, of that modification in the legal classification of the acts.
- 60 The referring court enquires whether Directive 2012/13 requires that, in order to safeguard the fairness of criminal proceedings, the defendant should be able to request imposition of a negotiated penalty in a case such as this where the legal classification of the acts has been modified.
- 61 As the Advocate General highlighted in point 71 of his Opinion, the obligations defined in Directive 2012/13 constitute an expression of how the fairness of proceedings is to be guaranteed with respect to the provision of information to persons suspected or accused of having committed a criminal offence.
- 62 As stated in recital 14 and Article 1 of Directive 2012/13, the subject matter of that directive is the establishment of minimum standards to be applied in the field of information to suspects or accused persons (judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 82).
- 63 Furthermore, it does not emerge from the case-law cited in paragraphs 51 to 53 and 55 of this judgment that the right of suspects and accused persons to be informed of a change in the legal classification of the acts to which the accusation relates presupposes an obligation that the accused person be given the benefit of the right to request imposition of a negotiated penalty during the trial proceedings.

- 64 Moreover, in the present case, the referring court notes that, in the event of such a modification of the legal classification of the acts, the national legislation guarantees the accused person's right to submit arguments in defence.
- 65 Accordingly, in a case such as that in the main proceedings, the right of an accused person to be informed promptly of any changes in the information given, where that is necessary to safeguard the fairness of the proceedings, in accordance with Article 6(4) of Directive 2012/13, does not mean that the Member State concerned must grant that person a right, after proceedings have commenced, to request imposition of a negotiated penalty where the legal classification of the acts to which the accusation relates has been modified.

### *The Charter*

- 66 As a preliminary observation, it is to be recalled that the Charter's field of application so far as concerns action of the Member States is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing European Union law (judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 17).
- 67 The Court's settled case-law indeed states, in essence, that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations. In this respect, the Court has already observed that it has no power to examine the compatibility with the Charter of national legislation lying outside the scope of EU law. On the other hand, if such legislation falls within the scope of EU law, the Court, when requested to give a preliminary ruling, must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures (judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 19, and order of 23 November 2017, *Cunha Martins*, C-131/17, not published, EU:C:2017:902, paragraph 10).
- 68 Since the case in the main proceedings concerns the scope of the defendant's right to be informed of the accusation against him, and in particular of changes affecting the criminal act he is accused of having committed, within the meaning of Article 6(4) of Directive 2012/13, that legal situation does fall within the field of application of EU law.
- 69 According to Article 48(2) of the Charter, respect for the rights of the defence is guaranteed for all accused persons.
- 70 As apparent from the case-law cited in paragraphs 51 to 53 and 55 of this judgment, respect for the rights of the defence, within the meaning of that article of the Charter, requires that, where the legal classification of the acts to which the accusation relates has been modified, the accused person must be informed of that modification at a point in time when that person still has the opportunity to respond effectively, before the stage of deliberation, in order to be able to prepare his or her defence effectively.
- 71 In the present case, as stated in paragraphs 21 and 27 of this judgment, it is apparent from the decision to refer that, as a result of his spontaneous statements made during the trial proceedings, the defendant was informed that the legal classification of the acts of which he was accused had been modified and that he was entitled to submit arguments in defence.

- 72 In contrast, the rights of the defence established in Article 48(2) of the Charter, as regards the accused person's right to information, do not require the accused person to be entitled, once the trial proceedings have commenced, to request the imposition of a negotiated penalty where there has been a modification of the acts on which the accusation is based or a modification of the legal classification of the acts to which the accusation relates.
- 73 The mere fact that national law does not give the accused person the same rights as regards the ability to request imposition of a negotiated penalty irrespective of whether the modification relates to the acts on which the accusation is based or to the legal classification of the acts to which the accusation relates cannot, by itself, amount to an infringement of the rights of the defence, within the meaning of Article 48(2) of the Charter, from the perspective of the right of suspects and accused persons to be informed of the accusation against them.
- 74 In the light of the foregoing, the question should be answered to the effect that Article 6(4) of Directive 2012/13 and Article 48 of the Charter must be interpreted as meaning that they do not preclude national legislation according to which the accused person can, during the trial proceedings, request imposition of a negotiated penalty where the acts on which the accusation is based have been modified, but not where the legal classification of the acts to which the accusation relates has been modified.

### Costs

- 75 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 (First Chamber) hereby rules:

**Article 6(4) 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 and Article 48 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that they do not preclude national legislation according to which the accused person can, during the trial proceedings, request imposition of a negotiated penalty where the acts on which the accusation is based have been modified, but not where the legal classification of the acts to which the accusation relates has been modified.**

[Signatures]