



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

14 May 2024*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2013/48/EU – The right of access to a lawyer in criminal proceedings – Article 3(6)(b) – Temporary derogation from the right of access to a lawyer in exceptional circumstances – Article 9 – Waiver of the presence or assistance of a lawyer – Conditions – Article 12(2) – Respect for the rights of the defence and the fairness of the proceedings – Admissibility of evidence – Article 47 of the Charter of Fundamental Rights of the European Union – Written waiver of an illiterate suspect's right of access to a lawyer – No explanation as to the possible consequences of waiving that right – Implications for subsequent investigative acts – Decision on an appropriate restraint measure – Assessment of evidence obtained in breach of the right of access to a lawyer)

In Case C-15/24 PPU [Stachev],ⁱ

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad (Sofia District Court, Bulgaria), made by decision of 11 January 2024, received at the Court on 11 January 2024, in the criminal proceedings against

CH

intervening parties:

Sofiyska rayonna prokuratura,

THE COURT (First Chamber),

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

Advocate General: A.M. Collins,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 11 March 2024,

after considering the observations submitted on behalf of:

– CH, by I.R. Stoyanov, advokat,

* Language of the case: Bulgarian.

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

– the European Commission, by J. Vondung and I. Zaloguin, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 11 April 2024,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(6)(b), Article 9(1)(a) and (b) and Article 12(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 the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in criminal proceedings brought against CH, a Bulgarian national who is accused of having committed two robberies with violence.

Legal context

European Union law

- 3 Recitals 39, 40 and 50 to 53 of Directive 2013/48 state:

'(39) Suspects or accused persons should be able to waive a right granted under this Directive provided that they have been given information about the content of the right concerned and the possible consequences of waiving that right. When providing such information, the specific conditions of the suspects or accused persons concerned should be taken into account, including their age and their mental and physical condition.

(40) A waiver and the circumstances in which it was given should be noted using the recording procedure in accordance with the law of the Member State concerned. ...

...

(50) Member States should ensure that in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer, or in cases where a derogation from that right was authorised in accordance with this Directive, the rights of the defence and the fairness of the proceedings are respected. In this context, regard should be had to the case-law of the European Court of Human Rights, which has established that the rights of the defence will, in principle, be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction. This should be without prejudice to the use of statements for other purposes permitted under national law, such as the need to execute urgent investigative acts to avoid the perpetration of other offences or serious adverse consequences for any person or related to an urgent need to prevent substantial jeopardy to criminal proceedings where access to a lawyer or delaying the investigation would

irretrievably prejudice the ongoing investigations regarding a serious crime. Further, this should be without prejudice to national rules or systems regarding admissibility of evidence, and should not prevent Member States from maintaining a system whereby all existing evidence can be adduced before a court or a judge, without there being any separate or prior assessment as to admissibility of such evidence.

- (51) The duty of care towards suspects or accused persons who are in a potentially weak position underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore facilitate the effective exercise by such persons of the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to exercise the right of access to a lawyer and to have a third party informed upon deprivation of liberty, and by taking appropriate steps to ensure those rights are guaranteed.
- (52) This Directive upholds the fundamental rights and principles recognised by the Charter, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.
- (53) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950], are implemented consistently with those of [that convention] and as developed in the case-law of the European Court of Human Rights.'

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 ... to have access to a lawyer ...'

5 Article 2 of the same directive, entitled 'Scope', provides:

'1. 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.

...

4. ...

In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.'

6 Article 3 of Directive 2013/48, 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;

...

(c) without undue delay after deprivation of liberty;

...

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. ...

(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.

...

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 Under Article 9 of that directive, headed ‘Waiver’:

‘1. Without prejudice to national law requiring the mandatory presence or assistance of a lawyer, Member States shall ensure that, in relation to any waiver of a right referred to in Articles 3 and 10:

(a) the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it; and

(b) the waiver is given voluntarily and unequivocally.

2. The waiver, which can be made in writing or orally, shall be noted, as well as the circumstances under which the waiver was given, using the recording procedure in accordance with the law of the Member State concerned.

3. Member States shall ensure that suspects or accused persons may revoke a waiver subsequently at any point during the criminal proceedings and that they are informed about that possibility. Such a revocation shall have effect from the moment it is made.’

8 Article 12 of that directive, entitled ‘Remedies’, provides, in paragraph 2:

‘Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 3(6), the rights of the defence and the fairness of the proceedings are respected.’

9 Article 13 of Directive 2013/48, headed ‘Vulnerable persons’, provides:

‘Member States shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.’

Bulgarian law

Constitution of the Republic of Bulgaria

10 Under Article 30(4) of the Konstitutsia na Republika Bulgaria (Constitution of the Republic of Bulgaria) (‘the Bulgarian Constitution’):

‘Everyone has the right to be defended by a lawyer at the time when he or she is arrested or charged.’

