Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 4 April 2017 [1]

Case C-612/15

Criminal proceedings
against
Nikolay Kolev,
Stefan Kostadinov

(Request for a preliminary ruling
from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria))

(Reference for a preliminary ruling — Criminal proceedings — Directive 2012/13/EU — Right to be informed of the accusation — Right of access to the file — Directive 2013/48/EU — Right of access to a lawyer — Fraud affecting the financial interests of the European Union — Criminal offences — Effective and dissuasive penalties — Pre-determined period — Termination of the criminal proceedings without examining the merits of the accusations — Right to a fair trial — Rights of the defence — Reasonable time)

1. This case provides the Court with the opportunity to rule on fundamental concepts of criminal law. It is being asked by the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) to rule on whether EU law must be interpreted as precluding a national law requiring the court before which the person concerned has brought the matter to terminate criminal proceedings brought against him where a period of more than two years has elapsed since the beginning of the pre-trial investigation, whatever the seriousness of the matter and without it being possible to overcome the deliberate obstruction placed by the accused persons. The Court is asked to examine what the consequences of any incompatibility of that national law with EU law would be in those circumstances.

2. Moreover, the referring court addresses a number of questions to the Court concerning the time when the accused person must be informed of the accusation made against him and the time when that person, or his lawyer, must have access to the case file documents. Finally, the Court is called upon to examine whether a provision of national law providing that a lawyer representing defendants with conflicting interests in the same case must be removed and replaced by a court-appointed lawyer is contrary to EU law.

1 Original language: French.

I – Legal context

A – EU law

1. Primary law

3. Article 325 TFEU provides:

‘1. The [European] Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union’s institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

…

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union’s institutions, bodies, offices and agencies.

…’

2. Secondary legislation

(a) Regulation (EC) No 450/2008

4. Under Article 21(1) of Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code),[2] ‘each Member State shall provide for penalties for failure to comply with Community customs legislation. Such penalties shall be effective, proportionate and dissuasive’.

(b) The PFI Convention and the first protocol to the PFI Convention

5. The preamble to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests, signed in Luxembourg on 26 July 1995,[3] states that the High Contracting Parties to that convention, Member States of the European Union, are convinced ‘that protection of the European Communities’ financial interests calls for the criminal prosecution of fraudulent conduct injuring those interests’[4] and ‘of the need to make such conduct punishable with effective, proportionate and dissuasive criminal penalties, without prejudice to the possibility of applying other penalties in appropriate cases, and of the need, at least in serious cases, to make such conduct punishable with deprivation of liberty’.[5]

2 OJ 2008 L 145, p. 1.

3 OJ 1995 C 316, p. 49, ‘the PFI Convention’.

4 The fifth recital of that preamble.

5 The sixth recital of that preamble.

6. Article 1(1)(b), first indent, and (2) of the PFI Convention provides as follows:

‘For the purposes of this Convention, fraud affecting the European Communities’ financial interests shall consist of:

…

(b) in respect of revenue, any intentional act or omission relating to:

– the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

– …

2. [E]ach Member State shall take the necessary and appropriate measures to transpose paragraph 1 into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences.’

7. Article 2(1) of that convention states:

‘Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1(1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding [EUR] 50 000.’

8. Article 2 of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities’ financial interests,[6] entitled ‘Passive corruption’, is worded as follows:

‘1. For the purposes of this Protocol, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities’ financial interests shall constitute passive corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.’

9. Article 3 of the First Protocol to the PFI Convention, entitled ‘Active corruption’, states:

‘1. For the purposes of this Protocol, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities’ financial interests shall constitute active corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.’

6 OJ 1996 C 313, p. 2, ‘the First Protocol to the PFI Convention’.

(c) Directive 2012/13/EU

10. According to Article 1 thereof, the purpose 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[7] is to '[lay] 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'.

11. According to Article 6 of that directive:

'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.'

12. Article 7 of that directive reads as follows:

'1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.

2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.

3. Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.

…'

7 OJ 2012 L 142, p. 1.

(d) Directive 2013/48/EU

13. Article 1 of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty[8] provides as follows:

'This Directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Framework Decision 2002/584/JHA … to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.'

14. Under Article 3(1) of the directive:

'Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.'

B – Bulgarian criminal procedure

15. In the pre-trial investigation, the prosecutor plays a decisive role. He directs the investigation entrusted to the investigating bodies and he alone decides the direction to be given to proceedings.

16. As regards the investigation, under Article 234 of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure, 'the NPK'), the prosecutor has a period of two months to carry out investigations, a period which may be extended once by four months by the administrative head of the prosecution office concerned and which may also be extended, in exceptional circumstances, an unlimited number of times, and for a period of unlimited duration, by the administrative head of the Principle Public Prosecutor's Office General. The referring court states, in that regard, that the latter type of extension is used mainly in complex cases, such as that in the main proceedings.

17. Under Articles 219, 221 and 246 of the NPK, when sufficient evidence against the person suspected of having committed an offence has been gathered, criminal charges are filed and signed by the investigating body. Those charges are in the form of a written document which satisfies certain specific conditions. It must, in particular, contain an account of the principal facts of the offence and the legal classification of those facts. The person suspected of having committed the offence, and his lawyer, are then informed of the accusation by the presentation of that document. They must next examine the content of the criminal charges and sign the document. The defendant is subsequently questioned and he may either give a statement or remain silent and, like his lawyer, may also make requests.

18. The disclosure of the investigation file is governed by Articles 226 to 230 of the NPK. For that purpose, the accused person and his lawyer must have, at their request, access to the documents constituting the proceedings. If requests are made, the prosecutor decides on the action to be taken in respect of them.

8 OJ 2013 L 294, p. 1.

19. When the request for disclosure of the investigation file has been made, the defendant and his lawyer are summoned at least three days before such disclosure. If they do not appear on the day of the summons, without valid grounds, the disclosure obligation no longer applies. At the time of the disclosure, the person conducting the investigation assigns an appropriate period for the defendant and his lawyer to examine all the findings of the investigation.

