

THE DIRECTIVE 2012/13/EU ON THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS: *STATUS QUO* OR STEP FORWARD?

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1. A RESPONSE TO THE LOOPHOLES OF THE EUROPEAN LEGAL FRAMEWORK

The right to information aims at enabling suspects and persons accused of having committed an offence to effectively prepare their defence and at guaranteeing the fairness of the proceedings¹. With this understanding, the Court of Justice of the European Union (CJEU) ruled for the first time on the interpretation of directive 2012/13/EU on the right to information in criminal proceedings² and, more generally, on the implementation of defence rights enacted by EU secondary law in the criminal realm³. Indeed, the 2012 directive is the second step in implementing the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings adopted by the Council in 2009⁴. According to article 82 §2 of the Treaty on the Functioning of the European Union (TFEU) which forms the legal basis of the 2012 directive, its purpose lies in harmonizing the rights of individuals in criminal proceedings to the extent necessary to facilitate mutual recognition of judicial decisions in criminal matters⁵. Despite the approximation of domestic law resulting from the prolific case law of the European Court of Human Rights (ECtHR), significant discrepancies between national criminal procedures may still jeopardize mutual trust between Member States⁶. Moreover, recent studies pointed out the limited effectiveness of the Strasbourg system in exhorting

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¹ CJEU, 15 October 2015, *Gavril Covaci*, case C- 216/14, para 63.

² 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 L 142, 1.6.2012, p. 1.

³ In particular, the preliminary ruling referred to the CJEU in the *Covaci* case also concerned the interpretation of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1.

⁴ Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, p. 1.

⁵ Art. 82 §2 (b) of the TFEU.

⁶ Sproken, T.; Vermeulen, G.; De Vocht, D., *EU Procedural Rights in Criminal Proceedings*, Maklu, 2009, pp. 25 *et seq.*

national legislators to strengthen procedural guarantees by reforming criminal procedures⁷.

Thus, the directive 2012/13/EU intends to promote common minimum standards for the information of suspects and accused persons in order to ensure the fairness of transnational criminal proceedings, considering both the vertical and horizontal dimension of the European penal area⁸. To this end, the right to information guaranteed under the directive is rooted on the one hand in the common constitutional traditions of the Member States. On the other, it falls within the umbrella concept of defence rights referred to in article 48 §2 of the Charter. The latter provision and similarly the 2012 directive reflect the corresponding right to be informed arising from articles 5 and 6 of the European Convention on Human Rights (ECHR)⁹. Even though the right to information is not explicitly mentioned in the wording of the Convention, its scope has been outlined over the years by the case law of the ECtHR¹⁰. From this perspective, does the directive 2012/13/EU represent a step forward? The right to information guaranteed by the EU legal instrument is threefold: it consists in the right of the suspect or accused person to be informed about procedural guarantees¹¹, the right to be informed about charges¹² and the right to access the case file¹³.

2. THE RIGHT TO BE INFORMED ABOUT PROCEDURAL RIGHTS

The effective exercise of defence presupposes that the suspected or accused persons are promptly made aware of the rights they are entitled to in criminal proceedings. To this end, the right to be informed about procedural rights arises “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”¹⁴. Consequently,

⁷ Van Puyenbroeck, L.; Vermeulen, G., *Towards minimum procedural guarantees for the defence in criminal proceedings in the EU*, Int. Comp. Law Q., 60, 2011, p. 1017 – 1038, p. 1022 *et seq.*; Morgan, M., *Are article 6 ECHR and ECtHR enough to protect defence rights?*, J EurCrim Law, 2007, pp. 27 – 35.

⁸ Recital 10 of Directive 2012/13/EU.

⁹ In particular, article 5 §2 of the Convention guarantees the right to be promptly informed of the reasons of the arrest, whilst article 6 §3 (a) entails the right to be informed promptly of the nature and causes of the accusation.

¹⁰ Lloyd-Cape, E.; Namoradze, Z.; Smith, R.; Spronken, T., *Effective Criminal Defence in Europe*, Intersentia, 2012, pp. 32 *et seq.*

¹¹ Art. 3 of directive 2012/13/EU.

¹² Art. 6 of directive 2012/13/EU.

¹³ Art. 7 of directive 2012/13/EU.