The Law on the Ministry of the Interior

- 11 Article 72 of the *Zakon za ministerstvoto na vatreshnite raboti* (Law on the Ministry of the Interior, DV No 53 of 27 June 2014), in the version applicable to the facts in the main proceedings, is worded as follows:

‘(1) The police authorities may detain a person:

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

...

(5) From the time of his arrest, the person shall be entitled to a lawyer, and the detained person must also be informed of his or her right to waive that right to a lawyer and of the consequences of such waiver, as well as of his or her right to remain silent where the arrest takes place on the basis of point 1 of paragraph 1.’

- 12 Article 74 of that law provides:

‘(1) For persons referred to in Article 72(1), a written arrest warrant ordering the arrest shall be issued.

(2) The arrest warrant referred to in paragraph 1 shall state:

1. the name, function and place of employment of the police officer issuing the arrest warrant;

2. the factual and legal grounds for the arrest;

3. the arrested person’s identification data;

4. the date and time of the arrest;

5. the restriction of the person’s rights under Article 73;

6. his or her right to:

(a) challenge the legality of the detention before the courts;

(b) the assistance of a lawyer from the time of arrest;

...

(3) The arrested 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 exercise his or her rights under paragraph 2(6)(b) to (f). The arrest warrant shall be signed by the police authority and by the arrested person.

(4) The refusal or inability of the arrested person to sign the arrest warrant shall be attested by the signature of a witness.’

The NPK

- 13 Article 94 of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure, DV No 86 of 28 October 2005), in the version applicable to the facts in the main proceedings ('the NPK'), provides:

'(1) The participation of a lawyer in criminal proceedings is mandatory where:

...

6. ... the accused person is detained'.

- 14 Under Article 96(1) of the NPK:

'The accused person may waive the right to a lawyer at any time during the proceedings, except in the cases referred to in Article 94(1)(1) to (3) and (6). The consequences of waiving the right to be defended by a lawyer shall be explained to the accused person.'

- 15 Article 97 of the NPK is worded as follows:

'(1) The lawyer may participate in the criminal proceedings from the time of the arrest of the person or from the date when he or she is charged.

(2) The authority entrusted with the pre-trial procedure shall be under an obligation to explain to the accused person that he or she has the right to a lawyer and shall enable him or her to immediately contact that lawyer. That authority may not carry out any investigative or procedural act with the participation of the accused person until it has fulfilled that obligation.'

- 16 Article 248 of the NPK provides:

'(1) At the preliminary hearing, the following questions shall be examined:

...

3. whether the pre-litigation procedure has been affected by a material breach of the rules of procedure, capable of being remedied, which has led to a restriction of the procedural rights of the accused person, the victim or the victim's heirs;

...

5. the examination of the case in camera, the appointment of a reserve judge or juror, the appointment of a lawyer, an expert, an interpreter, a sign language interpreter and the performance of investigative judicial acts by delegation;

6. the procedural restraint measures taken;

7. requests to gather new evidence;

8. the setting of the hearing and the determination of the persons to be summoned to attend.'

17 Article 270(1) of the NPK provides:

‘The question of modifying the restraint measure may be raised at any time during the court proceedings. In the event of a change in circumstances, a new application concerning the restraint measure may be made before the court having jurisdiction.’

The main proceedings and the questions referred for a preliminary ruling

- 18 On 16 December 2022, CH was arrested by the Bulgarian police to investigate his involvement in a robbery with violence. On the same day, he signed a written statement in which it was stated that he did not wish to be defended by a lawyer of his choice and at his own expense or by a court-appointed lawyer.
- 19 According to the information provided by the referring court, however, the consequences of the waiver of his right to be represented by a lawyer were not explained to CH, who has not received a basic education and does not have a written command of the Bulgarian language. In addition, the statement includes the requirement that, where a person in custody is illiterate or is unable to complete that statement himself or herself, the statement must be completed by a police officer, with declarations of intent having to be made by that person himself or herself in the presence of a witness attesting to their veracity by signing them. In the present case, that statement bears neither the signature of a police authority nor of a witness.
- 20 Immediately after his arrest, when he was interviewed by a police authority as a witness, CH admitted participating in the commission of a robbery with violence. According to the order for reference, CH was indeed informed of his rights, that he was not required to incriminate himself with the commission of a criminal offence and that he could refuse to give evidence. However, that hearing took place in the absence of a lawyer. Similarly, the absence of a lawyer is also apparent from the minutes in which other investigative acts were recorded, carried out between 16 and 17 December 2022, such as a reconstruction, a search of CH’s home, two suspect identity parades and a search of CH. Evidence was gathered during those investigative acts.
- 21 On 17 December 2022, the public prosecutor’s office ordered CH to be charged with robbery with violence. Consequently, a member of the Sofia Bar (Bulgaria) was officially assigned as CH’s lawyer on the same day. Furthermore, CH and his lawyer were informed of the charge.
- 22 Subsequently, the Sofiyski rayonen sad (Sofia District Court, Bulgaria), which is the referring court in the present case, granted, by order of 19 December 2022, the application made by the public prosecutor to order that CH be remanded in custody.
- 23 By order of 13 June 2023, that court dismissed CH’s application for amendment of that restraint measure.
- 24 On 26 July 2023, the public prosecutor’s office ordered that CH also be charged with another robbery committed with violence.
- 25 Following a subsequent application by CH seeking an examination of the question of the appropriate restraint measure, the Sofiyski rayonen sad (Sofia District Court) decided, by order of 18 August 2023, to apply a more lenient measure, namely the obligation for CH periodically to sign a register kept by the police authorities of his place of residence.

