Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

19 September 2019*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Articles 6, 47 and Article 51(1) of the Charter of Fundamental Rights of the European Union — Directive 2012/13/EU — Article 8(2) — Directive 2013/48/EU — Article 12 — Directive (EU) 2016/343 — Article 3 — National legislation authorising, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society — Right to information about rights — Right of access to a lawyer — Right to an effective remedy — Presumption of innocence — Vulnerable persons)

In Case C-467/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rayonen sad Lukovit (District Court, Lukovit, Bulgaria), made by decision of 17 July 2018, received at the Court on 17 July 2018, in the criminal proceedings against

EP,

Proceedings instituted at the request of:

Rayonna prokuratura Lom,

KM,

HO,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, J. Malenovský, C.G. Fernlund (Rapporteur) and L.S. Rossi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– EP, by M. Ekimdzhiev, K. Boncheva and T. Ekimdzhieva, advokati,

– the Czech Government, by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,

* Language of the case: Bulgarian.

– the Netherlands Government, by M. Bulterman and P. Huurnink, acting as Agents,

– the European Commission, by R. Troosters and Y.G. Marinova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8(2) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1); Article 12 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 (OJ 2013 L 294, p. 1); Article 3 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1); and Article 6, Article 21(1) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in judicial proceedings for an order that EP be committed to a psychiatric hospital.

Legal context

ECHR

3 Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), that article being headed 'Right to liberty and security', provides:

'1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

…

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

…

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

…'

European Union law

Directive 2012/13

4 Recitals 19, 22 and 26 of Directive 2012/13 are worded as follows:

‘(19) The competent authorities should inform suspects or accused persons promptly of those rights, as they apply under national law, which are essential to safeguarding the fairness of the proceedings, either orally or in writing, as provided for by this Directive. In order to allow the practical and effective exercise of those rights, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority.

…

(22) Where suspects or accused persons are arrested or detained, information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist those persons in understanding their rights. Such a Letter of Rights should be provided promptly to each arrested person when deprived of liberty by the intervention of law enforcement authorities in the context of criminal proceedings. …

…

(26) When providing suspects or accused persons with information in accordance with this Directive, competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition.’

5 Article 2(1) of that directive defines its scope as follows:

‘This Directive applies 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, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.’

6 Article 3 of that directive, headed ‘Right to information about rights’, provides:

‘1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

(a) the right of access to a lawyer;

(b) any entitlement to free legal advice and the conditions for obtaining such advice;

(c) the right to be informed of the accusation, in accordance with Article 6;

(d) the right to interpretation and translation;

(e) the right to remain silent.

2. Member States shall ensure that the information provided for under paragraph 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.'

7 Article 6(1) and (3) of the same directive, that article being headed 'Right to information about the accusation', provides:

'1. Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

…

3. Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.'

8 Article 8(2) of Directive 2012/13, that article being headed 'Verification and remedies', provides:

'Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.'

Directive 2013/48

9 Recital 51 of Directive 2013/48 states:

'The duty of care towards suspects or accused persons who are in a potentially weak position underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore facilitate the effective exercise by such persons of the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to exercise the right of access to a lawyer and to have a third party informed upon deprivation of liberty, and by taking appropriate steps to ensure those rights are guaranteed.'

10 Article 2(1) of that directive is worded as follows:

'This Directive applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.'

11 Article 12 of that directive, headed 'Remedies', provides:

'1. Member States shall ensure that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive.

2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 3(6), the rights of the defence and the fairness of the proceedings are respected.'

12 Article 13 of the same directive, headed 'Vulnerable persons', provides:

'Member States shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.'

Directive 2016/343

13 Article 2 of Directive 2016/343, headed 'Scope', provides:

'This Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.'

14 Under Article 3 of that directive, headed 'Presumption of innocence':

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

15 Article 6 of that directive states:

'1. Member States shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. This shall be without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.

2. Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including where the court assesses whether the person concerned should be acquitted.'

16 In accordance with Article 14(1) of the same directive, the deadline for its transposition was 1 April 2018 and, pursuant to Article 15 thereof, it entered into force on 31 March 2016.

Bulgarian law

17 Article 427 et seq. of the Nakazatelno protsesualen kodeks (Code of Criminal Procedure), in the version in force on the date of the events in the main proceedings, provide for a special procedure enabling a court to order, on the proposal of the Public Prosecutor's Office, compulsory medical measures against an individual who, in a state of insanity, has committed an act that represents a danger to society.

