



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

29 July 2019*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2012/29/EU — Minimum standards on the rights, support and protection of victims of crime — Articles 16 and 18 — Examination of the victim by a criminal court of first instance — Alteration of the composition of the panel of judges — Fresh examination of the victim at the request of one of the parties to the proceedings — Charter of Fundamental Rights of the European Union — Articles 47 and 48 — Right to a fair trial and rights of the defence — Principle of immediacy — Scope — Victim's right to protection during criminal proceedings)

In Case C-38/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Bari (District Court, Bari, Italy), made by decision of 10 October 2017 received at the General Court on 19 January 2018, in criminal proceedings against

Massimo Gambino,

Shpetim Hyka,

in the presence of:

Procura della Repubblica presso il Tribunale di Bari,

Ernesto Lappostato,

Banca Carige SpA — Cassa di Risparmio di Genova e Imperia,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader, A. Rosas, L. Bay Larsen and M. Safjan (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, assisted by P.G. Marrone and D. Di Giorgio, avvocati dello Stato,

* Language of the case: Italian.

- the Czech Government, by A. Kasalická and by J. Vlácil and M. Smolek, acting as Agents,
- the German Government, initially by T. Henze, M. Hellmann and E. Lankenau, and subsequently by M. Hellmann and E. Lankenau, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and M.A.M. de Ree, acting as Agents,
- the Austrian Government, by G. Hesse, acting as Agent,
- the European Commission, by C. Cattabriga and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2019,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 16 and 18 and Article 20(b) of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ 2012 L 315, p. 57).
- 2 The request has been made in criminal proceedings brought against Mr Massimo Gambino and Mr Shpetim Hyka relating to offences of fraud and money laundering.

Legal context

European Union law

- 3 Recitals 11, 12, 20, 58 and 66 of Directive 2012/29 read as follows:
 - ‘(11) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.
 - (12) The rights set out in this Directive are without prejudice to the rights of the offender. The term “offender” refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.
- ...
- (20) The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria: whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings. Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.

...

- (58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.

...

- (66) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.'

- 4 Paragraph 1 of Article 1 of that directive, entitled 'Objectives', provides:

'The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.'

- 5 Article 10 of that directive, entitled 'Right to be heard', provides:

'1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.'

- 6 Article 16 of the same directive, entitled 'Right to decision on compensation from the offender in the course of criminal proceedings', provides:

'1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.'

- 7 Article 18 of Directive 2012/29, entitled 'Right to protection', reads as follows:

'Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and

to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.'

- 8 Article 20 of that directive, entitled 'Right to protection of victims during criminal investigations', provides:

'Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

...

- (b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;

...'

- 9 Article 22 of that directive, entitled 'Individual assessment of victims to identify specific protection needs', provides:

'1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:

- (a) the personal characteristics of the victim;
(b) the type or nature of the crime; and
(c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.'

10 Article 23 of the same directive, entitled 'Right to protection of victims with specific protection needs during criminal proceedings', provides:

'1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):

- (a) interviews with the victim being carried out in premises designed or adapted for that purpose;
- (b) interviews with the victim being carried out by or through professionals trained for that purpose;
- (c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;
- (d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:

- (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
- (b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
- (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
- (d) measures allowing a hearing to take place without the presence of the public.'

Italian law

11 Paragraphs (1) and (2) of Article 511 of the Codice di procedura penale (Code of Criminal Procedure), entitled 'Authorised readings', provides:

'1. The court shall decide, where appropriate of its own motion, that the documents in the case file may be read, in full or in part, for the purposes of the hearing.

2. Written records of statements may be read only after the person giving them has been examined, unless no examination takes place.'

12 Paragraphs (1) and (2) of Article 525 of the Code of Criminal Procedure, entitled 'Immediacy of the decision', provides:

'1. The judges' deliberations shall take place immediately after the closure of the oral procedure.

