

The relevance of the EU Charter for criminal lawyers

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I. A mechanism that is rarely used

- A) Preliminary rulings: a long and unpredictable procedure
- B) The necessary link between individual cases and union law
- C) An unpredictable case law

II. Exercise: understanding the preliminary question in criminal law

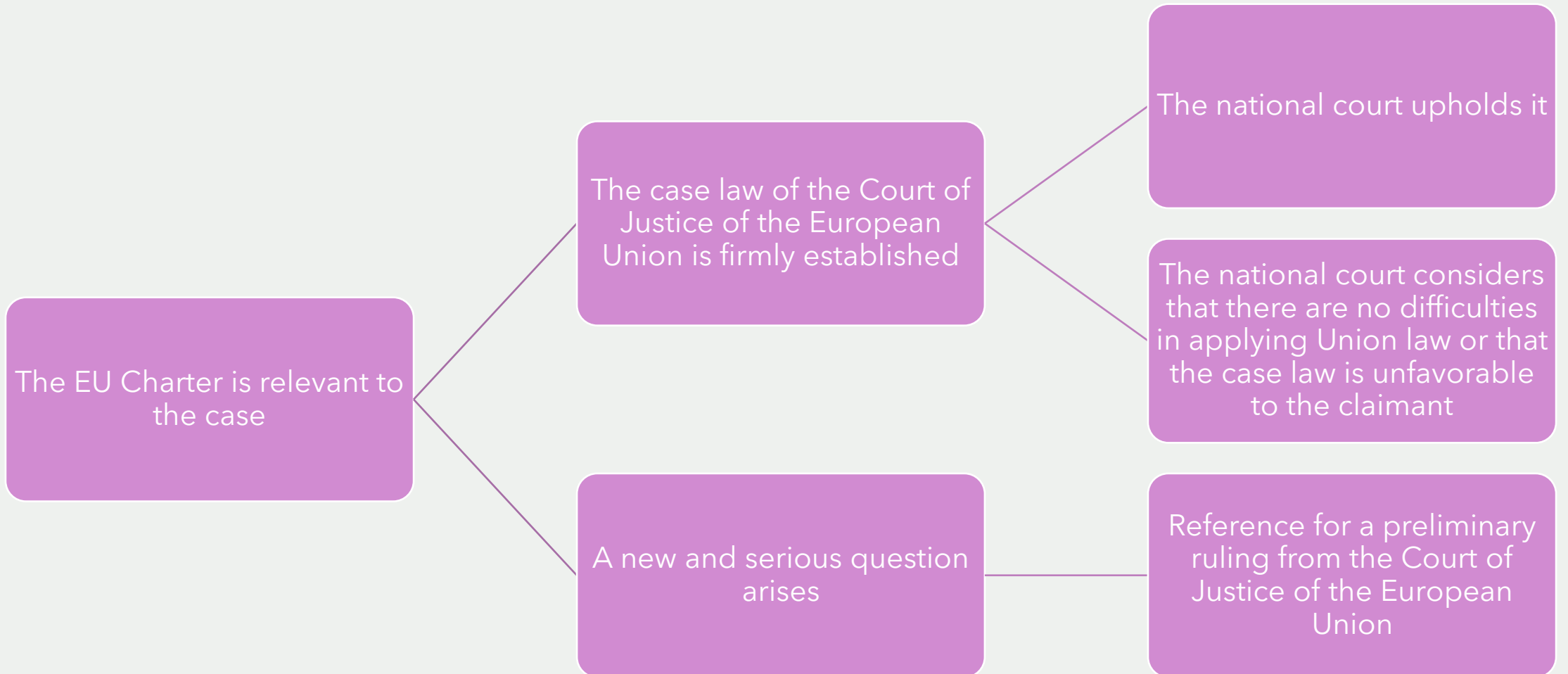
- A) Fundamental rights in criminal procedures
- B) Ne bis idem principle
- C) European mandates: an extensive field of application

A relatively unused mechanism, including in Criminal Law

Only 211 decisions by the Criminal Chamber of the Court of Cassation between December 2009 and October 2022 mentioned the EU Charter (519 decisions mentioned the European convention for the protection of human rights) ;

WHY ?