18 Article 427 of the Code of Criminal Procedure provides:

'(1) A proposal for the adoption of compulsory medical measures shall be made by the district Public Prosecutor's Office, …

(2) Before making the proposal, the Public Prosecutor's Office shall order that an expert report be obtained and shall instruct the investigating body to evaluate the person's behaviour before and after the act was committed and to assess whether the person represents a danger to society.'

19 It is clear from the procedure outlined in Articles 428 to 491 of that code that the proposal by the Public Prosecutor's Office is examined by the district court of the place of residence of the person concerned, which, after a hearing, gives a ruling by order of a single judge, which is then open to appeal.

20 In addition, Article 155 et seq. of the Zakon za zdraveto (Health Law) establish a special procedure for obtaining an order for the compulsory admission to a medical facility of a person suffering from a mental disorder representing a danger to himself or others.

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

21 On 26 August 2015, after the discovery of a body in a street in the town of Medkovets (Bulgaria), police officers attended the home of EP, the deceased's son. EP admitted to having killed his mother. Informed of EP's mental disorder by witnesses, the police officers took him to the emergency unit of a psychiatric hospital.

22 By decision of 12 September 2015, the Rayonen sad Lom (District Court, Lom, Bulgaria) ordered that EP be admitted to a psychiatric hospital for a period of 6 months. That decision, taken on the basis of the Health Law, was renewed continuously until the date of the order for reference.

23 The forensic psychiatry expert report assigned to two hospital psychiatrists concluded that EP was suffering from paranoid schizophrenia.

24 By order of 7 July 2016, the Public Prosecutor's Office in Montana (Bulgaria) suspended the criminal proceedings on the grounds that EP was suffering from a mental illness. Taking the view that EP was unable to participate in the proceedings, the Public Prosecutor's Office did not serve that order on EP.

25 On 29 December 2017, the Apelativna prokuratura Sofia (Public Prosecutor's Office, Sofia, Bulgaria) ordered criminal proceedings to be resumed and made provision for the continuation of EP's committal under the Health Law.

26 On 1 March 2018 an order was made closing the criminal proceedings initiated against EP. The Public Prosecutor's Office concluded that compulsory medical measures should be ordered on the ground that EP had intentionally committed an offence in a state of mental disorder such that he could not be held to be criminally responsible. That order was served on his sister. As no appeal was brought within the prescribed period, that order became final on 10 March 2018.

27 The Rayonna prokuratura Lom (Public Prosecutor's Office, Lom, Bulgaria) brought an application before the referring court, the Rayonen sad Lukovit (District Court, Lukovit, Bulgaria), for EP's committal to a psychiatric hospital under Article 427 et seq. of the Code of Criminal Procedure.

28 The referring court has doubts as to whether the national provisions governing the compulsory admission of mentally ill persons to a medical facility are in conformity with the rights guaranteed by Directives 2012/13, 2013/48 and 2016/343 and by the Charter. Those doubts principally concern Article 427 et seq. of the Code of Criminal Procedure and the special criminal procedure they establish, which may result in the committal to a psychiatric hospital of a person representing a danger to society. Those doubts also relate to the provisions of the Health Law, in that the procedure

provided for therein also allows for the compulsory committal of a person, as a preventive measure, where there are grounds to believe that, in view of his state of health, he is likely to commit a criminal offence.

29 The referring court states that EP was never questioned during the investigation and that he was not notified of the criminal procedure initiated against him. As he was not the subject of criminal proceedings, he was not given access to a lawyer. He had no recourse to a judicial remedy against the findings of law or fact of the Public Prosecutor's Office.

30 Furthermore, the referring court considers that, in relation to the procedure for the adoption of compulsory medical measures under Article 427 et seq. of the Code of Criminal Procedure, national law does not enable a court to verify whether, during the initial investigation, the person considered to be the perpetrator of the acts was granted the minimum procedural guarantees for the exercise of his rights of defence. In the present case, EP has alleged an infringement of his rights to be informed of the charge brought against him, to remain silent and to have access to a lawyer. The referring court seeks clarification, inter alia, on whether such legislation is compatible with Article 47 and Article 48(2) of the Charter.