2. The same judges who took part in the oral procedure shall take part in the deliberations, failing which their decision shall be null and void. If alternate judges are called upon to make up the full complement of judges on the panel, replacing members who are prevented from sitting, decisions already delivered and not expressly revoked shall remain effective.'

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

13 The order for reference states that Mr Gambino and Mr Hyka are being tried before the Tribunale di Bari (District Court, Bari, Italy) for offences of fraud and money laundering, as set out in the Italian Criminal Code.

14 That order also states that, according to the prosecution statement, the victims of that presumed fraud are Mr Ernesto Lappostato and Mr Gianluca Menini. Mr Lappostato brought a civil action, claiming that Mr Gambino should be ordered to compensate him for the harm caused by his criminal conduct.

15 At the hearing held on 14 April 2015, Mr Lappostato and Mr Menini gave evidence before a panel of the Tribunale di Bari (District Court, Bari) composed of three judges.

16 On 21 February 2017, a new hearing took place before the same panel the composition of which had changed after one of the three judges who heard the case on 14 April 2015 had moved to another court.

17 At that hearing on 21 February 2017, the lawyer representing Mr Gambino requested, under Articles 511 and 525 of the Code of Criminal Procedure, that all the witnesses examined up to that date be examined again, including, in particular, the victims of the presumed fraud. He repeated that request at a hearing held on 10 October 2017.

18 The referring court notes that Article 525 of the Code of Criminal Procedure establishes the principle of immediacy, which consists not only in ensuring that the judges' deliberations take place immediately after the closure of the oral procedure, but also that the judges deliberating are the same judges who were present during the oral procedure. The rationale for that requirement is the need for the same judges who were present when the evidence was given in court to decide on the criminal liability of the defendant.

19 The referring court states that it has doubts as to the compatibility with EU law of the national legislation, as interpreted by the Corte suprema di cassazione (Court of Cassation, Italy), which provides that, where it is necessary for the oral procedure to be conducted a second time because there is a different single judge or the composition of the judicial panel has changed, the evidence heard by the original court cannot be used for the purpose of making the decision simply by virtue of the fact that the written record of the evidence has been read, without the person who testified being examined again, where a fresh examination is still possible and has been requested by one of the parties.

20 In those circumstances, where a decision is taken to conduct the oral procedure again following a change in the composition of the judicial panel and the court admits the newly requested oral evidence, the written record of statements previously given may not be read pursuant to Article 511 of the Code of Criminal Procedure without the consent of all parties to the proceedings.

- 21 According to the referring court, such an interpretation would open the way to abuse by a defendant, who could withhold consent to the judges reading the written records of evidence already given and therefore impose a further hearing upon the victim.
- 22 Thus, Article 511(2) and Article 525(2) of the Code of Criminal Procedure, as interpreted by the national courts, are contrary to Directive 2012/29, which requires that Member States adopt rules that protect victims of crime in criminal proceedings.
- 23 In that regard, the referring court notes that, as regards the interpretation of the Council Framework Decision of 15 March 2001 (2001/220/JHA) on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1), which was replaced by Directive 2012/29, the Court of Justice, in paragraph 56 of the judgment of 16 June 2005, *Pupino* (C-105/03, EU:C:2005:386), held that achievement of the aims pursued by that framework decision requires that a national court should be able, in respect of particularly vulnerable victims, to use a special procedure, such as the special inquiry for early gathering of evidence provided for in the law of a Member State, and the special arrangements for hearing testimony for which provision is also made, if that procedure best corresponds to the situation of those victims and is necessary in order to prevent the loss of evidence, to reduce the repetition of questioning to a minimum, and to prevent the damaging consequences for those victims of their giving testimony at the trial.
- 24 According to the referring court, the requirement for a victim to be examined again appears contrary to the principles set out in that judgment, since the defendant's right to a fair trial is not sacrificed in any way by the reading of the written record of statements originally given in public, in accordance with the *audi alteram partem* rule, before an impartial court.
- 25 The balance struck between respect for the dignity of the victim and the defendant's right to a fair trial must in any event comply with the principle of proportionality mentioned in Article 52 of the European Charter of Human Rights ('the Charter'). At the same time, the right to a fair trial, laid down by Article 6 of the European Convention on Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR') and by Article 47 of the Charter, cannot be exploited in such a way as to give rise to an abuse of rights.
- 26 Lastly, examination of the victim a second time not only represents additional psychological suffering for that person but entails costly lengthening of the criminal proceedings, in breach of the requirement of the reasonable duration of proceedings.
- 27 Accordingly, the Tribunale di Bari (District Court, Bari) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 16, Article 18 and Article 20(b) of Directive [2012/29] be interpreted as precluding the victim of a crime from having to give evidence again before the court sitting in a new composition when one of the parties to the proceedings, in accordance with Articles 511(2) and 525(2) of the Code of Criminal Procedure (as consistently interpreted by the case-law of the Supreme Court of Cassation), does not consent to that court reading the written record of the oral evidence previously given by that victim, in accordance with the *audi alteram partem* rule, before a different panel of judges in the same proceedings?'

