



InfoCuria

Giurisprudenza



[Pagina iniziale](#) > [Formulario di ricerca](#) > [Elenco dei risultati](#) > **Documenti**



[Avvia la stampa](#)

Lingua del documento :

ECLI:EU:C:2024:685

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

5 September 2024 (*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive (EU) 2016/800 – Procedural safeguards for children who are suspects or accused persons in criminal proceedings – Scope – Article 2(3) – Persons who were children on the date on which criminal proceedings were initiated against them but who reach the age of 18 years during the proceedings – Article 4 – Right to information – Article 6 – Right of access to a lawyer – Article 18 – Right to legal aid – Article 19 – Remedies – Admissibility of evidence obtained in breach of procedural rights)

In Case C-603/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy w Słupsku (District Court, Słupsk, Poland), made by decision of 26 August 2022, received at the Court on 19 September 2022, in criminal proceedings against

M.S.,

J.W.,

M.P.,

other parties to the proceedings:

Prokurator Rejonowy w Słupsku,

D.G., acting as administrator appointed to act for M.B. and for B.B.,

THE COURT (Third Chamber),

composed of K. Jürimäe (Rapporteur), President of Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Third Chamber, N. Piçarra, N. Jääskinen and M. Gavalec, Judges,

Advocate General: T. Ćapeta,

Registrar: N. Mundhenke, Administrator,

having regard to the written procedure and further to the hearing on 15 November 2023,

after considering the observations submitted on behalf of:

- the Prokurator Rejonowy w Słupsku, by T. Rutkowska-Szmydyńska, Prokurator Regionalny w Gdańsku,
- the Polish Government, by B. Majczyna, J. Sawicka and S. Żyrek, acting as Agents,
- the Czech Government, by M. Smolek, T. Suchá and J. Vláčil, acting as Agents,
- the European Commission, by S. Grünheid, K. Herrmann, J. Hottiaux and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), of Article 2 and the second subparagraph of Article 19(1) TEU, of 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), of Article 12(2) and Article 13 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), of Article 3 of 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), of Article 7(1) and (2) and Article 10(2) of 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 of the principles of the primacy, direct effect and effectiveness of EU law.

2 The request has been made in criminal proceedings brought against M.S., J.W. and M.P., three minors charged with having broken into the buildings of a disused former holiday centre, thereby causing harm to M.B. and B.B., who are represented by the appointed administrator, D.G.

Legal context

European Union law

Directive 2012/13

3 Recitals 19 and 26 to Directive 2012/13 state:

'(19) The competent authorities should inform suspects or accused persons promptly of [procedural rights], as they apply under national law, which are essential to safeguarding the fairness of the proceedings, either orally or in writing, as provided for by this Directive. In order to allow the practical and effective exercise of those rights, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority.

...

(26) When providing suspects or accused persons with information in accordance with this Directive, competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition.'

4 Article 2(1) of that directive provides:

'This Directive applies from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence 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 criminal offence, including, where applicable, sentencing and the resolution of any appeal.'

5 Under Article 3 of that directive:

'1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

- (a) the right of access to a lawyer;
- (b) any entitlement to free legal advice and the conditions for obtaining such advice;
- (c) the right to be informed of the accusation, in accordance with Article 6;
- (d) the right to interpretation and translation;
- (e) the right to remain silent.

2. Member States shall ensure that the information provided for under paragraph 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.'

6 Article 8 of that same directive, entitled 'Verification and remedies', states:

'1. Member States shall ensure that when information is provided to suspects or accused persons in accordance with Articles 3 to 6 this is noted using the recording procedure specified in the law of the Member State concerned.

2. Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.'

Directive 2013/48

7 Recitals 15 and 50 of Directive 2013/48 provide:

'(15) The term "lawyer" in this Directive refers to any person who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice and assistance to suspects or accused persons.

...

(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.'

8 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;

(c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a crime.

...

5. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

6. In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.'

9 Article 12 of that directive, entitled 'Remedies', provides:

'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.'