31 The referring court is also uncertain as to whether the procedure to which EP is subject falls within the scope of Directives 2012/13, 2013/48 and 2016/343. If so, the referring court considers that, if the Court were to find that the special criminal procedure provided for in Article 427 et seq. of the Code of Criminal Procedure does not guarantee a right to an effective remedy, it could then apply, by analogy, ordinary criminal procedure.

32 It is in those circumstances that the Rayonen sad Lukovit (District Court, Lukovit) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do the present proceedings for an order for the adoption of compulsory medical measures, constituting a form of State compulsion in relation to persons who, according to the findings of the Public Prosecutor's Office, have committed an act representing a danger to society, fall within the scope of Directive [2012/13] and Directive [2013/48]?

(2) Do the Bulgarian procedural provisions governing the special procedure for an order for the adoption of compulsory medical measures provided for in Article 427 et seq. of the Code of Criminal Procedure, under which a court is not empowered to refer the proceedings back to the Public Prosecutor's Office with the instruction to rectify the procedural errors committed in the course of the pre-trial procedure, but can either grant the application for an order for the adoption of compulsory medical measures or reject it, constitute an effective remedy, within the meaning of Article 12 of Directive 2013/48 and Article 8 of Directive 2012/13 read in conjunction with Article 47 of the Charter, which confers on the person concerned the right to challenge before a court any infringements of their rights which may have been committed in the course of the pre-trial procedure?

(3) Are Directive 2012/13 and Directive 2013/48 applicable to (pre-trial) criminal proceedings in the case where the national law, that is to say the Code of Criminal Procedure, does not recognise the legal concept of "suspect" and the Public Prosecutor's Office does not formally regard the person in question as a defendant during the pre-trial procedure, since, on the assumption that the homicide forming the subject of the investigations was committed by that person in a state of mental disorder such as to exclude criminal responsibility, it closes criminal proceedings without informing the person concerned and applies to the court for an order for the adoption of compulsory medical measures against that person?

(4) Is a person in relation to whom compulsory medical treatment has been applied for to be regarded as being "suspected" within the meaning of Article 2(1) of Directive 2012/13 and Article 2(3) of Directive 2013/48 in the case where, in the course of the first inspection of the crime scene and the initial investigative measures at the home of the victim and her son, a police officer, after identifying traces of blood on the son's body, questioned him about his reasons for killing his mother and taking her body out into the street and, after the son had answered those questions, handcuffed him? If so, must the person in question be provided with information pursuant to Article 3(1) in conjunction with (2) of Directive 2012/13 even at that stage, and how are the particular needs of that person to be taken into account, pursuant to paragraph 2, when information is provided to him in such circumstances, that is to say where the police officer was aware that the person in question suffered from a psychiatric disorder?

(5) Are national rules such as those at issue, which effectively allow a person to be deprived of his liberty by being committed to a psychiatric hospital under a procedure provided for in the Health Law (a precautionary compulsory measure ordered where there is evidence that the person concerned suffers from a mental illness and is at risk of committing a criminal offence, but not where an offence has already been committed), compatible with Article 3 of Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence, in the case where the real reason for initiating the procedure is the offence on account of which criminal proceedings have been brought against the person committed for treatment, and does this circumvent the right, on arrest, to a fair trial which must satisfy the conditions laid down in Article 5(4) of the [ECHR], that is to say a trial in which the court is empowered to review not only compliance with the rules of procedure but also the suspicion justifying the arrest and the lawfulness of the objective pursued by that measure, the court being obliged to carry out such a review in the case where the person in question was arrested under the procedure laid down in the Code of Criminal Procedure?

(6) Does the concept of the presumption of innocence in Article 3 of Directive 2016/343 also include the presumption that persons lacking criminal responsibility by reason of mental disorder did not commit the offence representing a danger to society of which they are accused by the Public Prosecutor's Office, until such time as proof to the contrary is established in accordance with the rules of procedure (in criminal proceedings, with due regard for the rights of the defence)?