20. When the investigation file has been disclosed and, where appropriate, the decisions on the requests of the defendant and his lawyer have been made, the investigation is completed.

21. The lodging of the prosecutor's indictment initiates another phase, namely the judicial phase. The indictment (which is, according to the referring court, 'the final and detailed criminal charges') gives full details of the charge in relation to the facts and their legal classification. It consists of two parts, the circumstantial part, containing the facts, and the conclusive part, which sets out their legal classification. The indictment, a copy of which is subsequently addressed to the defendant and his lawyer, is brought before the court which must verify within 15 days whether any essential procedural requirements have been infringed.

22. In that regard, Article 348(3)(1) of the NPK states that an infringement of 'essential' procedural requirements has been committed where the infringement significantly affects a procedural right recognised by law. That article states that the infringement ceases to be an infringement of 'essential' procedural requirements only if the infringement has been remedied.

23. The content of the indictment is subject to strict formal requirements. Thus, contradictions between the indictment and the last criminal charges document disclosed to the defendant by the investigating body constitute infringements of essential procedural requirements. A contradiction in the indictment itself also constitutes an infringement of essential procedural requirements. Thus, in the case in the main proceedings, it was considered that the fact that the prosecutor relied in the grounds for his indictment on the fact that two of the defendants in the main proceedings expressed their disappointment at the small sum of money offered as a bribe by grimacing whereas, in the conclusive part of the indictment, the prosecutor states that those defendants expressed their unhappiness in words constitutes an infringement of essential procedural requirements.

24. Moreover, failure to notify the criminal charges drawn up by the investigating body is regarded as an infringement of essential procedural requirements, irrespective, in that regard, of the reasons for the failure to notify, even if it results, for example, from a deliberate intention on the part of the defendants to obstruct notification. It should be noted that such notification must be made by the investigating body directly and in person to the actual defendant and his lawyer.

25. The referring court states that, in absolutely all criminal cases in Bulgaria, the defence examines the content of the indictment and, therefore, the information concerning the charge, after it has been filed with the court but before the examination of the charge itself.

26. At the same time, Articles 368 and 369 of the NPK provide that, if the pre-trial investigation is not completed within a period of two years, defendants have the right to submit a request to the court to order the prosecutor to conclude the pre-trial investigation by discontinuing it or referring it to the court within a period of three months. The prosecutor has fifteen more days to draw up the indictment. If the prosecutor does not complete the pre-trial investigation within the period specified, the court takes over the case and terminates the criminal proceedings.

27. On the other hand, if the prosecutor draws up an indictment before the court, the court examines it and checks whether the proceedings were conducted lawfully. If there has been an infringement of essential procedural requirements, the court refers the case back to the prosecutor, who has a period of one month to remedy any such infringements. If the prosecutor does not bring the case before the court within that period or if the case is indeed brought before the court but the court again establishes that there has been an infringement of essential procedural requirements, the criminal proceedings are terminated.

28. The termination of the criminal proceedings is a final decision not subject to appeal, the lawfulness of which can be reviewed only in exceptional circumstances. The public prosecutor then loses any right to prosecute the person suspected of having committed the offence.

29. As regards right of access to a lawyer, Article 91(3) and Article 92 of the NPK provide that a court must exclude the lawyer of a defendant who is representing or has represented another defendant if the defence of one of the defendants conflicts with that of the other. According to settled Bulgarian case-law, there is a conflict of interests where one of the defendants gives a statement which constitutes evidence against another defendant who, for his part, does not give a statement. In such a case, those persons cannot have the same lawyer. The lawyer is therefore obliged to withdraw on his own initiative and, if he does not do so, the prosecutor or the court must remove him. Otherwise, they are committing an infringement of essential procedural requirements, which results in the annulment of the decision of the prosecutor or the court.

II – Facts of the dispute in the main proceedings

30. Nikolay Kolev and Stefan Kostadinov ('the defendants in the main proceedings') are accused of having taken part, when they were customs officers in Svilengrad (Bulgaria) at the border with Turkey, in a criminal conspiracy in the period from 1 April 2011 to 2 May 2012. It is alleged that they demanded bribes from drivers of lorries and cars crossing the border from Turkey to Bulgaria in order not to carry out customs inspections and in order not to record any irregularities in official documentation. The money received in this way was allegedly divided among the defendants in the main proceedings at the end of their shift.

31. All the persons involved in that criminal conspiracy, including the defendants in the main proceedings, were arrested in the night of 2 to 3 May 2012. Immediately after they were searched following the arrest, those persons were charged with taking part in a criminal conspiracy and three of them, including one of the defendants in the main proceedings, were accused of having concealed the money found both in their work premises and on one of those persons.

32. In February and March 2013, the charges against the eight persons involved in that criminal conspiracy were established and those persons were all informed of them. In particular, the defendants in the main proceedings and their representatives were informed of the charges, the evidence gathered and all the other case materials on 21 March 2013. The charge against Mr Kolev was restated subsequently and notified to him on 17 July 2013.

33. Four of the eight persons involved in the criminal conspiracy concluded an agreement with the public prosecutor in order to put an end to the prosecution concerning the charge of participation in a criminal conspiracy. The agreement was twice submitted for ratification to the Spetsializiran nakazatelen sad (Specialised Criminal Court), which twice rejected that request on the ground that the criminal charges documents had not been established by the competent body and because procedural requirements had been infringed. The court then ordered the case to be referred back to the competent prosecutor so that he could draw up new charges.

34. On 7 November 2013, the case was therefore entrusted to the special prosecution service. The periods specified for the investigation were extended several times. In the process, the prosecutor made decisions ex officio, such as referring the case back to the investigation services with instructions or requests to extend the periods assigned to the investigation and requests for information.