¹⁴ Art. 2 §1 of directive 2012/13/EU.

the application of the directive does not depend on official notification of the charges nor on indictment by prosecuting authorities. Indeed, the term “suspect” must be understood as any individual who has not yet been officially charged¹⁵. Similarly, the ECtHR does not systematically adopt a formal definition of criminal charges in order to identify the procedural stage that gives rise to fair trial guarantees enshrined in article 6 §3 of the Convention. Rather, European case-law refers to a substantial criterion, where the situation of the applicant who is not formally accused is nevertheless affected by criminal investigations¹⁶. In this instance, the Court admits that article 6 of the Convention comes into play at an early stage of proceedings, while considering the “special features of those proceedings and the circumstances of the case assessed in relation to the entirety of the domestic proceedings conducted in the case”¹⁷. Therefore, the procedural stage at which the suspect must be first informed will mostly depend on the significance of the secrecy of pretrial investigations within criminal justice systems and, consequently, may vary significantly among Member States¹⁸. Thus, the directive 2012/13/EU is expected to entail limited harmonization in this respect.

Having regard to the substance of information conveyed, article 3 of the directive enacts a minimum content. National authorities must inform the suspect or the accused about *at least* their 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 silent¹⁹. Concerning the latter procedural guarantee, it remains doubtful whether the right to remain silent should be understood as encompassing the privilege against self-incrimination. Although such rights are intrinsically linked, the case-law of the ECtHR refers separately to both guarantees while interpreting article 6 of the Convention²⁰. As regards procedural requirements, the directive 2012/13/EU provides that information should be communicated orally or in writing, as well as in simple and accessible language²¹. This last requirement has to be interpreted in line with the directive 2010/64/EU on the right to interpretation and translation in criminal proceedings²².

¹⁵ Quattrococo, S., *The Right to Information in EU Legislation*, in Ruggieri, S., *Human Rights in European Criminal Law*, Springer, 2015, p. 81 – 93, p. 85.

¹⁶ ECtHR, 18 February 2010, *Zaichenko v. Russia*, App. n° 39660/02, para 42 – 43.

¹⁷ ECtHR, 18 February 2010, *Zaichenko v. Russia*, App. n° 39660/02, para 45.

¹⁸ Quattrococo, S., *The Right to Information in EU Legislation*, in Ruggieri, S., *Human Rights in European Criminal Law*, Springer, 2015, p. 81 – 93, p. 85.

¹⁹ Art. 3 §1 of directive 2012/13/EU.

²⁰ See for instance ECtHR, 17 December 1996, *Saunders v. UK*, App. n° 19187/91, para 68.

²¹ Art. 3 §2 of directive 2012/13/EU.

²² Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1.

The standards of protection are higher in case of deprivation of liberty. According to article 4 of the directive, Member States must inform promptly the arrested or detained person in writing about further procedural guarantees²³. The so-called “Letter of Rights” shall indicate the right of access to the materials of the case, the right to have consular authorities and one person informed, the right of access to urgent medical assistance, the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority²⁴. The 2012 directive also provides a model letter of rights to be used in European arrest warrant proceedings²⁵. In addition, basic information about any possibility, under national law, of challenging the lawfulness of the arrest, obtaining a review of the detention or making a request for provisional release must be provided²⁶. The inclusion of the latter information corresponds to the *habeas corpus* guarantees enshrined in article 5 §4 of the ECHR. In this respect, it is worth recalling that the right to review the lawfulness of arrest does not simply require information about the possibility to appeal a detention order and the related procedural conditions. It also implies the opportunity for the arrested person to know the reasons for his detention and have access to the case file within adequate time, in order that the right to review the arrest warrants be effectively exercised according to the principle of equality of arms²⁷.

3. THE RIGHT TO BE INFORMED ABOUT THE CHARGES

According to article 6 of the 2012 directive, the right to be informed about the accusation takes different forms. While the first paragraph of the provision guarantees the right for the defendant to be promptly informed about the alleged offence²⁸, the third paragraph compels national authorities to provide detailed information on the submission of the merits of the accusation to a court²⁹. In other words, the amount of information available increases as criminal proceedings near the adversarial stage.

