

JUDGMENT OF THE COURT (Fourth Chamber)

9 November 2023 (*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2012/13/EU – Right to information in criminal proceedings – Article 6 – Right to information about the accusation – Article 6(4) – Changes in the information given – Amendment of the classification of the criminal offence – Obligation to inform the accused person in due time and to offer him or her the opportunity to put forward his or her arguments regarding the new envisaged classification – Effective exercise of the rights of the defence – Fairness of the proceedings – Directive (EU) 2016/343 – Strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings – Article 3 – Presumption of innocence – Article 7(2) – Right not to incriminate oneself – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Requirement that the criminal court or tribunal be impartial – Reclassification of the offence on the initiative of the criminal court or tribunal or on the basis of a proposal from the accused person)

In Case C-175/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 8 March 2022, received at the Court on that same date, in the criminal proceedings against

BK

with the participation of:

Spetsializirana prokuratura,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot, S. Rodin and L.S. Rossi, Judges,

Advocate General: T. Čápetá,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 2 March 2023,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the European Commission, by E. Rousseva and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 May 2023,

gives the following

Judgment

¹ This request for a preliminary ruling concerns the interpretation of Article 6(3) and (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 (OJ 2012 L 142, p. 1) and of the second paragraph of 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 BK for acts initially classified as corruption in the bill of indictment drawn up by the public prosecutor's office, but in respect of which the referring court plans to use the classification of fraud or of exercise of undue influence.

Legal context

European Union law

Directive 2012/13

- 3 Recitals 3, 9, 14 and 27 to 29 of Directive 2012/13 state:

'(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.

...

(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.

...

(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 at Rome on 4 November 1950,] as interpreted by the European Court of Human Rights. ...

...

(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.'

- 4 Article 1 of Directive 2012/13, entitled 'Subject matter', is worded as follows:

'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.'

5 Article 3 of that directive, entitled 'Right to information about rights', provides, in paragraph 1 thereof:

'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.'

6 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.

...

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.'

Directive (EU) 2016/343

7 The purpose 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) is, inter alia, according to Article 1(a) thereof, to lay down 'common minimum rules' concerning 'certain aspects of the presumption of innocence in criminal proceedings'.

8 Article 3 of that directive, entitled 'Presumption of innocence', provides:

'Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.'

9 Article 7 of that directive, entitled 'Right to remain silent and right not to incriminate oneself', provides, in paragraph 2 thereof:

'Member States shall ensure that suspects and accused persons have the right not to incriminate themselves.'

Bulgarian law

- 10 Article 287(1) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure), in the version applicable to the dispute in the main proceedings ('the NPK'), provides:

'The public prosecutor shall bring new charges where, in the course of the judicial investigation, he or she finds that there are grounds for making substantial amendments to the factual aspect of the charges or for applying a law concerning an offence attracting more serious penalties.'

- 11 Under Article 301(1)(2) of the NPK, when giving the verdict, the court or tribunal having jurisdiction is to consider, and decide on, the question whether the act is a criminal offence and how it is to be legally classified.

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

- 12 On 26 February 2021, the Spetsializirana prokuratura (Specialised Public Prosecutor's Office, Bulgaria) brought a bill of indictment before the referring court in respect of BK regarding acts classified as corruption which were alleged to have been committed in connection with his duties as an investigating officer.
- 13 According to the findings set out in the bill of indictment, BK requested a sum of money from two suspects in order to carry out the following two acts in connection with the exercise of his duties. First, BK is alleged to have offered to provide a favourable opinion regarding the suspects' requests to have vehicles which might have been used to commit an offence returned to them, and to return those vehicles to them once this had been authorised by the public prosecutor. Second, BK is also alleged to have offered not to charge the two suspects with the offence which they were suspected of having committed.
- 14 The Spetsializirana prokuratura (Specialised Public Prosecutor's Office) classified those acts as corruption committed by an investigating officer by way of extortion in abuse of his or her office. The penalties incurred for that offence would be a custodial sentence of 3 to 15 years, a fine of up to 25 000 leva (BGN) (approximately EUR 12 500), confiscation of up to half of the convicted person's assets, and loss of rights.
- 15 BK objected to that classification. He argued, in that regard, that the acts at issue could not be regarded as having been committed in connection with his duties, given that those acts do not fall within the powers of a police investigator but within those of the public prosecutor. Consequently, according to BK, the appropriate classification for such acts was that of fraud.
- 16 The referring court has noted, in that regard, that the form of fraud relied on, which arises where the perpetrator obtains a pecuniary advantage to the detriment of the victim by profiting from the victim's error, inexperience or ignorance, is punishable by a custodial sentence the duration of which may be up to five years.
- 17 The Spetsializirana prokuratura (Specialised Public Prosecutor's Office), however, has maintained the classification of corruption. The referring court has explained that, according to the national rules of procedure, it is for the public prosecutor alone to define the charge, and that the court or tribunal having jurisdiction cannot issue him or her with any directions whatsoever in that regard.
- 18 Accordingly, in the context of the procedure in the main proceedings, both the parties and the referring court have focused their attention on the evidence for or against acts of corruption. That court is required to give a ruling on the accusation as formulated by the public prosecutor, namely that of corruption. That being so, if it were to give a verdict acquitting BK of the charge of corruption, it would have the possibility to envisage a reclassification of the acts concerned.
- 19 According to the explanations given by the referring court, the national case-law interprets Article 301(1)(2) of the NPK, read in conjunction with Article 287(1) thereof, as meaning that the court or tribunal having jurisdiction has the power to declare a defendant guilty on the basis of a classification which differs from that initially used in the bill of 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.