35. The defendants in the main proceedings, considering that the period specified in Article 368(1) of the NPK had expired, brought proceedings under Article 369 of the NPK. The court found that the two-year period from the beginning of the pre-trial investigation had indeed expired and accordingly referred the case back to the prosecutor, ordering him to conclude it within three months under Article 369 of the NPK, notify the defendants in the main proceedings of the charges and disclose the investigation file. That period started to run on 29 October 2014 and expired on 29 January 2015. Therefore, all the investigative measures, including the drawing up of the charges and the notification of them to the defendants in the main proceedings, should have been concluded on that date. The prosecutor then had 15 days to draw up an indictment and submit it to the court.

36. It was impossible to ensure communication, to the defendants and their lawyers in person, of the new documents bringing charges drawn up after the court's decision. Mr Kolev received a summons on 13 January 2015 to appear on 19 January 2015. His lawyer stated on the same day by fax that Mr Kolev could not attend for health reasons. Mr Kolev was, once again, summoned by telephone to appear on 22 January 2015. However, neither he nor his lawyer appeared, the lawyer having stated that his client was in hospital and that he himself was unable to appear for professional reasons. Mr Kolev was again summoned to appear on 27 and 28 January 2015, without success, as his lawyer had stated that he was hospitalised. They were again summoned to appear on 29 January 2015 but did not appear, Mr Kolev's lawyer stating that he was professionally engaged on another case. Mr Kolev was therefore not informed of the charges brought against him.

37. Finally, as regards Mr Kostadinov, he was not found at the address given. His lawyer stated that he had no contact with him. It was therefore decided to compel him to appear. However, Mr Kostadinov's lawyer produced a medical certificate stating that he had been hospitalised. Accordingly, he was also not informed of the charges brought against him.

38. The pre-trial investigation was therefore concluded within the period set by the court and a new indictment was drawn up by the prosecutor.

39. By order of 20 February 2015, that court held that infringements of essential procedural requirement had been committed during the pre-trial investigation. First, procedural requirements had been infringed in that the last criminal charges document had not been notified to the defendants and their lawyers. Secondly, there appeared to be a contradiction between the criminal charges document and the indictment in that, since the last criminal charges document was not notified to the defendants in the main proceedings, the indictment could not reproduce that last criminal charges document. Only the criminal charges notified to the parties should have been contained in the indictment.

40. Moreover, the court held that the obstacles to the communication of the new charges to Mr Kolev and Mr Kostadinov did not justify the infringement of their procedural rights.

41. That court therefore set a period of one month for the prosecutor to remedy the infringements, failing which the criminal proceedings against the defendants in the main proceedings would be terminated. The case was therefore referred back to the prosecutor on 7 April 2015 and that period expired on 7 May 2015.

42. However, it was impossible for the prosecutor to communicate the new charges and the investigation file to the defendants in the main proceedings and their lawyers, since the latter relied on medical and professional reasons to refuse communication of them.

43. By order of 22 May 2015, the Spetsializiran nakazatelen sad (Specialised Criminal Court) therefore found that the prosecutor had not remedied the infringements of essential procedural requirements and had committed new ones, as it considered that the procedural rights of the defendants in the main proceedings had been infringed and that the contradictions in the indictment had not been removed.

44. Although that court noted the possibility that the defendants in the main proceedings and their lawyers had abused their rights in order to precipitate the expiry of the periods so that the criminal proceedings against them would be terminated, it nonetheless found that the conditions for terminating those proceedings had been fulfilled. However, it decided not to terminate the criminal proceedings but to take no further action.

45. As the prosecutor considered that there had been no infringement of essential procedural requirements, he lodged an appeal against the order of 22 May 2015.

46. By order of 12 October 2015, the appeal court referred the case back to the referring court, that is to say the Spetsializiran nakazatelen sad (Specialised Criminal Court), on the ground that the latter court should have terminated the criminal proceedings brought against the defendants in the main proceedings under Articles 368 and 369 of the NPK.

47. In those circumstances, the referring court decided to refer to the Court the questions for a preliminary ruling set out in the following point 48.

III – The questions referred for a preliminary ruling

48. In the dispute in the main proceedings, the Spetsializiran nakazatelen sad (Specialised Criminal Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is a national law compatible with the obligation of a Member State to provide for the effective prosecution of criminal offences by customs officials if that law provides for criminal proceedings brought against customs officials — for participation in a conspiracy to commit corruption offences while performing their professional duties (accepting bribes for non-performance of customs inspections), and for specific bribery offences and concealment of bribes received — to be terminated, without the court having examined the charges brought, under the following conditions: (a) two years have elapsed since the accused was charged; (b) the accused has lodged a request for the pre-trial investigation to be concluded; (c) the court has given the prosecutor a period of three months to conclude the pre-trial investigation; (d) during that period, the prosecutor has committed ‘infringements of essential procedural requirements’ (failure properly to notify a supplementary charge, failure to disclose the investigation file, contradictory indictment); (e) the court has given the prosecutor a further period of one month to remedy those ‘infringements of essential procedural requirements’; (f) the prosecutor has failed to remedy the ‘infringements of essential procedural requirements’ within that time limit — albeit that the infringements committed within the first three-month period and the failure to remedy them within the subsequent one-month period are attributable both to the prosecutor (failure to remove contradictions in the indictment; failure to take real action for most of those periods) and also to the defence (breach of the duty to cooperate with respect to notification of the charge and inspection of the investigation file due to the hospitalisation of the accused and claims regarding

the lawyers' other professional commitments); (g) the accused has acquired a subjective right to the termination of the criminal proceedings on account of the failure to remedy the 'infringements of essential procedural requirements' within the prescribed periods?

(2) If the answer [to the first question] is in the negative, which part of the abovementioned legislation should the national court disapply in order to ensure that EU law is applied effectively: (a) termination of the criminal proceedings once the one-month period has expired; or (b) categorisation of the abovementioned defects as 'infringements of essential procedural requirements'; or (c) protection of the subjective right arising in the first question under (g) if there is a possibility that that infringement may be remedied effectively in the court proceedings?

