

ECJ Ruled on Waiver of Right to Legal Representation



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Anna Pingen

News

On 14 May 2024, the Court of Justice of the European Union (ECJ) issued a [ruling](#) clarifying the interpretation and application of [Directive 2013/48/EU](#), which deals with the right of access to a lawyer in criminal proceedings.

The case ([C-15/24 PPU](#), *Stachev*) concerned a Bulgarian national, CH, who had been arrested and accused of committing violent robberies. Upon his arrest, CH signed a statement waiving his right to a lawyer, despite being illiterate and not fully informed about the consequences of this waiver. During subsequent police interrogations and investigative actions, CH did not have legal representation, which raised concerns about the fairness of the proceedings.

The Sofia District Court posed several questions to the ECJ on the compatibility of the waiver of the right of access to a lawyer with the Directive and the consequences of the waiver. The ECJ addressed these issues as follows:

- *Non-transposition of directive provisions:* The ECJ ruled that national authorities cannot rely on Art. 3(6)(b) of Directive 2013/48/EU, which allows for temporary derogation from the right to a lawyer in exceptional circumstances, if that provision has not been properly transposed into national law. In this case, the Bulgarian authorities could not invoke this derogation because it was not part of Bulgarian law.
- *Validity of the waiver:* The ECJ found that CH's waiver of his right to a lawyer was invalid. For a waiver to be valid under Art. 9(1) of Directive 2013/48, the suspect must be fully informed, in clear and understandable language, about the content of the legal right and the possible consequences of waiving it. Additionally, the waiver must be documented properly. In CH's case, these conditions had not been met, particularly because of his illiteracy and the lack of an adequate explanation of the consequences.
- *Requirement to re-inform:* The ECJ also held that if a vulnerable person, such as CH, waives their right to a lawyer, authorities must remind them of the possibility to revoke this waiver before each significant investigative act, particularly those that could have a substantial impact on the person's rights and interests.
- *Assessment of evidence:* The ECJ emphasised that national courts must have the ability to assess whether evidence obtained in violation of the right to a lawyer was used in the proceedings. Specifically, when a court is deciding on the appropriateness of a pre-trial detention measure, it must consider whether any evidence was obtained in breach of Directive 2013/48/EU. If such evidence was obtained, the court must ensure that the fairness of the proceedings is not compromised. The ECJ ruled that

AUTHOR

Anna Pingen 

Researcher

Max Planck Institute for the Study of Crime, Security and Law

Published in
2024, Vol. 19(2) [eucri](#)m
ISSN: 1862-6947



national case law preventing courts from excluding evidence obtained in violation of the Directive is incompatible with EU law.

In conclusion, the ECJ underscored the importance of ensuring that suspects' rights are fully protected, particularly in cases involving vulnerable individuals, and that any procedural breaches are appropriately addressed in order to maintain the fairness of criminal proceedings.

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



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