- 20 Thus, the referring court explains that, under that case-law, it would be open to that court to use, in the context of the dispute in the main proceedings, the classification of fraud, as suggested by BK, given that that offence is punished with a lighter penalty than that incurred in the case of corruption.
- 21 That court adds that it could also envisage reclassifying the acts at issue as exercise of undue influence. Indeed, it could be held that BK sought payment from the suspects of a sum of money for the purpose of influencing the decisions of the public prosecutor in connection with the exercise of his duties, so that the public prosecutor would approve the return of their vehicles and would not proceed to charge them. The penalty incurred for the offence of exercise of undue influence would also be lighter than that provided for in relation to the offence of corruption, that is to say, it would be either a custodial sentence the duration of which could be up to six years or a fine the amount of which could be up to BGN 5 000 (approximately EUR 2 500).
- 22 The referring court emphasises, however, that there is no guarantee that the rights of the defence will be protected where the court or tribunal having jurisdiction decides to sentence a defendant on the basis of a classification of the acts concerned which differs from that initially used in the bill of indictment drawn up by the public prosecutor. In particular, that court or tribunal would not be required to inform that defendant beforehand; nor would it be required to permit him or her to put forward his or her arguments regarding the new envisaged classification. In practice, the defendant would become aware of that new classification in the judgment convicting him or her.
- 23 Thus, the referring court has doubts as to whether such a practice is compatible with EU law. More specifically, in its first question, that court asks whether the delivery of a judgment convicting a defendant on the basis of a classification of the acts at issue of which that defendant has not been informed beforehand is compatible with Article 6(3) and (4) of Directive 2012/13.
- 24 The second question concerns the requirements resulting from the second paragraph of Article 47 of the Charter.
- 25 According to the referring court, the obligation which it might have, as a result of the answer to the first question, to inform the defendant of the possibility of using a classification of the acts concerned which differs from that initially proposed by the public prosecutor could be such as to call in question its impartiality and the fairness of the proceedings. In that regard, two scenarios are envisaged by the referring court.
- 26 On the one hand, if the court or tribunal having jurisdiction were to inform a defendant of the possibility of using another envisaged classification on its own initiative, such as the classification of exercise of undue influence in the dispute in the main proceedings, that court or tribunal would be taking on, in fact, the role of prosecutor. In the referring court's view, it would be permissible to doubt the impartiality of a court or tribunal which, on its own initiative, suggested a new legal classification and then gave a judgment convicting a defendant which was based on that classification, even if that court or tribunal had given that defendant the opportunity to defend him- or herself in that regard beforehand.
- 27 On the other hand, if the court or tribunal having jurisdiction were to inform a defendant of the possibility of using a classification of the acts concerned suggested by that defendant him- or herself, such as the classification of fraud in the dispute in the main proceedings, this could, according to the referring court, result in an impairment of the right not to incriminate oneself, as well as an infringement of the rules of a fair trial.
- 28 The referring court has, nevertheless, emphasised that, in the context of the dispute in the main proceedings, BK has made no admission of guilt as regards the offence of fraud, but has merely indicated that the acts as presented by the public prosecutor should be classified as fraud, and not as corruption.

29 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘[(1)] Does Article 6(3) and (4) of [Directive 2012/13] preclude an interpretation of national legal provisions – Article 301(1)(2) [of the NPK], in conjunction with Article 287(1) [thereof], – in the case-law according to which the court may, in its judgment, give a legal classification of the offence that differs from that set out in the bill of indictment, provided that it is not classified as an offence attracting a more severe penalty, on the ground that the accused person was not properly informed of the new, different legal classification before the delivery of the judgment and was unable to defend him- or herself against it?’