10 According to Article 13 of the same directive:

'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 2016/343

11 Recitals 31 and 44 of Directive 2016/343 provide:

'(31) Member States should consider ensuring that, where suspects or accused persons are provided with information about rights pursuant to Article 3 of Directive [2012/13], they are also provided with information concerning the right not to incriminate oneself, as it applies under national law in accordance with this Directive.

...

(44) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy, which is available in the event of a breach of any of the rights laid down in this Directive, should, as far as possible, have the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to protecting the right to a fair trial and the rights of the defence.'

12 Article 2 of that directive provides:

'This Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final

determination of whether that person has committed the criminal offence concerned has become definitive.’

13 Article 7 of that directive, entitled ‘Right to remain silent and right not to incriminate oneself’, provides, in paragraphs 1 and 2 thereof:

‘1. Member States shall ensure that suspects and accused persons have the right to remain silent in relation to the criminal offence that they are suspected or accused of having committed.

2. Member States shall ensure that suspects and accused persons have the right not to incriminate themselves.’

14 Under Article 10 of Directive 2016/343, headed ‘Remedies’:

‘1. Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.

2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, the rights of the defence and the fairness of the proceedings are respected.’

Directive 2016/800

15 Recitals 1, 11, 16, 18, 19, 22, 25 to 27 and 29 to 32 of Directive 2016/800 state:

‘(1) The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.

...

(11) This Directive, or certain provisions thereof, should also apply to suspects or accused persons in criminal proceedings, and to requested persons, who were children when they became subject to the proceedings, but who have subsequently reached the age of 18, and where the application of this Directive is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned.

...

(16) In some Member States certain minor offences, in particular minor road traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.

...

(18) This Directive should be implemented taking into account the provisions of Directives [2012/13] and [2013/48]. This Directive provides for further complementary safeguards with regard to information to be provided to children and to the holder of parental responsibility in order to take into account the specific needs and vulnerabilities of children.

(19) Children should receive information about general aspects of the conduct of the proceedings. To that end, they should, in particular, be given a brief explanation about the next procedural steps in the proceedings in so far as this is possible in the light of the interest of the criminal proceedings, and about the role of the authorities involved. The information to be given should depend on the circumstances of the case.

...

(22) Member States should inform the holder of parental responsibility about applicable procedural rights, in writing, orally, or both. The information should be provided as soon as possible and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the child.

...

(25) Children who are suspects or accused persons have the right of access to a lawyer in accordance with Directive [2013/48]. Since children are vulnerable and not always able to fully understand and follow criminal proceedings, they should be assisted by a lawyer in the situations set out in this Directive. In those situations, Member States should arrange for the child to be assisted by a lawyer where the child or the holder of parental responsibility has not arranged such assistance. Member States should provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer.

(26) Assistance by a lawyer under this Directive presupposes that the child has the right of access to a lawyer under Directive [2013/48]. Therefore, where the application of a provision of Directive [2013/48] would make it impossible for the child to be assisted by a lawyer under this Directive, such provision should not apply to the right of children to have access to a lawyer under Directive [2013/48]. On the other hand, the derogations and exceptions to assistance by a lawyer laid down in this Directive should not affect the right of access to a lawyer in accordance with Directive [2013/48], or the right to legal aid in accordance with the Charter and the [Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950; "the ECHR"], and with national and other Union law.

(27) The provisions laid down in this Directive on assistance by a lawyer should apply without undue delay once children are made aware that they are suspects or accused persons. For the purposes of this Directive, assistance by a lawyer means legal support and representation by a lawyer during the criminal proceedings. Where this Directive provides for the assistance by a lawyer during questioning, a lawyer should be present. Without prejudice to a child's right of access to a lawyer pursuant to Directive [2013/48], assistance by a lawyer does not require a lawyer to be present during each investigative or evidence-gathering act.

...

(29) Where a child who was not initially a suspect or accused person, such as a witness, becomes a suspect or accused person, that child should have the right not to incriminate him or herself and the right to remain silent, in accordance with Union law and the ECHR, as interpreted by the [Court] and by the European Court of Human Rights. This Directive therefore makes express reference to the practical situation where such a child becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a child other than a suspect or accused person becomes a suspect or accused person, questioning should be suspended until the child is made aware that he or she is a suspect or accused person and is assisted by a lawyer in accordance with this Directive.

