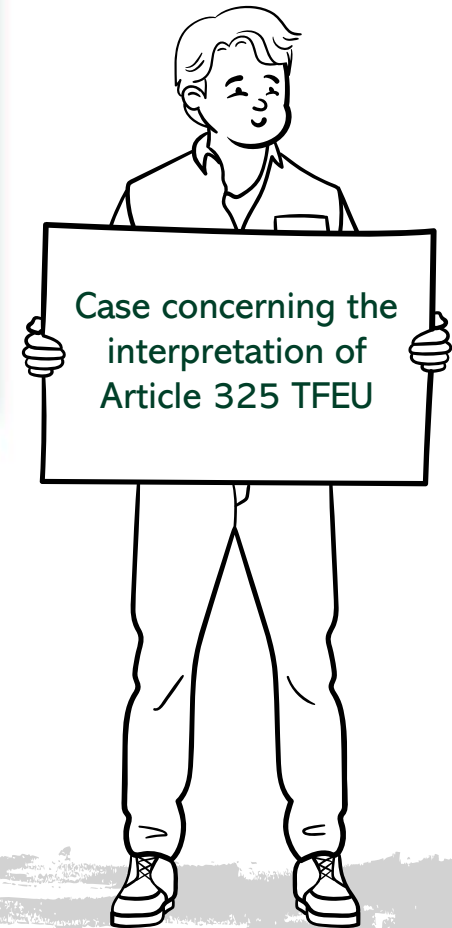


C-310/15

Kolev and Others



Case Facts



In 2012, Mr. Kolev and 7 others were accused of bribing drivers crossing the border between Bulgaria and Turkey to avoid customs inspections and the documentation of irregularities

After their arrest charges were drawn and subsequently disclosed in more detail to the individuals, including being informed of the evidence gathered. Due to this charges being drawn up by an incompetent body, the case was referred to the competent prosecutor.

New chargers were submitted but this along with the investigation file were not disclosed to Mr. Kolev and two other individuals. Although the prosecutor was asked to remedy these procedural infringements, the prosecutor did not succeed.

Case Facts

This led the referring court to suspend the case rather than order the closure of the proceedings. The appellate court disagreed and held that the criminal proceedings ought to have closed.

The referring court had doubts whether national law was compatible with EU law, in particular the obligation that MS have to ensure the effective prosecution of offences affecting the financial interests of the EU.

If national law was deemed incompatible, the referring court asked whether it would be bound to disapply the articles at issue. It also seeks to ascertain what specific measures it should take to ensure effectiveness of EU law while protecting the rights of the defendants to a fair trial.

Preliminary Questions

Whether EU law, in particular Article 325 TFEU, precludes national legislation and what:

1

the consequences are if such a legislation is incompatible with EU law.

2

the rights of individuals to be informed of the charges against them and to have access to case materials are.

3

the scope of the right of access to a lawyer are, in circumstances such as those of the main proceedings.

Consideration of question # 1

Article 325 TFEU

1

the consequences are if such a legislation is incompatible with EU law.

The referring court seeks to ascertain whether with respect to criminal offences in custom matters if Article 325 TFEU must be interpreted as precluding national legislation that establishes for terminating criminal procedures, and the consequences for incompatibility



Article 325 TFEU

CJEU concluded that the provision must be interpreted as precluding national legislation that establishes a procedure for the termination of criminal proceedings in so far as that legislation is applicable in proceedings initiated with respect to cases of serious fraud or illegal activities affecting the financial interests of the EU in custom matters

It is also for the national courts to give full effect to the provision by disapplying that national legislation as necessary while ensuring respect for the fundamental rights of the persons accused

Consideration of question # 2

Directive 2012/13

2

the rights of individuals to be informed of the charges against them and to have access to case materials are

Whether article 6(3) of the Directive on the right to be informed of the charges is respected if “detailed information on the charges is disclosed to the defence only after the lodging before the court of the indictment that initiates proceedings, but before the court begins to examine the merits of the charges and before the commencement of any hearing when argument is submitted to the court.” (para. 78)

Whether 7(3) of the Directive on the right of access to the case materials is “is safeguarded when the competent authorities have given to the defence the opportunity to consult those materials during the pre-trial stage of the criminal proceedings, even if the defence has not been in a position to avail itself of that opportunity.” (para. 79)

Article 6(3) Dir. 2012/13

CJEU concluded that the provision must be interpreted as not precluding the disclosure of detailed information on the charges [...]

“where the information disclosed is the subject of subsequent amendments, provided that all necessary measures are taken by the court to ensure respect for the rights of the defence and the fairness of the proceedings” (para. 99)

Consideration of question # 2

Directive 2012/13

2

the scope of the right of access to a lawyer are, in circumstances such as those of the main proceedings.

Whether article 6(3) of the Directive on the right to be informed of the charges is respected if “detailed information on the charges is disclosed to the defence only after the lodging before the court of the indictment that initiates proceedings, but before the court begins to examine the merits of the charges and before the commencement of any hearing when argument is submitted to the court.” (para. 78)

Whether 7(3) of the Directive on the right of access to the case materials is “is safeguarded when the competent authorities have given to the defence the opportunity to consult those materials during the pre-trial stage of the criminal proceedings, even if the defence has not been in a position to avail itself of that opportunity.” (para. 79)



Article 7(3) Dir. 2012/13

CJEU concluded similarly that it is for the national court to be satisfied that the defence has been granted access to the case materials [...] “where new evidence is placed in the file in the course of the proceedings” provided that the rights of the defendants and fairness of the proceedings are respected (para. 100).

Consideration of question # 3

Directive 2013/48

3

the scope of the right of access to a lawyer are, in circumstances such as those of the main proceedings.

Whether article 3(1) of the Directive “must be interpreted as precluding national legislation that requires a national court to dismiss the lawyer instructed by two accused persons, against their wishes, on the ground that there is a conflict of interest between those persons and, further, as precluding the court from allowing those persons to instruct a new lawyer or, when necessary, itself naming two court-appointed lawyers, to replace the first lawyer.” (para. 101)



Article 3(1) Dir. 2013/48

CJEU concluded as not precluding national legislation requiring dismissal of a lawyer if there is a conflict of interest.

According to the Advocate General in p. 110 of his opinion “a lawyer cannot fully and effectively defend two accused persons within the same proceedings if there is a conflict of interest between those persons, for example if one of them has made statements that could be used to incriminate the other, when the latter has not confirmed such statements.” (para. 109)