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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

8 May 2025 (*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive (EU) 2016/1919 – Legal aid – Directive 2013/48/EU – The right of access to a lawyer in criminal proceedings – Procedural safeguards for vulnerable persons – Determination of the vulnerability of those persons – No legal presumption – Direct effect – Interview of a suspect in the absence of a lawyer – Admissibility of evidence obtained in breach of procedural rights)

In Case C530/23 [Barało], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy w Włocławek (District Court, Włocławek, Poland), made by decision of 17 August 2023, received at the Court on 17 August 2023, in criminal proceedings against

K.P.,

other party to the proceedings

Prokurator Rejonowy we Włocławku,

THE COURT (Second Chamber),

composed of K. Jürimäe (Rapporteur), President of Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, M. Gavalec, Z. Csehi and F. Schalin, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Prokurator Rejonowy we Włocławku, by T. RutkowskaSzmydyńska,

– the Polish Government, by B. Majczyna, acting as Agent,

– the Czech Government, by M. Smolek, T. Suchá and J. Vláčil, acting as Agents,

– the European Commission, by J. Hottiaux and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 November 2024,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of:

– Article 6(1) to (3) and the second paragraph of Article 19(1) TEU;

– Articles 4 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter');

– Article 1(2), Article 2(1)(b), Article 4(5) and Articles 8 and 9 of Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ 2016 L 297, p. 1);

– Article 3(2)(a) to (c) and Article 3(3)(a) and (b) of 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 (OJ 2013 L 294, p. 1);

– Points 6, 7, 11 and 13 of the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (OJ 2013 C 378, p. 8) ('the Commission recommendation'); and

– the principles of primacy, effectiveness and direct effect of EU law.

2 The request has been made in the context of criminal proceedings brought against K.P. for, first, possession of illegal substances and psychotropic substances and, second, driving under the influence of drugs.

Legal context

International law

3 Points 23 and 32 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems adopted on 20 December 2012 by resolution 67/187 of the General Assembly are worded as follows:

'23. It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.

…

32. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not exclusively, … persons with mental illnesses [and] drug users …. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.'

European Union law

Directive 2013/48

4 Recitals 50 and 51 of Directive 2013/48 state:

‘(50) Member States should ensure that in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer, or in cases where a derogation from that right was authorised in accordance with this Directive, the rights of the defence and the fairness of the proceedings are respected. In this context, regard should be had to the case-law of the European Court of Human Rights, which has established that the rights of the defence will, in principle, be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction. This should be without prejudice to the use of statements for other purposes permitted under national law, such as the need to execute urgent investigative acts to avoid the perpetration of other offences or serious adverse consequences for any person or related to an urgent need to prevent substantial jeopardy to criminal proceedings where access to a lawyer or delaying the investigation would irretrievably prejudice the ongoing investigations regarding a serious crime. Further, this should be without prejudice to national rules or systems regarding admissibility of evidence, and should not prevent Member States from maintaining a system whereby all existing evidence can be adduced before a court or a judge, without there being any separate or prior assessment as to admissibility of such evidence.

(51) The duty of care towards suspects or accused persons who are in a potentially weak position underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore facilitate the effective exercise by such persons of the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to exercise the right of access to a lawyer and to have a third party informed upon deprivation of liberty, and by taking appropriate steps to ensure those rights are guaranteed.’

5 Article 2 of that directive, entitled ‘Scope’, provides, in paragraph 1:

‘This Directive applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.’

6 Article 3 of that directive, entitled ‘The right of access to a lawyer in criminal proceedings’, is worded as follows:

‘1. Member States shall ensure that suspects and accused persons 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.

2. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:

(a) before they are questioned by the police or by another law enforcement or judicial authority;

(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

3. The right of access to a lawyer shall entail the following:

(a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;

(b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;

…'

7 Article 12 of that same directive, entitled 'Remedies', states:

'1. Member States shall ensure that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive.

2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 3(6), the rights of the defence and the fairness of the proceedings are respected.'

8 Article 13 of Directive 2013/48 states:

'Member States shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.'

Directive 2016/1919

9 Recitals 1, 3, 4, 6, 17 to 19, 23 and 24 of Directive 2016/1919 state:

'(1) The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer as provided for under [Directive 2013/48] by making available the assistance of a lawyer funded by the Member States for suspects and accused persons in criminal proceedings …

…

(3) The third paragraph of Article 47 of the [Charter enshrines] the right to legal aid in criminal proceedings in accordance with the conditions laid down in [that provision]. …

(4) On 30 November 2009, the Council [of the European Union] adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings [OJ 2009 C 295, p. 1] ("the Roadmap"). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspected or accused persons who are vulnerable (measure E).

…

(6) Five measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ 2010 L 280, p. 1), Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1), Directive 2013/48, Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1) and Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ 2016 L 132, p. 1)].

…

(17) In accordance with Article 6(3)(c) [of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1959 ('the ECHR')], suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer are to have the right to legal aid when the interests of justice so require. This minimum rule allows Member States to apply a means test, a merits test, or both. The application of those tests should not limit or derogate from the rights and procedural safeguards that are ensured under the Charter and the ECHR, as interpreted by the [Court] and by the [European Court of Human Rights].

(18) Member States should lay down practical arrangements regarding the provision of legal aid. Such arrangements could determine that legal aid is granted following a request by a suspect, an accused person or a requested person. Given in particular the needs of vulnerable persons, such a request should not, however, be a substantive condition for granting legal aid.

(19) The competent authorities should grant legal aid without undue delay and at the latest before questioning of the person concerned by the police, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts referred to in this Directive are carried out. If the competent authorities are not able to do so, they should at least grant emergency or provisional legal aid before such questioning or before such investigative or evidence-gathering acts are carried out.

…

(23) When implementing this Directive, Member States should ensure respect for the fundamental right to legal aid as provided for by the Charter and by the ECHR. In doing so, they should respect the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

(24) Without prejudice to provisions of national law concerning the mandatory presence of a lawyer, a competent authority should decide, without undue delay, whether or not to grant legal aid. The competent authority should be an independent authority that is competent to take decisions regarding the granting of legal aid, or a court, including a judge sitting alone. In urgent situations the temporary involvement of the police and the prosecution should, however, also be possible in so far as this is necessary for granting legal aid in a timely manner.'

10 Article 1 of that directive, entitled 'Subject matter', states:

'1. This Directive lays down common minimum rules concerning the right to legal aid for:

(a) suspects and accused persons in criminal proceedings; …

…

2. This Directive complements Directives [2013/48] and [2016/800]. Nothing in this Directive shall be interpreted as limiting the rights provided for in those Directives.'

11 Article 2 of Directive 2016/1919, entitled 'Scope', provides, in paragraphs 1 and 2 thereof:

'1. This Directive applies to suspects and accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive [2013/48] and who are:

(a) deprived of liberty;

(b) required to be assisted by a lawyer in accordance with Union or national law; or

(c) required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a crime.

2. This Directive also applies, upon arrest in the executing Member State, to requested persons who have a right of access to a lawyer pursuant to [Directive 2013/48].'

12 Article 4 of Directive 2016/1919, entitled 'Legal aid in criminal proceedings', is worded as follows:

'1. Member States shall ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require.

2. Member States may apply a means test, a merits test, or both to determine whether legal aid is to be granted in accordance with paragraph 1.

…

5. Member States shall ensure that legal aid is granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering acts referred to in point (c) of Article 2(1) are carried out.

…'

13 Article 8 of that directive, entitled 'Remedies', states:

'Member States shall ensure that suspects, accused persons and requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.'

14 Article 9 of that directive, entitled 'Vulnerable persons', is worded as follows:

'Member States shall ensure that the particular needs of vulnerable suspects, accused persons and requested persons are taken into account in the implementation of this Directive.'

15 Article 11 of the same directive, entitled 'Non-regression', provides:

'Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.'