(30) Provided that this complies with the right to a fair trial, Member States should be able to derogate from the obligation to provide assistance by a lawyer where this is not proportionate in the light of the

circumstances of the case, it being understood that the child's best interests should always be a primary consideration. In any event, children should be assisted by a lawyer when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive, as well as during detention. Moreover, deprivation of liberty should not be imposed as a criminal sentence unless the child has been assisted by a lawyer in such a way as to allow the child to exercise his or her rights of the defence effectively and, in any event, during the trial hearings before a court. Member States should be able to make practical arrangements in that respect.

(31) Member States should be able to derogate temporarily from the obligation to provide assistance by a lawyer in the pre-trial phase for compelling reasons, namely where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person, or where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence, inter alia, with a view to obtaining information concerning the alleged co-perpetrators of a serious criminal offence, or in order to avoid the loss of important evidence regarding a serious criminal offence. During a temporary derogation for one of those compelling reasons, the competent authorities should be able to question children without the lawyer being present, provided that they have been informed of their right to remain silent and can exercise that right, and that such questioning does not prejudice the rights of the defence, including the right not to incriminate oneself. It should be possible to carry out questioning, to the extent necessary, for the sole purpose of obtaining information that is essential to avert serious adverse consequences for the life, liberty or physical integrity of a person, or to prevent substantial jeopardy to criminal proceedings. Any abuse of this temporary derogation would, in principle, irretrievably prejudice the rights of the defence.

(32) Member States should clearly set out in their national law the grounds and criteria for such a temporary derogation, and they should make restricted use thereof. Any temporary derogation should be proportional, strictly limited in time, not based exclusively on the type or the seriousness of the alleged criminal offence, and should not prejudice the overall fairness of the proceedings. Member States should ensure that where the temporary derogation has been authorised pursuant to this Directive by a competent authority which is not a judge or a court, the decision on authorising the temporary derogation can be assessed by a court, at least during the trial stage.'

16 Article 1(a) of that directive provides:

'This Directive lays down common minimum rules concerning certain rights of children who are:

(a) suspects or accused persons in criminal proceedings'.

17 Under Article 2 of that directive, defining its scope:

'1. This Directive applies to children who are suspects or accused persons in criminal proceedings. It applies until the final determination of the question whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal.

2. This Directive applies to children who are requested persons from the time of their arrest in the executing Member State, in accordance with Article 17.

3. With the exception of Article 5, point (b) of Article 8(3), and Article 15, in so far as those provisions refer to a holder of parental responsibility, this Directive, or certain provisions thereof, applies to persons as referred to in paragraphs 1 and 2 of this Article, where such persons were children when they became subject to the proceedings but have subsequently reached the age of 18, and the application of this Directive, or certain provisions thereof, is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned. Member States may decide not to apply this Directive when the person concerned has reached the age of 21.

...'

18 Article 3(1) of that directive defines 'child' as 'a person below the age of 18'.

19 As set out in Article 4 of Directive 2016/800, headed 'Right to information':

'1. Member States shall ensure that when children are made aware that they are suspects or accused persons in criminal proceedings, they are informed promptly about their rights in accordance with Directive [2012/13] and about general aspects of the conduct of the proceedings.

Member States shall also ensure that children are informed about the rights set out in this Directive. That information shall be provided as follows:

- (a) promptly when children are made aware that they are suspects or accused persons, in respect of:
 - (i) the right to have the holder of parental responsibility informed, as provided for in Article 5;
 - (ii) the right to be assisted by a lawyer, as provided for in Article 6;
 - (iii) the right to protection of privacy, as provided for in Article 14;
 - (iv) the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings, as provided for in Article 15(4);
 - (v) the right to legal aid, as provided for in Article 18;
- (b) at the earliest appropriate stage in the proceedings, in respect of:
 - (i) the right to an individual assessment, as provided for in Article 7;
 - (ii) the right to a medical examination, including the right to medical assistance, as provided for in Article 8;
 - (iii) the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention, as provided for in Articles 10 and 11;
 - (iv) the right to be accompanied by the holder of parental responsibility during court hearings, as provided for in Article 15(1);
 - (v) the right to appear in person at trial, as provided for in Article 16;
 - (vi) the right to effective remedies, as provided for in Article 19;
- (c) upon deprivation of liberty in respect of the right to specific treatment during deprivation of liberty, as provided for in Article 12.