(a) Should the decision to disapply national rules providing for the termination of criminal proceedings be determined by:

(i) the prosecutor's being granted an additional period of time to remedy the 'infringement of essential procedural requirements' equal to the period during which he was, objectively, precluded from doing so because of obstacles attributable to the defence;

(ii) the court's establishing in the case of (i) above that the obstacles are the result of an 'abuse of law', and

(iii) if the answer to question 2(a)(i) is in the negative, the court's establishing that national law provides sufficient guarantees that the pre-trial investigation will be completed within a reasonable time?

(b) Is the decision not to categorise the abovementioned defects in accordance with national law as 'infringements of essential procedural requirements' compatible with EU law, that is to say:

(i) Would the right under Article 6(3) of Directive 2012/13 for the defence to be provided with detailed information on the accusation be adequately safeguarded:

– if that information was provided after the actual submission of the merits of the accusation [(also referred to below as 'the indictment')] to a court but before examination of the indictment by the court, or if, at an earlier stage, prior to submission of the indictment to the court, the defence was provided with full information about the essential elements of the accusation (as in Mr Hristov's case);

– in the event that the answer to question 2(b)(i), first indent, is in the affirmative, if that information was provided after the actual submission of the indictment to a court but before the court had examined it, and the defence had, at an earlier stage, been provided with partial information about the essential elements of the accusation prior to submission of the indictment to the court, the provision of only partial information being attributable to obstacles on the part of the defence (as in the case of Mr Kolev and Mr Kostadinov), and

– if the information was contradictory as regards the way in which the demand for a bribe was actually expressed (at one point it is stated that another defendant expressly demanded the bribe, while Mr Hristov indicated his dissatisfaction, by grimacing, when the person undergoing the customs inspection offered too little money, whereas elsewhere it is asserted that Mr Hristov explicitly and specifically demanded a bribe)?

(ii) Would the right under Article 7(3) of Directive 2012/13 for the defence to be granted access to case materials 'at the latest upon submission of the merits of the accusation to the judgment of a court' be adequately safeguarded in the main proceedings if the defence had access to the essential part of the materials at an earlier stage and was given the opportunity to inspect the materials but, because of various obstacles (illness, professional commitments), and in reliance on national law which requires at least three days' notice to be given of the availability of materials for inspection, did not avail itself of that opportunity? Must a further opportunity for inspection be given once those obstacles are removed and subject to at least three days' notice being given? Is it necessary to establish whether the obstacles referred to did, objectively, exist or constitute an abuse of law?

(iii) Does the legal requirement laid down in Article 6(3) and Article 7(3) of Directive 2012/13 ('at the latest on submission of the merits of the accusation to a court'/'at the latest upon submission of the merits of the accusation to the judgment of a court') have the same meaning in both provisions? What does that requirement mean: prior to the actual submission of the merits of the accusation to [the judgment of] a court, or at the latest on their submission to the court, or after their submission to a court but before the court has taken steps to examine the merits of the accusation?

(iv) Does the legal requirement to provide information on the accusation to the defence and access to the materials of the case in such a way as to ensure that 'the effective exercise of the rights of the defence' and 'the fairness of the proceedings' can be safeguarded in accordance with Article 6(1) and Article 7(2) and (3) of Directive 2012/13 have the same meaning in both provisions? Would that requirement be met:

– if the detailed information on the accusation was provided to the defence after submission of the indictment to a court but before any steps had been taken to examine its merits and the defence had been given sufficient time for preparation, incomplete and partial information on the accusation having been provided at an earlier stage;

– if the defence was granted access to all the case materials after submission of the indictment to a court but before any steps had been taken to examine its merits, and the defence had been given sufficient time for preparation, access to the majority of the case materials having been given to the defence at an earlier stage, and

– if the court adopted measures to guarantee to the defence that all statements given by the defence after studying the detailed indictment and all the case materials would have the same effect as they would have had if those statements had been given to the prosecutor before submission of the indictment to the court?

(v) Would 'the fairness of the proceedings' in accordance with Article 6(1) and (4) and 'the effective exercise of the rights of the defence' in accordance with Article 6(1) of Directive 2012/13 be safeguarded if the court decided that judicial proceedings should be commenced in respect of a definitive charge that is contradictory as regards the way in which the demand for a bribe was expressed, but then gave the prosecutor an opportunity to remove those contradictions and enabled the parties to exercise fully those rights which they would have had if the charge had been filed without any such contradictions?

(vi) Would the right of access to a lawyer enshrined in Article 3(1) of Directive 2013/48/EU be adequately safeguarded if, during the pre-trial investigation, the lawyer was given the opportunity to appear in order to be notified of the provisional charge and to be given full access to all case materials, but failed to appear due to professional commitments and in reliance on national law requiring at least three days' notice to be given? Is it necessary for a new time limit of at least three days to be imposed once those commitments have been met? Is it necessary to establish whether the reason for the non-appearance is valid or whether there has been an abuse of law?

(vii) Would the infringement during the pre-trial investigation of the right of access to a lawyer enshrined in Article 3(1) of Directive 2013/48 have an effect on the 'practical and effective exercise of rights of defence' if, after submission of the indictment to the court, the court granted the lawyer full access to the final and detailed indictment and to all the case materials, and then adopted measures to guarantee to the lawyer that all statements made by him after studying the detailed indictment and all the case materials would have the same effect as they would have had if those statements had been made to the prosecutor before submission of the indictment to the court?

(c) Is the subjective right of the accused to have the criminal proceedings terminated (under the above conditions) compatible with EU law, notwithstanding the fact that the 'infringement of essential procedural requirements' which the prosecutor has failed to remedy may be fully remedied as a result of measures taken by the court in the judicial proceedings, so that ultimately the legal position of the accused is identical to that which he would have had if the infringement had been remedied in due time?

