

CASE STUDY – The Lawyer of the Absent – Guidance for Facilitators

Findings of the Court/ Important Aspects to be addressed

The Case is based on CJEU, Case C-659/18, VW, judgement 12th March 2020, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=224382&pageInd ex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5080977>

The rules of the right to a lawyer are based on Article 24 of the Spanish Constitution. In criminal matters, the rights of defense of the person under investigation are governed by Article 118 of the Code of Criminal Procedure. Those provisions have been interpreted by the Tribunal Constitucional (Constitutional Court, Spain) and the Tribunal Supremo (Supreme Court, Spain) as meaning that the right of access to a lawyer may be subject to the obligation, for the person accused, to appear in person before the court. In particular, in accordance with the settled case-law of the Tribunal Constitucional (Constitutional Court), the benefit of such a right may be refused when that person is absent or cannot be located.

Furthermore, the court observes that that case-law has been maintained notwithstanding the reform which took place in 2015, in particular in order to ensure that Directive 2013/48 is transposed into Spanish law. That court also observes that, under Article 118 of the Code of Criminal Procedure, the right of access to a lawyer is limited solely in the cases referred to in Article 527 of that code, which is expressly cited in that provision.

Therefore, that court raises the question of the scope of the right of access to a lawyer provided for in that directive. In particular, it has doubts as to whether that case-law complies with Article 3(2) of that directive and Article 47 of the Charter.

Guidance for facilitators

- The facilitator distributes the Case Studies to participants divided into in groups of 3 to 4.
- The participants should read the facts of the case, the background info and discuss the questions.
- After the participants have discussed the questions, the facilitator should present the findings of the court, eventually ask the follow-up question.



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- The participants should discuss the findings and the follow-up question(s).
- The results of the working group will subsequently be presented in the plenum.

Note: Before starting, the participants should appoint one note taker and one person to present the results of their working group to the plenum.

Specific Guidance for Spanish Group – National Pilot Trainings

All the procedural guarantees Directives we have discussed are applied in our national level. The Directive 2016/800 has not been transposed, and neither the Directive of the presumption of innocence 2016/343. Our legislator considered that the national regulations already comply with the Directives, since they are minimum rules. Nevertheless, there is a bill on the presumption of innocence being discussed now in the Congress of Spain.

The rest of them were transposed and the Criminal Procedure Code and the Criminal Code were modified because of these Directives. The most important modification was made in 2015 to comply with the Directive 48/2013 on the right to access to a lawyer.

On the other hand, it is to be discussed a few issues, not only internal regulation issues but also some practical problems we have to deal with in order to comply with the Directives.

- Directive 2013/48 access to a lawyer

In Spain we have some minor offences that have a penalty of a fine and are dealt with by criminal courts. The defendants of minor offenses aren't assisted by lawyers, even though the failure to pay the fine can end up in a deprivation of liberty

- Directive 2016/343 on presumption of innocence

Sometimes, more often than desired, accused and suspects are presented through the use of measures of physical restraint with no specific reasons.

It is very difficult to deal with parallel trials, especially in cases with high public interest that will be judged by a jury (mass media)



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- Directive 2012/13 right to information

We have issues with this Directive because police eventually could refuse to give full access to the materials of the case.

Remains to be seen as well the impact of the Directives 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for request persons in EAW proceedings, and the Directive 2010/64 on the right to interpretation and translation in criminal proceedings.



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