- A mechanically cumbersome procedure
 - A restricted category of litigation
 - Unpredictable case law



Average time to judgment of the court of justice of the European union

- *16,6 months in 2021*

Average time for urgent preliminary ruling proceedings

- *3,7 months in 2021*

- **Unsuitable for certain procedural frameworks**

For example, in the context of procedures designed to rapidly extinguish public action, such as the immediate appearance procedure.

- **Too long a procedure when minor offences are involved**

The necessary connection to European Union law :

Criminal law and community law

- In principle, in view of the principle of state sovereignty, only the legislator and the regulatory authorities can, in their respective fields, make conduct an offence and set the penalties applicable to its perpetrators (CJCE 25 February 1988, n°299/86 *"in principle, criminal law and procedure remain the responsibility of the member states"*).
- Nonetheless, **there are some areas where EU law deals with criminal matters**. These include Council Framework Decision 2002/584/JHA of June 13, 2002, on the European arrest warrant and the surrender procedures between Member States, Directive 2012/13/EU of May 22, 2012, on the right to information in criminal proceedings, and Directive (EU) 2016/343 strengthening certain aspects of the presumption of innocence and the right to be heard in criminal proceedings. Added to this corpus are the provisions of Union law that entrust Member States with the responsibility of ensuring the repression of certain behaviors through appropriate penal mechanisms[9]. Relying on the Charter in criminal law is therefore not impossible.

The necessary connection to European Union law : raising a sufficiently serious question

The question must be sufficiently serious to justify the national court's inability to resolve it, i.e. to dismiss it without referring it to the CJEU.

- *Crim., 20 mai 2014, n° 14-83.138.*
- *Crim., 12 juillet 2016, n° 16-84.000.*

The necessary connection to European Union law : raising a sufficiently new question

The question must be new to justify a reference for a preliminary ruling.

- ***Crim., 20 mai 2014, n° 14-83.138.***

The Cour de cassation will refuse to refer a question to the CJEU if the Court of Luxembourg has already answered it, as it did, for example, on a question concerning the conformity of provisions of the 2002 framework decision on the European arrest warrant with article 6 of the Charter (right to liberty and security).

- ***Crim., 25 juin 2013, n° 13-84.149. Advocaten voor de Wereld VZW, rendu par la CJCE le 3 mai 2007 (C-303/05).***

In a case concerning Article 50 of the Charter, the Cour de cassation examined the relevant case law of the CJEU, both to check whether the question was new and to refine, if necessary, the points still to be decided which would justify asking the Court in Luxembourg. It was only at the end of its examination that it concluded that it was necessary to "[confront] national legislation with the requirements of Union law", and that it decided to refer the matter to the CJEU when "[it] could not be asserted that the correct application of Union law was so self-evident as to leave no room for reasonable doubt".

- ***Crim., 21 octobre 2020, n° 19-81.929, §§ 47, 56 et 64.***

Unpredictable European case law : a formal approach to the application of the charter

In a 2018 Emil Milev case, the Court was asked by the Bulgarian courts to interpret Directive (EU) 2016/343 on strengthening certain aspects of the presumption of innocence and the right to be heard in criminal proceedings in the light of Articles 47 and 48 of the Charter (presumption of innocence and rights of the defense)

- **CJUE, 19 septembre 2018, Emil Milev, C-310/18**

In fact, the Court did not examine the conformity of the enacting terms with the Charter, basing its decision essentially on the text of the directive and its recitals. It refused to rule further, pointing out that the directive did not "*regulate the conditions under which decisions on provisional detention may be adopted*". Indeed, it considered that "*in view of the minimal nature of the harmonization pursued by Directive (EU) 2016/343, the latter cannot be interpreted as being a complete and exhaustive instrument which is intended to lay down all the conditions for adopting a decision on provisional detention*" and that "*the procedures for examining the various items of evidence and the extent of the statement of reasons which it is required to provide in response to the arguments presented before it, such matters are not governed by that directive, but are a matter for national law alone*".

Unpredictable European case law : a sometimes~ extensive application of the charter

As we know from the Åkerberg Fransson case, the CJEU does not restrict the concept of situations governed by EU law to direct applications of a European text but extends it to cases of de facto implementation of a European obligation by the national court.