The Commission recommendation

16 Recitals 1, 6, 7, 11 and 13 of the Commission recommendation state:

‘(1) The aim of this Recommendation is to encourage Member States to strengthen the procedural rights of all suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities (“vulnerable persons”).

…

(6) It is essential that the vulnerability of a person suspected or accused in criminal proceedings is promptly identified and recognised. For that purpose, an initial assessment should be carried out by police officers, law enforcement or judicial authorities. The competent authorities should also be able to ask an independent expert to examine the degree of vulnerability, the needs of the vulnerable person and the appropriateness of any measures taken or envisaged against the vulnerable person.

(7) Suspects or accused persons or their lawyers should have the right to challenge, in accordance with national law, the assessment of their potential vulnerability in criminal proceedings, in particular if this would significantly impede or restrict the exercise of their fundamental rights. That right does not entail the obligation for Member States to provide for a specific appeal procedure, a separate mechanism, or a complaint procedure in which such failure or refusal may be challenged.

…

(11) Persons who are recognised as particularly vulnerable are not able to follow and understand the criminal proceedings. In order to ensure that their fair trial rights are ensured, they should not be able to waive their right to a lawyer.

…

(13) Vulnerable persons are not always able to understand the content of police interviews to which they are subject. In order to avoid any contestation of the content of an interview and thereby undue repetition of questioning, these interviews should be audio-visually recorded.’

17 Point 4 of that recommendation is set out in Section 2 thereof, entitled, ‘Identification of Vulnerable Persons’. Point 4 states:

‘Vulnerable persons should be promptly identified and recognised as such. Member States should ensure that all competent authorities may have recourse to a medical examination by an independent expert to identify vulnerable persons, and to determine the degree of their vulnerability and their specific needs. This expert may give a reasoned opinion on the appropriateness of the measures taken or envisaged against the vulnerable person.’

18 Section 3 of that recommendation, entitled ‘Rights of Vulnerable Persons’, comprises 10 parts, 4 of which are entitled ‘Non-discrimination’, ‘Presumption of vulnerability’, ‘Right of access to a lawyer’ and ‘Recording of questioning’. Point 6 of that recommendation, which is in the first of those four parts, is worded as follows:

‘The procedural rights granted to vulnerable persons should be respected throughout the criminal proceedings taking into account the nature and degree of their vulnerability.’

19 Point 7 of the Commission recommendation, which is set out in the part entitled ‘Presumption of vulnerability’, states:

‘Member States should foresee a presumption of vulnerability in particular for persons with serious psychological, intellectual, physical or sensory impairments, or mental illness or cognitive disorders, hindering them to understand and effectively participate in the proceedings.’

20 Under point 11 of that recommendation, which is set out in the part entitled ‘Right of access to a lawyer’:

‘If a vulnerable person is unable to understand and follow the proceedings, the right to access to a lawyer in accordance with [Directive 2013/48] should not be waived.’

21 Point 13 of that recommendation, which is set out in the part entitled ‘Recording of questioning’, provides:

‘Any questioning of vulnerable persons during the pre-trial investigation [stage] should be audio-visually recorded.’

Polish law

22 Under Article 6 of the ustawa – Kodeks postępowania karnego (Law on the Code of Criminal Procedure) of 6 June 1997 (Dz. U. of 2022, item 1375) (‘the CCP’), in the version applicable to the main criminal proceedings, the accused person is to have the rights of the defence, including the right to be assisted by a lawyer. That person shall be informed of that right.

23 Article 79(1) of the CCP provides that, in criminal proceedings, the accused person must be assisted by a lawyer if there is reasonable doubt as to whether his or her capacity to recognise the significance of the offence or control his or her behaviour was, at the time that offence was committed (point 3), hindered or significantly impaired and if there is reasonable doubt as to whether the state of his or her mental health allows him or her to take part in the proceedings or conduct the defence in an independent and reasonable manner (point 4). Article 79(3) of the CCP provides, moreover, that in the cases referred to in paragraph 1 of that article, the presence of a lawyer at the trial and the hearings which the accused person is required to attend is to be mandatory.

24 Under Article 168a of the CCP, evidence may not be declared inadmissible solely on the ground that it was obtained in breach of the rules of procedure or by means of an offence referred to in Article 1(1) of the Criminal Code, unless the evidence was obtained in connection with the performance of official duties by a public official, as a result of murder, intentional bodily harm or deprivation of liberty.

25 Article 300 of the CCP concerns a suspect’s right to information. On that basis, the suspect must, before he or she is first questioned, be informed of his or her right to be heard, to remain silent or to refuse to answer questions, of the content of the charges and of any amendments to them, to make requests for preliminary investigation or judicial investigation duties to be carried out, to be assisted by a lawyer, including requesting the assistance of a court-appointed lawyer in certain situations of which he or she must be informed, to acquaint himself or herself with the evidence in the definitive criminal investigation file and the rights set out in Article 301 of the CCP, and of the obligations and consequences set out in Article 74 of the CCP. The suspect must receive that information in writing and confirm that he or she received that information by signing an acknowledgement of receipt of the document containing that information.

26 Under Article 301 of the CCP, the suspect, at his or her request, is to be questioned in the presence of the appointed lawyer. The absence of the latter does not prevent questioning.

27 Under Article 344a of the CCP, the court hearing the proceedings must send the case back to the prosecutor in order to carry out further investigations where there are serious deficiencies in the case file, in particular the need to search for evidence, and where that court has significant difficulties in carrying out the necessary measures. When the court refers the case back to the prosecutor, it is to specify the direction that the further investigation is to take and, where necessary, the appropriate measures to take. The parties may bring an action against that order.

The dispute in the main proceedings and the questions referred for a preliminary ruling

28 Criminal proceedings have been brought before the Sąd Rejonowy we Włocławku (District Court, Włocławek, Poland), the referring court in the present case, against K.P..

29 According to the information provided by the referring court, the criminal proceedings were brought in the following context. On 22 July 2022, after receiving information about a collision involving two vehicles, police officers apprehended K.P.. He was outside of his vehicle, nervous and speaking in a confused and incoherent way.

30 The police officers asked him to hand over to them any item on his person that might be prohibited. K.P. took small plastic bags containing white powder and a dry, green substance out of a bag. Those substances were confiscated and subsequently identified as likely to be amphetamine and marijuana respectively.

31 After his apprehension, K.P. was arrested and taken to hospital where a blood test was carried out to determine whether he had taken drugs. He was charged with possession of a narcotic product and a psychotropic substance.

32 K.P. was informed of his right to be assisted by a lawyer of his choice and the right to be assigned a court-appointed lawyer where his economic situation did not enable him to choose one. He was also informed of his right to be heard, to remain silent and to refuse to answer questions. The record of the interview contained an annotation from a police officer that 'according to his statement, [K.P.] is of sound mind, is not receiving and has not received psychiatric, medical or neurological treatment.'

33 K.P. did not waive his right to be assisted by a lawyer but also did not request that one be contacted. There was no evidence that the police officer had examined K.P. to establish whether, during his questioning, he was under the influence of products or substances altering his understanding or ability to recall the facts, or whether he was under the influence of narcotic substances.

34 The substances in K.P.'s possession, which had been seized, and the samples of his blood taken at the hospital were subject to scientific analysis. Taking into account the concentration of amphetamine present in those samples, it was concluded that K.P., during the blood test, was 'under the influence of a drug which had a similar effect to alcohol'. On 7 August 2022, he was charged with driving a car under the influence of a drug having a similar effect to alcohol.

35 The indictment was given to him on 14 October 2022 at the psychiatric service of the hospital where he was staying. He was heard without the presence of a lawyer, as the prosecutor had not requested that a court-appointed lawyer be assigned to assist him. Nor was there any audiovisual recording of his interview.