[(2)] If Question 1 is answered in the affirmative: Does the second paragraph of Article 47 of the Charter prohibit the court from informing the accused person that it could base its decision on the merits on a different legal classification of the offence, and also from giving him [or her] the opportunity to prepare his [or her] defence against that classification, because the initiative for this different legal classification did not come from the public prosecutor’s office?’

30 By letter of 5 August 2022, the Sofiyski gradski sad (Sofia City Court, Bulgaria) informed the Court of Justice that, following a legislative amendment which had entered into force on 27 July 2022, the Spetsializiran nakazatelen sad (Specialised Criminal Court) had been dissolved and that certain criminal cases which had been brought before that court, including the case in the main proceedings, had been transferred with effect from that date to the Sofiyski gradski sad (Sofia City Court).

Consideration of the questions referred

The first question

31 By its first question, the referring court asks, in essence, whether Article 6(3) and (4) of Directive 2012/13 is to be interpreted as precluding national case-law which enables a court or tribunal ruling on the substance in a criminal case to use a legal classification of the acts at issue which differs from that initially used by the public prosecutor’s office, where the new classification cannot entail the application of a more severe penalty, without informing the accused person of the new envisaged classification beforehand and, accordingly, without offering that person the opportunity to exercise his or her rights of defence specifically and effectively with regard to the new offence thus used.

32 As can be seen from Article 1 of Directive 2012/13, that directive, which was adopted on the basis of Article 82(2) TFEU, establishes common minimum standards as regards providing persons suspected or accused of a criminal offence with information regarding their rights and the accusation against them.

33 It follows from a combined reading of Articles 3 and 6 of Directive 2012/13 that the right to be informed, referred to in Article 1 thereof, concerns, at the very least, two separate rights. First, suspects or accused persons must, in accordance with Article 3 of that directive, be informed, at least, of the various procedural rights referred to in that article, which include 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. Second, Article 6 of the directive lays down the rules relating to the right to information about the accusation (see, to that effect, judgment of 13 June 2019, *Moro*, C-646/17, EU:C:2019:489, paragraph 43).

34 Those rules are intended, as is confirmed by recitals 27 to 29 of Directive 2012/13, to safeguard the fairness of the proceedings and allow for an effective exercise of the rights of the defence (see, to that effect, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 89).

35 That objective requires, inter alia, that the accused person receive detailed information regarding the accusation, including the nature and legal classification of the criminal offence, in due time, at a point which enables him or her to prepare his or her defence effectively, as is stated in Article 6(3) of that

directive (see, to that effect, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 90).

- 36 That objective, as well as the proper conduct of the proceedings, require that either the accused person or his or her lawyer be informed in detail of the acts he or she is alleged to have committed and the legal classification of those acts so that he or she may properly participate in the hearing of argument relating to the merits of the charge with due regard for the adversarial principle and equality of arms, so as to be able to state his or her position effectively (see, to that effect, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraphs 92 and 93).
- 37 In this instance, it is apparent from the wording of the first question and from the information set out in the request for a preliminary ruling that the referring court is questioning the extent of the obligation incumbent on a court or tribunal ruling on the substance in a criminal case to inform the accused person of amendments made to the legal classification of the acts at issue.
- 38 In that regard, the Court has already acknowledged the possibility of the information in relation to the charges sent to the defence being the subject of later amendments, in particular as regards the legal classification of the alleged acts. Such amendments 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 envisaged in Article 6(4) of Directive 2012/13, which provides that the accused person 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 (judgment of 21 October 2021, *ZX (Regularisation of the indictment)*, C-282/20, EU:C:2021:874, paragraph 29 and the case-law cited).
- 39 Recital 29 of that directive also specifies, in that regard, that 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 In that context, it is necessary to emphasise the decisive importance of communicating the legal classification of the offence for effectively exercising the rights of the defence. Such communication to the accused person – or his or her lawyer – is essential in order to put that person in a position to understand what he or she is being accused of, to organise his or her defence accordingly, and – as the case may be – to contest his or her guilt by attempting to demonstrate that one or more elements of the offence used are absent.
- 41 Consequently, any amendment of the legal classification of the acts concerned by the court or tribunal ruling on the substance in a criminal case is likely to have a decisive impact on the exercise of the rights of the defence and on the fairness of the proceedings for the purposes of Article 6(4) of Directive 2012/13.
- 42 This is the case where the new envisaged offence comprises new elements, regarding which the accused person has not yet had the opportunity to put forward his or her arguments.
- 43 In such a situation, it is clearly necessary, in order to safeguard the fairness of the proceedings as required in Article 6(4) of Directive 2012/13, that the criminal court or tribunal ruling on the substance inform the accused person – or his or her lawyer – of the new envisaged classification in due time, at a point which enables him or her effectively to prepare his or her defence, and that it offer that person the opportunity to exercise his or her rights of defence specifically and effectively in that regard.
- 44 In this instance, it is apparent from the documents before the Court of Justice that the referring court intends not to use the classification of corruption committed by an investigating officer by way of extortion in abuse of his or her office, initially used by the Spetsializirana prokuratura (Specialised Public Prosecutor's Office), and to replace it with the classification of fraud or the classification of exercise of undue influence. However, those last two offences comprise elements regarding which BK has not yet had the opportunity to put forward his arguments.