"the fundamental rights guaranteed in the legal order of the Union [and in particular the Charter] are intended to be applied in all situations governed by Union law, but not outside such situations" "Since the fundamental rights guaranteed by the Charter must therefore be respected where national legislation falls within the scope of Union law [emphasis added], there can be no situation in which Union law applies without those fundamental rights being applicable. The applicability of Union law implies that of the fundamental rights guaranteed by the Charter".

The CJEU has even gone so far as to retain the criterion of the material exercise of a fundamental right guaranteed by the Charter, even outside the scope of Union law, as illustrated by the 2015 Delvigne case (CJUE (GC), 6 octobre 2015, *Thierry Delvigne contre Commune de Lesparre-Médoc et Préfet de la Gironde*, C-650/13.). The most interesting aspect of this judgment, in our view, is that the CJEU rejected the pleas of lack of competence raised against it in this case, on the grounds that the case did not concern a matter governed by Union law within the meaning of Article 51 of the Charter (scope of application of the text). It took the view that, insofar as a Member State enacted provisions excluding a European citizen from the right to vote in European elections, it was implementing Union law within the meaning of Article 51 § 1 of the Charter[27] (principle of subsidiarity and limitation of the Charter to Union law).

Exercise: understanding the preliminary question in criminal law

- A) Ne bis idem principle
- B) Fundamental rights in criminal procedures
- C) European mandates: an extensive field of application

Ne Bis Idem Principle :

Article 50 of the Charter

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Article 4, Protocole 7 ECHR

- No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
- The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
- No derogation from this Article shall be made under Article 15 of the Convention.

Right to information in criminal proceedings : Directive 2006/112/EC

Article 2(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) determines the transactions subject to VAT.

Under Article 273 of that directive:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.'

Right to information in criminal proceedings : Italian Law

Article 13(1) of the decreto legislativo n. 471, Riforma delle sanzioni tributarie non penali in materia di imposte dirette, di imposta sul valore aggiunto e di riscossione dei tributi, a norma dell'articolo 3, comma 133, lettera q), della legge 23 dicembre 1996, n. 662 (Legislative Decree No 471 on the reform of non-criminal tax penalties in the field of direct taxation, value added tax and tax collection, in accordance with Article 3(133q) of Law No 662 of 23 December 1996) of 18 December 1997 (Ordinary Supplement to GURI No 5 of 8 January 1998) is worded as follows:

- *'Any person who fails to pay, in whole or in part, within the prescribed periods, instalments, periodic payments, the equalisation payment or the balance of tax due on the tax return, after deduction in those cases of the amount of the periodic payments and instalments, even if they have not been paid, shall be liable to an administrative penalty amounting to 30% of each outstanding amount, even where, after the correction of clerical or calculation errors noted during the inspection of the annual tax return, it transpires that the tax is greater or that the deductible surplus is less. ...'*

Article 10a of the decreto legislativo n. 74, Nuova disciplina dei reati in materia di imposte sui redditi e sul valore aggiunto, a norma dell'articolo 9 della legge 25 giugno 1999, n. 205 (Legislative Decree No 74 adopting new rules on offences relating to direct taxes and value added tax, pursuant to Article 9 of Law No 205 of 25 June 1999) of 10 March 2000 (GURI No 76 of 31 March 2000, p. 4) ('Legislative Decree No 74/2000') provides:

- *'Any person who fails to pay, by the deadline fixed for the filing of the withholding agent's annual tax return, the withholding tax resulting from the certification issued to the taxpayers in respect of whom tax is withheld shall be liable to a term of imprisonment of between six months and two years in the case where that amount exceeds EUR 50 000 for each tax period.'*

Article 10b of that decree, entitled 'Failure to pay VAT', states:

- *'Article 10a shall also apply, within the limits there determined, to any person who fails to pay the value added tax owed on the basis of the annual return by the deadline for the payment on account relating to the subsequent tax period.'*

