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Case study

Three customs officers, A, B and C, are accused of having participated in a criminal organisation, in the period from 1 March 2016 to 30 November 2016, on the ground that they demanded bribes from drivers crossing the border in order not to carry out customs inspections and not to document any irregularities identified. B is also accused of receiving the bribes, while C is also accused of corruption.

On 15 December 2016, these individuals were arrested. They were informed of the charges against them immediately after their arrest. Within the following months, the charges were stated in more detail and disclosed to those individuals. They were also informed of the evidence gathered.

At the beginning of 2019 the investigation was not concluded yet. The fact that two years had passed had a practical effect on the case, because, according to national law, a special procedure could be set in motion. In particular, based on this special procedure, the court would have to refer the case back to the prosecutor, giving the latter a period of three months to conclude the investigation and to bring to an end the pre-trial stage of the criminal proceedings, either by halting the prosecution or by bringing the case for trial. If the prosecutor chose the second option, he had a period of an additional 15 days to issue and to submit an indictment to the court. If the prosecutor did not comply with those further time limits, the court was to take charge of the case and close the criminal proceedings. A, B and C filed an application requesting that the court would apply this procedure.

The court accepted the application and referred the case back to the prosecutor, giving the latter a period of three months to conclude the investigation, to draw up new charges, to disclose those charges and the investigation file to the accused and to bring to an end the pre-trial stage of the criminal proceedings, the prosecutor then having fifteen additional days to issue an indictment and submit it to the court.

The prosecutor drew up new charges and submitted an indictment to the court within the period prescribed. However, he did not disclose those charges and the contents of the investigation file to A, B and C or their lawyers, as they had stated that they were unable to appear on the dates set for that disclosure for medical and professional reasons.

Subsequently, the court held that infringements of essential procedural requirements of the national law had been committed, while the parts of the indictment concerning what C was alleged to have done were vitiated by contradictions. Consequently, in accordance with the provisions on this special procedure, that court again ordered the case to be referred back to the prosecutor, giving the latter a period of one month to cure the infringements of procedural requirements identified.

However, although the public prosecutor summoned the individuals on several occasions, he did not succeed in making proper disclosure of the charges drawn up and of the investigation file. Those three individuals and their lawyers again stated that they could not appear on the set



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dates for a variety of reasons, including travel abroad, medical and professional reasons and a failure by the prosecutor to comply with the legal period of three days prior notice with respect to the disclosure of the investigation file. Consequently, the court held that the prosecutor had not cured the infringements of essential procedural requirements previously identified and had committed further infringements, and that the contradictions in the indictment had not been entirely removed.

The court also stated that it was possible that those three individuals and their lawyers had abused their rights and had engaged in no more than delaying tactics in order to prevent the prosecutor from bringing to an end the pre-trial stage of the criminal proceedings and from curing the infringements within the period prescribed. Even so, the court held that the conditions for the closure of those proceedings were met and that those individuals therefore had a right to have those proceedings closed. Nonetheless, the court decided to suspend the case rather than order the closure of the criminal proceedings.

The prosecutor, who claimed that no infringement of essential procedural requirements had been committed, and C, who considered that the court had made a mistake in not closing the criminal proceedings concerned, lodged appeals against that order. The appeal court held that the court ought to have closed the criminal proceedings in accordance with the special provisions of the national law and, for that purpose, referred the case back to it.

However, the court was uncertain whether closing the proceedings in this manner was compatible to EU law, in particular with the obligation of Member States to ensure the effective prosecution of offences affecting the financial interests of the European Union. For this reason it referred to the CJEU and, indeed, the latter ruled that Article 325(1) TFEU precludes national legislation that establishes a procedure for the termination of criminal proceedings, such as the one of the case concerned, with regard to serious illegal activities affecting the financial interests of the European Union in customs matters. In addition, it called the national court to give full effect to Article 325(1) TFEU, by disapplying the special national legislation, where necessary, while also ensuring respect for the fundamental rights of the persons accused. In addition, the CJEU ruled on whether and how the referring court could cure the infringements to the rights of the individuals in accordance with EU law.

Following the judgment of the CJEU, the court decided to disapply a national provision in order to comply with the preliminary ruling. However, the accused persons lodged an appeal against this decision; the decision was then annulled by the appeal court. As a result, the case was sent back to the court, requesting it to refer the case back to the prosecutor. Because of this, the court held it is no longer in position to cure the procedural infringements in the way indicated by the CJEU, since the public prosecutor is to take over.

Questions – issues:

1. Identify points of the case which are relevant to the rights of the defence as regulated in EU legislation, in particular provisions of Directive 2012/13/EU and Directive 2013/48/EU



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2. Identify violation of rights. Which violations can be cured at the stage reached so that there is compatibility with the Directives?
3. Does the abuse of rights by the accused person have an effect on these estimations?
4. Suppose that A and C have the same lawyer. A is making arguments incriminating C, while C remains silent. Does this present a problem? Is it acceptable by the Directives for a national provision to oblige the court to dismiss this lawyer? Would it be the same if they both made incriminating statements for one another?
5. Suppose that D, a driver, had gone to the police and accused B of asking him for a bribe. The police, who had just started investigating B, took into account the accusations of D but at the same time became suspicious of him. Because of this, and having discovered certain notes implying illegal transactions kept by B, they questioned D on the basis of information that had derived from the notes, without revealing this to D. The combination of the notes and the questioning later indicated that D had in fact given money to B several times in the past. If the criminal proceedings included D along with the other three individuals with regard to bribery, would there be a violation of D's rights? Would it be possible to charge him and ensure respect of his rights?
6. Suppose that E, another driver and third country national, is also arrested for bribery in the case. Under which conditions would he be entitled of receiving translation of documents of the case and which documents should that include based on EU law? [Directive 2010/64/EU]