Consideration of the question referred

- 28 By its question, the referring court asks, in essence, whether Article 16, Article 18 and Article 20(b) of Directive 2012/29 should be interpreted as precluding national legislation under which, where the victim of a criminal offence has been examined on the first occasion by a panel of judges of a first-instance criminal court and the composition of that panel is subsequently changed, that victim

should, in principle, be examined again by the panel sitting in its new composition, where one of the parties to the proceedings does not consent to that panel basing its decision on the written record of that victim's first examination.

- 29 Under the first subparagraph of Article 1(1) of Directive 2012/29, the purpose of that directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.
- 30 It should be noted at the outset that, according to Article 20(b) of that directive, without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States are to ensure that during criminal investigations the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the 'criminal investigation'.
- 31 In that regard, as is clear from Article 23(2) and (3) of Directive 2012/29, the directive draws a distinction between the 'criminal investigation' stage and the 'court proceedings' stage.
- 32 Moreover, the proposal for the Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime [COM(2011) 275 final], on which Directive 2012/29 was based, provided that Member States were to ensure that the number of interviews was kept to a minimum and that interviews were carried out only where strictly necessary for the purposes of 'criminal proceedings'.
- 33 The preparatory work for Directive 2012/29 thus confirms that, in light of the wording of Article 20(b) of that directive, as used by the EU legislature, the latter chose to restrict the scope of that provision solely to the criminal investigation stage.
- 34 As is clear from the order for reference, any fresh examination of the victim in the main proceedings takes place at the judicial stage of the criminal proceedings, Mr Gambino having been referred to a new panel of judges.
- 35 In those circumstances, Article 20(b) of Directive 2012/29 does not apply to a dispute such as that in the main proceedings.
- 36 In any event, by stating that Member States are to ensure that the number of interviews is kept to a minimum, that provision does not require that the victim of a criminal offence should be examined only once by the trial court.
- 37 With regard to the interpretation of Articles 16 and 18 of Directive 2012/29, it should be noted that, according to recital 12 thereof, the directive provides that the rights set out in it are without prejudice to the rights of the offender.
- 38 Under the second paragraph of Article 47 of the Charter, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law, and everyone is to have the possibility of being advised, defended and represented. Moreover, Article 48(2) of the Charter states that respect for the rights of the defence of anyone who has been charged is to be guaranteed.
- 39 In so far as the Charter contains rights corresponding to rights guaranteed under the ECHR, Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed under the ECHR, without thereby adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 23). According to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17),

the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the ECHR and Article 48 of the Charter is the same as Article 6(2) and (3) of the ECHR. The Court must, accordingly, ensure that its interpretation of the second paragraph of Article 47 and of Article 48 of the Charter ensures a level of protection which does not disregard that guaranteed by Article 6 of the ECHR, as interpreted by the European Court of Human Rights (see, by analogy, judgment of 26 September 2018, *Belastingdienst v Toeslagen* (suspensory effect of the appeal), C-175/17, EU:C:2018:776, paragraph 35 and the case-law cited).

