



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 March 2020*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2013/48/EU — Article 3(2) — Right of access to a lawyer — Circumstances in which the right of access to a lawyer must be guaranteed — Non-appearance — Derogations from the right of access to a lawyer — Article 47 of the Charter of Fundamental Rights of the European Union — Right to effective judicial protection)

In Case C-659/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Instrucción n. 4 de Badalona (Court of Preliminary Investigation No 4, Badalona, Spain), made by decision of 19 October 2018, received at the Court on 22 October 2018, in the criminal proceedings against

VW,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, P.G. Xuereb and T. von Danwitz (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- the Spanish Government, by M.J. Ruiz Sánchez and M.J. García-Valdecasas Dorrego, acting as Agents,
- the European Commission, by S. Pardo Quintillán and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 November 2019,

gives the following

* Language of the case: Spanish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(2) of 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), and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The reference has been made in criminal proceedings brought against VW for offences of driving without a licence and forgery of a public document.

Legal context

European Union law

- 3 Recitals 4, 6, 19 and 30 to 32 of Directive 2013/48 state:
 - '(4) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other's criminal justice systems. The extent of the mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.
 - ...
 - (6) Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities, but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied. Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees arising from the Charter, the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950,] and the [International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966 and which entered into force on 23 March 1976]. It also requires, by means of this Directive and by means of other measures, further development within the [European] Union of the minimum standards set out in the Charter and in the [European Convention for the Protection of Human Rights and Fundamental Freedoms].
 - ...
 - (19) Member States should ensure that suspects or accused persons have the right of access to a lawyer without undue delay in accordance with this Directive. In any event, suspects or accused persons should be granted access to a lawyer during criminal proceedings before a court, if they have not waived that right.
 - ...
 - (30) In cases of geographical remoteness of the suspect or accused person, such as in overseas territories or where the Member State undertakes or participates in military operations outside its territory, Member States are permitted to derogate temporarily from the right of the suspect or accused person to have access to a lawyer without undue delay after deprivation of liberty. ...

- (31) Member States should be permitted to derogate temporarily from the right of access to a lawyer in the pre-trial phase when there is a need, in cases of urgency, to avert serious adverse consequences for the life, liberty or physical integrity of a person. ... Any abuse of this derogation would in principle irretrievably prejudice the rights of the defence.
- (32) Member States should also be permitted to derogate temporarily from the right of access to a lawyer in the pre-trial phase where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings, in particular to prevent destruction or alteration of essential evidence, or to prevent interference with witnesses. ... Any abuse of this derogation would in principle irretrievably prejudice the rights of the defence.'

4 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to [Council] Framework Decision 2002/584/JHA [of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1)] ..., to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.'

5 Article 2 of that directive, entitled 'Scope', provides, in paragraph 1 thereof:

'This Directive applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies 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 offence, including, where applicable, sentencing and the resolution of any appeal.'

6 Article 3 of that directive, entitled 'The right of access to a lawyer in criminal proceedings', is worded as follows:

'1. Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.

2. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:

- (a) before they are questioned by the police or by another law enforcement or judicial authority;
- (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;
- (c) without undue delay after deprivation of liberty;
- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

3. The right of access to a lawyer shall entail the following:

- (a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
- (b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;
- (c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a crime.

4. Member States shall endeavour to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons.

Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.

5. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

6. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.'

7 Article 8 of Directive 2013/48 provides:

'1. Any temporary derogation under Article 3(5) or (6) or under Article 5(3) shall

- (a) be proportionate and not go beyond what is necessary;
- (b) be strictly limited in time;
- (c) not be based exclusively on the type or the seriousness of the alleged offence; and

(d) not prejudice the overall fairness of the proceedings.

2. Temporary derogations under Article 3(5) or (6) may be authorised only by a duly reasoned decision taken on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review. The duly reasoned decision shall be recorded using the recording procedure in accordance with the law of the Member State concerned.

3. Temporary derogations under Article 5(3) may be authorised only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.'

Spanish law

8 Article 24 of the Constitución (Constitution) provides:

'1. Everyone has the right to obtain the effective protection of the judges and the courts in the exercise of his or her legitimate rights and interests, and in no case may due process be denied.

2. Likewise, all persons have the right of access to the ordinary judge predetermined by law; to a defence and to the assistance of a lawyer; to be informed of the charges against them; to a public trial without undue delay and with full guarantees; to the use of evidence appropriate to their defence; not to incriminate themselves; not to plead guilty; and to the presumption of innocence.

...'

