

ECJ Ruled on the Rights of Vulnerable Persons in Criminal Proceedings



News

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On 8 May 2025, the ECJ handed down a [ruling](#) on the scope of the rights of access to a lawyer and a vulnerable person's right to legal aid in line with Directive 2013/48 and Directive 2016/1919 ([Case C-530/23, Barafo](#)).

The referred questions were raised in respect of the treatment of a defendant in Poland who was charged with "driving a car under the influence of a drug having a similar effect to alcohol" and who suffered from psychotic mental health condition during the investigative phase of the criminal proceedings.

The ECJ clarified that, in line with Directives 2013/48 and 2016/1919, the EU Member States have the following obligations:

- To ensure that the vulnerability of an accused person or of a suspect is ascertained and acknowledged before that person or suspect is questioned in the context of criminal proceedings or before specific investigative or evidence-gathering measures have been carried out in relation to that person or suspect;
- To ensure that such persons or suspects have access to a lawyer under legal aid for the purposes of those proceedings without undue delay and, at the latest, before questioning by the police or by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering act in respect of which that person or suspect is required or permitted to attend is carried out;
- To reason decisions concerning, first, the assessment of the potential vulnerability of a suspect or an accused person and, second, the refusal to grant legal aid to a vulnerable person and the choice to question that person in the absence of the lawyer; these decisions must be the subject of an effective remedy.

By contrast to the Advocate General's opinion, the ECJ held, however, that the EU Directives do not preclude national legislation which, in criminal proceedings, do not allow for a court to declare inadmissible incriminating evidence contained in statements made by a vulnerable person during questioning by the police, by another law enforcement authority or by a judicial authority in breach of the rights laid down by Directive 2013/48 or 2016/1919. But this is under the condition that, in criminal proceedings, the adjudicating court is in a position, first, to verify that those rights, read in the light of Art. 47 and Art. 48(2) of the EU Charter of Fundamental Rights, have been respected and, second, to draw all the inferences from that breach, in particular as regards the probative value of the evidence obtained in those circumstances.

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Published in
2025, Vol. 20(1) eucrim
ISSN: 1862-6947
<https://eucrim.eu>



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