36 Prior to that hearing, on 22 August 2022, a psychiatrist who had previously treated K.P. stated, while giving evidence, that K.P.'s psychological condition, that is to say the seriousness of the symptoms and his mental illness, did not allow him to take part in any proceedings, since that condition was likely to persist for at least several weeks. It is apparent, moreover, from K.P.'s medical files, sent to the prosecutor at his request on 23 September 2022, that K.P. had several stays in a psychiatric hospital between 30 June 2021 and 22 July 2022 for treatment of schizophrenia and schizoaffective disorders. It is also apparent that he was initially diagnosed as suffering from a mental health condition and a condition caused by the alternating use of narcotic drugs and psychoactive substances, as well as a psychotic mental health condition.

37 On 15 December 2022, the indictment initiating proceedings was brought before the referring court.

38 On 28 February 2023, that court decided, on the basis of Article 344a(1) of the CCP, to refer the case back to the public prosecutor for further investigation, so that K.P. could be questioned in the presence of a

lawyer and to obtain the opinion of psychiatric experts as to the state of K.P.'s mental health at the time of the offence and during the criminal proceedings brought against him.

39 That decision was, however, annulled by the Sąd Okręgowy we Włocławku (Regional Court, Włocławek, Poland) further to an appeal brought by the public prosecutor. The case was sent back to the referring court for continuation of the proceedings.

40 In the context of those proceedings, that court states that it found, inter alia, that no individual assessment was carried out during the investigation in order to establish whether K.P. was in a situation of vulnerability requiring the appointment of a court-appointed lawyer. Nor had it been established whether his mental health allowed him to take part in the proceedings or ensure his defence in an independent and reasonable manner.

41 The referring court concludes from those findings that K.P. was thus deprived, first, of the minimum protection to which he is entitled under Directive 2016/1919, as a suspect and a potentially vulnerable person and, second, of the rights to which all suspects are entitled under Directives 2012/13 and 2013/48. This concerns, principally, the guarantee of the right to legal assistance for persons deemed vulnerable and the right of those persons to benefit from legal aid as soon as they are suspected of having committed an offence.

42 According to the referring court, that situation arises from the failure to transpose those directives correctly and in full and the failure to implement the Commission's recommendation into the Polish legal system. It is therefore necessary, in the first place, to establish whether the relevant provisions of the aforementioned directives fulfil the criteria for direct effect.

43 The referring court notes, moreover, that the rules of criminal procedure law in force do not offer sufficiently precise solutions guaranteeing to any person coming within the scope of Directive 2013/48 and 2016/1919 the full extent of the rights that those directives provide for, such as the right of immediate access to a lawyer, the right to have the assistance of a lawyer at the earliest stage of the initial stage of the proceedings and even the right to have his or her needs identified without delay before being questioned as a suspect. If it is not possible to interpret those rules in a manner compatible with EU law, the referring court wishes to ascertain, in the second place, whether not only national courts, but, more broadly, all national authorities responsible for overseeing enforcement of the law, are required to disapply those rules.

44 In its request for a preliminary ruling, the referring court states, in the third place, that it seeks to 'establish an effective remedy' capable of removing the effects of the breach of the rights which the suspect should have enjoyed at the earlier stages of the proceedings under Directive 2016/1919. To that end, it refers to Article 8 of that directive and Article 12 of Directive 2013/48 and the case-law of the European Court of Human Rights.

45 In the fourth place, the referring court has questions regarding the situation of a suspect or an accused person who is identified as being a vulnerable person to whom legal aid must be provided, without delay, in accordance with Directive 2016/1919. That court asks whether the national authorities, such as the prosecutor, who participate in and conduct the pre-trial stage of criminal proceedings, are required to ensure effective judicial protection under that directive where the offence at issue is punishable by a custodial sentence. The effective application of EU law requires, moreover, the independence and impartiality of the courts, but also of the authorities responsible for criminal prosecutions in cases that have a factor connecting it with EU law.

46 In those circumstances, the Sąd Rejonowy we Włocławku (District Court, Włocławek) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the combined provisions of Articles 2(1)(b), 4(5) and 9, and recitals 18, 19, 24 and 27 of [Directive 2016/1919], in conjunction with Articles 3(2)(a) and (c) and 3(3)(a) of [Directive 2013/48], interpreted in the light of Sections 6, 7, 11, and 13 of the [Commission recommendation] be interpreted as introducing a directly effective and mandatory rule which makes it impermissible to carry out an act involving the questioning of a vulnerable person without the presence of a lawyer where the factual conditions for granting legal aid are met, if, at the same time, the authority conducting pre-trial proceedings fails to grant legal aid (including emergency or provisional legal aid) without undue delay and before the person concerned [(specifically, a vulnerable person)] has been questioned by the police, by another law enforcement authority or a judicial authority, or before specific investigative or evidence-gathering acts have been carried out?

(2) Must the combined provisions of Articles 2(1)(b), 4(5) and 9, and recitals 18, 19, 24 and 27, of [Directive 2016/1919], read in conjunction with Article 1(2) of that directive, analysed in the light of Sections 6, 7, 11, and 13 of the [Commission recommendation], be interpreted as meaning that [(i)] the failure, in the course of the procedure, to identify a person’s potential vulnerability or to recognise that person’s vulnerability, despite there being factual reasons justifying its prompt identification, and [(ii)] the absence of any possibility of challenging the assessment of the person’s potential vulnerability and of granting that person legal aid without undue delay, are in no way lawful in cases concerning offences punishable by imprisonment, and in that the circumstances which led to the conclusion that the person was not in a vulnerable situation and that legal aid should not be granted must be explicitly stated in the decision to proceed with the questioning in the absence of a lawyer, which decision must in principle be subject to appeal?

(3) Must the combined provisions of Articles 2(1)(b), 4(5) and 9, and recitals 18, 19, 24 and 27, of [Directive 2016/1919], read in conjunction with Article 1(2) of that directive, analysed in the light of [Sections 6, 7, 11 and 13 of the Commission recommendation], be interpreted as meaning that the failure of a Member State to introduce a presumption of vulnerability in criminal proceedings must be interpreted as preventing a suspect from benefiting from the safeguard laid down in Article 9 of [Directive 2016/1919], analysed in the light of [Section 11 of the Commission recommendation], and consequently that the authorities administering justice are obliged to apply the provisions of the directive directly in such a situation?

(4) If the answer to at least one of [the first three questions] is in the affirmative, are the provisions of the two directives referred to in the questions to be interpreted as precluding provisions of national law such as:

(a) the second sentence of Article 301 of the [CCP], under which a suspect is to be questioned in the presence of the court-appointed lawyer only at his or her request and the failure of that lawyer to appear for the questioning of the suspect is not to block questioning;

(b) Article 79(1)(3) and (4) of the [CCP], under which an accused person (suspect) must have a lawyer in criminal proceedings if there is reasonable doubt as to whether his or her capacity to recognise the significance of the offence or control his or her behaviour was not, at the time that offence was committed, hindered or significantly impaired and if there is reasonable doubt as to whether the state of his or her mental health allows him or her to take part in the proceedings or conduct the defence in an independent and reasonable manner?

(5) Do the combined provisions of Article 3(2)(a) and Article 3(3)(b), of [Directive 2013/48], in conjunction with the principle of the primacy and direct effect of directives, require the authorities conducting pre-trial proceedings, the courts and any State authorities to disregard provisions of national law which are incompatible with [that] directive, such as those listed in [the fourth question], and

consequently – on account of the expiry of the implementation period – to replace the abovementioned national rule with the directly effective rules of [that] directive?