The provision guarantees first general information about the criminal act that an individual is suspected or accused of having committed³⁰. Little guidance for determining the scope of the right arises from the wording of article 6 itself. On the one hand, the directive gives a rather vague and broad defini-

²³ Art. 4 §1 of directive 2012/13/EU.

²⁴ Art. 4 §2 of directive 2012/13/EU.

²⁵ Art. 5 of the directive 2012/13/EU.

²⁶ Art. 4 §3 of directive 2012/13/EU.

²⁷ ECtHR, 9 December 1998, *Schöps v. Germany*, App. n° 25116/94, 2001-I, para 44.

²⁸ Art. 6 §1 of directive 2012/13/EU.

²⁹ Art. 6 §3 of directive 2012/13/EU.

³⁰ Art. 6 §1 of directive 2012/13/EU.

tion of the content of such information. Indeed, it requires that information about the charges must be provided “in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of defence”³¹. Given the lack of precise requirements, Member States are likely to adopt divergent standards of protection in implementing article 6 §1 of the directive. On the other hand, the provision does not specify the time period in which the person has to be informed³². Nonetheless, recitals 19 and 28 indicate a certain timeline for the public authorities to respect. When read in conjunction, “prompt” information means that the guarantees under article 6 of the directive arise at the latest before the first official interview of the suspect or accused person by the police or by another competent authority³³.

Both aspects were addressed by the CJEU in the *Covaci* case³⁴. The preliminary rulings submitted by a German Court called into question the compatibility of national notification procedures with article 6 of directive 2012/13/EU³⁵. Indeed, German law provides that the accused not residing in the country is under an obligation to appoint a person authorized to accept service of a penalty order. The period of two weeks for lodging an objection against that order runs from the service of the latter to the authorized person. Admittedly, the service of the penalty order must be seen a communication of the accusation against the offender. Following the opinion delivered by the Advocate General, the Court recalled first that the 2012 directive “does not regulate the procedures whereby information about the accusation (...) must be provided”³⁶. However, those procedures cannot undermine the objective of article 6 §1 and §3 of the directive, which consists in enabling suspects or accused persons to prepare their defences and in safeguarding the fairness of the proceedings³⁷. Therefore, the notification procedure in question is consistent with article 6 §1 of the directive in so far as the period for lodging an objection begins to run from the time when the accused person actually becomes aware of the penalty order³⁸. With this reasoning, the Court did not address the appropriateness of the limitation period established under national law, but merely applied the principle of non-discrimination between alleged offenders with a residence within or outside the jurisdiction of domestic legislation³⁹.

³¹ Art. 6 §1 of directive 2012/13/EU.

³² Art. 6 §1 of the directive 2012/13/EU.

³³ Recitals 19 and 28 of the Directive 2012/13/EU.

³⁴ CJEU, 15 October 2015, *Gavril Covaci*, case C- 216/14.

³⁵ CJEU, 15 October 2015, *Gavril Covaci*, case C- 216/14, para 52.

³⁶ CJEU, 15 October 2015, *Gavril Covaci*, case C- 216/14, para 62; Opinion of Advocate General Bot, 7 May 2015, *Gavril Covaci*, case C- 216/14, para 105.

³⁷ CJEU, 15 October 2015, *Gavril Covaci*, case C- 216/14, para 63.

³⁸ CJEU, 15 October 2015, *Gavril Covaci*, case C- 216/14, para 66 - 67.

³⁹ CJEU, 15 October 2015, *Gavril Covaci*, case C- 216/14, para 65.

Second, the defendant has the right to obtain more precise information at a later stage of proceedings. Thus, the competent authorities shall provide the accused person with detailed information on the accusation, which includes the nature and legal classification of the criminal offence as well as the nature of participation by the accused⁴⁰. The right to be informed referred to under article 6 §3 of the directive applies to submission of the merits of the accusation to a court⁴¹. Consequently, the information to be provided encompasses factual and legal aspects, while the right to be informed enshrined in paragraph 1 of the provision might be construed as limited to the factual aspects of the case⁴². Lastly, the directive requires that any changes in the information given in accordance with article 6 must be communicated to suspects and accused persons⁴³.