- 45 In addition, even assuming that the new envisaged offence does not comprise any new element in relation to the offence previously used, so that the accused person has had the opportunity, in the course of the proceedings, to put forward his or her arguments regarding all the elements which that new offence comprises, the reclassification of the offence by the criminal court or tribunal ruling on the substance is still likely to have a non-negligible impact on the exercise of the rights of the defence. Indeed, it is not inconceivable that the accused person to whom the new envisaged classification is communicated may organise his or her defence differently.
- 46 It should also be emphasised that, in this context, the fact that the new classification cannot entail the application of a more severe penalty is entirely irrelevant. Indeed, the fairness of the proceedings requires that the accused person be able fully to exercise his or her 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.
- 47 It follows that a court or tribunal ruling on the substance in a criminal case is required, when envisaging reclassifying the offence, to inform the accused person – or his or her lawyer – of the new envisaged classification in due time, at a point and under conditions which enable that person effectively to prepare his or her defence, and to offer him or her the opportunity to exercise his or her rights of defence specifically and effectively with regard to that classification, in order to safeguard the fairness of the proceedings for the purposes of Article 6(4) of Directive 2012/13. The need to grant the accused person a period to prepare or revise his or her defence in such a context, as well as the duration of that period, are elements which must be determined by that court or tribunal, having regard to all the relevant circumstances.
- 48 The interpretation set out in the preceding paragraph is confirmed by the objectives of Directive 2012/13. As can be seen from recitals 3, 9 and 14 thereof, that directive, by establishing common minimum standards as regards providing persons suspected or accused of a criminal offence with information regarding their rights and the accusation against them, is intended to enhance mutual trust among Member States and, accordingly, to facilitate the mutual recognition of judgments and judicial decisions in criminal matters.
- 49 As was noted, in essence, by the Advocate General in points 59 to 71 of her Opinion, the interpretation adopted in paragraph 47 of the present judgment, which takes the form of a clear and simple rule of application as regards the obligation of the court or tribunal ruling on the substance in a criminal case to inform the accused person in due time where that court or tribunal is envisaging reclassifying the offence, contributes to respect for the rights of the defence and to the fairness of criminal proceedings in the Member States. In so doing, that interpretation enhances mutual trust among those States and, accordingly, facilitates the mutual recognition of judgments and judicial decisions in criminal matters, in accordance with the objectives pursued by that directive.
- 50 Having regard to all of the foregoing, the answer to the first question is that Article 6(4) of Directive 2012/13 must be interpreted as precluding national case-law which enables a court or tribunal ruling on the substance in a criminal case to use a legal classification of the acts at issue which differs from that initially used by the public prosecutor's office without informing the accused person of the new envisaged classification in due time, at a point and under conditions which would enable him or her effectively to prepare his or her defence, and, accordingly, without offering that person the opportunity to exercise his or her rights of defence specifically and effectively with regard to that new classification. In that context, the fact that that classification cannot entail the application of a more severe penalty than the offence of which the person was initially accused is entirely irrelevant.

The second question

- 51 According to settled case-law, in the procedure laid down by Article 267 TFEU providing 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 decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in

adjudicating on the case pending before it, whether or not that court has referred to them in its questions (judgment of 22 December 2022, *Ministre de la Transition écologique and Premier ministre (Liability of the State for air pollution)*, C-61/21, EU:C:2022:1015, paragraph 34).