- During the tax periods at issue in the main proceedings, Mr Orsi was the legal representative of S.A. COM Servizi Ambiente e Commercio Srl and Mr Baldetti that of Evoluzione Maglia Srl.
- Proceedings have been brought against Mr Orsi and Mr Baldetti before the Tribunale di Santa Maria Capua Vetere (District Court, Santa Maria Capua Vetere, Italy) with respect to the offence provided for in and punishable under Article 10b of Legislative Decree No 74/2000, read in conjunction with Article 10a thereof, on the ground that they failed, in their capacity as legal representatives of those companies, to pay within the time limit stipulated by law, VAT due on the basis of the annual return in respect of the tax periods at issue in the main proceedings. The amount of unpaid VAT, in each case, is more than EUR 1 million.
- Those criminal proceedings were brought after the Agenzia delle Entrate (tax authorities) reported those offences to the Procura della Repubblica (public prosecutor). During those criminal proceedings, a precautionary seizure was carried out of the assets of both Mr Orsi and Mr Baldetti. Both Mr Orsi and Mr Baldetti submitted an application for review of that seizure.
- Before those criminal proceedings were initiated, the amounts of VAT at issue in the main proceedings were subject to an assessment by the tax authorities, which not only calculated that tax liability, but also imposed a tax penalty on S.A. COM Servizi Ambiente e Commercio and on Evoluzione Maglia, equivalent to 30% of the amount of VAT owed. Following a transaction relating to those assessment measures, they became definitive, without being contested.

ne bis idem principle

Case Law	Prejudicial Question	Answer by the CJEU
CJUE, 5 avril 2017, <i>Massimo Orsi et Luciano Baldetti</i> , C-217/15 et C-350/15.	On a proper construction of Article 4 of Protocol No 7 to the ECHR and Article 50 of the Charter, is the provision made under Article 10b of Legislative Decree No 74/2000 consistent with EU law, in so far as it permits the criminal liability of a person to whom a final assessment by the tax authorities of the State has already been issued imposing an administrative penalty ... to be assessed in respect of the same act or omission (non-payment of VAT)?	<i>WHAT DO YOU THINK ?</i> <ul style="list-style-type: none">- <i>Is the ECHR relevant ?</i>- <i>If tax penalty are inflicted on a company with legal personality, can criminal proceedings against natural persons be engaged ?</i>

Ne bis idem Principle

Case Law	Answer by the CJEU
CJUE, 5 avril 2017, <i>Massimo Orsi et Luciano Baldetti</i> , C-217/15 et C-350/15.	Since the referring court refers not only to Article 50 of the Charter, but also to Article 4 of Protocol No 7 to the ECHR, it should be noted that whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of the European Union's law and whilst Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by that convention, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law (judgments of 26 February 2013, <i>Åkerberg Fransson</i> , C-617/10, EU:C:2013:105, paragraph 44, and of 15 February 2016, <i>N.</i> , C-601/15 PPU, EU:C:2016:84, paragraph 45 and the case-law cited). Therefore, the examination of the question referred must be undertaken solely in the light of the fundamental rights guaranteed by the Charter (see, to that effect, judgments of 28 July 2016, <i>Conseil des ministres</i> , C-543/14, EU:C:2016:605, paragraph 23 and the case-law cited, and of 6 October 2016, <i>Paoletti and Others</i> , C-218/15, EU:C:2016:748, paragraph 22)

Ne bis idem Principle

Case Law	Answer by the CJEU
CJUE, 5 avril 2017, <i>Massimo Orsi et Luciano Baldetti</i> , C-217/15 et C-350/15.	<ul style="list-style-type: none">• In this case, it follows from the information contained in the orders for reference, confirmed both by certain information contained in the documents available to the Court and by the Italian Government during the hearing before the Court, that the tax penalties at issue in the main proceedings were imposed on two companies with legal personality, namely S.A. COM Servizi Ambiente e Commercio and Evoluzione Maglia, whereas the criminal proceedings at issue in the main proceedings relate to Mr Orsi and Mr Baldetti, who are natural persons.• According to the case-law of the European Court of Human Rights, the imposition of penalties, whether tax or criminal, does not constitute an infringement of Article 4 of Protocol No 7 to the ECHR where the penalties at issue concern natural or legal persons who are legally distinct (ECtHR, 20 May 2014, <i>Pirttimäki v. Finland</i>, CE:ECHR:2014:0520JUD00353211, § 51).• Therefore, the answer to the question referred is that Article 50 of the Charter must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which permits criminal proceedings to be brought for non-payment of VAT, after the imposition of a definitive tax penalty with respect to the same act or omission, where that penalty was imposed on a company with legal personality, while those criminal proceedings were brought against a natural person.