- 26 That court held, in that regard, that CH's right to be defended by a lawyer, enshrined in Article 30(4) of the Bulgarian Constitution, arose at the time of his detention. However, the exercise of that right was not guaranteed by the law enforcement authorities. Despite the statement completed by CH following his arrest, it is impossible to conclude beyond doubt that CH made a voluntary and conscious choice. In those circumstances, none of the investigative acts carried out after CH's arrest and before he was charged could be used in the assessment of CH's criminal liability.
- 27 By order of 7 September 2023, the Sofiyski gradski sad (Sofia City Court, Bulgaria) set aside the order of the Sofiyski rayonen sad (Sofia District Court) of 18 August 2023 and upheld the pre-trial detention order imposed on CH.
- 28 On 2 October 2023, the referring court again ruled on the question of the restraint measure and amended it to require CH periodically to sign a register kept by the police authorities of his place of residence. By order of 7 November 2023, following an appeal brought by the public prosecutor's office, the Sofiyski gradski sad (Sofia City Court) annulled the measure adopted on 2 October 2023 and upheld the pre-trial detention order made against CH.
- 29 The referring court states that the subject matter of the proceedings pending before it is the examination of CH's involvement in the offence for which he has been charged and that it is called upon, in its final decision, to rule on whether or not CH is guilty.
- 30 In that regard, it is important to ascertain whether, in the present case, the authorities responsible for the investigation procedure guaranteed CH the right of access to a lawyer when he was arrested and before he was charged. Since that right derives from Directive 2013/48, the referring court refers, in the first place, to Article 12(2) of that directive, from which it is apparent that, in criminal proceedings, the rights of the defence and the fairness of the proceedings must be respected when assessing statements made by suspects or accused persons or evidence obtained in breach of their right to a lawyer.
- 31 According to the referring court, that provision applies not only when adopting a final decision on the guilt of the accused person, but also when determining the restraint measure that must be imposed on that person. In its order of 7 September 2023, the Sofiyski gradski sad (Sofia City Court) ruled out the possibility for the referring court to assess whether, in the present case, evidence had been obtained in breach of CH's right of access to a lawyer.
- 32 In those circumstances, the referring court raises the question, first of all, of the compatibility with Article 12(2) of Directive 2013/48 of national legislation and case-law according to which the court which examines the extent to which the accused person is involved in the criminal offence of which he or she is accused, in order to make or enforce the appropriate restraint measure, is deprived of the possibility of assessing whether the evidence gathered was in breach of the right of that accused to be assisted by a lawyer.
- 33 Next, in order to determine whether the position taken by the Sofiyski gradski sad (Sofia City Court) is well founded, the referring court asks whether the requirement to respect the rights of the defence and the fairness of the proceedings, within the meaning of Article 12(2) of Directive 2013/48, is complied with where the court examining the appropriateness of the restraint measure uses, in forming its own view, evidence obtained in breach of the requirements laid down by that directive.