In addition to criminal charges, article 6 of the directive contains a specific provision on the right to information about the reasons for the arrest⁴⁴. As mentioned above, the right to be informed constitutes the *conditio sine qua non* that enables the person deprived of liberty to challenge the arrest warrant or detention order, as guaranteed by article 5 §4 of the ECHR. Likewise, the right to be promptly informed about the reasons for the arrest corresponds to the procedural safeguard enshrined in article 5 §2 of the Convention⁴⁵. In this respect, the case law of ECtHR provides clarifications regarding both the content of the information conveyed and the period within which such communication should be made. On the first aspect, the Court considered that by virtue of article 5 §2 of the Convention “any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest”⁴⁶. As regards the time frame, neither the Convention provisions nor the case-law establish an exact period defined by minimum and maximum terms during which the information must be provided. As a general rule, the information should be given immediately or as soon as practicable after the person is deprived of his liberty, the requirement of promptness being assessed in each case according to its special features⁴⁷. The Court held for instance that such information provided a few hours after the arrest complies

⁴⁰ Art. 6 §3 of the directive 2012/13/EU.

⁴¹ Art. 6 §3 of the directive 2012/13/EU.

⁴² Quattrococo, S., *The Right to Information in EU Legislation*, in Ruggieri, S., *Human Rights in European Criminal Law*, Springer, 2015, p. 87.

⁴³ Art. 6§4 of the directive 2012/13/EU.

⁴⁴ Art. 6 §2 of the directive 2012/13/EU.

⁴⁵ Grabenwarter, C., *European Convention of Human Rights. Commentary*, 2014, Beck, Hart, Nomos, p. 85.

⁴⁶ ECtHR, 30 August 1990, *Fox, Campbell and Hartley v. United Kingdom*, App. n° 112244/86, 12245/86 and 12383/86, para 40.

⁴⁷ ECtHR, 30 August 1990, *Fox, Campbell and Hartley v. United Kingdom*, App. n° 112244/86, 12245/86 and 12383/86, para 40.

with article 5 §2 of the Convention⁴⁸, whilst it found a violation of the provision where the delay between arrest and communication of the information amounted to 76 hours⁴⁹. Again, the extensive case law of the Strasbourg Court will offer guidance for the interpretation of article 6 §2 of the directive.

4. THE RIGHT OF ACCESS TO THE CASE FILE

The third component of the right to information under the 2012 directive concerns access to the case file. On the one hand, article 7 of the directive grants the arrested and detained persons access to the materials of the case, which are essential to challenging effectively the lawfulness of the arrest⁵⁰. The wording of the provision coincides with the interpretation adopted by the ECtHR of article 5 §4 of the Convention. Indeed, the *Mooren v. Germany* judgment explicitly stressed that proceedings “before the court examining an appeal against detention must be adversarial and must always ensure “equality of arms” between the parties (...). Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client’s detention”⁵¹. However, contrary to the ECHR⁵², article 7 of directive 2012/13/EU does not admit grounds for rejecting a request for access to the relevant case materials introduced by the arrested person.

On the other hand, the EU directive guarantees to any other suspect or accused person the right to access to all material evidence in the possession of the competent authorities, whether for or against them⁵³. Information disclosed must be sufficient to safeguard the fairness of the proceedings and to enable the adequate preparation of the defence⁵⁴. Furthermore, access to the case materials shall be granted in due time⁵⁵. In this respect, the directive adds a precise time limit prior to which the procedural guarantees must be enforced, namely “at the latest upon submission of the merits of the accusation to the judgment of a court”⁵⁶. However, it is not clear from the wording used whether the right of access to the case file should be granted during

⁴⁸ ECtHR, 30 August 1990, *Fox, Campbell and Hartley v. United Kingdom*, App. n° 112244/86, 12245/86 and 12383/86, para 40; ECtHR, 28 October 1994, *Murray v. United Kingdom*, App. n° 14310/88, para 78.

⁴⁹ ECtHR, 29 January 2008, *Saadi v. United Kingdom*, App. n° 13229/03, para 84.

⁵⁰ Art. 7 §1 of the directive 2012/12/EU.

⁵¹ ECtHR, 9 July 2009, *Mooren v. Germany*, App. n° 11364/03, para 124.

⁵² See for instance ECtHR, 17 April 2012, *Piechowicz v. Poland*, App. n° 20071/07, para 203.