(6) Must [the combined provisions of Articles 2(1)(b), 4(5) and 9, and] recitals 19, 24 and 27, of [Directive 2016/1919], be interpreted as meaning that in the absence of a decision to grant, or in the event of a failure to grant, legal aid to a vulnerable person or a person who is presumed to be vulnerable under [Section 7 of the Commission recommendation], and subsequently investigative measures are carried out with the participation of that person by a police or other law enforcement authority, including acts which cannot be repeated before the court, the national court hearing the case in criminal proceedings, and also any other State authorities administering justice (and thus an authority conducting pre-trial proceedings) are obliged to disregard the provisions of national law which are incompatible with [that] directive, such as those referred to in [the fourth question], and consequently – having regard to the expiry of the implementation period – to replace the abovementioned national rule with the directly effective rules of the directive, even where that person, after the investigation (or prosecution) has been completed and the public prosecutor has brought an indictment before the court, has appointed a lawyer of his or her choice?

(7) Must the combined provisions of Articles 2(1)(b), 4(5) and 9, in conjunction with recitals 19, 24 and 27, of [Directive 2016/1919], read in conjunction with Article 1(2) of that directive, analysed in the light of Sections 6, 7, 11, and 13 of the [Commission recommendation], be interpreted as meaning that a Member State is obliged to ensure that the vulnerability of a suspect is promptly identified and recognised, and legal aid is granted to suspects or accused persons in criminal proceedings who are presumed to be vulnerable persons, and that that assistance is mandatory even where the competent authority does not ask an independent expert to assess the degree of vulnerability, the needs of the vulnerable person and the appropriateness of any measures taken or envisaged as regards the vulnerable person until the independent experts' assessment has been properly carried out?

(8) If the answer to [the seventh question] is in the affirmative, are the abovementioned provisions of [Directive 2016/1919] and the Commission recommendation to be interpreted as precluding national legislation such as Article 79(1)(3) and (4) of the [CCP], under which an accused person must have a defence counsel in criminal proceedings only if there is reasonable doubt as to whether his or her capacity to recognise the significance of the offence or control his or her behaviour was not, at the time that offence was committed, hindered or significantly impaired and if there is reasonable doubt as to whether the state of his or her mental health allows him or her to take part in the proceedings or conduct the defence in an independent and reasonable manner?

(9) Must the combined provisions of Articles 2(1)(b), 4(5) and 9, and recitals 19, 24 and 27, of [Directive 2016/1919], in conjunction with Article 1(2) of that directive, analysed in the light of Sections 6, 7, 11, and 13 of the [Commission recommendation], be interpreted as meaning that the competent authorities (public prosecutor's office, police) should, at the latest before the first questioning of a suspect by the police or another competent authority, promptly identify and recognise the vulnerability of the suspect in criminal proceedings and ensure that legal aid or emergency (provisional) aid is granted to him or her and refrain from questioning the suspect until such time as that legal aid or emergency (provisional) aid is granted to that person?

(10) If the answer to [the ninth question] is in the affirmative, must the combined provisions of Articles 2(1)(b), 4(5) and 9, and recitals 19, 24 and 27, of [Directive 2016/1919], in conjunction with Article 1(2) of that directive, analysed in the light of Sections 6, 7, 11 and 13 of the [Commission recommendation], be interpreted as imposing on Member States an obligation to set out clearly in their national law the reasons and criteria for any exception to the immediate identification and recognition of the vulnerability of a suspect in criminal proceedings and to ensure that legal aid or emergency (provisional) aid is granted to him or her, and any derogations should be proportionate, limited in time and

not infringe the principle of a fair trial, and should take the form of a procedural decision authorising a temporary derogation, against which, in principle, the party should have the right to request a judicial review?

(11) Must the second paragraph of Article 19(1) TEU and Article 47 of the [Charter], read in conjunction with Articles 3(2)(a) and [(3)(a) and (b)] of [Directive 2013/48], in conjunction with Article 1(2) and recital 27, and in conjunction with Article 8 of [Directive 2016/1919], be interpreted as meaning that where the judicial authority does not grant legal aid and specify the reasons for deciding not to grant legal aid to a person who is presumed to be vulnerable and/or is vulnerable (in accordance with [points 7 and 11 of the Commission recommendation]), such a person has a right to an effective remedy, it being understood that the arrangement in national procedural law set out in Article 344a of the [CCP], requiring that the case be referred back to the public prosecutor for the purpose of:

(a) the authority conducting pre-trial proceedings identifying and recognising the vulnerability of the suspect in criminal proceedings;

(b) enabling the suspect to consult his or her lawyer before questioning;

(c) questioning the suspect in the presence of his lawyer with audiovisual recording of the questioning itself; and

(d) enabling the defence counsel to familiarise him or herself with the case file and present any submissions of evidence from the vulnerable person and a lawyer appointed officially or a lawyer appointed by the suspect;

should be regarded as such a remedy?

(12) Must the combined provisions of Article 4 of the [Charter], and Articles 6(1) and (2) of the [TEU] and Article 6(3) [TEU], taken together with Article 3 of the [ECHR] …, in conjunction with the presumption of vulnerability under [point 7 of the Commission recommendation], be interpreted as meaning that the questioning of a suspect by a police officer or other person authorised to carry out an investigative act under psychiatric hospital conditions without taking account of the situation of insecurity and under conditions of particularly limited freedom of expression and specific mental vulnerability, and in the absence of a lawyer, constitutes inhuman treatment and as such completely disqualifies such a procedural act of questioning as contrary to the fundamental rights of the European Union?

(13) If the answer to [the twelfth question] is in the affirmative, must the provisions referred to in that question be interpreted as empowering (or obliging) [(i)] a national court hearing a case in criminal proceedings – coming within the scope of [Directive 2016/1919], read in conjunction with [point 7 of the Commission recommendation] and the scope of [Directive 2013/48], [(ii)] and also any other criminal authorities carrying out procedural acts in the case, to disregard provisions of national law which are incompatible with the directive, including in particular Article 168a of the [CCP], and consequently, having regard to the expiry of the implementation period, to replace the abovementioned national rule with the directly effective rules of [that] directive, even where that person, after the investigation (or prosecution) has been completed and the public prosecutor has brought an indictment before the court, has appointed a lawyer of his or her choice?

(14) Must the combined provisions of Articles 2(1)(b), 4(5) and 9, and recitals 19, 24 and 27, of [Directive 2016/1919], in conjunction with Articles 3(2)[(a) to (c)] and 3(3)(b) of [Directive 2013/48], in conjunction with the second subparagraph of Article 19(1) TEU and the principle of effectiveness in EU law, be interpreted as meaning that the public prosecutor, when acting at the pre-trial stage in criminal proceedings, is obliged to act in full compliance with the requirements of Directive 2016/1919 having direct effect and thus to ensure that a suspect or accused person covered by the protection of the above directive

in the proceedings is afforded effective legal protection from whichever of the following points in time is the earliest:

(a) before they are questioned by the police or by another law enforcement or judicial authority;

(b) where investigative or other competent authorities carry out an investigative or other evidence-gathering measure in accordance with Article 3(3)(c) of Directive [2013/48];

(c) immediately after deprivation of liberty (that is to say also a stay in a psychiatric hospital) and, if necessary, the public prosecutor is obliged to disregard any orders of superior prosecutors if he or she is satisfied that complying with them would prejudice the effective protection of a suspect presumed to be vulnerable, particularly that person's right to a fair trial or to any other right conferred on him or her by Directive 2016/1919, in conjunction with [Directive 2013/48]?

