

Defence Issues in EPPO Proceedings - Summary

- Art. 6 of the European Convention on Human Rights provides for the concrete and effective participation of the defence in criminal proceedings. The Council Regulation (EU) 2017/1939 on the establishment of the European Public Prosecutor's Office (Regulation) does not provide **defence rights on the European central level**. This gap could be filled by the EPPO's internal rules and guidelines, but the European Public Prosecutor's Office - until now – did not use its competence to compensate this deficit.
- **Access to case files** is of crucial importance for the defence, and a very important element regarding the fairness of the trial. There is no rule on access to case files for the defence regarding the case file which is stored in the EPPO's case management system. The Regulation does not rule that access to this case file should not be provided, the Regulation just does not say anything on this issue. According to the ECHR case law, equality of arms may be breached when the accused has limited access to his case file or other documents. Therefore, the EPPO ought to provide access to the case file which is in the case management system.
- The **right to be heard before decisions of the Permanent Chamber** should be granted in cases where the defendant has been made aware of the proceedings or when making him or her aware would not contradict the interests of the investigation. Decisions on reallocation and merging and splitting of cases may be of utmost importance for the defendant. "Forum-shopping" is a risk because there is no unique European procedural law for the investigation phase, and the applicable substantive law differs among the member states. Regarding the right to a fair trial, it is not understandable that the regulation does not provide for any right to be heard before the Permanent Chamber takes a decision of merging, splitting or reallocating cases. This lack of fairness could be solved in the internal rules of the EPPO, as the Regulation does not forbid to hear the defendant. There is no equality of arms if the Prosecution makes such a far-reaching decision without any involvement of the defendant. The same applies for decisions taken according to Art. 36 of the Regulation.

- The **Right to investigation within a reasonable time** is endangered because the distribution between national investigations and decisions on the European Central Level may cause delays for the proceedings. The EPPO Regulation does not include any provision which deals with this issue. Neither do the internal Rules and Guidelines. It would raise trust if the awareness for this issue was documented in the internal Rules or Guidelines.
- **Conclusion:** The Regulation has gaps regarding the right to a fair trial and the EPPO has the competence to fill these gaps. The CCBE is ready and willing to discuss and to assist with filling the gaps. The project of establishing the European Public Prosecutor is not completed as long as defence rights are not granted in full compliance with the Charter and the Convention.

Margarete v. Galen, 15 September 2021