

Access to Lawyer despite Absence of Investigating Judge



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News

The CJEU ruled that Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings must be interpreted in the light of Art. 47 of the EU Charter of Fundamental Rights (CFR) as meaning that the right cannot be delayed to the suspected or accused person for failing to appear before the investigating judge at the pre-trial stage of criminal proceedings. The case is referred to a C-659/18, “VW”.

The Spanish case in the main proceedings concerned a person suspected of driving without a driving licence and of falsifying documents. The person, despite being summoned to appear before the investigating judge (Juzgado de Instrucción), did not appear, even though an arrest warrant had been issued for him. After the arrest warrant had been issued, a lawyer sent, a letter by fax in which she stated that she was entering an appearance in the proceedings on behalf of the suspect, together with signed authority to act and consent to let her take on the case. Since the suspect did not appear when first summoned and was subject to an arrest warrant, access to legal assistance was to be suspended, in accordance with Spanish law, until such time as the warrant for his arrest had been executed. The referring court asked whether such legislation – backed by national case law – is in line with Union law.

The CJEU ruled that this provision was unlawful. Accordingly, derogations from the rights of Directive 2013/48 are only permissible under the exceptions set out in Art. 3 of the Directive. These exceptions must be interpreted strictly. If there were further exceptions, this would be contrary to the aims and the scheme of the Directive and its wording, and the law would be deprived of its *effet utile*. This interpretation is also consistent with the fundamental right to effective judicial protection deriving from Art. 47 CFR.

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