(15) If the answer to the [fourteenth question] is in the affirmative, must the second subparagraph of Article 19(1) TEU laying down the principle of effective legal protection, read in conjunction with the principle of respect for the rule of law, as interpreted in the case-law of the Court of Justice (see judgment of 27 May 2019[, *OG and PI (Public Prosecutor's Office in Lübeck and in Zwickau*), C508/18 and C82/19 PPU, EU:C:2019:456], and the principle of judicial independence established in second subparagraph of Article 19(1) TEU and Article 47 of the [Charter], as interpreted in the case-law of the Court of Justice (see judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C64/16, EU:C:2018:117), be interpreted as meaning that those principles, in view of the possibility of the Public Prosecutor General or higher-ranking public prosecutors issuing binding instructions to lower-level prosecutors that obliging lower-ranking prosecutors to disregard directly effective EU rules or that impede the application thereof, preclude national legislation stating that the prosecutor's office is to be directly dependent on an executive authority, that is to say the Minister for Justice, and also preclude the existence of national rules which limit the independence of the public prosecutor in the application of EU law, in particular … Articles 1(2), 3(1)(1) and (3), 7(1) to (6) and (8), and 13(1) and (2) of the prawo o prokuraturze (Law of 28 January 2016 on the Public Prosecutor's Office) (Dz. U of 2016, position 176, as amended), which state that the Minister for Justice, who is also the Public Prosecutor General and the highest authority of the public prosecutor's office, has the right to issue instructions which are binding on lower-ranking public prosecutors also to the extent that they restrict or impede the direct application of EU law?'

Procedure before the Court

47 The referring court has also requested the Court to determine the present case pursuant to the expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court of Justice. By order of 8 November 2023, *Barało* (C530/23, EU:C:2023:927), the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to refuse that request.

Consideration of the questions referred

48 The questions referred by the referring court concern, in essence, the interpretation of several provisions of Directives 2013/48 and 2016/1919. By those questions, the referring court seeks, primarily, to determine the scope of the right of access to a lawyer and of a vulnerable person's right to legal aid.

49 However, questions relating to several concepts of EU law and various procedural aspects, such as the determination of the direct effect of certain provisions of Directives 2013/48 and 2016/1919 or the possible obligation to establish remedies imposed by those directives, are added to the principal subject matter of the request for a preliminary ruling and overlap in the wording of the various questions referred for a preliminary ruling.

50 In view of the way in which all of those questions relate to each other, it is necessary to examine together (i) the first to tenth, thirteenth and fourteenth questions, in so far as they concern the scope of the right of access to lawyer and a vulnerable person's right to legal aid and the consequences of any failure of national legislation to comply with the obligations which arise from Directives 2013/48 and 2016/1919, (ii) the second, tenth and eleventh questions, in so far as they concern the requirement of an effective remedy in the event of a breach of the rights provided for under those directives and the admissibility of evidence, (iii) the twelfth question and, lastly, (iv) the fifteenth question.

The first to tenth, thirteenth and fourteenth questions, in so far as they concern the scope of the right of access to a lawyer and a vulnerable person's right to legal aid and the consequences of any failure of national legislation to comply with the obligations which arise from Directives 2013/48 and 2016/1919

51 By its first to tenth, thirteenth and fourteenth questions, the referring court asks, in essence, whether Article 1(2) and Article 2(1)(b), Article 4(5) and Article 9 of Directive 2016/1919, read in conjunction with Article 3(2)(a) to (c) and Article 3(3)(a) and (b) of Directive 2013/48 must be interpreted as meaning that Member States are required, first, to ensure that the vulnerability of an accused person or 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 acts are taken in relation to that person and, second, to ensure that he or she has access to a lawyer with the benefit of legal aid for the purposes of those proceedings.

52 By those questions, the referring court addresses several issues which should be examined in turn. It is necessary, first, to determine the respective scope of Directives 2013/48 and 2016/1919 and how they relate to each other. Next, it is necessary to assess the scope of the right of access to a lawyer and a vulnerable person's right to legal aid. Lastly, in order to give a complete answer to the referring court, it is necessary to consider the consequences of any failure of national legislation to comply with the obligations which arise from Directives 2013/48 and 2016/1919.

The respective scope of Directives 2013/48 and 2016/1919 and the relationship between them

53 It is made expressly clear in Article 1(2) of Directive 2016/1919 that that directive complements Directive 2013/48 since the right to legal aid is linked to the exercise of the right to access a lawyer. Article 2(1)(a) to (c) of Directive 2016/1919 provides, moreover, that it applies to suspects and accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48 and who are deprived of liberty, required to be assisted by a lawyer in accordance with EU or national law, or required or permitted to attend an investigative or evidence-gathering act.

54 Article 3(2)(a) to (d) of Directive 2013/48 provides that suspects or accused persons in criminal proceedings are, in any event, to have access to a lawyer in four situations. That right must be guaranteed to them (i) before they are questioned by the police or by another law enforcement or judicial authority, (ii) upon the carrying out of certain investigative or other evidence-gathering acts, (iii) without undue delay after deprivation of liberty or (iv) in due time before they appear before the competent court.

55 It is therefore apparent from those different provisions that the occurrence of the events listed in Article 3(2)(a) to (d) of Directive 2013/48 determines not only the triggering of the right of access to a lawyer, but also, at the same time, the applicability of Directive 2016/1919 and the right to legal aid that it establishes.

56 That coincidence in the protection provided by those directives also arises from Article 4(5) of Directive 2016/1919, which expressly requires Member States to ensure that legal aid is granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or

by a judicial authority, or before the investigative or evidence-gathering acts referred to in of Article 2(1)(c) of that directive are carried out.

57 The importance of granting legal aid at an early stage is confirmed by recital 24 of that directive. It follows from that recital that the temporary involvement of the police and the prosecution, in the procedure for granting that aid, should be possible where that involvement proves necessary, in urgent situations, in order to grant legal aid in a timely manner.

58 Article 4(5) of Directive 2016/1919 thus implements the objective pursued by that directive, which aims, as stated in the recital 1 thereof, to ensure the effectiveness of the right of access to a lawyer as provided for under Directive 2013/48 by making available the assistance of a lawyer funded by the Member States for suspects and accused persons in criminal proceedings.

59 The right of access to a lawyer is a fundamental principle which must enable suspects and accused persons to exercise their rights of defence practically and effectively. That is why those suspects and persons must have access to a lawyer without undue delay and, in any event, from whichever of the four specific points in time listed in Article 3(2)(a) to (d) of Directive 2013/48 is earliest, which include being questioned by the police (see, to that effect, judgment of 14 May 2024, *Stachev*, C15/24 PPU, EU:C:2024:399, paragraphs 47 to 48). It follows that, in order for that assistance to be effective, legal aid must itself be provided at an early stage in the proceedings (see, by analogy, judgment of 19 September 2019, *Rayonna prokuratura Lom*, C467/18, EU:C:2019:765, paragraph 50).

The scope of the right of access to a lawyer and of a vulnerable person's right to legal aid.

60 As regards the situation of vulnerable persons, Article 13 of Directive 2013/48 and Article 9 of Directive 2016/1919 require Member States, in similar terms, to ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the implementation of those directives.

61 First, the Court has held, in that regard, that persons with mental health conditions come within the category of vulnerable persons referred to in Article 13 (see, to that effect, judgment of 19 September 2019, *Rayonna prokuratura Lom*, C467/18, EU:C:2019:765, paragraph 48). Since, as stated in paragraph 53 above, Directive 2016/1919 completes Directive 2013/48 and those two directives pursue the common objective of ensuring the protection of the rights of suspects and accused persons in criminal proceedings, their respective scope *ratione personae* cannot diverge. It follows that persons with mental health conditions also come within the definition of vulnerable persons for the purposes of Article 9 of Directive 2016/1919.

62 Second, so far as concerns a supposed obligation for Member States to establish a presumption of vulnerability in criminal proceedings, referred to by the referring court in its third question, it must be noted that the EU legislature has not specified the scope of the obligation on Member States under Article 13 of Directive 2013/48 or Article 9 of Directive 2016/1919. Therefore, it cannot be inferred from those two provisions that the Member States are required to establish, in certain circumstances, a presumption of vulnerability of the suspect or accused person.

63 It is true that the Commission recommendation which the referring court refers to in support of its reference for a preliminary ruling, encourages the Member States to provide for such a presumption, in particular as regards persons who have psychological disorders which prevent them from understanding and effectively participating in the proceedings.