(3) Can more favourable national rules on the right to a trial within a reasonable time, the right to information and the right of access to a lawyer be applied if they — in conjunction with other circumstances (the procedure described at point 1) — would result in the termination of the criminal proceedings?

(4) Is Article 3(1) of Directive 2013/48 to be interpreted as authorising the national court to exclude from the court proceedings a lawyer who has represented two of the accused, one of whom has given a statement regarding matters that are prejudicial to the interests of the other, who has not given a statement?

If this question is to be answered in the affirmative, would the court be safeguarding the right of access to a lawyer in accordance with Article 3(1) of Directive 2013/48 if, having allowed a lawyer who has simultaneously represented two defendants with conflicting interests to take part in the proceedings, it appointed new, different defence lawyers to represent each of those defendants?'

IV – My analysis

49. Before proposing that the questions referred be reworded, I would like to make the following two observations.

50. First, in order to remove any doubt as to whether EU law applies in the main proceedings, I would point out that Article 325 TFEU states that the Union and the Member States are to counter fraud and any other illegal activities affecting the financial interests of the Union. [9]

9 See judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555, paragraph 37).

51. In that regard, Article 1(1)(b), first indent, of the PFI Convention provides that such fraud is constituted by, in respect of revenue, any intentional act or omission relating to the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities. Under Article 1(2) of that convention, such forms of conduct are to constitute criminal offences in national law.

52. Article 2(1) of that convention states that Each Member State is to take the necessary measures to ensure that the conduct referred to in Article 1 of that convention, and participating in, instigating, or attempting the conduct referred to in Article 1(1) thereof, are punishable by effective, proportionate and dissuasive criminal penalties. Moreover, under the First Protocol to the PFI Convention, passive corruption and active corruption [10] must also constitute criminal offences in the national law of each Member State.

53. In the present case, the defendants in the main proceedings are accused of having committed corruption offences by demanding bribes from drivers of lorries and cars crossing the European Union's external border, that is to say, between Bulgaria and Turkey, in order not to be subject to customs controls. Under Article 301 of the NPK, that offence is punishable by a term of imprisonment of up to six years and a fine of up to BGN 5 000 (Bulgarian leva) (approximately EUR 2 500). Such conduct by the defendants in the main proceedings may have affected the financial interests of the European Union by depriving it of some of its own resources. Therefore, there can be no doubt that EU law is applicable in the dispute in the main proceedings.

54. Secondly, it should be noted that, by order of 28 September 2016, submitted to the Court on 25 October 2016, the referring court stated that Mr Hristov, one of the defendants, died on 9 September 2016, thereby terminating the criminal proceedings brought against him. I therefore consider that the questions relating to Mr Hristov's situation are no longer relevant to the resolution of the dispute in the main proceedings.

A – Preliminary observations

55. The referring court asks the Court some twenty questions and sub-questions which can, in my view, be examined as two main sets of questions.

56. The first of the referring court's questions is directly linked to the course of the criminal proceedings, the excessively formalistic nature of which may, in its view, be contrary to EU law. Thus, the establishment of the procedure laid down in Articles 368 and 369 of the NPK combined with the excessive adherence to formalities of the right to be informed of the charges and of the disclosure of the case materials may lead to the termination of criminal proceedings without the persons suspected of having affected the financial interests of the European Union being prosecuted.

57. That set of questions requires the Court to examine, first, whether EU law precludes provisions of national law, such as Articles 368 and 369 of the NPK, which, owing to the failure to observe a pre-determined time limit, require the national court to conclude the criminal proceedings even if the delay is caused by deliberate obstruction attributable to the accused person. If that is the case, the consequences of such incompatibility will have to be determined.

58. Secondly, by its question 2(b), the referring court seeks to ascertain, in essence, whether Article 6(3) of Directive 2012/13 precludes a national practice, such as that in the main proceedings, which provides for the notification to the accused person of the information on the accusation after the indictment has been submitted to the court, but before that court has begun to examine the

10 For a definition of those two concepts, reference should be made to points 8 and 9 of this Opinion.

merits of the accusation. It also asks whether Article 7(3) of that directive precludes that national practice whereby the final indictment is sent to the court having jurisdiction even where the defence, which had the opportunity to examine the case materials, did not exercise that right on account of professional commitments or on account of the health of the defendant.

59. The other set of questions specifically concerns Directive 2013/48. The referring court seeks to ascertain, in essence, whether Article 3(1) of that directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that the national court is required to exclude from its proceedings the lawyer of a defendant who is representing or has represented another defendant if the defence of one of the defendants conflicts with that of the other. If that is the case, must Article 3(1) of that directive be interpreted as meaning that the right of access to a lawyer is safeguarded in so far as that court appoints new defence lawyers to represent those defendants?

60. In the following analysis, I shall therefore examine those questions in turn.

B – The questions referred

1. The compatibility of the criminal procedure laid down in Articles 368 and 369 of the NPK with EU law and the consequences of its possible incompatibility

61. By its first and third questions, the referring court asks whether EU law must be interpreted as meaning that it precludes provisions of national law, such as Articles 368 and 369 of the NPK, which, owing to the failure to observe a pre-determined time limit, require the national court to conclude the criminal proceedings even if the delay is caused by deliberate obstruction attributable to the accused person.

62. A pre-determined time limit is defined as '*le délai d'action déterminé par la loi dont le cours, à la différence de la prescription, n'est susceptible ni de suspension ni d'interruption*' ['the time limit for action determined by the law, the course of which, unlike in the case of prescription, cannot be suspended or interrupted']. [11]

63. The procedural case which has been referred to the Court exactly fits that definition. The facts of the case show that there is a systemic risk of offences affecting the financial interests of the European Union going unpunished.