⁵³ Art. 7 §2 of the directive 2013/13/EU.

⁵⁴ Art. 7 §2 of the directive 2013/13/EU.

⁵⁵ Art. 7 §3 of the directive 2013/13/EU.

⁵⁶ Art. 7 §3 of the directive 2013/13/EU.

the pre-trial stage of criminal proceedings. Consequently, discrepancies may persist among national legislations. The entitlement to disclosure of relevant materials and evidence is not an absolute right⁵⁷. Accordingly, article 7 §4 of the directive allows Member States to refuse access to certain case materials in a limited number of cases. Grounds for refusal admitted by EU legislation are restricted to threats to life or the fundamental rights of another person, as well as the need to safeguard an important public interest provided that the refusal to access the case file is strictly necessary for that purpose⁵⁸. In a similar way, the ECtHR consistently held that restrictions to the right of access to the case file are admissible under article 6 of the Convention in so far as they are “strictly necessary”⁵⁹.

It should however be stressed that article 7 of the directive 2012/13/EU does not refer to official questioning. The silence of the text might seem surprising considering that knowledge of incriminating evidence is crucial for the defence to prepare for examination. Indeed, empirical studies point to the reluctance of persecuting authorities to disclose information. The reasons highlighted lie in the culture of secrecy characterizing criminal investigations, and in distrust towards defence lawyers.

5. STRIVING FOR EFFECTIVENESS: RECORDING PROCEDURE AND LEGAL REMEDIES

The directive provides two legal mechanisms in order to ensure the effectiveness of the right to information. First, article 8 of the 2012 directive grants the suspect or accused person or their lawyer the right to challenge the failure or refusal of the competent authorities to provide information in accordance with the directive⁶⁰. It is worth noting that an equivalent right to challenge is not guaranteed as such by the ECHR. Indeed, the Strasbourg Court assesses the overall effectiveness of the right to be informed and the access to evidence under the principle of equality of arms⁶¹. The right to access the case file constitutes an essential element forming part of the reasonable opportunity that must be afforded the defence to present his case in conditions that do not place him at a disadvantage vis-à-vis the prosecution⁶². Second, all the information provided in accordance with the Directive shall be noted using the recording

⁵⁷ ECtHR, 16 February 2000, *Rowe and Davis v. United Kingdom*, App. n° 28901/95, para 61.

⁵⁸ Art. 7 §4 of the directive 2012/13/EU.

⁵⁹ ECtHR, 16 February 2000, *Jasper v. United Kingdom*, App. n° 27052/95, para 52.

⁶⁰ Art. 8 §2 of directive 2012/13/EU.

⁶¹ ECtHR, 18 March 1997, *Foucher v. France*, App. n° 222209/93, para 32 *et seq.*

⁶² *Ibid.*

procedure specified in the law of the Member State concerned⁶³. Similarly, the ECtHR found for instance a breach of the right to be informed of the reasons for the arrest where lack of reliable information resulted from the absence of recording⁶⁴.

However, no procedural sanctions are envisaged in the event of violation of the duty to record and to inform the accused or suspect. One could wonder whether the lack of legal consequences in the event of violation would undermine the effectiveness of the procedural guarantees enshrined in the directive⁶⁵. Although the defendant has the right to challenge the failure of the competent authorities to provide information, the concrete consequences (if any) of such an appeal procedure when the competent authorities found a breach of the right to information strongly relies on the willingness of each Member State. Furthermore, some empirical studies have pointed out that despite the information conveyed individuals mostly remain ignorant of the procedural guarantees they enjoy. In order for the accused to gain a sound understanding of the procedure, the tone of communication is just as important as the content. From that perspective, does the right to information guarantee in an effective way sufficient awareness of the suspected or accused person?

6. CONCLUDING REMARKS

Even though the directive 2012/13/EU is mostly built upon the ECHR and related case law, it takes a step forward as regards certain aspects of the right to information in criminal proceedings. While the numerous judgments of the Strasbourg Court provide further explanations concerning the amount of information that must be communicated, the 2012 directive imposes on national authorities more specific requirements attached to the time frame, recording and legal remedies. By doing so, the EU legislator strived to enhance the effectiveness of the right to be informed⁶⁶. Similarly, the ECtHR pays particular attention to the effective exercise of defence rights stemming from the principle of fair trial⁶⁷. However, the effectiveness of the right to information under the Convention primarily relies on the specific features and circumstances of the case. Likewise, the ECtHR has stressed that the fact of the competent authorities passively making information available to the suspect or accused person does not in itself comply with the rights guaranteed under the Conven-

⁶³ Art. 8 §2 of the directive 2012/13/EU.