- 40 To the same effect, as regards Framework Decision 2001/220, which was replaced by Directive 2012/29, the Court has held that the former must be interpreted in such a way that fundamental rights, including in particular the right to a fair trial as set out in Article 6 of the ECHR, and interpreted by the European Court of Human Rights, are respected (judgments of 16 June 2005, *Pupino*, C-105/03, EU:C:2005:386, paragraph 59, and of 9 October 2008, *Katz*, C-404/07, EU:C:2008:553, paragraph 48).
- 41 In that regard, it is clear from the case-law of the European Court of Human Rights that principles of fair trial require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify (ECtHR, 26 March 1996, *Doorson v. Netherlands*, CE:ECHR:1996:0326JUD002052492, § 70, and ECtHR, 5 October 2006, *Marcello Viola v. Italy*, CE:ECHR:2006:1005JUD004510604, § 51).
- 42 In that context, those who have the responsibility for deciding the guilt or innocence of an accused ought, in principle, to be able to hear witnesses in person and assess their trustworthiness. The assessment of the trustworthiness of a witness is a complex task which usually cannot be achieved by a mere reading of his or her recorded words (ECtHR, 5 July 2011, *Dan v. Moldova*, CE:ECHR:2011:0705JUD000899907, § 33, and ECtHR, 29 June 2017, *Lorefice v. Italy*, CE:ECHR:2017:0629JUD006344613, § 43).
- 43 Thus an important aspect of fair criminal proceedings is the ability for the accused to be confronted with the witnesses in the presence of the judge who ultimately decides the case. The principle of immediacy is an important guarantee in criminal proceedings in which the observations made by the court about the demeanour and credibility of a witness may have important consequences for the accused. Therefore, a change in the composition of the trial court after the hearing of an important witness should normally lead to the rehearing of that witness (ECtHR, 9 March 2004, *Pitkänen v. Finland*, CE:ECHR:2004:0309JUD003050896, § 58, and ECtHR, 18 March 2014, *Beraru v. Romania*, CE:ECHR:2014:0318JUD004010704, § 64).
- 44 However, the principle of immediacy cannot be deemed to constitute a prohibition of any change in the composition of a court during the course of a case. Very clear administrative or procedural factors may arise rendering a judge's continued participation in a case impossible. Measures can be taken to ensure that the judges who continue hearing the case have the appropriate understanding of the evidence and arguments, for example, by making transcripts available, where the credibility of the witness concerned is not in issue, or by arranging for a rehearing of the relevant arguments or of important witnesses before the newly composed court (ECtHR, 2 December 2014, *Cutean v. Romania*, CE:ECHR:2014:1202JUD005315012, § 61, and ECtHR, 6 December 2016, *Škaro v. Croatia*, CE:ECHR:2016:1206JUD000696213, § 24).
- 45 It is in the light of those considerations that the question must be answered with regard to Articles 16 and 18 of Directive 2012/29.