64. It appears, in the light of the various written or oral statements submitted to the Court, that the Republic of Bulgaria's adoption of that legislation is the consequence of a desire to prevent procedural delays which had led the European Court of Human Rights repeatedly to criticise that Member State for infringing the 'reasonable time' principle. [12]

65. The question referred to the Court in the present case is the reverse, that is to say, does the adoption of pre-determined time limits in the procedural circumstances described by the referring court not lead to the establishment of an equally unreasonable period for judgment because it is too short and intangible, resulting in an offence going unpunished?

11 See Cornu, G., *Vocabulaire juridique*, Presses universitaires de France, Paris, 2011.

12 See, in particular, ECtHR, 10 May 2011, *Dimitrov and Hamanov v. Bulgaria* CE:ECHR:2011:0510JUD004805906, and paragraphs 34.1 and 37 of the request for a preliminary ruling.

66. Infringement of the 'reasonable time' principle is traditionally relied on in connection with respect for the rights of the defence where a period specified for action is unreasonable because it is too long. In the present case, the principle must be examined with regard to a period which is unreasonable because it is too short to allow in respect of the offences committed the imposition of the normal penalty which they warrant.

67. As I have stated in points 50 to 53 of this Opinion, this matter falls within the scope of EU law and the question raised here concerns, in fact, the effectiveness of that law and especially of the primary law.

68. Therefore, it must reasonably be asked whether the national legislation at issue adequately fulfils the obligation under the Treaties which requires the Member States to counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and to take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own financial interests. [13]

69. It is incumbent on the Court to examine the national law from that perspective, in so far as, in the situation before it, since the same provisions are applicable both in the context of national law and in the context of EU law, the principle of equivalence is perfectly fulfilled and the ineffectiveness follows from that equivalence.

70. All illegal activities affecting the financial interests of the European Union are, by nature, complex and therefore difficult to establish. Even if the circumstances of the case in the main proceedings appear relatively simple, they nonetheless implicate a number of joint perpetrators or accomplices, which is always an element causing difficulties and necessitating multiple interviews and confrontations.

71. Moreover, it would be incomprehensible if the investigations did not seek to establish the scale of the illicit activity in terms of both its duration and the profits it generated. Investigation of any subsequent laundering of the amount misappropriated also appears necessary, in so far as the seizure of the assets acquired with the profits from the offence is, generally, the only means of offsetting the damage caused.

72. In a case of this kind, it is well known that the periods laid down for the investigation are inadequate. Indeed, the basic period is two months with possible extensions but with a maximum period of two years, the final deadline.

73. How, then, could it be imagined, for example, that an investigation might result in a VAT carousel fraud case involving shell companies spread over several countries necessitating technical investigations such as experts' reports from accountants and recourse to international judicial and police cooperation?

74. If, moreover, the evident bad faith of the accused persons and their lawyers' obstruction (which the referring court describes as deliberate) are sufficient entirely to stall the proceedings, resulting in the termination of the prosecution, the systemic nature of the impotence referred to is, in my view, amply demonstrated. This is particularly true since the referring court's description of the various stages of the proceedings shows that there is no means of setting aside the mandatory time limits and that court's attempt to do so quickly failed, being rejected by the appeal court. [14]

13 See Article 325 TFEU and judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555, paragraph 37).

14 See points 44 and 46 of this Opinion.

75. Therefore, it can only be concluded that the referring court must disregard the provisions of national law which result in that situation, since an interpretation consistent with them cannot be obtained in this case, as the referring court itself recognises.

76. That solution is also required by a general principle of EU law, namely the principle of proportionality.

77. As a general principle of EU law, it now finds expression in Article 5(1) and (4) TEU, in the version arising from the Treaty of Lisbon.

78. Article 5(1) TEU assigns to it, together with the principle of subsidiarity, the major role of governing the exercise of EU competences, the limits of which are determined, under that provision, by the principle of conferral of powers.

79. Action by the European Union is taken only within the limits of its competences to attain the objectives set out in the Treaties.

80. According to Article 5(4) TEU, such action must observe the principle of proportionality, which means that that action must not exceed, either in substance or in form, what is necessary to achieve the objectives in question.

81. However, the principle of proportionality cannot weaken or paralyse European Union action even if it is most often relied on to prevent the application of a rule or instrument of the European Union which is regarded as infringing national law.

82. It is true that that principle prohibits action which exceeds what is necessary to achieve the European Union's objective but, within that limit, it cannot prevent what is necessary from being done.

83. Thus, by way of example, recital 11 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters [15] affords the executing State the possibility of replacing the requested measure by another, less intrusive measure based on its national law only on condition that the national measure in question is equally effective.

84. That comparison prompts me to make a further comment, namely that the purpose here is that the Member States must ensure, throughout EU territory within the framework of Regulation No 450/2008 and in the territory of the Member States which are signatories to the PFI Convention, the uniform punishment of offences affecting the financial interests of the European Union.

85. However, those legal texts (primarily Regulation No 450/2008) require the Member States concerned to provide for proportionate, dissuasive and effective criminal penalties. Therefore, the effectiveness obligation cannot be fulfilled if procedural provisions prevent the application of such penalties in practice.

86. As has been shown above, the national provision at issue, owing to its pre-determined nature, clearly does not conform to the objective pursued by the applicable EU legislation. While the principle of proportionality, as a general principle, justifies and, where necessary, provides a legal basis for the decision to disregard the national provisions at issue, [16] it also states how they should be replaced.

15 OJ 2014 L 130, p. 1.

16 According to the settled case-law of the Court, the referring court is required to disapply, on its own authority, national provisions which are contrary to EU law, without having to request or await the prior repeal of those articles by way of legislation or any other constitutional procedure. See, to this effect, judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555, paragraph 49 and the case-law cited).

87. There is no room for deviation in this matter. The principle of proportionality, which is a general principle of law recognised by the Charter of Fundamental Rights of the European Union, is also a fundamental freedom which must be applied, here, from that supplementary perspective.

88. The national court is, then, bound by the need to comply with the rules on 'reasonable time', which is only one of the many manifestations of the principle of proportionality, though, in this situation, it takes specific form in a procedural action.