2. Member States shall ensure that the information referred to in paragraph 1 is given in writing, orally, or both, in simple and accessible language, and that the information given is noted, using the recording procedure in accordance with national law.

3. Where children are provided with a Letter of Rights pursuant to Directive [2012/13], Member States shall ensure that such a Letter includes a reference to their rights under this Directive.'

20 Article 5 of Directive 2016/800, entitled 'Right of the child to have the holder of parental responsibility informed', provides in paragraph 1:

'Member States shall ensure that the holder of parental responsibility is provided, as soon as possible, with the information that the child has a right to receive in accordance with Article 4.'

21 Article 6 of that directive, entitled 'Assistance by a lawyer', provides:

1. Children who are suspects or accused persons in criminal proceedings have the right of access to a lawyer in accordance with Directive [2013/48]. Nothing in this Directive, in particular in this Article, shall affect that right.

2. Member States shall ensure that children are assisted by a lawyer in accordance with this Article in order to allow them to exercise the rights of the defence effectively.

3. Member States shall ensure that children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons. In any event, children shall be assisted by 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 4;

(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.

4. Assistance by a lawyer shall include the following:

(a) Member States shall ensure that children 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 children are assisted by a lawyer when they are questioned, and that the lawyer is able to participate effectively during questioning. Such participation shall be conducted in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise or 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 under national law;

(c) Member States shall ensure that children are, as a minimum, assisted by a lawyer during the following investigative or evidence-gathering acts, where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a crime.

5. Member States shall respect the confidentiality of communication between children and their lawyer in the exercise of the right to be assisted by a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

6. Provided that this complies with the right to a fair trial, Member States may derogate from paragraph 3 where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, it being understood that the child's best interests shall always be a primary consideration.

In any event, Member States shall ensure that children are assisted by a lawyer:

- (a) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and
- (b) during detention.

Member States shall also ensure that deprivation of liberty is not imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the rights of the defence effectively and, in any event, during the trial hearings before a court.

7. Where the child is to be assisted by a lawyer in accordance with this Article but no lawyer is present, the competent authorities shall postpone the questioning of the child, or other investigative or evidence-gathering acts provided for in point (c) of paragraph 4, for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

8. In exceptional circumstances, and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.

Member States shall ensure that the competent authorities, when applying this paragraph, shall take the child's best interests into account.

A decision to proceed to questioning in the absence of the lawyer under this paragraph may be taken only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.'

22 Article 7 of that directive concerns the right to an individual assessment.

23 Under Article 13(2) of the same directive:

'Member States shall take appropriate measures to ensure that children are always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have.'

24 Article 15 of Directive 2016/800, entitled 'Right of the child to be accompanied by the holder of parental responsibility during proceedings', states in paragraph 4:

'In addition to the right provided for under paragraph 1, Member States shall ensure that children have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult as referred to in paragraph 2, during stages of the proceedings other than court hearings at which the child is present where the competent authority considers that:

- (a) it is in the child's best interests to be accompanied by that person; and
- (b) the presence of that person will not prejudice the criminal proceedings.'

25 Article 18 of that directive provides:

‘Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer pursuant to Article 6.’

26 Article 19 of that directive reads as follows:

‘Member States shall ensure that children who are suspects or accused persons in criminal proceedings and children who are requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.’

Polish law

27 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), in the version applicable to the dispute in the main proceedings (‘the CCP’), provides:

‘A person charged with an indictable offence enjoys rights of defence, including the right to the assistance of a defence counsel, of which he or she must be informed.’

28 Article 79 of the CCP provides:

‘§ 1. In criminal proceedings, the accused person must have a defence counsel:

(1) if he or she is below the age of 18;

...