(7) Do national rules which confer on the adjudicating court different powers in relation to the examination as to the lawfulness of the pre-trial procedure which it must carry out *ex officio*, depending on whether:
   (a) the court examines an indictment from the Public Prosecutor's Office in which the latter maintains that a particular person of unsound mind has committed homicide (Article 249(1) in conjunction with (4) of the Code of Criminal Procedure), or
   (b) the court examines an application from the Public Prosecutor's Office in which the latter maintains that the person concerned has committed homicide but that act does not constitute a criminal offence because the perpetrator suffers from a psychiatric disorder, and by which it seeks a court order for the imposition by the State of compulsory treatment,

   afford vulnerable persons an effective remedy as stipulated in Article 13 in conjunction with Article 12 of Directive 2013/48 and Article 8(2) in conjunction with Article 3(2) of Directive 2012/13, and are the various powers available to the court depending on the nature of the procedure, the latter being itself dictated by whether the mental health of the person identified as the perpetrator is such as to render him criminally responsible, compatible with the principle of non-discrimination laid down in Article 21(1) of the Charter?'

Procedure before the Court

33 The referring court requested that the case be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union.

34 On 10 August 2018, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, the Court decided that it was unnecessary to grant that request.

Consideration of the questions referred

The first, third and fourth questions

35 By its first, third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Directives 2012/13 and 2013/48 must be interpreted as applying to judicial proceedings, such as those provided for by the national legislation at issue in the main proceedings, which authorise, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society, and, if so, at what point in time must the person concerned be informed of the rights conferred on him by Directive 2012/13.

36 The purpose of both Directive 2012/13 and Directive 2013/48 is to establish minimum rules on certain rights of suspects and accused persons in criminal proceedings. Directive 2012/13 concerns more specifically the right to information about rights and Directive 2013/48 relates to the right to have access to a lawyer, the right to inform a third party of the deprivation of liberty, and the right of persons deprived of liberty to communicate with third parties and the right to communicate with consular authorities.

37 Furthermore, it is clear from the recitals of those directives that they are based to that end on the rights set out in, inter alia, in Articles 6, 47 and 48 of the Charter and seek to promote those rights with regard to suspects or accused persons in criminal proceedings.

38 The respective scope of those directives is defined in almost identical terms in Article 2 of each of those directives. In essence, it is clear from those provisions that the directives apply from the time when persons are informed 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, which 'is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal'.

39 It is true that neither Directive 2012/13 nor Directive 2013/48 contain express provisions to the effect that the criminal proceedings they govern also include a procedure that may result in a measure of committal to a psychiatric hospital, such as that provided for in Article 427 et seq. of the Code of Criminal Procedure.

40 However, that absence of express provisions does not mean that such a procedure for the committal to a psychiatric hospital is excluded from the scope of those directives on the ground that it does not lead to the imposition of a 'sentence'.

41 In that regard, as the Advocate General pointed out, in essence, in points 61 and 62 of his Opinion, the wording of Article 2(1) of Directive 2012/13 and the similar wording of Article 2(1) of Directive 2013/48 allow, on the contrary, the concept of 'criminal proceedings', within the meaning of those directives, to be regarded as also covering proceedings for committal to a psychiatric hospital which,

although they do not lead to a 'sentence' in the strict sense, nevertheless result in a measure involving a deprivation of liberty, provided that such a measure is justified not only on therapeutic grounds but also on safety grounds, in respect of persons who have committed acts constituting a criminal offence, but whose mental state, at the time of the acts punishable under criminal law, justifies their being the subject of a measure of committal to a psychiatric hospital rather than a criminal penalty, such as a prison sentence.

42 Since Article 6 of the Charter, concerning the right to liberty and security, guarantees rights corresponding to those guaranteed by Article 5 ECHR, which concerns the same right, Article 52(3) of the Charter requires that Article 6 be given the same meaning and scope as that given to Article 5 ECHR, as interpreted by the case-law of the European Court of Human Rights. Account must therefore be taken of Article 5(1) ECHR for the purpose of interpreting Article 6 of the Charter (see, to that effect, judgment of 12 February 2019, *TC*, C-492/18 PPU, EU:C:2019:108, paragraph 57).

43 Under Article 5(1)(e) ECHR, 'everyone has the right to liberty and security. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: … the lawful detention … of persons of unsound mind'.

44 That provision has been construed by the European Court of Human Rights as laying down a positive obligation on the State to protect the liberty of individuals within its jurisdiction. Otherwise, there would be a sizeable lacuna in the protection from arbitrary detention, which would be inconsistent with the importance of personal liberty in a democratic society. The State is therefore obliged to take measures providing effective protection of vulnerable persons (ECtHR, 17 January 2012, *Stanev v. Bulgaria*, No 36760/06, CE:ECHR:2012:0117JUD003676006, § 120).