Right to information in criminal proceedings : the Charter

- *Article 47*

- **Right to an effective remedy and to a fair trial**

- Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
- Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
- Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

- *Article 48*

- **Presumption of innocence and right of defence**

- 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.

Right to information in criminal proceedings : Directive 2012/13

Recitals 14 and 41 of Directive 2012/13 state:

- ‘(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 (“ECHR”),] as interpreted by 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.’

Article 6 of that directive, headed ‘Right to information about the accusation’, provides in paragraphs 3 to 4 thereof:

- ‘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.’

Right to information in criminal proceedings : Bulgarian Law

Article 246(2) and (3) of the Nakazatelno-protsesualen kodeks (Criminal Procedure Code) provides:

- '(2) The statement of facts in the indictment shall set out: the offence committed by the accused; the time, place and manner in which it was committed; the victim and the amount of the damage; ...
- (3) The operative part of the indictment shall state: ... the legal classification of the act committed ...

Article 248(1) and (3) of the Criminal Code Procedure provides:

- '(1) The following questions shall be raised at the preliminary hearing:
- 3. in the course of the pre-trial proceedings, was there an infringement of essential procedural requirements which could be rectified and which resulted in a restriction of the procedural rights of the accused person, the victim or their dependants?
- (3) At the trial before the courts of first instance, appeal and cassation, it is not permissible to challenge violations of the procedural rights referred to in paragraph 1(3) which were not raised at the pre-trial hearing, including at the initiative of the judge-rapporteur, or which are considered insignificant.

Under Article 249(2) of that code:

- 'Where proceedings are suspended on the basis of Article 248(1)(3) of the [Criminal Procedure Code], the court shall notify the case to the public prosecutor by means of an order indicating the violations committed.'

In accordance with Article 287(1) of that code, 'the prosecutor shall bring new charges where, during the course of the judicial investigation, there are grounds for making substantial amendments to the charges in order to apply a law imposing more serious sanctions'. Under Article 287(3), the amendment of the charges entails an obligation to ensure that the rights of defence are protected, that is to say that the case is to be adjourned on the application of the defence in order to prepare having regard to the amended charges.

Right to information in criminal proceedings

Case Law	Prejudicial questions Number 1	Answer by the CJEU
<i>CJUE, 21 octobre 2021, ZX, C-282/20</i> <i>Article 6(3) of Directive 2012/13 and Article 47 of the Charter</i>	The referring court asks, in essence whether Union Law must be interpreted as precluding national legislation which does not provide for a procedural means of remedying, following the preliminary hearing in a criminal case, inaccuracies and deficiencies in the content of the indictment which prejudice the right of the person prosecuted to be provided with <u>detailed information about the charge</u> .	<i>WHAT DO YOU THINK ?</i>

Right to information in criminal proceedings

Case Law	Prejudicial questions Number 1	Answer by the CJEU
<p><i>CJUE, 21 octobre 2021, ZX, C-282/20</i></p> <p><i>Article 6(3) of Directive 2012/13 and Article 47 of the Charter</i></p>	<p>The referring court asks, in essence whether Union Law must be interpreted as precluding national legislation which does not provide for a procedural means of remedying, following the preliminary hearing in a criminal case, inaccuracies and deficiencies in the content of the indictment which prejudice the right of the person prosecuted to be provided with <u>detailed information about the charge</u>.</p>	<p><i>Such legislation does not comply with Article 6(3) of Directive 2012/13 or Article 47 of the Charter since, after the hearing, the absence of a procedural means of remedying the defects in the indictment prevents the accused from knowing, in sufficient detail, the charges brought against him, which is likely to hinder the effective exercise of the rights of the defence.</i></p>