§ 2. The accused person must also have a defence counsel if the court considers it necessary because of other circumstances which might obstruct his or her defence.

§ 3. In the cases referred to in paragraphs 1 and 2, the presence of the lawyer at the trial and the hearings which the accused person is required to attend shall be mandatory.

...’

29 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 within the meaning of 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 injury or deprivation of liberty.’

30 Article 301 of the CCP provides:

‘The suspect must be questioned, at his or her request, in the presence of the appointed defence counsel. The absence of the latter does not prevent questioning.’

31 Under Article 9 of the ustawa – Prawo o ustroju sądów powszechnych (Law relating to the organisation of the ordinary courts) of 27 July 2001 (Dz. U. of 2001, No 98, item 1070), in the version applicable to the disputes in the main proceedings (‘the Law on the organisation of the ordinary courts’), administrative oversight of the activity of the courts is provided by the Minister for Justice.

32 Under Article 130 of that law:

‘§ 1. Where a judge is arrested in the act of committing an intentional offence, other than a minor offence or where, having regard to the type of act committed by the judge, the authority of the court or the essential interests of the service require his or her immediate removal from office, the President of the

Court or the Minister for Justice may order the immediate suspension of the judge's activities pending the decision of the disciplinary court within a period of less than one month.

§ 2. If the judge referred to in paragraph 1 performs the duties of President of the Court, it shall be for the Minister for Justice to order the temporary suspension of his or her activities.

§ 3. Within three days from the date of the order referred to in paragraph 1, the President of the Court or the Minister for Justice shall inform the disciplinary court, which shall adopt without delay, at the latest before the expiry of the period laid down in the temporary suspension order, a resolution concerning the suspension of the judge from his or her duties or the annulment of the temporary suspension order. The disciplinary court shall inform the judge that the sitting is held if it considers it useful.'

33 Several provisions of the ustawa – Prawo o prokuraturze (Law on the Public Prosecutor's Office) of 28 January 2016 (Dz. U. of 2016, item 177), in the version applicable to the case in the main proceedings, concerning the organisation and structure of the Public Prosecutor's Office and the powers of prosecutors are listed in the request for a preliminary ruling. Those provisions provide, inter alia, that the role of Prokurator Generalny (Public Prosecutor General) is to be carried out by the Minister for Justice. In addition, prosecutors are, in principle, completely independent in the performance of their duties. However, they are required to implement regulations, circulars and instructions adopted by the senior prosecutor.

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

34 Criminal proceedings have been brought before the Sąd Rejonowy w Słupsku (District Court, Słupsk, Poland), the referring court in the present case, against M.S., J.W. and M.P. (together, 'the minor suspects'), charged with having broken into a disused holiday centre in Ustka (Poland) ('the facts at issue'), to the detriment of M.B. and B.B., represented by the appointed administrator, D.G. That break-in constitutes an offence under the Kodeks karny (Criminal Code), punishable by up to one year's imprisonment.

35 M.S. is being prosecuted for having, between December 2021 and January 2022, entered the break-in site on several occasions, while J.W. and M.P. are being prosecuted for having entered only once. At the material time, M.S., J.W. and M.P. were 17 years old.

36 M.S. was summoned by the police on 26 January 2022 to be questioned as a suspect. The police officer who questioned him knew that, on that date, M.S. was not yet 18 years old. His parents were not informed in advance of that questioning. The summons did not state that M.S. could appoint a lawyer. M.S. travelled to the police station with his mother, who, despite her request, was unable to attend the questioning of her son on the ground that, according to the police officers, he was answering for the facts at issue as an adult. In addition, the mother was denied any information concerning the conduct of the investigation phase and M.S. was also not informed of his right to acquaint himself with the case file before the indictment initiating the criminal proceedings was lodged at the court.

37 During that first questioning, M.S. admitted having committed the facts at issue and gave a detailed account of the course of the events, making statements that could incriminate him. Following those statements, the charges against him were amended since, instead of being prosecuted for breaking into the holiday centre in question only once, he was prosecuted for breaking into it on several occasions.