9 Article 118 of the Ley de Enjuiciamiento Criminal (Code of Criminal Procedure), as amended by the Ley Orgánica 13/2015 de modificación de la Ley de Enjuiciamiento Criminal para el fortalecimiento de las garantías procesales y la regulación de las medidas de investigación tecnológica (Organic Law 13/2015 amending the Code of Criminal Procedure in order to strengthen the procedural guarantees and regulate technological investigative measures) of 5 October 2015 (BOE No 239 of 6 October 2015, p. 90192) ('the Code of Criminal Procedure'), provides:

'1. Anyone accused of a punishable offence may exercise his or her rights of defence, by taking part in proceedings, from the moment when he or she is informed of the existence of the proceedings, or he or she has been placed under arrest or made the subject of any other precautionary measures, or an order has been made for him or her to be charged, and to this end he or she shall be informed without undue delay of the following rights:

...

(b) The right to examine the proceedings with sufficient time to safeguard the rights of the defence and, in all cases, before he or she gives evidence.

...

(d) The right freely to appoint a lawyer, without prejudice to Article 527(1)(a).

...

2. The rights of the defence shall be exercised with no restrictions other than those expressly established by law from the point when the individual is accused of the punishable offence until the conclusion of the punishment.

...'

10 Article 527 of the Code of Criminal Procedure provides:

'1. In the situations provided for in Article 509, a person who is detained or imprisoned may be deprived of the following rights where justified by the circumstances of the case:

(a) The right to appoint a lawyer he or she trusts.

...

(d) The right for him or her or his or her lawyer to access the proceedings, except for those elements that are essential in order to be able to challenge the lawfulness of the detention.'

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

11 On 20 April 2018, the police in Badalona (Spain) filed a report in respect of alleged offences of driving without a licence and forgery of documents with regard to VW, following a roadside check during which he presented an Albanian driving licence.

12 On 19 May 2018, the expert report concluded that that document was a forgery.

13 By order of 11 June 2018, the Juzgado de Instrucción No 4 de Badalona (Court of Preliminary Investigation No 4, Badalona, Spain), before which the criminal proceedings against VW were brought, decided to hear VW. An officially designated lawyer was appointed for that purpose. After several attempts to summon the person concerned were unsuccessful because his whereabouts were unknown, a warrant was issued on 27 September 2018 for his arrest and for him to be brought before the court.

14 On 16 October 2018, a lawyer sent, by fax, a letter in which she stated that she was entering an appearance in the proceedings on behalf of VW, together with a signed authority to act and consent to let her take on the case given by the officially designated lawyer of the person concerned. She requested that future procedural documents be sent to her and that the arrest warrant issued against her client be suspended, stating that her client wished in any event to appear before the court.

15 Since VW did not appear when first summoned and is subject to an arrest warrant, the referring court asks whether the former's right of access to a lawyer may be delayed until that warrant has been executed, in accordance with the national rules on the rights of the defence.

16 In that regard, that court states that those rules are based on Article 24 of the Constitution and that, in criminal matters, the rights of defence of the person under investigation are governed by Article 118 of the Code of Criminal Procedure. That court adds that those provisions are interpreted by the Tribunal Constitucional (Constitutional Court, Spain) and the Tribunal Supremo (Supreme Court, Spain) as meaning that the right of access to a lawyer may be subject to the obligation, for the person accused, to appear in person before the court. In particular, in accordance with the settled case-law of the Tribunal Constitucional (Constitutional Court), the benefit of such a right may be refused when that person is absent or cannot be located. According to that case-law, the requirement for the person concerned to appear in person is considered reasonable and does not have a significant impact on the rights of the defence. In essence, the presence of the person under investigation is an obligation. It may be necessary to clarify the facts. Moreover, in the event of persistent absence on the part of that person at the conclusion of the investigation, the hearing cannot be held and judgment cannot be given, so that the proceedings are paralysed to the detriment of both the individuals concerned and the public interests at issue.

- 17 Furthermore, the referring court observes that that case-law has been maintained notwithstanding the reform which took place in 2015, in particular in order to ensure that Directive 2013/48 is transposed into Spanish law. That court also observes that, under Article 118 of the Code of Criminal Procedure, the right of access to a lawyer is limited solely in the cases referred to in Article 527 of that code, which is expressly cited in that provision.
- 18 Therefore, that court raises the question of the scope of the right of access to a lawyer provided for in that directive. In particular, it has doubts as to whether that case-law complies with Article 3(2) of that directive and Article 47 of the Charter.
- 19 In those circumstances, the Juzgado de Instrucción n. 4 de Badalona (Court of Preliminary Investigation No 4, Badalona) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 47 of the [Charter] and, in particular, Article 3(2) of Directive [2013/48] be interpreted as meaning that the right of access to a lawyer may justifiably be delayed where the suspect or accused fails to appear when first summoned by the court and a national, European or international arrest warrant is issued, and that the assistance of a lawyer and the entering of an appearance by the lawyer in the proceedings may be delayed until the warrant is executed and the suspect is brought to court by the police?’