Right to information in criminal proceedings

Case Law	Prejudicial questions Number 2	Answer by the CJEU
<p>CJUE, 21 octobre 2021, ZX, C-282/20</p> <p>Article 6(3) of Directive 2012/13 and Article 47 of the Charter</p>	<p><i>The referring court asks, in substance, whether Union Law must be interpreted as requiring an interpretation of national law concerning amendment of the indictment that enables the public prosecutor to remedy inaccuracies and deficiencies in the content of the indictment at the trial hearing while actively and genuinely safeguarding the rights of defence of the person prosecuted, or <u>whether these provisions require that the prohibition in national law on suspending court proceedings and referring the case back to the public prosecutor to draw up a new indictment be left unapplied.</u></i></p>	<p>WHAT DO YOU THINK ?</p>

Right to information in criminal proceedings

Case Law	Answer by the CJEU
<p><i>CJUE, 21 octobre 2021, ZX, C-282/20</i></p> <p><i>Article 6(3) of Directive 2012/13 and Article 47 of the Charter</i></p>	<ul style="list-style-type: none">• the specific arrangements for implementing Article 6(3) of Directive 2012/13 fall within the procedural autonomy of the Member States, subject to compliance with the principle of equivalence, which requires that national rules are not less favourable than those governing similar domestic situations, and the principle of effectiveness• In particular, Article 6(3) of Directive 2012/13 does not preclude the right of accused persons to be informed of the charge being assured either by the public prosecutor• whenever the point in time when the information referred to in Article 6(3) of Directive 2012/13 is provided, the accused person and his or her 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• It is <u>only where it is unable to interpret national law in compliance with the requirements of EU law, that the national court, which is called upon within the exercise of its jurisdiction to apply provisions of EU law, is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation</u>• since the national court is able to interpret the Criminal Procedure Code in conformity with those provisions of EU law, it is not obliged to disapply Article 248(3) of the Criminal Procedure Code, as it results from an amendment adopted in 2017. It is, however, for the referring court to carry out the necessary verifications in that respect.

Right to information in criminal proceedings

Case Law	Answer by the CJEU
<p>CJUE, 21 octobre 2021, ZX, C-282/20</p> <p>Article 6(3) of Directive 2012/13 and Article 47 of the Charter</p>	<p><i>"In the light of the foregoing considerations, the answer to the second question is that Article 6(3) of Directive 2012/13 and Article 47 of the Charter must be interpreted as <u>requiring the referring court to give an interpretation of the national rules on the amendment of the indictment, as far as possible in a manner consistent with that law, so as to enable the prosecutor to remedy errors and omissions in the content of the indictment at the trial, while at the same time actively and genuinely safeguarding the rights of the defence of the accused person. Only if the referring court considers that such an interpretation is not possible should it disregard the national provision prohibiting the suspension of court proceedings and refer the case back to the public prosecutor in order for the latter to draw up a new indictment.</u>"</i></p>

European Mandates: the Charter

- *Article 47*

- **Right to an effective remedy and to a fair trial**

- Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
- Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
- Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

- *Article 48*

- **Presumption of innocence and right of defence**

- 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.

European mandates : Framework decision of the Council of the European Union 2002/584/JAI

Article 8 Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information, presented in accordance with the form set out in the Annex:
 - a) the identity and nationality of the requested person;
 - b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
 - c) an indication of the existence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same force falling within the scope of articles 1 and 2;
 - d) the nature and legal classification of the offence, with particular reference to article 2;
 - e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the person sought;
 - f) the penalty imposed, in the case of a final judgment, or the range of penalties provided for the offence under the law of the issuing Member State;
 - g) as far as possible, the other consequences of the offence.
2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, at the time of adoption of this Framework Decision or subsequently, indicate in a declaration to the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Communities.

