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Case Study 1

Facts:

Ms Juniper received a diamond ring –a rare antic valued in 10 000 €– from her former husband. After her divorce, she sold the ring together with some other presents that her former husband had given to her. Few months later, the police paid her a visit, and she was later charged with the criminal offence of handling the proceeds of crime, namely stolen jewellery.

During the trial hearing, Ms Juniper confessed she knew that her ex-husband was involved in activities of dubious character, which included reselling stolen jewellery. In fact, several times, she suspected that some of those stolen goods were given to her as a present in birthdays and anniversaries. She added that this was one of the problems that led to the divorce and that that was also the reason why she wanted to get rid of all those presents.

Following this confession, Ms Juniper was informed that the acts of which she was accused could be reclassified and that the charge could thus be modified to the criminal offence of being an accomplice to aggravated theft. Following this reclassification, the lawyer of Ms Juniper applied for a negotiated penalty. Negotiated penalties are possible under the national legal system, and they are often granted when there is a reclassification of offences. This procedure enables certain benefits for the accused person to be negotiated, including a reduction of the sentence. However, there are some procedural limitations: the request for the application of that procedure must be submitted *before* the trial proceedings begins. The request of Ms Juniper for a negotiated penalty was therefore rejected because it was made outside the applicable period.

The District Court of Trolantis (Republic of Slacia, an EU Member State) has doubts as to whether such national provisions comply with EU law provisions concerning the rights of the defense of accused persons. Those rights are, inter alia, contained in Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings (Directive 2012/13). It has decided to ask the following question to the Court of Justice:

‘Must Article 48 of the Charter be interpreted as precluding criminal procedural rules which do not allow, after the trial begin, to apply for a negotiated penalty following a change to the legal classification of a criminal charge?’

Legal framework

Article 48(2) of the Charter : ‘Respect for the rights of the defence of anyone who has been charged shall be guaranteed’.

Article 1 of Directive 2012/13 ‘lays 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. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights’.

Article 2(1) of Directive 2012/13 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’.

Article 3 of Directive 2012/13 ‘Right to information about rights’

‘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:

...

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

Article 6 of Directive 2012/13, ‘Right to information about the accusation’

‘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.’

Position of the parties:

The Government of the Republic of Slacia, which has intervened in the written procedure, submits that the Court of Justice lacks jurisdiction in the present case because the Charter does not apply. This is a purely internal situation and the procedure of negotiated penalties is not a transposition of Directive 2012/13.

Case Study 2

Facts:

Mr Rosbud is a Critian national (Critia being an EU Member State). He is a widower and father of four children. After having met his deceased wife in an interrail trip over Europe, he established his residence with her in the Wrench Republic in 2007. The Wrench Republic joined the EU in 2015. He has not worked ever since, and has no economic resources.

In January 2021, the immigration authorities of the Wrech Republic granted Mr Rosbud a temporary residence permit, under the National Scheme to Welcome Potential Workers (the NSWP). This is a pilot project which gave very wide residence rights to foreigners with strong ties to the Wrech Republic and was not subject to any condition.

Three months later, Mr Rosbud applied for social assistance. That assistance was refused on the ground that Mr Rosbud did not meet the residence requirement. The national administrative authority explained that only the persons that have a right of residence under EU law, according to the conditions of Directive 2004/38, can claim social assistance, because they are the only entitled to equal treatment under EU law. Since that Directive establishes a requirement of sufficient resources, which Mr Rosbud did not fulfill, he is not entitled to the assistance.

Mr Rosbud appealed that decision against the Administrative Court of Rostring (Wrech Republic), arguing that national law infringes Article 18 TFEU because it excludes legally resident Union citizens from social assistance, and moreover, that there are serious problems of fundamental rights. The Administrative Court dismissed the appeal. Ms Rosbud has litigated all the way up to the Supreme Court the Wrech Republic.

The Wrech Supreme Court has serious doubts about this case. On the one hand, it considers that EU law does not apply, because the NSWP programme is not part of EU law, but is a more favourable regime that the Wrech Government has decided to apply to some potential workers. On the other hand, that court considers that the present case raises serious problems with regard to Article 7 (the right to family life) and Article 24 (the best interest of the child) of the Charter. That court is considering the possibility to send a preliminary question to the Court of Justice and has asked the parties to provide observations in this regard, but, on the other hand, it also considers that probably, asking its Constitutional Court would be better.

Legal framework

Article 24 of Directive 2004/38, entitled 'Equal treatment':

'1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.'

Article 37 of Directive 2004/38, entitled 'More favourable national provisions':

'The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.'

Position of the parties:

The ministry of social affairs of the Wrench Republic has submitted that a preliminary question to the Court of Justice would be clearly inadmissible because the Charter does not apply.

What shall the national court do?