- 46 In that regard, the referring court considers that fresh examination of the victim following the change in the composition of the panel of judges is contrary to Article 16 of that directive, paragraph 1 of which states that Member States are to ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.
- 47 The referring court considers therefore that the requirement to provide timely compensation, provided for in Article 16, is inevitably thwarted by national legislation which requires all parties to the proceedings to give their consent for witnesses not to have to testify again before the newly composed panel of judges. In particular, the referring court considers that the national legislation at issue in the main proceedings may give rise to abuse by a defendant since the latter's refusal to consent to the reading of statements previously given by the victim has the effect of extending the duration of the proceedings.
- 48 However, fresh examination of the victim in the event of a change in the composition of the panel of judges before which he or she originally gave evidence does not, in itself, mean that a decision cannot be given on compensation for that victim within a reasonable time.
- 49 Moreover, as the Advocate General stated in point 128 of his Opinion, the right provided for in Article 16 of Directive 2012/29 in favour of the victim of an offence cannot alter the effective enjoyment of the procedural rights granted to the defendant, as set out in paragraphs 42 and 43 of the present judgment, which include the principle of immediacy, where the composition of the panel of judges has been changed, since that circumstance cannot be attributed to that person.
- 50 The referring court also refers to Article 18 of Directive 2012/29, which provides that, without prejudice to the rights of the defence, Member States are to ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying; when necessary, such measures must also include procedures established under national law for the physical protection of victims and their family members.
- 51 However, it does not follow from the wording of that article that the EU legislature included, among the measures designed to protect the victim of a criminal offence, provision for limiting examination of the victim to a single occasion during the judicial proceedings.
- 52 Furthermore, Article 18 of Directive 2012/29 affords the victim the right to protection, 'without prejudice to the rights of the defence'. To the same effect, recital 58 of that directive states that the extent of appropriate measures to protect victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation during criminal proceedings should be determined 'without prejudice to the rights of the defence and in accordance with rules of judicial discretion'.
- 53 As the Advocate General noted in point 73 of his Opinion, the EU legislature thus establishes in Directive 2012/29 rights for victims, the exercise of which does not undermine the right to a fair trial or the rights of defence of the defendant as provided for in the second paragraph of Article 47 and Article 48(2), respectively, of the Charter.
- 54 Consequently, it should be noted that Article 18 of Directive 2012/29 does not in principle preclude, in the event of a change in the composition of the panel of judges, the victim of a criminal offence being examined again by that panel at the request of one of the parties to the proceedings.

- 55 However, as the Advocate General stated in point 116 of his Opinion, it follows from the case-law of the European Court of Human Rights that, in order to determine whether it is possible to use the written record of a victim's statement in evidence, Member States should examine whether hearing the testimony of the victim is likely to be decisive for purposes of the defendant's trial and to ensure by means of strong procedural safeguards that the taking of evidence in the context of criminal proceedings does not prejudice the fairness of those proceedings for the purposes of the second paragraph of Article 47 of the Charter or the rights of the defence for the purposes of Article 48(2) of the Charter.
- 56 The referring court should therefore examine whether, in the case in the main proceedings, particular circumstances such as those referred to in the preceding paragraph might lead to the victim of the criminal offence in question not being required to testify again.
- 57 It should be added that, in the event of it being decided that the victim should testify before the panel of judges in its new composition, the competent national authorities must, under Article 22 of Directive 2012/29, conduct an individual assessment of that victim to identify his specific protection needs and, where appropriate, to afford him the protection measures provided for in Articles 23 and 24 of that directive.
- 58 The referring court must therefore ensure that the victim in the main proceedings has no specific protection needs during the criminal proceedings.
- 59 In the light of the foregoing, the answer to the question referred is that Articles 16 and 18 of Directive 2012/29 must be interpreted as not precluding national legislation under which, where the victim of a criminal offence has already been examined by a panel of judges of a first-instance court and the composition of that panel is subsequently changed, that victim must, in principle, be examined again by the panel in its new composition, where one of the parties to the proceedings does not consent to that panel basing its decision on the written record of the evidence the victim gave at the first examination.

Costs

- 60 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 (First Chamber) hereby rules:

Articles 16 and 18 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA must be interpreted as not precluding national legislation under which, where the victim of a criminal offence has already been examined by a panel of judges of a first-instance court and the composition of that panel is subsequently changed, that victim must, in principle, be examined again by the panel in its new composition, where one of the parties to the proceedings does not consent to that panel basing its decision on the written record of the evidence the victim gave at the first examination.

[Signatures]