European mandates : Belgium Law

Under Article 95/2 of the wet betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten (Law on the external legal status of persons sentenced to a custodial sentence and the rights granted to the victim in the framework of the modalities for the serving of sentences) of 17 May 2006 (*Moniteur belge* of 15 June 2006, p. 30455), as amended by the wet betreffende de terbeschikkingstelling van de strafuitvoeringsrechtbank (Law on release conditional to placement at the disposal of the court for the enforcement of custodial sentences) of 6 April 2007 (*Moniteur belge* of 13 July 2007, p. 38299):

- '§ 1 Release conditional to placement at the disposal of the court for the enforcement of custodial sentences pronounced against the person convicted ... shall commence on the expiry of the main sentence.
- § 2. The court for the enforcement of custodial sentences shall decide, before the expiry of the main sentence pursuant to Part 2, either in favour of deprivation of liberty or in favour of conditional release under supervision of the convicted person released
- § 3. The person subject to conditional release shall be deprived of his liberty if there is a risk of him committing serious offences that undermine the physical or psychological integrity of third parties which, in the context of release under supervision, cannot be offset through the imposition of special conditions.

The 2018 IK case concerned a person sentenced by the Belgian courts for a sexual offence to three years' imprisonment, together with an additional penalty of being placed at the disposal of the sentence enforcement court for ten years, which allowed the court to deprive the convicted person of liberty or restrict his freedom. While on the run, IK was the subject of a European arrest warrant, which mentioned only the principal sentence and not the additional penalty. Arrested in the Netherlands, IK argued that the principle of speciality prevented the complementary sentence, which was not mentioned in the European arrest warrant, from being enforced in the State of destination. Belgium therefore made a request for additional consent, which the Dutch authorities refused, arguing that such a request could only concern an offence distinct from the one which had motivated the initial surrender. In this case, however, the two sentences were for the same offence. The Belgian Court of Cassation therefore questioned the CJEU on this point.

European Mandates

Case Law	Prejudicial questions Number 2	Answer by the CJEU
<i>CJUE, 6 décembre 2018, IK, C-551/18 P PU</i>	'(1) Must Article 8(1)(f) of [Framework Decision 2002/584] be interpreted as meaning that it is sufficient that, in a European arrest warrant, the issuing judicial authority mentions only the presently enforceable custodial sentence imposed and thus not an additional sentence imposed for the same offence by the same judicial decision, such as conditional release, which will give rise to actual deprivation of liberty only after the execution of the main custodial sentence and only after an express decision to that effect is taken by the [strafuitvoeringsrechtbank (Court for the enforcement of custodial sentences)]?	WHAT DO YOU THINK ?

European mandates

Case Law	Answer by the CJEU
<i>CJUE, 6 décembre 2018, IK, C-551/18 PPU</i>	<p>On this occasion, the Court recalled that IK, like any other person subject to the jurisdiction of the courts of the Union, could rely on respect for the right to an effective remedy and to a fair trial, as well as on the rights of the defense under article 47 and article 48 § 2 of the Charter. Nevertheless, it replied that it was not necessary to mention the additional penalty in the European arrest warrant in order to be able to execute it, particularly in view of the objective of facilitating and accelerating judicial cooperation pursued by this framework decision.</p>

The Urgent Procedure

Why do you think this procedure was dealt with under the urgent preliminary ruling procedure provided for in Article 107(1) of the Rules of Procedure of the Court ?

To find out more : areas for the future

Regulation of economic activities	The use of personal data in criminal matters
CJUE, 7 août 2018, <i>Clergeau e.a.</i> , C-115/17.	CJUE (GC), 5 avril 2022, <i>G.D.</i> , C-140/20
CJUE, 9 septembre 2021, <i>FO</i> , n° C-906/19, §§ 45 et 46 et dispositif de l'arrêt. Voir <i>Crim.</i> , 1 février 2022, n° 18-83.384 pour la décision de cassation tirant les conséquences de la jurisprudence européenne.	CJUE (GC), 6 octobre 2020, <i>La Quadrature du Net e.a.</i> , n°s C-511/18, C-512/18 et C-520/18
	CJUE, <i>G.D.</i> , précité, §§ 20 et 21.
	CJUE, <i>G.D.</i> , précité, première question, § 30.
	CJUE, <i>La Quadrature du Net e.a.</i> , précité, § 227.
	CJUE (GC), 20 septembre 2022, <i>VD et SR</i> , C-339/20 et C-397/20, §§ 27 et 85
	CJUE, <i>VD et SR</i> , précité, §§ 26, 35 et 46.