⁶⁴ ECtHR, 19 November 2009, *Kaboulov v. Ukraine*, App. N° 41015/04, para 147 – 148.

⁶⁵ Quattrococo, S., *The Right to Information in EU Legislation*, in Ruggieri, S., *Human Rights in European Criminal Law*, Springer, 2015, p. 90.

⁶⁶ Recital 16 of the Proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings, COM(2010) 392 final.

⁶⁷ ECtHR, 10 August 2006, *Padalov v. Bulgaria*, App. n° 54784/00, para 51.

tion⁶⁸. Indeed, the right to information in criminal proceedings also entails a positive obligation to provide the individual with information on his defence rights as well as to take additional steps in order to ensure that he effectively understands the information conveyed⁶⁹. Despite this common background, it should be emphasized that Member States have less room regarding the duty to inform the suspect or accused person under the directive compared to the ECHR.

Although the directive strengthens the right to information arising from European legal texts, its transnational implementation still raises questions. In this regard, the CJEU explicitly held that “In so far as the ECHR would, in requiring the EU and the Member States to be considered Contracting Parties not only in their relations with Contracting Parties which are not Member States of the EU but also in their relations with each other, including where such relations are governed by EU law, require a Member State to check that another Member State has observed fundamental rights, even though EU law imposes an obligation of mutual trust between those Member States, accession is liable to upset the underlying balance of the EU and undermine the autonomy of EU law”⁷⁰. To what extent is the EU judiciary willing to limit the principle of mutual recognition in criminal matters in the event of a violation of the right to be informed and more generally when procedural guarantees of the defendant have been violated? The question does not only reflect concerns about the judicial dialogue between European judges. It also reminds us that the effective implementation of defence rights guaranteed by the new directives depends *in fine* on the judicial review undertaken by national and European courts. The judgment of the CJEU in the *Covaci* case is certainly the first of a series of preliminary rulings, which will further clarify the scope of defence rights within the multilevel European penal area.

The role the CJEU will play in interpreting defence rights in criminal proceedings is even more crucial given the potential scope of application of the Charter of fundamental rights. According to article 51 §2 of the EU Charter, the Charter applies to the Member States only when they are implementing Union law⁷¹, meaning that the Court of Justice has jurisdiction to rule on the consistency of domestic law with the Charter provided that the legal situation at stake comes within the scope of EU law⁷². As directive 2012/13/EU shows, the scope of application of secondary law harmonizing procedural guarantees covers any kind of criminal proceedings, irrespective of the seriousness of

⁶⁸ ECtHR, 25 July 2000, *Mattoccia v. Italy*, App. n° 23969/94, para 65.

⁶⁹ ECtHR, 27 March 2007, *Talat Tunç v. Turkey*, App. n°32432/96, para 61; ECtHR, 11 December 2008, *Panovits c. Cyprus*, App. n° 4268/04, para 72 – 73.

⁷⁰ CJEU, Opinion 2/13 on Accession of the EU to the ECHR, para 194.

⁷¹ CJEU, 26 February 2013, *Åklagaren v. Hans ÅkerbergFransson*, case C-617/10, para 19.

⁷² CJEU, 6 October 2015, *Delvigne v. Commune de Lesparre-Médoc and Préfet de la Gironde*, Case C- 650/13, para 27.

the offence in question⁷³. Likewise, the applicability of directives on defence rights under criminal procedure is not dependent on prior harmonization of substantive criminal law, nor should the procedural guarantees stemming from the Charter be limited to those sectors of penal law falling within the scope of article 83 of the TFEU. The transversal dimension of the newly adopted directives will dramatically increase the number of preliminary rulings addressed to the EU judicature in the coming years. Let us hope that this will give rise to courageous decisions and fruitful judicial dialogue.

⁷³ Art. 2 of directive 2012/13/EU.