- 34 Lastly, still with regard to the order of the Sofiyski gradski sad (Sofia City Court) of 7 September 2023, the referring court adds that, given that it is criticised in that order for a lack of objectivity, the question arises as to whether the exclusion of evidence obtained in breach of Directive 2013/48 by the court examining the question of the appropriateness of the restraint measure, despite the instructions to the contrary given by the higher court, has a negative impact on the requirements of procedural fairness and raises doubts as to the impartiality of that court.
- 35 In the second place, the referring court explains that, in its order of 7 November 2023, the Sofiyski gradski sad (Sofia City Court) held that, in the light of the particular circumstances of the case, Article 3(6)(b) of Directive 2013/48, which provides for the possibility of a temporary derogation from the right of access to a lawyer in exceptional circumstances, is applicable. The referring court states that, in its view, that provision was not expressly implemented in Bulgarian legislation because it is manifestly incompatible with Article 30(4) of the Bulgarian Constitution, which provides that the right to be defended by a lawyer arises from the moment a person is detained or charged. Thus, the question arises as to whether Article 3(6)(b) has direct effect.
- 36 In the third place, the referring court observes that, in its order of 7 September 2023, the Sofiyski gradski sad (Sofia City Court) stated that, even if CH had not been assisted by a lawyer at the time of his arrest, the acts carried out with or without his participation up to the time when he was charged would not appear to be unlawful and would not lose their probative value. In that context, the referring court asks whether the safeguards provided for in Article 9(1)(a) and (b) of Directive 2013/48, read in conjunction with recital 39 of that directive, are complied with in the event of a written waiver by an illiterate suspect of his right to be assisted by a lawyer, where the consequences of such a waiver have not been explained to him, and who then claims that he was not informed of the content of the document which he signed at the time of his arrest.
- 37 In the fourth and last place, the referring court states that, under the national legislation as interpreted by the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), the initial waiver of the right to be defended by a lawyer, declared by an arrested person, also extends to all other investigative acts involving that person before he or she is charged. Thus, in the present case, the investigating authorities carried out several investigative acts with CH's participation after his arrest, but in the absence of a lawyer. In that context, it is important to ascertain whether the waiver by a suspect, at the time of his or her arrest, of his or her right to be defended by a lawyer precludes the obligation of those authorities to explain to the suspect the right of access to a lawyer and the consequences of any waiver immediately before carrying out any subsequent investigative act involving the participation of that suspect.
- 38 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice 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], compatible with Article 12(2) of that directive, read in conjunction with the first paragraph of Article 47 of the [Charter]?’

- (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 forming its own view, 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 [the first and second paragraphs of Article 47] 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 at the time of his or her detention, exempt the authorities from the obligation to inform him or her, immediately prior to performing each subsequent investigative act with his or her participation, of the right of access to a lawyer and of the possible consequences of waiving that right?

The request that the reference be dealt with under the urgent preliminary ruling procedure

- 39 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.
- 40 In support of that request, that court states that CH has been remanded in custody since 16 December 2022.
- 41 In that regard, it must be observed, in the first place, that this reference for a preliminary ruling concerns the interpretation of Directive 2013/48, which comes under Title V of Part Three of the FEU Treaty, which relates to the area of freedom, security and justice. Consequently, this reference can be dealt with under the urgent preliminary ruling procedure.

- 42 In the second place, as regards the condition relating to urgency, that condition is satisfied, in particular, where the person concerned in the main proceedings is currently deprived of his or her liberty and when his or her continued detention turns on the outcome of the dispute in the main proceedings, it being specified that the situation of the person concerned must be assessed as it stood at the time when consideration was given to whether the reference for a preliminary ruling should be dealt with under the urgent procedure (judgment of 8 December 2022, *CJ (Decision to postpone surrender due to criminal prosecution)*, C-492/22 PPU, EU:C:2022:964, paragraph 46 and the case-law cited).
- 43 In the present case, it is apparent from the description of the facts provided by the referring court that CH has in fact been deprived of his liberty since 19 December 2022 and that he was in that condition at the time of the examination of the request for a preliminary ruling to be dealt with under the urgent procedure.
- 44 In addition, the questions raised by the referring court seek to determine, inter alia, whether the requirements laid down in Directive 2013/48 were complied with when CH waived, after his arrest, his right of access to a lawyer, which, depending on the interpretation of that directive, is liable to have an impact both on the restraint measure imposed on CH and on the decision as to his criminal liability and, consequently, as to his continued detention.
- 45 In those circumstances, on 25 January 2024, the First Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

The fourth question

- 46 By its fourth question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 3(6)(b) of Directive 2013/48 must be interpreted as meaning that, where that provision has not been transposed into the national legal order, the police authorities of the Member State concerned may rely on that provision in relation to a suspect or accused person in order to derogate from the application of the right of access to a lawyer provided for by that directive.
- 47 In order to answer that question, it must be recalled that Article 3(1) of Directive 2013/48 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 enable them to exercise their rights of defence practically and effectively (judgment of 15 September 2022, *DD (Re-examination of a witness)*, C-347/21, EU:C:2022:692, paragraph 40 and the case-law cited).
- 48 That principle is embodied in Article 3(2) of that directive, under which 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. In addition, Article 3(3) of that directive specifies, in points (a) to (c), the elements which the right of access to a lawyer includes.