38 The indictment was read to M.S. and was given to him. He signed that indictment. The document relating to the general information on the rights and obligations of a suspect in criminal proceedings was also sent to him without that document containing any specific reference to the rights and obligations of minors. The information provided included, inter alia, information on the right to make statements or remain silent, or to refuse to answer questions without it being necessary to give reasons for that refusal, the right to be assisted by a lawyer of one's choice and the right to request the appointment of a court-appointed lawyer where the suspect does not have the financial means to choose his or her lawyer,

and the right to request the presence of the appointed lawyer during the questioning, provided that the absence of the latter is not an obstacle to questioning. Since that document was lengthy and complex, M.S. did not acquaint himself with its contents. He did, however, sign it, indicating acceptance.

39 M.S. was also informed of his right to request that the basis of the charges against him be communicated orally and to have a written presentation of the grounds of the indictment served on him or his lawyer within 14 days. He neither waived that right nor made such requests. Neither M.S. nor his parents appointed a lawyer to defend him, nor did he benefit from a court-appointed lawyer.

40 M.S. was questioned on two occasions. None of those interviews were the subject of an audiovisual recording. On the basis of the information provided by M.S. during his questioning, the police officers identified other persons suspected of having illegally broken into the holiday centre concerned, including the other minor suspects, J.W. and M.P.

41 Those two minors were summoned to the Ustka police station for questioning as suspects. Neither J.W.'s parents nor M.P.'s parents were informed of that questioning, even though the police officer responsible for the questioning knew that the two suspects were below the age of 18.

42 The questioning of J.W. and of M.P. was carried out in a similar way to that of M.S. The summons of J.W. and M.P. to the questioning did not contain any information on their right to appoint a lawyer or to be assisted by a court-appointed lawyer. Neither J.W. and M.P. nor their parents knew or had been informed that they were entitled to information about the progress of the proceedings or, in the case of the latter, to accompany their son during the pre-trial phase. J.W. and M.P. were provided with the same document as that given to M.S., as referred to in paragraph 38 above, and, like M.S., did not acquaint themselves with the contents of that document because of its length and the complexity of the language used.

43 No individual assessment of the minor suspects under Article 7 of Directive 2016/800 was carried out during the pre-trial stage.

44 On 31 May 2022, the Prokurator Prokuratury Rejonowej w Słupsku (public prosecutor of the District Public Prosecutor's Office, Słupsk, Poland) signed the indictment initiating the criminal proceedings concerning the minor suspects and forwarded it to the Sąd Rejonowy w Słupsku (District Court, Słupsk). Since the minor suspects did not have an appointed lawyer, that court, of its own motion, appointed a lawyer for each of them.

45 At the hearing on 23 August 2022, at which the minor suspects pleaded not guilty, M.S. made representations, but J.W. and M.P. refused to speak, responding only to questions from their lawyers. For each of the minor suspects, their lawyers requested that the statements made during the pre-trial phase should not be taken into account, since that evidence had been obtained in breach of their procedural rights, namely during questioning by the police in the absence of a lawyer, whose participation in the proceedings would have been mandatory. The lawyers argued that the evidence thus obtained could not serve as a basis for the findings of fact.

46 The Sąd Rejonowy w Słupsku (District Court, Słupsk) rejected as inadmissible the request of the Prokurator Prokuratury Rejonowej w Słupsku (public prosecutor of the District Public Prosecutor's Office, Słupsk) to be able to take into account evidence derived from statements made by minor suspects in the pre-trial phase during questioning conducted in the absence of a lawyer. Those statements were therefore removed from the file as evidence.

47 At the hearing on 26 August 2022, that court found of its own motion that M.P. had reached the age of 18 and that, in the light of Article 79(1)(1) of the CCP, the obligation to be assisted by a lawyer was no longer relevant to M.P. However, M.P.'s lawyer requested that his appointment automatically be maintained on the ground that M.P. was a minor at the time the proceedings commenced and that it was clear from the

circumstances of the case that his level of maturity required him to be assisted by a court-appointed lawyer. That court granted that request.