- 52 In this instance, it is apparent from the explanations provided by the referring court that that court has doubts, in the event of a reclassification of the offence by the court or tribunal ruling on the substance in a criminal case, as to the impartiality of that court or tribunal, where the new classification is used on the court or tribunal's own initiative, and as to the observance of the right not to incriminate oneself, where the new classification has been proposed by the accused person.
- 53 It should be borne in mind, in that regard, that Article 3 and Article 7(2) of Directive 2016/343 safeguard the presumption of innocence and the right not to incriminate oneself, respectively.
- 54 Consequently, having regard to the case-law referred to in paragraph 51 of the present judgment, it must be held that, by its second question, the referring court asks, in essence, whether Articles 3 and 7 of Directive 2016/343, as well as the second paragraph of Article 47 of the Charter, are to be interpreted as precluding a piece of national legislation which enables a court or tribunal ruling on the substance in a criminal case to use, on its own initiative or in response to a suggestion from the accused person, a legal classification of the acts at issue which differs from that initially used by the public prosecutor's office, including in a situation where that court or tribunal has informed the accused person of the new envisaged classification in due time, at a point and under conditions which have enabled him or her effectively to prepare his or her defence, and has thus offered that person the opportunity to exercise his or her rights of defence specifically and effectively with regard to the new classification thus used.
- 55 In the first place, it should be emphasised that a national rule which enables a court or tribunal ruling on the substance in a criminal case to reclassify the offence is not, in itself, capable of calling in question the presumption of innocence safeguarded in Article 3 of Directive 2016/343 or the impartiality of that court or tribunal for the purposes of the second paragraph of Article 47 of the Charter, even where the court or tribunal has used the new classification on its own initiative.
- 56 In that regard, the Court has previously acknowledged that the law of a Member State may confer on criminal courts or tribunals ruling on the substance the power to reclassify acts which are duly put before them, so long as they ensure that the accused persons have had the opportunity to exercise their rights of defence specifically and effectively in that regard, having been informed, in due 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 (see, to that effect, judgment of 13 June 2019, *Moro*, C-646/17, EU:C:2019:489, paragraph 55).
- 57 The fact that a court or tribunal ruling on the substance decides to reclassify the offence, without the involvement of the public prosecutor's office to that end, indicates that the acts at issue are considered by that court or tribunal to be capable, if proven, of corresponding to that new classification, and not that the court or tribunal has already adopted a position regarding the guilt of the accused person.
- 58 In the second place, as regards the right not to incriminate oneself, referred to in Article 7(2) of Directive 2016/343, the fact that the accused person suggests a new classification of the acts which he or she is accused of having committed does not mean, in itself, that that person acknowledges his or her guilt with regard to the new classification.
- 59 Moreover, in the context of the dispute in the main proceedings, the referring court has emphasised that, although BK has indicated that the acts as presented by the Spetsializirana prokuratura (Specialised Public Prosecutor's Office) should be classified as fraud and not as corruption, he has, however, made no admission of guilt as regards the offence of fraud.
- 60 In any event, there is no rule of EU law prohibiting an accused person from admitting that he or she has committed an offence.
- 61 Having regard to the foregoing, the answer to the second question is that Articles 3 and 7 of Directive 2016/343, as well as the second paragraph of Article 47 of the Charter, must be interpreted as not

precluding a piece of national legislation which enables a court or tribunal ruling on the substance in a criminal case to use, on its own initiative or in response to a suggestion from the accused person, a legal classification of the acts at issue which differs from that initially used by the public prosecutor's office, provided that that court or tribunal has informed the accused person of the new envisaged classification in due time, at a point and under conditions which have enabled him or her effectively to prepare his or her defence, and has thus offered that person the opportunity to exercise his or her rights of defence specifically and effectively with regard to the new classification thus used.

Costs

- 62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

1. **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**

must be interpreted as precluding national case-law which enables a court or tribunal ruling on the substance in a criminal case to use a legal classification of the acts at issue which differs from that initially used by the public prosecutor's office without informing the accused person of the new envisaged classification in due time, at a point and under conditions which would enable him or her effectively to prepare his or her defence, and, accordingly, without offering that person the opportunity to exercise his or her rights of defence specifically and effectively with regard to that new classification. In that context, the fact that that classification cannot entail the application of a more severe penalty than the offence of which the person was initially accused is entirely irrelevant.

2. **Articles 3 and 7 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, as well as the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union,**

must be interpreted as not precluding a piece of national legislation which enables a court or tribunal ruling on the substance in a criminal case to use, on its own initiative or in response to a suggestion from the accused person, a legal classification of the acts at issue which differs from that initially used by the public prosecutor's office, provided that that court or tribunal has informed the accused person of the new envisaged classification in due time, at a point and under conditions which have enabled him or her effectively to prepare his or her defence, and has thus offered that person the opportunity to exercise his or her rights of defence specifically and effectively with regard to the new classification thus used.

[Signatures]