- 49 The temporary derogations which Member States may provide for the right of access to a lawyer are listed exhaustively in Article 3(5) and (6) of Directive 2013/48 (judgment of 12 March 2020, *VW (Right of access to a lawyer in the event of non-appearance)*, C-659/18, EU:C:2020:201, paragraph 42).
- 50 Thus, according to Article 3(6)(b) of that directive, the provision referred to by the referring court, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 of that article, in so far as that is justified, in the light of the particular circumstances of the case, ‘where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings’.
- 51 As regards the question whether, in the absence of transposition of Article 3(6)(b) of Directive 2013/48 into the national legal order, the police authorities of the Member State concerned may rely on that provision against a suspect or accused person, it is settled case-law that, whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against a Member State where that State has failed to implement the directive in national law by the end of the period prescribed, or where it has failed to implement the directive correctly (judgment of 20 April 2023, *Autorità Garante della Concorrenza e del Mercato (Municipality of Ginosa)*, C-348/22, EU:C:2023:301, paragraph 62 and the case-law cited). By contrast, a directive cannot, of itself, impose obligations on an individual and cannot therefore be relied on as such against an individual (judgment of 3 May 2005, *Berlusconi and Others*, C-387/02, C-391/02 and C-403/02, EU:C:2005:270, paragraph 73 and the case-law cited).
- 52 In the present case, it is sufficient to note that Article 3(6)(b) of Directive 2013/48 does not establish a right that may be relied on by an individual against a Member State, but, rather, allows Member States to provide for a derogation from the application of the right of access to a lawyer in exceptional circumstances. Consequently, in accordance with the case-law referred to in paragraph 51 above, a public authority cannot, in the absence of transposition of that provision, rely on it against a suspect or accused person.
- 53 In the light of all the foregoing considerations, the answer to the fourth question is that Article 3(6)(b) of Directive 2013/48 must be interpreted as meaning that, where that provision has not been transposed into the national legal order, the police authorities of the Member State concerned cannot rely on that provision in relation to a suspect or accused person in order to derogate from the application of the right of access to a lawyer, which is laid down in a clear, precise and unconditional manner by that directive.

The fifth question

- 54 By its fifth question, which it is appropriate to examine in the second place, the referring court asks, in essence, whether Article 9(1) of Directive 2013/48, read in the light of recital 39 of that directive, must be interpreted as meaning that the requirements laid down by that provision for the waiving of the right of access to a lawyer are met in the case of a written waiver of that right of an illiterate suspect, to whom the possible consequences of that waiver have not been explained, and who claims that he was not informed of the content of the document which he signed at the time of his arrest.
- 55 Article 9(1) of Directive 2013/48 lays down two conditions for waiving the right of access to a lawyer in criminal proceedings.

- 56 Thus, under Article 9(1)(a), the suspect or accused person must have been provided with information about the content of the right of access to a lawyer and the possible consequences of waiving that right, it being specified that that information, which may be provided orally or in writing, must be clear and sufficient and communicated in simple and understandable language. In addition, in accordance with Article 9(1)(b), the waiver must be given voluntarily and unequivocally.
- 57 Recital 39 of Directive 2013/48 states, in that regard, that when providing such information, the specific conditions of the suspects or accused persons concerned must be taken into account, including their age and their mental and physical condition. Thus, by requiring that those specific conditions be taken into account, that directive seeks to ensure that the decision to waive the right of access to a lawyer is taken in full knowledge of the facts.
- 58 In that context, Article 13 of Directive 2013/48 provides that the particular needs of vulnerable suspects and vulnerable accused persons must be taken into account in the application of the directive, recital 51 thereof referring, in that regard, to ‘suspects or accused persons who are in a potentially weak position’ and to ‘any potential vulnerability that affects their ability to exercise the right of access to a lawyer’.
- 59 In the present case, first, the referring court states that the defendant in the criminal proceedings at issue in the main proceedings is illiterate.
- 60 As the European Commission observed in its written observations, a suspect or accused person such as the defendant in the main proceedings must, on account of his illiteracy, be regarded as a vulnerable person within the meaning of Article 13 of Directive 2013/48.
- 61 However, neither Article 9(1) of that directive nor Article 13 thereof supports the conclusion that the fact that the suspect or accused person is illiterate in itself precludes that person’s ability validly to declare that he or she waives the right of access to a lawyer. On the other hand, that fact must be duly taken into account in the context of such a waiver.
- 62 Secondly, the referring court is uncertain as to the relevance of the fact that, when the defendant waived the right of access to a lawyer, the possible consequences of such a waiver were not brought to his attention.
- 63 In that regard, it suffices to note that, as has been recalled in paragraph 56 of the present judgment, Article 9(1)(a) of Directive 2013/48 expressly requires that the suspect or accused person has been provided with information on the possible consequences of waiving the right of access to a lawyer.
- 64 Accordingly, if it were to be found that an accused person such as the one in the criminal proceedings at issue in the main proceedings did not receive, at the time of the declaration waiving his right of access to a lawyer, clear and sufficient information, in simple and understandable language, having regard to his condition as a vulnerable person, on the content of that right and on the possible consequences of waiving it, which it is for the referring court to ascertain, that waiver cannot be regarded as complying with the requirements laid down in Article 9(1) of Directive 2013/48.

