



Judgments of the Court

in Cases C-660/24 | Commission v Hungary and C-681/24 | Commission v Czech Republic (Prescribed period for access to a lawyer)

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Failure of a Member State to fulfil obligations: by allowing, as a general rule, suspects or persons under reasonable suspicion of having committed a criminal offence to be questioned without a lawyer if that lawyer does not attend within a certain period, Hungary and the Czech Republic have infringed EU law

The national legislation of those two Member States cannot be justified by the grounds exhaustively laid down in EU law that permit a temporary derogation from the right of access to a lawyer

The directive on the right of access to a lawyer in criminal proceedings ¹ provides that suspects and accused persons are to 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.

In the sets of proceedings for failure to fulfil obligations brought against Hungary and the Czech Republic, the European Commission complains that they have failed to comply with their obligations under that directive. Their respective legislation makes it possible, in a general manner, to question suspects and persons under reasonable suspicion of having committed a criminal offence in the absence of their lawyer, where that lawyer does not attend within the period laid down in national legislation. In Hungary, that period is two hours after the lawyer has been informed that the person has been placed in custody. In the Czech Republic, the period is 48 hours after the suspect is taken into custody. In the latter State, questioning may also take place if it has not been possible to reach the lawyer.

The Commission also complains that Hungary has not laid down, in its national law, provisions implementing the specific requirements of the directive regarding the waiver of the right of access to a lawyer.

The Court upholds the Commission's actions in their entirety, holding that Hungary and the Czech Republic have failed to fulfil their obligations under EU law.

First of all, it recalls that **the right of access to a lawyer includes**, *inter alia*, the right for suspects or accused persons for their lawyer to be present and participate effectively when questioned. In that connection, the Court specifies that this means, in principle, that **the lawyer is physically present**.

The Court goes on to state that the directive on the right of access to a lawyer in criminal proceedings seeks to further the mutual trust of Member States in their criminal justice systems, necessary for the mutual recognition of criminal decisions, *inter alia*, by safeguarding the rights of suspects and accused persons, and to ensure a common level of fair trial rights throughout the European Union. For those reasons, **the directive lists exhaustively the grounds on which a temporary derogation from the right of access to a lawyer is permitted**. However, the two sets of national legislation at issue **allow, in a general manner and without being validly based on those grounds for derogation, suspects or persons under reasonable suspicion of having committed a criminal offence to be questioned in the absence of a lawyer if that lawyer does not attend within a specific period**; moreover, the Czech legislation also allows such questioning to take place where it has not been possible to reach the lawyer.

Last, the Court states that, even though, under Hungarian law, the right of access to a lawyer is regarded as an inalienable

right, it is apparent that suspects or accused persons may decide not to exercise that right. However, such a situation may be regarded as equivalent to a 'waiver' by those persons of the right of access to a lawyer; the detailed rules for exercising such waivers are also governed by the directive on the right of access to a lawyer in criminal proceedings. By failing to transpose those rules into its national law, Hungary has also infringed the directive in that regard.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union 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 presentation of the facts and the legal context refers to the relevant period and is based on the case files.

The full text and, as the case may be, an abstract of the judgments ([C-660/24](#) and [C-681/24](#)) is published on the CURIA website on the day of delivery.

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¹ [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.