

**Case C-15/24 PPU [Stachev]<sup>i</sup>**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

11 January 2024

**Referring court:**

Sofiyski rayonen sad (Bulgaria)

**Date of the decision to refer:**

11 January 2024

**Defendant in criminal proceedings:**

CH

**Interested party:**

Sofiyska rayonna prokuratura

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**Subject matter of the main proceedings**

The proceedings concern two robberies which were committed as a continuing offence and are punishable under Article 198(1) in conjunction with Article 26(1) of the Nakazatelen kodeks (Criminal Code; ‘the NK’) of the Republic of Bulgaria. The defendant CH is currently subject to a restraint measure in the form of pre-trial detention.

**Subject matter and legal basis of the request**

Request under Article 267 TFEU for an interpretation of the provisions of EU law applicable to the subject matter of the proceedings (in particular in respect of the lawfulness of procedural acts performed in breach of the right of access to a lawyer)

<sup>i</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

## Questions referred for a preliminary ruling

1. Are national legislation and case-law, on the basis of which the court examining whether there is reasonable suspicion that an accused person was involved in the alleged criminal offence, with a view to adopting or enforcing an appropriate restraint measure, is deprived of the possibility of assessing whether, at the time that person was a suspect and his or her right of free movement was restricted by the police authorities, evidence was gathered in breach of his or her right of access to a lawyer under 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, compatible with Article 12(2) of that directive, in conjunction with Article 47(1) of the Charter of Fundamental Rights of the European Union?
2. Is the requirement of respect for the rights of the defence and the fairness of the proceedings within the meaning of Article 12(2) of Directive 2013/48 [...] satisfied if, in establishing its inner conviction, the court examining whether the restraint measure is appropriate takes into consideration evidence which was gathered in breach of the requirements of that directive at the time the person was a suspect and his or her right of free movement was restricted by the police authorities?
3. Does the exclusion by the court examining whether the restraint measure is appropriate, despite instructions to the contrary from a higher court, of evidence gathered in breach of Directive 2013/48 [...] have negative effects on the requirements laid down in Article 12(2) of Directive 2013/48 [...] in conjunction with Article 47(1) and (2) of the Charter [...] concerning the fairness of the proceedings, and does it cast doubt on the impartiality of the court?
4. Does the possibility provided for in Article 3(6)(b) of Directive 2013/48 [...], in exceptional circumstances at the pre-trial stage, of temporarily derogating from the right of access to a lawyer where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings have direct [...] effect in the EU Member State concerned, where that provision has not been transposed into its national law?
5. Are the safeguards provided for in Article 9(1)(a) and (b) in conjunction with recital 39 of Directive 2013/48 [...] respected if a suspect makes a waiver in writing of the right of access to a lawyer, but the suspect is illiterate and was not informed of the possible consequences of waiving that right, and subsequently claims before the court that he or she had not been aware of the content of the document signed by him or her at the time of the restriction of his or her right of free movement by the police authorities?

6. Does a waiver of the right to be assisted by a lawyer under the provisions of Directive 2013/48 [...], made by a suspect as at the time of his or her detention, exempt the authorities from the obligation to inform him or her, immediately prior to performing each further investigative action with his or her participation, of the right of access to a lawyer and of the possible consequences of waiving that right?

**Provisions of European Union law and case-law relied on**

Charter of Fundamental Rights of the European Union, Article 47

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), recital 39, Article 3(6)(b), Article 9(1)(a) and (b) and Article 12(2)

Judgments of the Court of Justice in Cases C-608/21 and C-209/22

**Provisions of national law relied on**

**Konstitutsia na Republika Bulgaria** (Constitution of the Republic of Bulgaria) (DV No 56 of 13 July 1991, in force since that date; ‘the Constitution’)

Article 5. (1) The Constitution shall be the supreme law and no other law shall contravene it.

(2) The provisions of the Constitution shall apply directly.

Article 30. (1) Everyone shall be entitled to personal freedom and inviolability.

(2) No one shall be detained or subjected to inspection, search or any other infringement of his or her personal inviolability except on the conditions and in a manner established by law.

(3) The competent State authorities may detain citizens only in the urgent circumstances expressly stipulated by law and shall immediately advise the judicial authorities accordingly. The judicial authorities shall rule on the legality of a detention within 24 hours of that detention.

(4) Everyone shall be entitled to legal counsel from the moment of detention or from the moment a formal accusation is made in respect of him or her.