48 In its reference for a preliminary ruling, the Sąd Rejonowy w Słupsku (District Court, Słupsk) also notes that the hierarchical superior of the Prokurator Rejonowy w Słupsku (District Public Prosecutor, Słupsk), who is a party to the criminal proceedings against the minor suspects, is the Prokurator Generalny (Prosecutor General), who is also the Minister for Justice. The Prosecutor General directs the activity of the Public Prosecutor's Office, personally or through the Prokurator Krajowy (National Prosecutor) and the other deputies of the Prokurator Generalny (Prosecutor General), by adopting decisions, guidelines and instructions.

49 The judge hearing the case in the main proceedings, sitting as a single judge at the Sąd Rejonowy w Słupsku (District Court, Słupsk), was removed from her post for the period from 9 February 2022 to 8 March 2022 by a decision of the Prokurator Generalny (Prosecutor General), pursuant to Article 130(1) of the Law on the organisation of the ordinary courts, on the ground that, in a case other than the case in the main proceedings, she had committed an act such that the authority of the Sąd Rejonowy w Słupsku (District Court, Słupsk) and the essential interests of the service required that she be immediately relieved of her duties.

50 In that other case, that judge had made an order granting a party's application by which it challenged a judge who had been appointed following proceedings involving the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland), set up after 2018, on the ground that that appointment did not comply with EU law and with the ECHR.

51 The Prokurator Rejonowy w Słupsku (District Public Prosecutor, Słupsk) had then informed the Prokurator Regionalny w Gdańsku (Regional Prosecutor, Gdańsk, Poland) of that situation, who informed the Minister for Justice, pursuant to instructions issued by the Public Prosecutor's Office, which require prosecutors to immediately inform the regional prosecutor with territorial jurisdiction of cases in which judges call into question the status of another judge of an ordinary court, or the status of judges sitting at the Sąd Najwyższy (Supreme Court, Poland). In essence, those instructions require notification of any situation in which a judge relies directly on provisions of EU law and the case-law of the Court by disapplying national law.

52 It is in that context that the referring court raises the question, in several respects, of the interpretation of EU law.

53 In the first place, in the view of the referring court, the circumstances in which the criminal proceedings took place deprived the minor suspects of the benefit of the minimum standards of protection applicable to 'children', within the meaning of Article 3(1) of Directive 2016/800, where they are suspects or accused persons, and of the rights which all suspects may claim under Directives 2013/48 and 2012/13, which shows that those directives have been incorrectly transposed into Polish law.

54 In the second place, the referring court is uncertain as to the consequences to be drawn from the failure to implement correctly EU law, given the direct effect of the provisions concerning the right to information and the right to be assisted by a lawyer. It points out that the procedural rules in force in Poland contain provisions which are not only not precise enough to guarantee the rights of children set out in Directive 2016/800, but also make it impossible to interpret those provisions in a manner consistent with EU law.

55 In the third place, the questions referred by the national court concern the effective remedies to ensure that suspected or accused children are protected from the effects of the breach of their rights under Directive 2016/800 and Directives 2012/13 and 2013/48, read in the light of the principle of a fair trial.

Article 19 of Directive 2016/800 provides that children who are suspects or accused persons have an effective remedy under national law in the event of a breach of their rights under that directive. However, the latter directive does not specify what those remedies are, suggesting that they are left to the discretion of the Member States.

56 Moreover, it is apparent from Directives 2012/13 and 2013/48 that there are no clear provisions in EU law relating to the possibility of using statements made by a suspected or accused child in the absence of a lawyer as evidence. However, Article 12 of Directive 2013/48, read in the light of recital 50 thereof, lays down a clause excluding evidence obtained in breach of the right of access to a lawyer.

57 In addition, the referring court points out that neither the ECHR nor the Charter lay down the detailed rules governing the exercise of the rights of the defence or the consequences of a breach of those rights. According to the referring court, they leave it to the Member States to choose the means of guaranteeing those rights in their judicial systems, provided that those means comply with the requirements of a fair trial. In that regard, it is necessary to refer to the ECHR in order to determine the minimum standard of protection that the remedies must guarantee. In its case-law, the European Court of Human Rights has established the importance of the right of the assistance of a lawyer for the purpose of assessing the fairness of proceedings and ruled on the question of the possibility of using in criminal proceedings evidence gathered in breach of the right of the suspect to the assistance of a lawyer at the initial stage of the criminal proceedings.