64 However, that recommendation is a non-binding document which cannot be the source of obligations for the Member States. That is all the more so in the context of a minimal harmonisation where the draft adoption of a binding text concerning specific safeguards for suspects or accused persons who are

vulnerable referred to in recital 9 of Directive 2013/48 and recital 4 of Directive 2016/1919 has not been given effect by the EU legislature.

65 That said, recital 23 of Directive 2016/1919 states that Member States should respect the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

66 As set out in point 23 of those principles and guidelines, it is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid. Point 32 of those principles and guidelines also states that special measures should be taken to ensure meaningful access to legal aid for groups with specific needs, including persons with mental illnesses and drug users.

67 Moreover, recital 51 of Directive 2013/48 states that the prosecution, law enforcement and judicial authorities should facilitate the effective exercise by persons in a potentially weak position of the rights provided for in that directive. In order to do so, they must, inter alia, as is apparent from recital 51, take into account any potential vulnerability that affects their ability to exercise the right of access to a lawyer and take appropriate steps to ensure those rights are guaranteed.

68 It follows that the investigative authorities or another law enforcement authority, such as prosecutors, must ensure that the vulnerability of a suspect or an accused person is ascertained and acknowledged before the questioning of that suspect or person in the context of criminal proceedings or before specific investigative or evidence-gathering acts have been taken in respect of such persons, in order to enable them, as stated in paragraph 59 above, to exercise their rights of defence practically and effectively.

69 Moreover, it follows from recital 18 of Directive 2016/1919 that, given, in particular, the specific needs of vulnerable persons, a request for legal aid made by the suspect or accused person should not constitute a substantive condition for the grant of such assistance.

70 It thus appears that, without going so far as to establish a presumption of vulnerability on the part of suspects or accused persons, the EU legislature did not intend to make the grant of legal aid subject to a request from the person in a vulnerable position.

71 Third, the choice of a Member State to apply, in accordance with Article 4(2) of Directive 2016/1919, a means test to determine whether legal aid is to be granted cannot delay the grant of that aid to a vulnerable person. As stated in recital 19 of that directive, the competent authorities that are unable to grant that aid to the person concerned before questioning of the person concerned by the police, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts are carried out, should grant emergency or provisional legal aid before such questioning or before such specific acts are carried out.

72 It follows that a vulnerable person, such as a person with a mental health condition, must be granted access to a lawyer under legal aid without undue delay and, at the latest, before questioning by police, by another law enforcement authority or by a judicial authority, or before investigative or evidence-gathering acts are carried out in respect of which that person is required or permitted to attend.

The consequences of any failure of national legislation to comply with the obligations which arise from Directives 2013/48 and 2016/1919

73 In the present case, it is apparent from the information provided by the referring court that the relevant provisions of national law, in particular points 3 and 4 of Article 79(1) of the CCP provide for the compulsory assistance of a lawyer if there is reasonable doubt as to the accused person's capacity to recognise the significance of the offence or control his or her acts at the time the offence was committed or

as to whether the state of his or her mental health allows that person to take part in the proceedings or conduct the defence in an independent and reasonable manner. Under Article 301 of the CCP, a suspect must also be questioned in the presence of a court-appointed lawyer when that person so requests, the absence of such a lawyer not preventing questioning.

74 The referring court asks the Court whether those provisions are compatible with Article 3(2) and (3) of Directive 2013/48 and Article 1(2), Article 2(1)(b), Article 4(5) and Article 9 of Directive 2016/1919. That court asks, moreover, whether the investigative authorities, the courts or any other State authority, are required to disapply provisions of national law that are incompatible with EU law and substitute those provisions with the provisions of Directives 2013/48 and 2016/1919, which have direct effect.

75 In that regard, in the context of the division of roles between the Court and the national courts which is the basis of Article 267 TFEU, it is not for the Court to interpret the provisions of national law or to rule on the compatibility of a national measure with EU law (see, to that effect, judgments of 3 February 1977, *Benedetti*, 52/76, EU:C:1977:16, paragraph 25; of 21 January 1993, *Deutsche Shell*, C188/91, EU:C:1993:24, paragraph 27; and of 15 October 2024, *KUBERA*, C144/23, EU:C:2024:881, paragraph 53).

76 It is therefore for the referring court to verify whether the abovementioned provisions of national law are compatible with EU law. That said, it is for the Court of Justice to provide that court with some useful guidance in the light of the information contained in the order for reference (judgments of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C582/21, EU:C:2024:282, paragraph 64 and of 15 October 2024, *KUBERA*, C144/23, EU:C:2024:881, paragraph 53).

77 In that context, it should be borne in mind, in the first place, that in order to ensure the effectiveness of all provisions of EU law, the primacy principle requires, inter alia, national courts to interpret, to the greatest extent possible, their national law in the light of the wording and the purpose of the act of EU law in question in order to achieve a solution which is consistent with the objective pursued by it (see, to that effect, judgments of 5 October 2004, *Pfeiffer and Others*, C397/01 to C403/01, EU:C:2004:584, paragraph 119; of 29 June 2017, *Popławski*, C579/15, EU:C:2017:503, paragraph 31; and of 5 September 2024, *M.S. and Others (Procedural rights of minors)*, C603/22, EU:C:2024:685, paragraph 116).

78 The obligation to interpret national law in a manner consonant with EU law has certain limits, however, and cannot, in particular, serve as a basis for an interpretation of national law *contra legem* (see, to that effect, judgments of 29 June 2017, *Popławski*, C579/15, EU:C:2017:503, paragraph 33, and of 5 September 2024, *M.S. and Others (Procedural rights of minors)*, C603/22, EU:C:2024:685, paragraph 117).

79 If it is not possible to interpret national law in conformity with the requirements of EU law, the principle of primacy requires the national court to give full effect to the requirements of EU law in the case before it. In order to do so, that court must, if necessary, disapply, of its own motion, any national rule or practice, even if adopted subsequently, which is contrary to a provision of EU law with direct effect, without it having to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means (see, to that effect, judgment of 5 September 2024, *M.S. and Others (Procedural rights of minors)*, C603/22, EU:C:2024:685, paragraph 118).

80 The competent national authorities are required to ensure respect for the rights that directly concerned natural or legal persons derive from a provision of EU law which appears, as regards its content, unconditional and sufficiently precise (see, by analogy, judgments of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C197/18, EU:C:2019:824, paragraph 32, and of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C569/20, EU:C:2022:401, paragraph 28).

81 From that point of view, in the absence of implementing measures adopted within the prescribed period, or in the event of incorrect transposition of a directive, the national courts and all State authorities are required to ensure such respect. Like the national court, those authorities, which include law enforcement or judicial authorities, such as the police or public prosecutor, are required, first, to disapply any provision of national law that is not compatible with the unconditional and sufficiently precise provisions of a directive and, second, to apply those provisions in so far as they define rights which individuals are able to assert against the State (see, to that effect, judgments of 19 January 1982, *Becker*, 8/81, EU:C:1982:7, paragraph 25; of 22 June 1989, *Costanzo*, 103/88, EU:C:1989:256, paragraphs 30 and 31; of 19 November 1991, *Francovich and Others*, C6/90 and C9/90, EU:C:1991:428, paragraph 11; and of 20 April 2023, *Autorità Garante della Concorrenza e del Mercato (Municipality of Ginosa)* C348/22, EU:C:2023:301, paragraph 77).

82 In the second place, as regards the direct effect of the provisions of EU law referred to in paragraph 74 above, it is apparent from settled case-law that a provision of EU law is, first, unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the institutions of the European Union or by the Member States, other than the act which transposes that provision into national law, and, second, sufficiently precise to be relied on by an individual and applied by a court where it sets out an obligation in unequivocal terms (see, to that effect, judgments of 3 April 1968, *Molkerei-Zentrale Westfalen* v *Lippe*, 28/67, EU:C:1968:17, paragraph 226; of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C205/20, EU:C:2022:168, paragraph 18; and of 1 August 2022, *TL (Absence of an interpreter and of translation)*, C242/22 PPU, EU:C:2022:611, paragraph 50).