**Zakon za Ministerstvoto na vatreshnite raboti** (Law on the Ministry of the Interior, DV No 53 of 27 June 2014)

Article 72. (1) The police authorities may take a person into custody:

1. in respect of whom there is evidence that he or she has committed a criminal offence;

[...]

(5) [...] From the moment of his or her detention, the person shall have the right to a defence counsel and shall also be informed of his or her right to waive the right to a defence counsel and of the consequences thereof, as well as of the right to remain silent where the detention takes place on the basis of subparagraph 1 of paragraph 1.

Article 74. (1) A written detention order shall be issued in respect of the persons referred to in Article 72(1).

(2) The detention order under paragraph 1 shall specify: [*content of the order*], in particular the factual and legal grounds for detention; the person's right to challenge the legality of the detention before the courts; the right to legal counsel from the moment of detention;

(3) The detained person shall complete a declaration stating that he or she is aware of his or her rights and that he or she intends to exercise or not to exercise his or her rights under points (b) to (f) of subparagraph 6 of paragraph 2. The detention order shall be signed by the police authority and the detained person.

(4) The refusal or inability of the detained person to sign the detention order shall be confirmed by the signature of a witness.

**Nakazatelen kodeks** (Criminal Code, DV No 26 of 2 April 1968, in force since 1 May 1968)

Article 26 [...] (1) The provisions of Articles 23 to 25 shall not apply in cases of a continuing offence, where two or more acts which, taken separately, fulfil one or more constituent elements of the same offence are committed during non-continuous periods of time, in the same circumstances and with the same form of guilt, the subsequent acts appearing, objectively and subjectively, as a continuation of the preceding acts.

(2) In the case of a continuing offence, the perpetrator shall be punished in relation to all the acts comprising the offence and the overall outcome caused by them in criminal law.

Article 198. (1) [...] Any person who takes movable property from the possession of another person by use of force or threat with the intention of unlawfully appropriating it shall be punished for robbery by imprisonment of three to ten years.

**Nakazatelno-protsesualen kodeks** (Code of Criminal Procedure, DV No 86 of 28 October 2005, in force since 29 April 2006; 'the NPK')

Article 25. (1) [*suspension of criminal proceedings where questions are referred to the Court of Justice of the European Union for a preliminary ruling*]

Article 94. (1) The participation of a defence counsel in criminal proceedings shall be mandatory if: [*other cases*] 6. the accused person has been detained;

Article 96. (1) [...] The accused person may, at any stage in the proceedings, waive the right to a defence counsel, except in the cases referred to in Article 94(1)(1) to (3) and (6). The accused person shall be informed of the consequences of waiving the right to a defence counsel.

Article 97. (1) The defence counsel may participate in criminal proceedings from the moment the person is detained or from the moment a formal accusation is made in respect of him or her.

(2) The pre-trial authority shall inform the accused person of his or her right to a defence counsel and give him or her the opportunity to contact the defence counsel immediately. It may not perform any investigative or other procedural actions with the participation of the accused person until it fulfils that obligation.

Article 248. (amended – DV No 63 of 2017, entered into force on 5 November 2017) (1) The following matters shall be discussed at the preliminary hearing:

[...] 3. whether there were remediable infringements of essential procedural requirements in the pre-trial proceedings which resulted in the restriction of the procedural rights of the accused person, [*other persons*];

5. [*other matters*] the appointment of a defence counsel, an expert witness, a translator or a sign language interpreter and [*other matters*];

6. the procedural coercive measures taken;

[*other matters*].

Article 270. (1) The matter of an amendment of the restraint measure may be raised at any time during the trial stage. A new application for the amendment of the restraint measure may be made in the same instance only if the circumstances have changed.

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 **CH** is a citizen of the Republic of Bulgaria. He has no education and no command of the Bulgarian written language and he has previous criminal convictions.
- 2 On 2 December 2022, the 6<sup>th</sup> Rayonno upravlenie pri Stolichna direktsia na vatreshnite raboti (Sixth District Police Department of the Capital Directorate of the Interior; ‘the District Police Department’) initiated pre-trial proceedings No 2021/2022 on the ground that, in Sofia at 20.30 on 2 December 2022, movable

property belonging to another person (a handbag) was taken by use of force from the possession of KL, when the bag was ripped from the injured party's hands, an act constituting a criminal offence under Article 198(1) of the NK. On 14 December 2022, the District Police Department initiated pre-trial proceedings No 2112/2022 on the ground that, in Sofia at 19.00 on that date, movable property belonging to another person (a handbag) was taken from the possession of MN, by use of force and without her consent with the intention of unlawful appropriation, when the bag was ripped from the injured party's hand by means of vigorous pulling, as a result of which she fell to the ground, an act constituting a criminal offence under Article 198(1) of the NK. After those two proceedings had been initiated, CH was detained, by order of the police authority, at 13.00 on 16 December 2022 for a period of up to 24 hours in order to obtain information to establish his involvement in a criminal offence under Article 198 of the NK in the second pre-trial proceedings (initiated on 14 December 2022).