45 It follows that measures involving a deprivation of liberty, such as the psychiatric or medical care measures at issue in the main proceedings, are covered by Article 5 ECHR and, consequently, by Article 6 of the Charter.

46 Accordingly, in the light of the right to liberty and security guaranteed by Article 6 of the Charter, Directives 2012/13 and 2013/48 cannot be interpreted as excluding from their scope judicial proceedings in which an order may be made for the committal to a psychiatric hospital of a person who, at the conclusion of earlier criminal proceedings, was found to be the perpetrator of acts constituting a criminal offence.

47 That interpretation is supported by the fact that the European Union legislature took care, in Article 3(2) of Directive 2012/13, to impose on Member States the obligation to ensure that the information provided pursuant to the right to information about rights is 'given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons'. Recital 26 of that directive expressly refers to the situation of persons who cannot understand the content or meaning of the information provided to them by the competent authorities because of their mental state. Persons of unsound mind must therefore be considered vulnerable persons for the purposes of that provision since, because of a serious mental disorder, they may not be capable of understanding the information provided to them about their rights.

48 Similarly, Article 13 of Directive 2013/48 requires Member States, in the implementation of that directive, to take into account 'the particular needs of vulnerable suspects and vulnerable accused persons'. Although recital 51 of that directive refers to persons 'in a potentially weak position' and to 'any potential vulnerability that affects their ability to exercise the right of access to a lawyer and to have a third party informed upon deprivation of liberty', without explicitly stating that that position of vulnerability may result from their mental state, it must nevertheless be held, having regard to the purpose of that directive, that persons of unsound mind also fall within the category of vulnerable persons referred to in Article 13 thereof.

49 Since Directive 2012/13 applies to a procedure such as that set out in Article 427 et seq. of the Code of Criminal Procedure, the referring court also asks at what point in time a suspect is required to be informed of his rights in accordance with Article 3 of that directive.

50 In order to be effective, the communication of rights must take place at an early stage of the proceedings. It is evident from Article 2 of that directive that the directive applies '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'. Article 3 of that directive also provides that 'Member States shall ensure that suspects or accused persons are provided promptly with information concerning … procedural rights … in order to allow for those rights to be exercised effectively'.

51 As noted in recital 19 of Directive 2012/13, the right to be informed of one's rights aims to safeguard the fairness of criminal proceedings and to guarantee the effectiveness of the rights of the defence, from the first stages of those proceedings. As is clear from point 24 of the Commission Proposal for a Directive of 20 July 2010 (COM(2010) 392 final), which led to Directive 2012/13, the period immediately following the deprivation of liberty is when there is the greatest risk of improper extraction of confessions, so that 'it is essential that a suspected or accused person is informed of his rights promptly, i.e. without delay after his arrest and in the most effective way'.

52 Recital 19 of Directive 2012/13 also makes clear that the right to be informed of one's rights must be observed 'at the latest before the first official interview of the suspect or accused person by the police'. Furthermore, under recital 22 of Directive 2012/13, 'where suspects or accused persons are arrested or detained, information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist those persons in understanding their rights. Such a Letter of Rights should be provided promptly to each arrested person when deprived of liberty by the intervention of law enforcement authorities in the context of criminal proceedings'.

53 It follows from the above that persons suspected of having committed a criminal offence must be informed as soon as possible of their rights, from the moment when they are subject to suspicions which justify, in circumstances other than an emergency, the restriction of their liberty by the competent authorities by means of coercive measures and, at the latest, before they are first officially questioned by the police.

54 In the light of those considerations, the answer to the first, third and fourth questions is that Directives 2012/13 and 2013/48 must be interpreted as applying to judicial proceedings, such as those provided for in the national legislation at issue in the main proceedings, which authorise, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society. Directive 2012/13 must be interpreted as meaning that persons suspected of having committed a criminal offence must be informed as soon as possible of their rights from the moment when they are subject to suspicions which justify, in circumstances other than an emergency, the restriction of their liberty by the competent authorities by means of coercive measures and, at the latest, before they are first officially questioned by the police.

The second and seventh questions

55 By its second and seventh questions, which it is appropriate to examine together, the referring court asks, in essence, whether the right to an effective remedy guaranteed by Article 47 of the Charter, and by Article 8(2) of Directive 2012/13 and Article 12 of Directive 2013/48, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for a procedure authorising, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society, on the

ground that that legislation does not enable the court with jurisdiction to verify that the procedural rights covered by those directives were respected in proceedings prior to those before the court, which were not subject to such judicial review.