83 Furthermore, the Court has held that, even though a directive leaves the Member States a degree of latitude when they adopt rules in order to implement it, a provision of that directive may be regarded as unconditional and precise where it imposes on Member States in unequivocal terms a precise obligation as to the result to be achieved, which is not coupled with any condition regarding application of the rule laid down by it (see, to that effect, judgments of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C205/20, EU:C:2022:168, paragraph 19, and of 1 August 2022, *TL (Absence of an interpreter and of translation)*, C242/22 PPU, EU:C:2022:611, paragraph 51). The essential point, in that regard, is that the latitude conferred on Member States by the directive concerned does not prevent the determination of the content of the minimum protection or the minimum guarantee from which persons covered by that directive must benefit (see, to that effect, judgments of 14 July 1994, *Faccini Dori*, C91/92, EU:C:1994:292, paragraph 17, and of 20 April 2023, *Autorità Garante della Concorrenza e del Mercato (Municipality of Ginosa)*, C348/22, EU:C:2023:301, paragraph 65).

84 As regards, first, Article 3(2) and (3) of Directive 2013/48, first, it is apparent from the very wording of Article 3(2) of that directive that suspects or accused persons are to have access to a lawyer without undue delay and, in any event, at the latest from the first of the four events listed successively in points (a) to (d) of that provision. That directive therefore has direct effect in so far as it requires, in unequivocal terms, Member States to guarantee access to a lawyer as soon as specific events occur, without the Member States having any degree of latitude or possibility of attaching any conditions to that requirement and without requiring the adoption of an act of the European Union or of the Member States.

85 By setting out the constituent elements of that right to a lawyer, Article 3(3) of that directive also has directive effect, since it set outs, in an unconditional and sufficiently precise manner, content comprising minimum protection for suspects or accused persons.

86 Second, Article 4(5) of Directive 2016/1919 also sets out a clearly identified obligation, the fulfilment of which is defined unconditionally.

87 According to the wording of that provision, legal aid must be granted to suspects and accused persons without undue delay and, at the latest, before questioning by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering acts referred to in Article 2(1)(c) of that directive are carried out.

88 It follows that, while, in accordance with Article 4(2) of that directive, Member States may choose to apply a means test, a merits test, or even both, to determine whether legal aid is to be granted, that latitude cannot affect the time at which that aid must be granted, since that latitude is limited by the indication of a precise temporal limit in Article 4(5) of that directive.

89 Third, as regards Article 9 of Directive 2016/1919, by requiring Member States to ensure that the particular needs of vulnerable suspects or accused persons are taken into account, that provision imposes on Member States a precise obligation as to the result to be achieved, which is not coupled with any condition regarding the application of the rule laid down by it.

90 The latitude afforded to Member States to define the way in which the specific needs of suspects or accused persons in a vulnerable position must be taken into account is limited by the obligation on those Member States, laid down by that provision in a general manner and in unequivocal terms, to ensure that those persons are specifically taken into account when exercising that discretion.

91 It follows from all of the foregoing considerations that it is for the referring court to interpret, so far as possible, the provisions of national law referred to in paragraph 73 above, in a manner consistent with EU law in order to ensure that those provisions are fully effective. If it is unable to make such an interpretation, it will have to disapply, of its own motion, any national provisions which appear to be incompatible with Article 3(2) and (3) of Directive 2013/48 and with Article 4(5) and Article 9 of Directive 2016/1919 and to apply the provisions of those directives, since the obligations which they lay down are binding on all of the authorities of the Member States, which include law enforcement or judicial authorities, such as the police or public prosecutor.

Conclusion on the first to tenth, thirteenth and fourteenth questions

92 In the light of the foregoing reasons, the answer to the first to tenth, thirteenth and fourteenth questions is that Article 2(1)(b), Article 4(5) and Article 9 of Directive 2016/1919, read in conjunction with Article 3(2)(a) to (c) and Article 3(3) of Directive 2013/48 must be interpreted as meaning that Member States are under an obligation, first, 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 and, second, 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.

The second, tenth, eleventh and thirteenth questions, in so far as they concern the requirement of an effective remedy and the admissibility of evidence

93 As a preliminary point, it should be noted that, in the wording of its eleventh question, the referring court cites Article 8 of Directive 2016/1919 and not Article 12(1) of Directive 2013/48. However, that court refers to the latter provision in the grounds of its request for a preliminary ruling, since the two articles concern remedies and are drafted in similar terms.

94 In those circumstances, it must be understood that, by its second, tenth, eleventh and thirteenth questions, the referring court asks, in essence, whether Article 12 of Directive 2013/48 and Article 8 of

Directive 2016/1919 must be interpreted as requiring that 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, are reasoned and may be the subject of an effective remedy. Furthermore, that court asks whether those provisions must be interpreted as precluding national legislation which, in the context of criminal proceedings, does 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 provided for in Directives 2013/48 and 2016/1919.

95 In that regard, it follows, first, from the very wording of Article 12(1) of Directive 2013/48 and Article 8 of Directive 2016/1919 that suspects or accused persons must have an effective remedy, under national law, in the event of a breach of their rights under those directives.

96 The Court has already held that the first of those provisions requires Member States to ensure respect for the right to a fair hearing and the rights of defence, enshrined, respectively, in Article 47 and Article 48(2) of the Charter, by providing for an effective remedy enabling any suspect or accused person to bring an action before a court responsible for examining whether his or her rights under Directive 2013/48 have been infringed (see, to that effect, judgment of 7 September 2023, *Rayonna prokuratura Lovech, teritorialno otdelenie Lukovit (Personal search)*, C209/22, EU:C:2023:634, paragraph 51).

97 The same interpretation applies to Article 8 of Directive 2016/1919. The grant of legal aid is an aspect of the right to an effective remedy that is expressly guaranteed by the third paragraph of Article 47 of the Charter, since the objective of that directive is to guarantee the effectiveness of the right of access to a lawyer provided for by Directive 2013/48. By their combined action, those two directives therefore contribute to the fulfilment of the right to an effective remedy enshrined in the first paragraph of Article 47 of the Charter since the grant of legal aid facilitates the right of access to a lawyer (see, to that effect, judgment of 22 June 2023, *K.B. and F.S. (Raising ex officio of an infringement in criminal proceedings)*, C660/21, EU:C:2023:498, paragraph 44).

98 It follows that Article 12(1) of Directive 2013/48 and Article 8 of Directive 2016/1919 must be interpreted as precluding any national measure which impedes the exercise of effective remedies in the event of a breach of the rights which those directives implement (see, to that effect, judgments of 19 September 2019, *Rayonna prokuratura Lom*, C467/18, EU:C:2019:765, paragraphs 57 and 58, and of 22 June 2023, *K.B. and F.S. (Raising ex officio of an infringement in criminal proceedings)*, C660/21, EU:C:2023:498, paragraph 37).

99 Next, it should be stated that Articles 47 and 48 of the Charter do not require Member States to establish independent actions that suspects or accused persons may bring in order to defend the rights conferred on them by those directives. According to settled case-law, EU law, including the provisions of the Charter, does not have the effect of requiring Member States to establish remedies other than those established by national law, unless it is apparent from the overall scheme of the national legal system in question that no legal remedy exists that would make it possible to ensure, even indirectly, respect for the rights that individuals derive from EU law (see, to that effect, judgments of 13 March 2007, *Unibet*, C432/05, EU:C:2007:163, paragraph 71; of 21 December 2021, *Randstad Italia*, C497/20, EU:C:2021:1037, paragraph 62; and of 7 September 2023, *Rayonna prokuratura Lovech, teritorialno otdelenie Lukovit (Personal search)*, C209/22, EU:C:2023:634, paragraph 54).