- 3 At 16.50 on the same date, 16 December 2022, **CH** signed a written declaration stating that he did not wish to be represented either by a defence counsel of his choice and at his expense or by a court-appointed defence counsel. However, he was not informed of the consequences of waiving the right to a defence counsel. The declaration sets out a requirement that, where the detained persons are illiterate or unable to complete it themselves, it must be completed by an official, and that expressions of will made by the detained person him or herself must be made in the presence of a witness, who is to confirm their authenticity by way of a signature. In the case at hand, there were no signatures by the police authority or a witness.
- 4 It does not appear from the evidence before the court that **CH** was informed immediately of the reasons for his detention, in particular the offences allegedly committed by him.
- 5 Immediately after he was detained on 16 December 2022, **CH** was questioned by a police authority from 13.10 to 13.25, in the procedural capacity of witness and without a defence counsel being present. It was noted that he had been informed of his rights, that he was not obliged to incriminate himself in respect of the commission of an offence and that he had the right to remain silent. While being questioned, **CH** admitted to having been involved in committing a robbery of a female in Sofia on 14 December 2022, when he had ripped her handbag from her by force, and stated that he was willing to show the police authorities the place where he had hidden the other person's property. It was noted in the record of questioning that the questioning had taken place in the presence of the witness OP, who had not, however, confirmed this by his signature.
- 6 Also on 16 December 2022, from 14.10 to 14.40, a crime scene reconstruction was carried out with the participation of **CH** and without a defence counsel being present, where **CH** took the law enforcement authorities to the location of the stolen handbag. With the participation of two witnesses to the act of the police

authority, a record of the investigative action was produced and photographs were taken.

- 7 From 15.50 to 16.20 on the same date, 16 December 2022, the apartment occupied by **CH** was subject to a search in his presence and without a defence counsel being present, during which clothing and footwear were seized. The investigative actions were noted in a record, two witnesses to the act of the police authority being involved; photographs were also taken. The record was approved by a judge of the Sofiyski rayonen sad (Sofia District Court, Bulgaria).
- 8 Subsequently, from 17.40 to 17.50 on 16 December 2022, a live identification exercise was carried out with the participation of **CH** and without a defence counsel being present, during which the injured party MN identified him among four males as the perpetrator of the criminal offence committed against her. With the participation of two witnesses to the act of the police authority, a record of the investigative action was produced and photographs were taken.
- 9 Shortly thereafter, from 18.05 to 18.15 on 16 December 2022, a physical search (visual inspection) was carried out on **CH**, during which the clothing worn by him was described and the jacket and trousers he was wearing were seized. With the participation of two witnesses to the act of the police authority, a record of the investigative action was produced and photographs were taken. It was expressly noted in the record that **CH** had refused a physical search and that record was approved by a judge of the Sofia District Court.
- 10 From 15.40 to 15.50 on the following day, 17 December 2022, a live identification exercise was carried out, with the participation of **CH** and without a defence counsel being present, for the purposes of the first pre-trial proceedings No 2021/2022 initiated by the District Police Department (on 2 December 2022), during which the injured party KL identified **CH** among four males as the perpetrator of the criminal offence committed against her. The investigative action was noted in a record, two witnesses to the act of the police authority being involved; photographs were also taken.
- 11 On the same date, 17 December 2022, by decision of a public prosecutor of Sofiyska rayonna prokuratura (Sofia District Public Prosecutor's Office, Bulgaria) in the second pre-trial proceedings No 2112/2022 initiated by the District Police Department, a formal accusation was made in respect of **CH** as regards a criminal offence under Article 198(1) of the NK. At 18.00 on 17 December 2022, Georgi Stoyanov from the Sofiyska Advokatska Kolegia (Sofia Bar Association, Bulgaria) was appointed *ex officio* as defence counsel for the accused person **CH**, as his defence was mandatory under Article 94(1)(6) of the NPK, and at 18.10 both of them were notified of the charges brought. Immediately thereafter, from 18.20 to 18.30 on 17 December 2022, the accused person **CH** was questioned and indicated that he had understood the charges, but declined to make a statement.