- 65 Thirdly, the referring court emphasises the fact that, in the present case, the defendant in the criminal proceedings at issue in the main proceedings states that he was not informed of the content of the document which he signed at the time of his arrest.
- 66 Since that aspect relates to the recording of the waiver, it should be noted that Article 9(2) of Directive 2013/48, read in the light of recital 40 thereto, provides that the statement of waiver, which may be made in writing or orally, and the circumstances in which it was made, are to be noted using the recording procedure in accordance with the law of the Member State concerned.
- 67 Whilst Article 9(2) refers to national procedural law as regards the manner in which the waiver of the right of access to a lawyer is recorded, the documentation referred to in that provision must, however, necessarily make it possible to verify that the requirements laid down in Article 9(1) have been complied with.
- 68 The referring court states that, in accordance with national law, the statement of waiver includes the requirement that, where a person in custody is illiterate or is unable to complete that statement himself or herself, the statement must be completed by an officer, with declarations of intent having to be made by that person himself or herself in the presence of a witness attesting to their veracity by signing them. In the present case, the signatures of a police authority and a witness were not affixed.
- 69 In that regard, if it were to be confirmed that the defendant's waiver of the right of access to a lawyer in the criminal proceedings at issue in the main proceedings was recorded in breach of national procedural law, which it is for the referring court to ascertain, the fact that an accused person signed a document attesting to his alleged waiver of the right of access to a lawyer cannot, in itself, demonstrate that he waived that right in full compliance with the requirements laid down in Article 9(1) of Directive 2013/48.
- 70 Having regard to all the foregoing considerations, the answer to the fifth question is that Article 9(1) and (2) of Directive 2013/48 must be interpreted as meaning that the statement of waiver of the right of access to a lawyer by an illiterate suspect cannot be regarded as complying with the requirements laid down in Article 9(1) of that directive, where that suspect has not been informed, in a manner which takes due account of his or her particular circumstances, of the possible consequences of such a waiver and where that waiver has not been recorded in accordance with national procedural law, in such a way as to enable compliance with those requirements to be verified.

The sixth question

- 71 By its sixth question, which it is appropriate to examine in the third place, the referring court asks, in essence, whether Article 9(3) of Directive 2013/48 must be interpreted as meaning that, following the waiver by a suspect of his or her right of access to a lawyer, the police are still required to inform that suspect, immediately before carrying out any subsequent investigative acts involving his or her participation, of his or her right of access to a lawyer and of the possible consequences of waiving that right.

- 72 As a preliminary point, it should be recalled that, according to the Court's settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 2 December 2021, *Vodafone Kabel Deutschland*, C-484/20, EU:C:2021:975, paragraph 19 and the case-law cited).
- 73 In that regard, first, under Article 9(3) of Directive 2013/48, Member States shall ensure that suspects or accused persons may revoke a waiver subsequently at any point during the criminal proceedings, and that they are informed of that possibility.
- 74 It may be inferred from the wording of Article 9(3) that a waiver of the right of access to a lawyer which complies with the requirements laid down by Directive 2013/48 produces its effects until it is revoked, without it being necessary to repeat it for each subsequent investigative act.
- 75 However, in so far as Article 9(3) of Directive 2013/48 requires that suspects or accused persons be informed of the possibility of revoking a waiver at any stage of the criminal proceedings, that provision does not specify whether that requirement is met where the person concerned has been informed only once of that possibility, or whether that information must, on the contrary, be provided at each subsequent stage of those proceedings, or even before any subsequent investigative act.
- 76 Secondly, as regards the context, account must be taken of Article 13 of Directive 2013/48, which requires, as recalled in paragraph 58 above, that the particular needs of vulnerable suspects and vulnerable accused persons be taken into account in the application of that directive. As the Commission points out in its written observations, the complexity of the rules of criminal procedure and in particular the arrangements for gathering and using evidence, limits the ability of the vulnerable suspect or vulnerable accused person to understand it fully and/or to react in a timely and appropriate manner.
- 77 Thirdly, it is necessary to take into account the purpose of Directive 2013/48, which is to promote, inter alia, the right to be advised, defended and represented laid down in the second paragraph of Article 47 of the Charter and the rights of the defence guaranteed in Article 48(2) thereof (judgment of 12 March 2020, *VW (Right of access to a lawyer in the event of non-appearance)*, C-659/18, EU:C:2020:201, paragraph 44 and the case-law cited).
- 78 In the light of those considerations, the information requirement laid down in Article 9(3) of Directive 2013/48 means that, in any event, if the person heard by the police or by another law enforcement or judicial authority is in a position of vulnerability, those authorities are required to remind that person of the possibility of revoking his or her statement of waiver of his or her right of access to a lawyer before any investigative act is carried out during which, on account of the intensity and importance of that investigative act, the absence of a lawyer is liable particularly to harm the interests and rights of the person concerned, such as during questioning, an identity parade, a confrontation or a reconstruction of the scene of a crime, as referred to in Article 3(3)(b) and (c) of that directive respectively.
- 79 That interpretation is supported by recital 20 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 (OJ 2012 L 142, p. 1), which states that 'once the information about a particular right has been provided, the competent authorities should not be required to reiterate it, unless the specific circumstances of the case ... so require.'