100 In that regard, it should be added that Article 12(1) of Directive 2013/48 and Article 8 of Directive 2016/1919 state that the right to challenge possible breaches of the rights conferred by those directives is granted in accordance with ‘national law’, while Article 12(2) of Directive 2013/48 states that the admissibility of evidence remains a matter for national rules and systems.

101 Those provisions do not therefore determine the manner in which infringements of those rights may be alleged, thus leaving Member States a certain degree of latitude in determining the specific procedures that will be applicable in that regard (see, to that effect, judgment of 7 September 2023, *Rayonna prokuratura Lovech, teritorialno otdelenie Lukovit (Personal search)*, C209/22, EU:C:2023:634, paragraph 52), subject to, as is clear from Article 12(2) of Directive 2013/48, respect for the rights of the defence and the fairness of the proceedings during the assessment of the statements made by suspects or accused persons, or of evidence obtained in breach of their right to a lawyer.

102 Consequently, nothing in those directives requires the national court to disapply automatically all of the evidence obtained in breach of the rights conferred by Directives 2013/48 and 2016/1919. However, in accordance with the case-law of the European Court of Human Rights, which must be taken into account, as is clear from recitals 50 and 53 of the first of those directives and recitals 17 and 30 of the second, where a procedural defect has been identified, it is for the national courts to assess whether that procedural shortcoming has been remedied in the course of the ensuing proceedings (see, to that effect, judgment of 14 May 2024, *Stachev*, C15/24 PPU, EU:C:2024:399, paragraph 96).

103 Thus, in the event that evidence has been collected in disregard of the requirements of those directives, it must be determined whether, despite that lacuna, at the time when the court hearing the case must give judgment, the criminal proceedings as a whole may be regarded as fair, taking into account a number of factors, including whether the statements taken in the absence of a lawyer are an integral or significant part of the probative evidence, as well as the strength of the other evidence in the file (judgment of 14 May 2024, *Stachev*, C15/24 PPU, EU:C:2024:399, paragraph 97).

104 It follows that EU law does not require the Member States to provide for the possibility for a court to declare inadmissible incriminating evidence contained in statements made by a vulnerable person during questioning by the police, by a law enforcement authority or by a judicial authority in breach of the rights laid down by Directive 2013/48 or 2016/1919, provided, however, that, in criminal proceedings, that court is in a position to verify that those rights, read in the light of Article 47 and Article 48(2) of the Charter, have been respected and to draw all the inferences from that breach, in particular as regards the probative value of the evidence obtained in those circumstances (see, by analogy, judgment of 5 September 2024, *M.S. and Others (Procedural rights of minors)*, C603/22, EU:C:2024:685, paragraph 174).

105 Lastly, it is clear from the Court's case-law that, when implementing Directives 2013/48 and 2016/1919, Member States must ensure that the requirements arising from both the right to an effective remedy and the right to a fair hearing laid down in the first and second paragraphs of Article 47 of the Charter and the rights of defence laid down in Article 48(2) of the Charter are respected (see, to that effect, judgment of 22 June 2023, *K.B. and F.S. (Raising ex officio of an infringement in criminal proceedings)*, C660/21, EU:C:2023:498, paragraph 40).

106 According to settled case-law, the communication of reasons is an aspect of the right to an effective remedy in that it ensures effective judicial review. In addition, in order for a suspect or an accused person to be able to defend the rights conferred on them by those directives under the best possible conditions and to decide, with full knowledge of the relevant facts, whether it is worth bringing an action, the competent national authority is under a duty to inform that interested party of the reasons upon which its refusal is based (see, to that effect, judgments of 15 October 1987, *Heylens and Others*, 222/86, EU:C:1987:442, paragraph 15, and of 17 March 2011, *Peñarroja Fa*, C372/09 and C373/09, EU:C:2011:156, paragraph 63).

107 In the light of the foregoing considerations, Article 12 of Directive 2013/48 and Article 8 of Directive 2016/1919 must be interpreted as requiring that 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, are reasoned and may be the subject of an effective remedy.

108 By contrast, those provisions 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, provided, however, that, in criminal proceedings, that court is in a position, first, to verify that those rights, read in the light of Article 47 and Article 48(2) of the Charter, 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.

The twelfth question

109 By its twelfth question, the referring court asks, in essence, whether the questioning of a suspect, conducted in the psychiatric hospital in which that suspect is present, without that suspect being assisted by a lawyer and without taking account of the suspect's situation of insecurity, in conditions of particularly limited freedom of expression and specific psychological fragility, constitutes inhuman treatment within the meaning, inter alia, of Article 4 of the Charter.

110 In that regard, it is apparent from settled case-law that the need to provide an interpretation of EU law which will be of use to the referring court requires that that court define the factual and legislative context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. That court must, moreover, set out the precise reasons why it is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (see, to that effect, judgments of 26 January 1993, *Telemarsicabruzzo and Others*, C320/90 to C322/90, EU:C:1993:26, paragraph 6; of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C42/07, EU:C:2009:519, paragraph 40; and of 29 July 2024, *LivaNova*, C713/22, EU:C:2024:642, paragraph 54).

111 As stated in Article 94(a) and (c) of the Rules of Procedure, a request for a preliminary ruling must contain, inter alia, a summary of the relevant findings of facts or, at least, an account of the facts on which the questions are based, as well as a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law and the relationship it establishes between those provisions and the national legislation applicable to the main proceedings.

112 In the present case, the request for a preliminary ruling does not contain any information concerning the conditions in which K.P's questioning in hospital was carried out. Nor does that request explain how an answer to the twelfth question is necessary to enable the referring court to decide the dispute in the main proceedings.

113 In those circumstances, the twelfth question is inadmissible.

The fifteenth question

114 By its fifteenth question, the referring court asks whether EU law precludes national legislation which provides that the public prosecutor is directly dependent on an executive body and, if so, whether, during the pre-trial stage, the prosecutor must disapply the provisions of that legislation.

115 In the present case, it is apparent from the information received from the referring court that, in the main proceedings, the pre-trial stage has been completed. In those circumstances, the question whether, in the context of the pre-trial stage, the prosecutor has an obligation to disapply national provisions that are contrary to EU law in order to ensure the effectiveness of the rights of the persons concerned does not

therefore seek an interpretation of EU law for the objective purpose of resolving the case in the main proceedings, but is general and hypothetical.

116 It is settled case-law that the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them and that the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered, but rather that it is necessary for the effective resolution of a dispute (see, to that effect, judgments of 16 December 1981, *Foglia*, 244/80, EU:C:1981:302, paragraph 18; of 18 October 1990, Dzodzi, C297/88 and C197/89, EU:C:1990:360, paragraph 33; of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C558/18 and C563/18, EU:C:2020:234, paragraph 44; and of 5 September 2024, *M.S. and Others (Procedural rights of minors)*, C603/22, EU:C:2024:685, paragraph 75).

117 In those circumstances, the fifteenth question is inadmissible.

Costs

118 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 2(1)(b), Article 4(5) and Article 9 of Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, read in conjunction with Article 3(2)(a) to (c) and Article 3(3) of 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,**

must be interpreted as meaning that Member States are under an obligation, first, 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 and, second, to ensure that such persons or suspects have access to a lawyer with the benefit of 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.

2. **Article 12 of Directive 2013/48 and Article 8 of Directive 2016/1919**

must be interpreted as requiring that 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 to choose to question that person in the absence of the lawyer, are reasoned and may be the subject of an effective remedy.

By contrast, those provisions 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, provided, however, that, in criminal proceedings, that court is in a position, first, to verify that those rights, read in

the light of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union, 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.

[Signatures]

* Language of the case: Polish.

i The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.