- 12 By decision of 17 December 2022 of a public prosecutor of the Sofia District Public Prosecutor's Office, the accused person **CH** was detained for a period of up to 72 hours on the basis of Article 64(2) of the NPK with a view to the preparation of the application to the Sofia District Court for a pre-trial detention order as a restraint measure. By order of 19 December 2022, the Sofia District Court granted the application made by the public prosecutor and imposed the most severe restraint measure on **CH** – a judicial decision which was confirmed by Sofiyski gradski sad (Sofia City Court, Bulgaria) on 29 December 2022.
- 13 By decision of the Public Prosecutor at the Sofia District Public Prosecutor's Office of 5 January 2023, the two pre-trial proceedings were joined on account of a connection between the two robberies and they were continued by the District Police Department under No 2112/2022.
- 14 By order of 13 June 2023, which was made in open court, a chamber of the Sofia District Court dismissed the application made by the accused person **CH** for amendment of the restraint measure imposed on him in the form of pre-trial detention. That judicial decision was confirmed by the Sofia City Court on 22 June 2023.
- 15 By decision of a public prosecutor of the Sofia District Public Prosecutor's Office of 26 July 2023, a formal accusation was made in respect of **CH** as regards the commission of the two robberies in the period from 20.30 on 2 December 2022 to 19.00 on 14 December 2022 as a continuing offence in accordance with Article 198(1) in conjunction with Article 26(1) of the NK. At 14.00 on 7 August 2023, **CH** and his court-appointed defence counsel were notified of the amended charges and, during questioning conducted from 14.10 to 14.20 on the same date, the accused person declared that he understood the charges, that he would not be pleading guilty, and denied that he had been involved in the two robberies.
- 16 On 14 August 2023, the investigation file was communicated to the defence counsel Mr Stoyanov. On the following day, 15 August 2023, a bill of indictment was lodged with the Sofia District Court against the defendant **CH** under Article 198(1) in conjunction with Article 26(1) of the NK in respect of the continuing offence he is alleged to have committed, on the basis of which NOHD (criminal case subject to public prosecution) No 11234/2023 was initiated. On 16 August 2023, the public prosecutor sent the court a written application made by the court-appointed defence counsel for amendment of the restraint measure ordered. On 18 August 2023, a hearing was held in open court pursuant to Article 270 of the NPK in order to consider whether the restraint measure was appropriate and, by order of the same date, this Chamber amended the measure to the least onerous restraint measure, namely 'signature' (requirement to report to the authorities).
- 17 In the grounds, it was stated that the defendant **CH** had been detained at 13.00 on 16 December 2022 by order of a police authority and his right to legal counsel under Article 30(4) of the Constitution arose at that time. The exercise of that



right was not ensured by the law enforcement authorities, since, despite the declaration completed after the detention, stating that he had waived his right to a defence counsel, in view of the factual circumstances in this case, namely that **CH** is illiterate, and his statement at the hearing that he had not been aware of the implications of the document presented to him, there is no clear indication, especially in the absence of a witness who could attest to the fact in question, that he took that decision voluntarily and deliberately.

- 18 In this situation, the court is not permitted to rely on any of the investigative actions performed after the defendant was detained and before a formal accusation was made in respect of him – namely the questioning of witnesses, the crime scene reconstruction, the live identification exercises, the body search and the extra-judicial statements made to the police authorities regarding participation in the offence – in making the necessary assessment of reasonable suspicion of involvement in the alleged criminal offence. Furthermore, unlike the national law of the Republic of Bulgaria, the EU legislature provides in Article 3(2)(a) and (b) of Directive 2013/48 for access to a lawyer also at times before persons are detained – namely before they are questioned by the police or by another law enforcement or judicial authority or upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act. In addition, under Article 12(2) of that directive, the Member States must ensure that, in the assessment of statements made by those persons or of evidence obtained in breach of their right to a lawyer, the rights of the defence and the fairness of the proceedings are respected. The period prescribed for implementing the directive expired on 27 November 2016 and, in so far as it lays down rights for natural persons and establishes obligations for Member States to respect those rights, its provisions have vertical direct effect.
- 19 In the view of the referring court, the only evidence at present linking **CH**, and only indirectly, with the objective elements of the first criminal offence he allegedly committed is the statement made by the witness QR according to whom he bought from him the mobile phone owned by the injured party KL, which was obtained through the criminal offence and subsequently seized by the investigating authorities.
- 20 In the light of these considerations, the first instance court took the view that, regardless of the fact that **CH** has previous criminal convictions and that the criminal offences formally fell within the probation period imposed on him on account of a previous conviction, in view of the weak strength of the reasonable suspicion of his possible complicity and the detention period of more than eight months, the restraint measure had to be amended to the least onerous one provided for by law, namely ‘signature’, as the appropriate information source indicated above for the alleged involvement in one of the robberies may justify the initial detention but not the continued application of the most severe personal procedural coercive measure at the trial stage of the criminal proceedings.