- 80 In the light of all the foregoing considerations, the answer to the sixth question is that Article 9(3) of Directive 2013/48 must be interpreted as meaning that, in the event of a vulnerable person waiving the right of access to a lawyer, within the meaning of Article 13 of that directive, that person must be informed of the possibility of revoking that waiver before any subsequent investigative act is carried out during which, taking into account the intensity and importance of that investigative act, the absence of a lawyer is liable particularly to harm the interests and rights of that person.

The first to third questions

- 81 By its first three questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 12(2) of Directive 2013/48, read in conjunction with the first and second paragraphs of Article 47 of the Charter, must be interpreted as precluding national legislation and case-law under which a court which examines the involvement of an accused person in a criminal offence in order to determine whether the restraint measure to be imposed on that accused person is appropriate, is deprived of the possibility, when adopting a decision on the continued detention of that accused person, of assessing whether evidence has been obtained in breach of the requirements of that directive and, where appropriate, of disregarding such evidence.

Admissibility

- 82 As regards the admissibility of those questions, it should be borne in mind that it is solely for the national court before which the dispute in the main proceedings has been brought to assess the need for a preliminary ruling and the relevance of the questions which it submits to the Court, which enjoy a presumption of relevance. Thus, the Court is, in principle, bound to give a ruling where the question submitted concerns the interpretation or the validity of a rule of EU law, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to that question (judgment of 22 February 2024, *Unedic*, C-125/23, EU:C:2024:163, paragraph 35 and the case-law cited).
- 83 In the present case, criminal proceedings against CH, who is currently remanded in custody, are pending before the referring court. It is common ground that that court has jurisdiction to rule on the restraint measure applied to CH and that it considers that it is for it to examine that measure both at the preliminary hearing and at the current stage of those criminal proceedings.
- 84 In those circumstances, the interpretation of Directive 2013/48 sought by the first to third questions is connected with the main proceedings and cannot be regarded as hypothetical.
- 85 It follows that the first to third questions are admissible.

Substance

- 86 As EU law currently stands, it is, in principle, for national law alone to determine the rules relating to the admissibility and assessment, in the context of criminal proceedings, of information and evidence obtained in a manner contrary to EU law (judgment of 30 April 2024, *M.N. (EncroChat)*, C-670/22, EU:C:2024:372, paragraph 128 and the case-law cited).

- 87 Furthermore, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish, in accordance with the principle of procedural autonomy, procedural rules for actions intended to safeguard the rights that individuals derive from EU law, provided, however, that those rules are no less favourable than the rules governing similar domestic actions (the principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (the principle of effectiveness) (judgment of 30 April 2024, *M.N. (EncroChat)*, C-670/22, EU:C:2024:372, paragraph 129 and the case-law cited).
- 88 That said, as regards the requirements stemming from the principle of effectiveness, the Court has already held that in deciding whether to exclude information and evidence obtained in contravention of the requirements of EU law, regard must be had, in particular, to the risk of breach of the adversarial principle and, therefore, of the right to a fair trial entailed by the admissibility of such information and evidence (judgment of 2 March 2021, *Prokuratuur (Conditions of access to data relating to electronic communications)*, C-746/18, EU:C:2021:152, paragraph 44).
- 89 In addition, Article 12(2) of Directive 2013/48, read in the light of recital 50 thereof, expressly requires Member States to ensure, without prejudice to national rules and systems on the admissibility of evidence, that, in criminal proceedings, in the assessment of statements made by suspects or accused 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.
- 90 In that regard, it should be noted, first, that in accordance with the last subparagraph of Article 2(4) of Directive 2013/48, that directive is to fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings. Article 12(2) of that directive is therefore applicable when a court is called upon to rule on the restraint measure of an accused person.
- 91 Secondly, as stated in recitals 52 and 53 of Directive 2013/48, Article 12(2) of that directive must be interpreted in the light of the Charter, in particular in the light of the right to liberty and security, the right to be advised, defended and represented and the rights of the defence and to a fair trial, guaranteed respectively in Article 6, the second paragraph of Article 47 and Article 48(2) of the Charter, and also in the light of the corresponding rights guaranteed in particular in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (see, by analogy, judgment of 1 August 2022, *TL (Absence of an interpreter and of translation)*, C-242/22 PPU, EU:C:2022:611, paragraph 40).
- 92 It follows, in the first place, that Article 12(2) of Directive 2013/48 lays down the requirement that the court examining whether the restraint measure of an accused person is appropriate must be able to assess, when deciding if the accused person should continue to be held in custody, whether evidence was obtained in breach of the requirements of that directive.
- 93 In the present case, the referring court states that the court hearing the restraint measure has, in principle, the possibility of examining whether the rights arising under Directive 2013/48 have been respected, but that, under the national case-law, the possibility of assessing whether evidence has been obtained in breach of the requirements of that directive is denied.
- 94 In the light of what has been stated in paragraph 92 above, Article 12(2) of Directive 2013/48 precludes such national case-law.