89. The reasonableness of the period for delivering judgment is to be appraised in the light of the circumstances specific to each case, such as the complexity of the case and the conduct of the parties.[17] The European Court of Human Rights has also repeatedly ruled that 'the reasonableness of the duration of criminal proceedings must be assessed in each case according to its circumstances and with regard to the criteria established by its case-law, in particular the complexity of the case and the conduct of the applicant and of the competent authorities'.[18]

90. Therefore, in the absence of the pre-determined period resulting from the exclusion of the national legislation which is contrary to EU law, the national court must ensure that the pre-trial investigation in the criminal proceedings has been conducted in observance of the principle of reasonable time. As I have stated above, it must examine proportionality in the light of the specific circumstances of the case, such as the complexity of the dispute and the conduct of the parties and that of the judicial authorities.

91. In that connection, as regards the complexity of the case in the main proceedings, it must be borne in mind that the investigation concerns eight defendants who are being prosecuted for taking part in a criminal conspiracy whose offences have been committed over a period of more than one year. The investigating authorities must, therefore, be able to have sufficient time to gather the necessary evidence, witness statements or other useful information. Moreover, the conduct of the defendants in the main proceedings may also be an element favouring an additional period, in that there is no doubt that they intended to help to prevent the prosecutor from fulfilling his obligations in the pre-trial investigation phase of the criminal proceedings, in particular the notification of the charge and the disclosure of the investigation file.

92. I would add that an excessively short period for investigation would be likely to result in the investigation being focused primarily on the evidence against the defendants at the expense of what might be exonerating evidence or evidence capable, by its explanation of motives or conduct, of reducing the severity of the punishment, thereby preventing the severity of the penalty from being disproportionate to the offence, as recommended by Article 49(3) of the Charter of Fundamental Rights on the principle of proportionality.

93. In the light of all the foregoing considerations, I take the view that Article 325 TFEU, Article 2(1) of the PFI Convention and Articles 2(2) and 3(2) of the First Protocol to the PFI Convention must be interpreted as precluding provisions of national law such as Articles 368 and 369 of the NPK which, owing to the failure to comply with a pre-determined time limit, require the national court to conclude the criminal proceedings, even if the delay is caused by deliberate obstruction attributable to the accused person. It is incumbent on the national court to give full effect to EU law by, where necessary, disapplying provisions of national law which have the effect of preventing the Member State concerned from fulfilling the obligations imposed on it by those provisions.

17 See judgment of 16 July 2009, *Der Grüne Punkt — Duales System Germany* v *Commission* (C-385/07 P, EU:C:2009:456, paragraph 181).
18 See ECtHR, 24 July 2012, *D.M.T. and D.K.I. v. Bulgaria* (CE:ECHR:2012:0724JUD002947606, § 93).

2. The right to be informed of the charges and right of access to the case materials

94. In question 2(b) the referring court asks the Court, in essence, whether Article 6(3) of Directive 2012/13 precludes a national provision, such as that in the main proceedings, which provides for the notification to the accused person of the information on the accusation after the indictment has been submitted to the court, but before the court has begun to examine the merits of the accusation. It also asks whether Article 7(3) of that directive precludes that national practice whereby the final indictment is sent to the court having jurisdiction even where the defence, which had the opportunity of studying the case materials, did not exercise that right on account of professional commitments or on account of the health of the defendant.

95. The answer to that question can only, in my opinion, be a negative one. What would be the use of removing the pre-determined time limit and granting the prosecutor additional, even very long, periods if there were no possibility of bypassing the defendants' obstruction?

96. I am of the view that the practice described by the referring court, which must be validated, particularly with regard to observance of the principle of effectiveness, was established, at least in part, precisely in order to overcome that obstruction which would prevent the case from being brought before the court.

97. I also consider that that practice guarantees respect for the rights of the defence, as referred to specifically in Directive 2012/13.

98. Article 6(3) and Article 7(3) of that directive do not state at what precise time in the proceedings the information on the charge and access to the case materials must be notified to the person suspected of having committed an offence. They merely indicate, respectively, that the detailed information on the accusation must be notified 'at the latest upon submission of the merits of the accusation to the court' and that access to the case materials must be 'granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court'.

99. The criminal charges document, together with access to the case materials, is intended to provide the suspect with precise information on the charge brought against him and to enable him to prepare and effectively exercise his defence, which are conditions for a fair trial. [19]

100. It should also be noted that the French version of Article 6(3) of Directive 2012/13 is, in my view, ambiguous. Strictly speaking, it would be in the course of the deliberation that the judge would rule on whether the charge was well founded. That provision must therefore be understood as requiring the communication of the accusation, the legal classifications, the charges and the documents at the latest when oral procedure begins before the court. That interpretation seems, moreover, to be confirmed by the other language versions of that directive. [20]

101. In order to ensure the operation of the rules of a fair trial, it is evident that the communication must be accompanied by the grant of a period which suffices for the accused to prepare an effective defence, and that means a requirement that a reference back may be ordered if necessary for that purpose.

19 See recitals 27 and 28 of Directive 2012/13.

20 In Italian, this provision is worded as follows: 'Gli Stati membri garantiscono che, al più tardi al momento in cui il merito dell'accusa è sottoposto all'esame di un'autorità giudiziaria, siano fornite informazioni dettagliate sull'accusa, inclusa la natura e la qualificazione giuridica del reato, nonché la natura della partecipazione allo stesso dell'accusato'. In English, it provides: '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'.

102. Thus, for example, as regards the disclosure of the case materials, it should be noted that they enable the accused person and his lawyer to make very specific requests concerning the evidence or even to request further investigation. Access to those materials must therefore occur at a time which enables the accused person or his lawyer to adequately and effectively prepare his defence and, in any event, such access cannot take place during the deliberation phase. If the court finds that access has been requested but that, for independent reasons beyond the control of the accused person or his lawyer, they were unable to examine the case materials, I consider that the court must, in that case too, suspend the proceedings and allow such access by leaving sufficient time for that person and his lawyer to examine the case materials and make any requests that they are entitled to make.