- 21 Following an objection lodged by a representative of the Sofia District Public Prosecutor's Office, the Sofia City Court set aside the ruling of the Sofia District Court by order of 7 September 2023 and upheld the restraint measure imposed on **CH** in the form of pre-trial detention. In the grounds, the appellate court criticises the Sofia District Court for being partial, as it 'took a view on the question of guilt and, in breach of Article 6(1) of the ECHR ..., assessed the validity and adequacy of the evidence obtained'. It was further stated that 'the rights of the detained person **CH** were infringed in fact because legal counsel was not provided', but at the same time that 'there is no evidence that a complaint was lodged against that detention under the prescribed statutory procedure' and that 'the defendant and his defence counsel had the opportunity to assert their rights' under a special law which provides that the State is liable for detention by police authorities for a period of up to 24 hours. As no such initiative was taken, the Sofia City Court held that 'although a defence counsel was not appointed for **CH** during his detention, [...] the actions which were taken with or without his participation up to the time when a formal accusation was made in respect of him do not appear to be unlawful and do not lose their probative value'.
- 22 On 2 October 2023, at the public preliminary hearing, this Chamber ruled again on the restraint measure and amended it to 'signature' because there were no reasonable grounds for departing from the reasoning set out in the previous procedure.
- 23 Following an objection lodged by a representative of the District Public Prosecutor's Office, Sofia City Court, sitting in a different composition, set aside the ruling of the Sofia District Court by order of 7 November 2023 and upheld the restraint measure imposed on **CH** in the form of pre-trial detention. In its grounds, the appellate court set out some of the evidence gathered in the case which, in the view of the referring court, did not relate directly to **CH**'s involvement in the two robberies and stated that, taking an overview, it gave grounds for 'reasonable suspicion of the defendant's involvement'. It further stated that 'it has not found any infringements of essential procedural requirements in the pre-trial proceedings at the time when the defendant was detained' as, 'according to the settled case-law of the ECtHR, the defendant or suspect must be given the possibility of early access to a defence counsel', but that right was 'not absolute'. Furthermore, the court points out that **CH** had undoubtedly been informed of his right to a lawyer, as was clear from the fact that the police served on him a copy of the detention order and he also signed a written declaration as regards his rights, with the result that there is no reason to concur with the view of the district court that 'that waiver of the right to a lawyer was uninformed, that is to say, the defendant did not know what he was signing because he was illiterate'. The first instance court was also criticised for its 'interpretation of Directive 2013/48', as Article 3(6) thereof 'provides for the possibility, at the pre-trial stage, of temporarily derogating from the rights'.

**The essential arguments of the parties in the main proceedings**

24 [Statements only on whether a reference for a preliminary ruling should be made]