Procedure before the Court

- 20 In its request for a preliminary ruling, the referring court requested that the case be determined pursuant to the expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court. That request was refused by order of the President of the Court of 18 January 2019, *VW (Right of access to a lawyer in the event of non-appearance)* (C-659/18, not published, EU:C:2019:45).

Consideration of the question referred

- 21 By its question, the referring court asks, in essence, whether Directive 2013/48, and in particular Article 3(2) thereof, read in the light of Article 47 of the Charter, must be interpreted as precluding national legislation, as interpreted by national case-law, according to which the exercise of the right of access to a lawyer may, at the pre-trial stage, be delayed because the suspect or accused person has failed to appear following a summons to appear before an investigating judge until the national arrest warrant issued against the person concerned has been executed.

Whether Directive 2013/48 is applicable

- 22 In order to answer that question, it is necessary to examine first of all whether Directive 2013/48 is applicable to the situation of a person, such as VW, who has been summoned to appear, on several occasions, before an investigating judge in order to be heard for the first time in respect of criminal offences which he or she is suspected of having committed and who is the subject of a national arrest warrant issued for that purpose.
- 23 In that regard, the Spanish Government expresses doubts as to whether such a situation falls within the scope of that directive. That government submits that, since the summonses of the person concerned to appear were unsuccessful, he was not informed that he was suspected of having committed a criminal offence, within the meaning of Article 2(1) of that directive.

- 24 It must be recalled that the subject matter of Directive 2013/48, according to Article 1 thereof, is to lay down minimum rules concerning the rights of suspects and accused persons in criminal proceedings, inter alia to have access to a lawyer. The scope of that directive is defined in Article 2 thereof, which provides, in paragraph 1, that that directive is to apply to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence.
- 25 A person who has been summoned to appear before an investigating judge, before whom criminal proceedings initiated for criminal offences which that person is alleged to have committed have been brought, falls within the concept of a ‘suspect’, within the meaning of Article 2(1) of Directive 2013/48. Moreover, the wording of that provision, in particular the words ‘are made aware by the competent authorities of a Member State, by official notification or otherwise’, indicates that, for the purposes of determining whether Directive 2013/48 is applicable, information received from the competent authorities of a Member State by the person concerned is sufficient, in whatever form that information is communicated.
- 26 Consequently, as the Advocate General observed in point 31 of his Opinion, the adoption by those authorities of an official decision or of any other procedural step aimed at informing the person concerned that he is to be treated as a suspect or an accused person, as required by national law, must be considered sufficient. By contrast, the means by which such information reaches that person is irrelevant.
- 27 In the present case, it is unequivocally clear from the file submitted to the Court not only that such a decision was adopted in respect of VW, but also that it was received by VW, since he instructed a lawyer to represent him in the criminal proceedings brought against him.
- 28 In those circumstances, the doubts expressed by the Spanish Government as to whether Directive 2013/48 is applicable in the main proceedings do not appear to be well founded, this nevertheless being a matter for the referring court to verify.

The right of access to a lawyer under Directive 2013/48

- 29 As regards the right of access to a lawyer provided for by Directive 2013/48, read in the light of Article 47 of the Charter, it should, first of all, be stated that, according to the information in the request for a preliminary ruling, the referring court seeks to ascertain whether the exercise of that right may be delayed because the suspect or accused person has failed to appear. On the other hand, that request does not concern the content of the right of access to a lawyer under that directive, including the elements mentioned in Article 3(3) thereof.
- 30 Article 3(1) of that directive requires the Member States to ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow them to exercise their rights of defence practically and effectively (judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 103).
- 31 Although Article 3(1) lays down the fundamental principle that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow them to exercise their rights of defence practically and effectively, that principle is fleshed out in paragraph 2 of that article, as the Advocate General noted in point 40 of his Opinion, with respect to the moment from which the right must be granted.