56 As regards, first, the interpretation of Directive 2012/13, it should be noted that Article 8(2) of that directive requires that 'suspects or accused persons, or their lawyers, have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive'.

57 Having regard to the importance of the right to an effective remedy, protected by Article 47 of the Charter, and to the clear, unconditional and precise wording of Article 8(2) of Directive 2012/13, the latter provision precludes any national measure which impedes the exercise of effective remedies in the event of a breach of the rights protected by that directive.

58 The same interpretation must be given, secondly, to Article 12 of Directive 2013/48, pursuant to which 'suspects or accused persons in criminal proceedings … shall have an effective remedy under national law in the event of a breach of the rights under this Directive'.

59 According to the Court's settled case-law, the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 4(3) TEU and Article 288 TFEU to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 38 and the case-law cited).

60 To fulfil that obligation, the principle of interpretation in conformity with EU law requires the national authorities to do everything within their power, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that EU law is fully effective and achieving an outcome consistent with the objective pursued by it (see, to that effect, judgments of 5 October 2004, *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraph 117, and of 8 May 2019, *Praxair MRC*, C-486/18, EU:C:2019:379, paragraph 37 and the case-law cited).

61 However, the principle of interpretation of national law in conformity with EU law has certain limits. Thus the obligation on a national court to refer to EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law and cannot serve as the basis for an interpretation of national law that is *contra legem* (judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 40 and the case-law cited).

62 It is for the national court to determine whether it is able to interpret national legislation in conformity with EU law. In that regard, it appears from the request for a preliminary ruling that the referring court considers that, despite there being no legal remedy making it possible, in an application for committal to a psychiatric hospital under Article 427 et seq. of the Code of Criminal Procedure, to verify the lawfulness of the criminal proceedings preceding that application, it could apply by analogy ordinary criminal procedure in order to carry out such a check and protect the rights of the person concerned.

63 It follows that Article 47 of the Charter, Article 8(2) of Directive 2012/13 and Article 12 of Directive 2013/48 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for judicial proceedings authorising, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society, in so far as that legislation does not enable the court with jurisdiction to verify that the procedural rights covered by those directives were respected in proceedings prior to those before the court, which were not subject to such judicial review.

The fifth question

64 By its fifth question, the referring court asks, in essence, whether the protection of the right to liberty and security, referred to in Article 6 of the Charter, first, and the right to be presumed innocent, as set out in Article 3 of Directive 2016/343, second, must be interpreted as precluding national legislation, such as that set out in Article 155 et seq. of the Health Law, at issue in the main proceedings, which authorises the committal to a psychiatric hospital of a person on the ground that there is a risk that, in view of his state of health, he represents a danger to himself or others, in so far as that legislation does not enable the court hearing such an application for committal to verify that that person has been afforded procedural safeguards in parallel criminal proceedings to which he is subject.

65 It is clear from Articles 1 and 2 of Directive 2016/343 that its purpose and scope are limited exclusively to criminal proceedings.

66 Accordingly, because of its therapeutic purpose, a procedure for the committal to a psychiatric hospital, such as that provided for in this case by Article 155 et seq. of the Health Law, when implemented independently of any criminal proceedings, including in order to prevent danger to the person concerned or to others, does not fall under criminal proceedings within the scope of Directive 2016/343.

67 Moreover, there is nothing in the file submitted to the Court to suggest that a procedure for compulsory committal to a psychiatric hospital for therapeutic purposes, such as that established by the Health Law, constitutes an application of EU law and that, in accordance with Article 51(1) of the Charter, the fundamental rights guaranteed by that article must be respected by the Member State in question when such a procedure is implemented.

68 The answer to the fifth question is therefore that Directive 2016/343 and Article 51(1) of the Charter must be interpreted as meaning that neither that directive nor that provision of the Charter apply to judicial proceedings for the committal to a psychiatric hospital for therapeutic purposes, such as those provided for in Article 155 et seq. of the Health Law, at issue in the main proceedings, on the ground that there is a risk that, in view of his state of health, the person concerned represents a danger to himself or others.

The sixth question

69 By its sixth question, the referring court asks, in essence, whether the principle of the presumption of innocence, referred to in Article 3 of Directive 2016/343, must be interpreted as requiring, in a procedure for the committal to a psychiatric hospital, on therapeutic and safety grounds, of persons who, in a state of insanity, have committed acts representing a danger to society, such as that at issue in the main proceedings, that the Public Prosecutor's Office provides proof that the person whose committal is sought is the perpetrator of acts deemed to constitute such a danger.