- 95 In the second place, as regards the inferences which the court seised must draw, when examining a restraint measure of an accused person, from the fact that evidence has been gathered in disregard of the requirements of Directive 2013/48, it should be noted that, first, there is nothing in that directive which obliges the court automatically to disregard all that evidence.
- 96 Secondly, in accordance with the case-law of the European Court of Human Rights, which, as stated in recitals 50 and 53 of Directive 2013/48, must be taken into account where a procedural defect has been identified, it is for the national courts to assess whether that procedural shortcoming has been remedied in the course of the ensuing proceedings (ECtHR, 28 January 2020, *Mehmet Zeki Çelebi v. Türkiye*, CE:ECHR:2020:0128JUD002758207, § 51).
- 97 Thus, in the event that evidence has been collected in disregard of the requirements of that directive, it must be determined whether, despite that lacuna, at the time of the decision to be taken by the court hearing the case, the criminal proceedings as a whole may be regarded as fair, taking into account a number of factors, including whether the statements taken in the absence of a lawyer are an integral or significant part of the probative evidence, as well as the strength of the other evidence in the file (see, by analogy, ECtHR, 13 September 2016, *Ibrahim and Others v. the United Kingdom*, CE:ECHR:2016:0913JUD005054108, § 273 and 274).
- 98 In any event, the obligation, arising from Article 12(2) of Directive 2013/48, to ensure that the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained in breach of the right to a lawyer, means that evidence on which a party is not in a position to comment effectively must be excluded from the criminal proceedings (see, by analogy, as regards Article 14(7) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1), judgment of 30 April 2024, *M.N. (EncroChat)*, C-670/22, EU:C:2024:372, paragraph 130).
- 99 In the light of all the foregoing considerations, the answer to the first to third questions is that Article 12(2) of Directive 2013/48, read in conjunction with the first and second paragraphs of Article 47 of the Charter, must be interpreted as precluding national case-law under which a court which examines the involvement of an accused person in a criminal offence in order to determine whether the restraint measure to be imposed on that accused person is appropriate, is deprived of the possibility, when adopting a decision on the continued detention of that accused person, of assessing whether evidence has been obtained in breach of the requirements of that directive and, where appropriate, of disregarding such evidence.

Costs

- 100 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 (First Chamber) hereby rules:

1. **Article 3(6)(b) 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,**

must be interpreted as meaning that where that provision has not been transposed into the national legal order, the police authorities of the Member State concerned cannot rely on that provision in relation to a suspect or accused person in order to derogate from the application of the right of access to a lawyer, which is laid down in a clear, precise and unconditional manner by that directive.

2. **Article 9(1) and (2) of Directive 2013/48**

must be interpreted as meaning that the statement of waiver of the right of access to a lawyer by an illiterate suspect cannot be regarded as complying with the requirements laid down in Article 9(1) of that directive, where that suspect has not been informed, in a manner which takes due account of his or her particular circumstances, of the possible consequences of such a waiver and where that waiver has not been recorded in accordance with national procedural law, in such a way as to enable compliance with those requirements to be verified.

3. **Article 9(3) of Directive 2013/48**

must be interpreted as meaning that in the event of a vulnerable person waiving the right of access to a lawyer, within the meaning of Article 13 of that directive, that person must be informed of the possibility of revoking that waiver before any subsequent investigative act is carried out during which, taking into account the intensity and importance of that investigative act, the absence of a lawyer is liable particularly to harm the interests and rights of that person.

4. **Article 12(2) of Directive 2013/48, read in conjunction with the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union**

must be interpreted as precluding national case-law under which a court which examines the involvement of an accused person in a criminal offence in order to determine whether the restraint measure to be imposed on that accused person is appropriate, is deprived of the possibility, when adopting a decision on the continued detention of that accused person, of assessing whether evidence has been obtained in breach of the requirements of that directive and, where appropriate, of disregarding such evidence.

[Signatures]