103. Therefore, in the light of the foregoing, I consider that Article 6(3) of Directive 2012/13 must be interpreted as not precluding a national practice which provides for the notification to the accused person of the information on the accusation after the indictment has been submitted to the court, in so far as the conduct of the proceedings during the hearing enables the accused person to be informed of and understand what he is being accused of and offers him reasonable time to discuss the evidence against him.

104. I also consider that Article 7(3) of that directive must be interpreted as not precluding a national practice which provides for access to the case materials to be granted, at the request of the parties, during the pre-trial investigation before the final indictment is drawn up. The answer here is dictated purely by practical considerations. A different answer would mean the proceedings being sent to the defendant or his lawyer with the resulting risk of their loss or destruction. Moreover, the case materials may be quite bulky and, for example, in that type of offence, involve the seizure of accounts.

105. On the other hand, the national court must ensure that the accused person or his lawyer can have effective access to the materials in order to enable him to prepare an effective defence.

3. The right of access to a lawyer

106. By its fourth question, the referring court seeks to ascertain, in essence, whether Article 3(1) of Directive 2013/48 must be interpreted as precluding national legislation, such as the legislation at issue in the main proceedings, which provides that the national court is required to exclude from its proceedings the lawyer of a defendant who is representing or has represented another defendant if the defence of one of the defendants conflicts with that of the other and which provides that that court must appoint new defence lawyers to represent those defendants.

107. It should be noted, first, that, under Article 15 of that directive, the Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 27 November 2016. Therefore, on the date of the facts in the main proceedings, the period specified for that purpose had not expired. However, while a rule of law does not apply to legal situations that have arisen and become definitive under the old law, it does apply to their future effects, and to new legal situations too.[21] Moreover, Directive 2013/48 does not contain any particular provision specifically laying down the conditions for its temporal application. It follows that the directive is, in my view, applicable to the situations of the defendants in the main proceedings.

108. It should be noted that Article 3(1) of that directive states that 'Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively'. The right of access to a lawyer is therefore an essential component of a fair trial.[22]

21 See judgment of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 22).

22 See recital 12 of Directive 2013/48.

109. In fact, Directive 2013/48 aims only to lay down minimum rules on the right of access to a lawyer in criminal proceedings.[23] In so far as it is silent on the possibility for a court to remove from the criminal proceedings a lawyer defending clients with conflicting interests in the same case, it is quite simply each person's fundamental right to an objective defence of his interests, without concession or equivocation, which dictates the answer to be given here.

110. As that principle is self-evident, there is ultimately no need to express it in legislation. In this case, I consider that the national legislation allowing a lawyer defending clients with conflicting interests in the same case to be removed from the criminal proceedings is rightly capable of safeguarding that right, in so far as it is difficult to see how the same lawyer could fully and effectively defend two defendants with conflicting interests, especially as, in this case, the statements of one of the defendants implicates the other. In reality, this would amount simply to depriving one, if not both, of those implicated of the fundamental right to be assisted by a lawyer and to depriving them of the exercise of their rights of defence practically and effectively.[24]

111. In my view, the appointment by a court of a lawyer where it removes the lawyer on account of conflicting interests also adequately guarantees the right of access to a lawyer, as described above.

112. On the other hand, the national court must ensure that the lawyer appointed can have sufficient time to examine the case and defend his client effectively. In that regard, the proceedings must, if necessary, be suspended so that the lawyer appointed can, where appropriate, request any procedural step (such as service of the investigation file or even an expert's report), which is expressly provided for in the national law, so that he can best prepare the defence of his client.

113. In the light of all the foregoing, I consider that Article 3(1) of Directive 2013/48 must be interpreted as not precluding national legislation, such as the legislation at issue in the main proceedings, which provides that the national court is required to exclude from its proceedings the lawyer of a defendant who is representing or has represented another defendant if the defence of one of the defendants conflicts with that of the other and which provides that the court must appoint new defence lawyers to represent those defendants.

V – Conclusion

114. In the light of all the foregoing considerations, I propose that the Court give the following answer to the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria):

(1) Article 325 TFEU, Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Luxembourg on 26 July 1995, and Article 2(2) and Article 3(2) of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests must be interpreted as precluding provisions of national law such as Articles 368 and 369 of the NPK which, owing to the failure to comply with a pre-determined time limit, require the national court to conclude the criminal proceedings, even if the delay is caused by deliberate obstruction attributable to the accused person. It is incumbent on the national court to give full effect to EU law by, where necessary, disapplying provisions of national law which have the effect of preventing the Member State concerned from fulfilling the obligations imposed on it by those provisions.

23 See Article 1 of that directive.

24 See Article 3(1) of Directive 2013/48. See, also, Article 1 thereof.

(2) Article 6(3) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings must be interpreted as not precluding a national practice which provides for the notification to the accused person of the information on the accusation after the indictment has been submitted to the court, in so far as the conduct of the proceedings during the hearing enables the accused person to be informed of and understand what he is being accused of and offers him reasonable time to discuss the evidence against him.

(3) Article 7(3) of Directive 2012/13 must be interpreted as not precluding a national practice which provides for access to the case materials to be granted, at the request of the parties, during the pre-trial investigation before the final indictment is drawn up. On the other hand, the national court must ensure that the accused person or his lawyer can have effective access to those materials in order to enable them to prepare an effective defence for that person.

(4) Article 3(1) of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer must be interpreted as not precluding national legislation, such as the legislation at issue in the main proceedings, which provides that the national court is required to exclude from its proceedings the lawyer of a defendant who is representing or has represented another defendant if the defence of one of the defendants conflicts with that of the other and which provides that the court must appoint new defence lawyers to represent those defendants.