**Succinct presentation of the reasoning in the request for a preliminary ruling**

- 25 The present case concerns the possible involvement of the defendant **CH** in the alleged offence for which he was prosecuted and the referring court must give a ruling on the substance as regards guilt. The main question to be clarified is whether the investigating authorities ensured CH's right to a lawyer under Directive 2013/48 at the time he was actually detained and before a formal accusation was made in respect of him, in particular against the background of the conflicting views of this Chamber and the appellate court regarding the application of the directive.
- 26 First of all, the Court must clarify whether national legislation and case-law, on the basis of which, in ordering or enforcing an appropriate restraint measure, the court is deprived of the possibility of assessing whether, at the time the defendant was a suspect and his right of free movement was restricted by the police authorities, evidence was obtained in breach of his right to a lawyer arising from Directive 2013/48, is compatible with Article 12(2) of that directive, in conjunction with Article 47(1) of the Charter. This question arises in the light of the first decision of the Sofia City Court made by order of 7 September 2023, in so far as it rejected unreservedly that power of the first instance court. In order to assess whether the view taken by the appellate court is correct, it is also necessary to answer the question whether the requirement of respect for the rights of the defence and the fairness of the proceedings within the meaning of Article 12(2) of Directive 2013/48 would be complied with if, in establishing its inner conviction, the court examining whether the restraint measure is appropriate takes into consideration evidence which was obtained in breach of the requirements of the directive at the time the person was a suspect and his or her right of free movement was restricted by the police authorities. The referring court recalls that the Court of Justice has repeatedly had to address the systemic problem of the lack of proper transposition and application 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 and Directive 2013/48, as far as suspects are concerned, because that is not a recognised legal concept in the Republic of Bulgaria (see judgments in Cases C-608/21 and C-209/22).
- 27 The general possibility for the court deciding on the restraint measure to examine whether the rights of the suspect or accused person under Directive 2013/48 were respected in conducting evidence-gathering acts is crucial in assessing whether or not there is reasonable suspicion of his or her involvement in the alleged criminal offence. In the view of the referring court, respect for the rights of the defence and the fairness of the proceedings under Article 12(2) of that directive must be guaranteed not only in the final judicial decision on the person's guilt but also in

the assessment whether a restraint measure should be ordered or enforced against that person and, if so, what measure.

- 28 Next, the Court must also address the question, again with regard to the first decision of the Sofia City Court made by the order of 7 September 2023 and the criticism of partiality raised against the referring court, whether the exclusion by the court examining whether the restraint measure is appropriate, despite instructions to the contrary from a higher court, of evidence obtained in breach of Directive 2013/48 has negative effects on the requirements laid down in Article 12(2) of that directive in conjunction with Article 47(1) and (2) of the Charter concerning the fairness of the proceedings and casts doubt on the impartiality of the court.
- 29 In the second decision of the Sofia City Court made by the order of 7 November 2023, that court found that, under the particular circumstances of the present case, Article 3(6)(b) of Directive 2013/48, which provides for the possibility, in exceptional circumstances at the pre-trial stage, of temporarily derogating from the right to a lawyer where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings, is applicable. That view requires the Court of Justice of the European Union to rule on whether the provision in question has direct effect in the EU Member State concerned, where it has not been transposed into its national law and does not confer rights on the natural persons concerned. It should be noted that, in the view of this Chamber, Article 3(6)(b) of Directive 2013/48 has not been expressly transposed into national law because it manifestly contravenes Article 30(4) of the Constitution, which provides clearly and unambiguously that the right to legal counsel arises from the moment of detention or from the moment a formal accusation had been made in respect of a person, which means that no time delay is permitted.
- 30 The next relevant question to be clarified by the Court is whether the safeguards provided for in Article 9(1)(a) and (b) in conjunction with recital 39 of Directive 2013/48 are respected if a suspect makes a waiver in writing of the right to a lawyer, but the suspect is illiterate and was not informed of the possible consequences of waiving that right, and subsequently claims before the court that he or she had not been aware of the content of the document signed by him or her at the time of the restriction of his or her right of free movement by the police authorities. The referring court's reasons [for referring this question] are apparent from the first decision of the Sofia City Court in the order of 7 September 2023 (see above, paragraph 21).
- 31 Lastly, the Court must also clarify whether a waiver of the right to be assisted by a lawyer, made by a suspect at the time of his or her detention, exempts the authorities from their obligation to inform that person, immediately prior to performing each further investigative action with his or her participation, of the right to access to a lawyer and the consequences of waiving that right. Under the national law of the referring court, a detained person may waive the right to a

defence counsel, but this is not permitted once a formal accusation has been made in respect of that person. This particular feature of national law influences the settled case-law of the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria) according to which the initial waiver by the detained person of the right to a defence counsel at the time of the restriction of his or her right of free movement extends to all further investigative action concerning him or her and with his or her participation before he or she acquires the status of an accused person.

- 32 The present proceedings were also conducted in accordance with this settled case-law of the highest Bulgarian court, in so far as the investigating authorities performed numerous investigative actions after CH had been detained, namely the questioning of witnesses, the crime scene reconstruction, the live identification exercises and interrogations, without informing him of the nature of the actions and the possible consequences and without giving him the opportunity, prior to each of those actions, to be assisted by a lawyer.

WORKING DOCUMENT