



## PRESS RELEASE No 36/26

Luxembourg, 12 March 2026

Advocate General's Opinions in Case C-660/24 and Case C-681/24 | Commission v Hungary and Commission v Czech Republic (Time limit imposed on the right of access to a lawyer)

### **Advocate General Ćapeta: by generally allowing suspects to be questioned without a lawyer if the lawyer does not appear within a certain time period, Hungary and the Czech Republic infringed EU law**

The Directive on the right of access to a lawyer in criminal proceedings<sup>1</sup> establishes the right for suspects or accused persons to have access to a lawyer at all stages of criminal proceedings, including when they are questioned by the authorities.

In these infringement proceedings, the Commission claims that Hungary and the Czech Republic have breached their obligations under the Directive because their legislation generally allows suspects or accused persons to be questioned by the authorities without the presence of their lawyer, if the lawyer does not appear within a certain time period.<sup>2</sup> Hungary and the Czech Republic consider, however, the right of access to a lawyer in the Directive is met when those persons are given the opportunity to have the presence of a lawyer. For that reason, the possibility to carry out questioning if the lawyer does not appear within a certain time period is not a derogation from that right.

The Commission also complains that no provision of Hungarian law implements the Directive's specific requirements for waiving the right of access to a lawyer which requires that a suspect or accused person be informed of the consequences of a waiver. Hungary, however, asserts that the right of access to a lawyer cannot be waived under its legal system, which is why it considers that it is not necessary to implement those requirements.

#### **In her Opinions delivered today, Advocate General Tamara Ćapeta takes the view that Hungary and the Czech Republic have failed to fulfil their obligations under EU law.**

The Advocate General considers that the Directive provides for a general right for suspects or accused persons to have their lawyer present during questioning by the authorities, unless the right has been waived or a derogation in the Directive applies. Therefore, the Hungarian and Czech legislation, which on a general basis allows those persons to be questioned without the presence of their lawyer simply because the lawyer has not been able to appear within the specified period, is contrary to the Directive.

In responding to the parties' arguments, the Advocate General emphasises that such an interpretation is in line with the wording and context of the Directive, and that a contrary interpretation would undermine its objectives to ensure a common level of fair trial rights throughout the European Union.

The Advocate General further considers that, as it is permitted in Hungarian law that suspects or accused persons may choose not to exercise the right of access to a lawyer, this essentially has the same practical result as a waiver and the fact that a legal concept may not be formally recognised in Hungary does not excuse that Member State from its obligation to sufficiently and fully implement the provisions of the Directive.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to

propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The full text of the Opinions ([C-660/24](#) and [C-681/24](#)) is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the Opinion are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> Directive [2013/48/EU](#) of the European Parliament and of the Council 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 (the directive)-

<sup>2</sup> The relevant time period is at least 2 hours in the case of Hungary and 48 hours in the case of the Czech Republic.