70 It must be noted that, in accordance with Article 15 thereof, Directive 2016/343 entered into force on 31 March 2016 and that, in accordance with Article 14(1) thereof, the period prescribed for transposition of that directive expired on 1 April 2018. That directive therefore applies *ratione temporis* to the proceedings pending before the referring court.

71 Furthermore, it is admittedly true that the purpose of a procedure such as that at issue in the main proceedings is not to determine the guilt of the person concerned, but to decide on his compulsory committal to a psychiatric hospital. However, since the reasons stated for that measure of deprivation of liberty are not just therapeutic grounds, but also safety grounds, it must be accepted, as held

previously with regard to Directives 2012/13 and 2013/48, that such a procedure falls, on account of its penal purpose, within the scope of Directive 2016/343. Directive 2016/343 therefore applies to a procedure such as that provided for in Article 427 et seq. of the Code of Criminal Procedure.

72 Article 3 of Directive 2016/343 requires Member States to ensure that suspects and accused persons are presumed innocent until proved guilty according to law. That obligation must be respected by the competent authorities in a procedure for committal to a psychiatric hospital, such as that at issue in the main proceedings. In accordance with Article 6 of that directive, the Public Prosecutor's Office bears the burden of proof for establishing that the criteria laid down by law for authorising the committal of a person to a psychiatric hospital are met.

73 Where, at the end of earlier criminal proceedings, it has been definitively established that that person committed, in a state of insanity, acts constituting a criminal offence, it is not, as such, contrary to the principle of the presumption of innocence set out in Article 3 of Directive 2016/343 for the Public Prosecutor's Office to rely on those factors in support of its application for committal of that person to a psychiatric hospital.

74 However, in a situation such as that at issue in the main proceedings, those considerations are without prejudice to review by the court hearing the case of whether the procedural rights covered by Directives 2012/13 and 2013/48 were respected in the earlier proceedings, which were not subject to such judicial review, as held earlier in paragraph 63 of the present judgment.

75 The answer to the sixth question is therefore that the principle of the presumption of innocence referred to in Article 3 of Directive 2016/343 must be interpreted as requiring, in judicial proceedings for the committal to a psychiatric hospital, on therapeutic and safety grounds, of persons who, in a state of insanity, have committed acts representing a danger to society, such as that at issue in the main proceedings, that the Public Prosecutor's Office provides proof that the person whose committal is sought is the perpetrator of acts deemed to constitute such a danger.

Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, and 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, must be interpreted as applying to judicial proceedings, such as those provided for by the national legislation at issue in the main proceedings, which authorise, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society. Directive 2012/13 must be interpreted as meaning that persons suspected of having committed a criminal offence must be informed as soon as possible of their rights from the moment when they are subject to suspicions which justify, in circumstances other than an emergency, the restriction of their liberty by the competent authorities by means of coercive measures and, at the latest, before they are first officially questioned by the police.**

2. **Article 47 of the Charter of Fundamental Rights of the European Union, Article 8(2) of Directive 2012/13 and Article 12 of Directive 2013/48 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for judicial proceedings authorising, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society, where that legislation does not enable the court with jurisdiction to verify that the procedural rights covered by those directives were respected in proceedings prior to those before that court, which were not subject to such judicial review.**

3. **Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, and Article 51(1) of the Charter of Fundamental Rights must be interpreted as meaning that neither that directive nor that provision of the Charter of Fundamental Rights applies to judicial proceedings for the committal to a psychiatric hospital for therapeutic purposes, such as those provided for in Article 155 et seq. of the Zakon za zdraveto (Health Law), at issue in the main proceedings, on the ground that there is a risk that, in view of his state of health, the person concerned represents a danger to himself or others.**

4. **The principle of the presumption of innocence referred to in Article 3 of Directive 2016/343 must be interpreted as requiring, in judicial proceedings for the committal to a psychiatric hospital, on therapeutic and safety grounds, of persons who, in a state of insanity, have committed acts representing a danger to society, such as that at issue in the main proceedings, that the Public Prosecutor's Office provides proof that the person whose committal is sought is the perpetrator of acts deemed to constitute such a danger.**

[Signatures]