- 32 Under Article 3(2) of that directive, suspects and accused persons must have access to a lawyer without undue delay and, in any event, from whichever of the four specific points in time listed in (a) to (d) of that provision is the earliest.
- 33 Article 3(2) provides that suspects or accused persons are to have access to a lawyer *inter alia* ‘before they are questioned by the police or by another law enforcement or judicial authority’, in accordance with Article 3(2)(a) and ‘where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court’, in accordance with Article 3(2)(d).
- 34 In this case, the person concerned was summoned to appear before the referring court, which has jurisdiction in criminal matters, to be heard concerning the criminal offences which he is suspected of having committed. In such a situation, the suspect’s right of access to a lawyer in criminal proceedings brought against him must, in principle, be guaranteed.
- 35 Recital 19 of Directive 2013/48 states, moreover, that Member States should ensure that suspects or accused persons have the right of access to a lawyer without undue delay and, in any event, be granted access to a lawyer during criminal proceedings before a court, if they have not waived that right.
- 36 That said, it is necessary, next, to determine whether Directive 2013/48, read in the light of Article 47 of the Charter, allows Member States to derogate from the right of access to a lawyer, which must thus, in principle, be guaranteed to a suspect who has been summoned to appear before an investigating judge, on account of that person’s failure to appear.
- 37 In that regard, Article 3 of that directive provides that a temporary derogation from the right of access to a lawyer laid down in the directive is possible in three sets of circumstances, referred to, respectively, in Article 3(5), Article 3(6)(a) and Article 3(6)(b) thereof.
- 38 Article 3 provides, in paragraphs 5 and 6 thereof, that, in ‘exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application’ of certain provisions of that article.
- 39 In particular, under Article 3(5) of Directive 2013/48, Member States may temporarily derogate from the application of Article 3(2)(c) of that directive ‘where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty’.
- 40 In accordance with Article 3(6) of Directive 2013/48, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 of that article to the extent justified in the light of the particular circumstances of the case, on the basis of two compelling reasons. Those compelling reasons are, according to Article 3(6)(a) of that directive, ‘where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person’ or, according to Article 3(6)(b) of that directive, ‘where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings’.
- 41 In this case, the request for a preliminary ruling does not mention any of the circumstances referred to in Article 3(5) and (6) of Directive 2013/48.
- 42 It is apparent from the scheme and objectives of Directive 2013/48 that the temporary derogations from the right of access to a lawyer which Member States may provide for are set out exhaustively in Article 3(5) and (6).

- 43 As regards the scheme of Directive 2013/48, paragraphs 5 and 6 of Article 3 of that directive, as provisions derogating from the principles established in Article 3(1) to (3) of that directive, must be interpreted strictly. Furthermore, Article 8 of that directive, entitled ‘General conditions for applying temporary derogations’, refers only, as regards the right of access to a lawyer, to the derogations provided for in Article 3(5) or (6) thereof. Recitals 30 to 32 of Directive 2013/48 also refer to those derogations only.
- 44 As regards the objectives of Directive 2013/48, it is apparent from recitals 4 and 6 of that directive that the directive seeks, inter alia, to implement the principle of mutual recognition of decisions in criminal matters, which presupposes that Member States trust in each other’s criminal justice systems. The aims of that directive include the promotion of the right to be advised, defended and represented laid down in the second paragraph of Article 47 of the Charter and of the rights of the defence guaranteed by Article 48(2) of the Charter (judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 104).
- 45 To interpret Article 3 of Directive 2013/48 as allowing Member States to provide for derogations from the right of access to a lawyer other than those which are exhaustively set out in that article would run counter to those objectives and the scheme of that directive and to the very wording of that provision and, as the Advocate General observed in point 51 of his Opinion, would render that right redundant.
- 46 In those circumstances, it must be held that the exercise by a suspect or accused person of the right of access to a lawyer laid down by Directive 2013/48, arising, in any event, from whichever of the four points in time referred to in Article 3(2)(a) to (d) of that directive is the earliest, does not depend on the person concerned appearing. Moreover, the fact that a suspect or accused person has failed to appear is not one of the reasons for derogating from the right of access to a lawyer set out exhaustively in that directive, so that the fact that a suspect has failed to appear, despite summonses having been issued to appear before an investigating judge, cannot justify that person being deprived of the exercise of that right.
- 47 Lastly, it should be added that the interpretation of Article 3(2) of Directive 2013/48 to the effect that the exercise of the right of access to a lawyer cannot be delayed because a suspect or accused person has failed to appear following a summons to appear is consistent with the requirements arising from the fundamental right to effective judicial protection enshrined in Article 47 of the Charter.
- 48 In the light of the foregoing, the answer to the question referred is that Directive 2013/48, and in particular Article 3(2) thereof, read in the light of Article 47 of the Charter, must be interpreted as precluding national legislation, as interpreted by national case-law, according to which the exercise of the right of access to a lawyer may, at the pre-trial stage, be delayed because the suspect or accused person has failed to appear following a summons to appear before an investigating judge until the national arrest warrant issued against the person concerned has been executed.

Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

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, and in particular

Article 3(2) thereof, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation, as interpreted by national case-law, according to which the exercise of the right of access to a lawyer may, at the pre-trial stage, be delayed because the suspect or accused person has failed to appear following a summons to appear before an investigating judge until the national arrest warrant issued against the person concerned has been executed.

[Signatures]