58 In the fourth place, the referring court puts forward a final series of considerations relating to the public prosecutor's status in criminal investigations and the independence of judges. The principle of effective protection of rights conferred by EU law is necessarily based on the independence and impartiality of all the authorities of the Member State concerned. A mechanism enabling the organs of the executive to encroach on the decision-making process of the prosecuting authorities, as well as on that of the courts, is problematic since it enables the executive to influence the classifications made and to call into question the judgments delivered by interfering in the process of direct application of EU law at the stage of both the criminal investigation and the judicial proceedings.

59 In particular, the referring court expresses its concerns regarding the power of the Minister for Justice to order, pursuant to Article 130(1) of the Law on the organisation of the ordinary courts, the immediate suspension of a judge from his or her duties when he or she takes decisions directly on the basis of EU law or decisions intended to guarantee the independence and impartiality of a court.

60 It is in those circumstances that the Sąd Rejonowy w Słupsku (District Court, Słupsk) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 6(1), (2), (3)(a) and (7) and Article 18, in conjunction with recitals 25, 26 and 27, of Directive [2016/800] be interpreted as meaning that, as soon as a suspect below the age of 18 years is charged, the authorities conducting the proceedings are obliged to ensure that the child has the right to be assisted by a public defence counsel if he or she does not have a defence counsel of his or her choice (because the child or the holder of parental responsibility has not arranged such assistance) and to ensure that a defence counsel participates in the actions of the pre-trial proceedings, such as the questioning of the minor as a suspect, and that they preclude a minor from being questioned without the participation of a defence counsel?

(2) Must Article 6(6) and (8), in conjunction with recitals 16, 30, 31 and 32, of Directive [2016/800] be interpreted as meaning that the provision of the assistance of a defence counsel without undue delay may not be derogated from in any event in cases concerning offences punishable by a restriction of liberty and that application of the right to assistance of a defence counsel within the meaning of Article 6(8) of [that] directive may be temporarily derogated from only in pre-trial proceedings and only in the circumstances

listed exhaustively in Article 6(8)(a) and (b) [of that directive], which must be expressly stated in the decision, which is in principle open to challenge, to proceed to questioning in the absence of a lawyer?

(3) If the answer to at least one of the first two questions is in the affirmative, are the abovementioned provisions of Directive [2016/800] therefore 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 with the participation of the appointed defence counsel only at his or her request and the failure of the defence counsel to appear for the questioning of the suspect is not to block questioning;

(b) Article 79(3) of the [CCP], under which, in the case of a person below the age of 18 years (Article 79(1)(1) of the [CCP]), the participation of a defence counsel is mandatory only at the trial and at those hearings in which the participation of the accused person is mandatory, that is to say[,] at the trial stage?

(4) Must the provisions referred to in [the first two questions], and also the principle of primacy and the principle of direct effect of directives, be interpreted as empowering (or obliging) a national court hearing a case in criminal proceedings coming within the scope of Directive [2016/800], and any State authorities, to disregard provisions of national law which are incompatible with the directive, such as those listed in [the third question], and consequently – on account of the expiry of the implementation period – to replace the abovementioned national rule with the directly effective rules of the directive?

(5) Must Article 6(1), (2), (3) and (7) and Article 18, in conjunction with Article 2(1) and (2) and recitals 11, 25 and 26, of Directive [2016/800 and] Article 13 and recital 50 of [Directive 2013/48] be interpreted as meaning that a Member State must grant legal aid to suspects or accused persons in criminal proceedings who were children at the time of the beginning of the proceedings but have subsequently reached the age of 18 years and that such assistance is mandatory until the final conclusion of the proceedings?

(6) If the answer to [the fifth question] is in the affirmative, must the abovementioned provisions of the directive therefore be interpreted as precluding provisions of national law, such as Article 79(1)(1) of the [CCP], under which, in criminal proceedings, the accused person must have a defence counsel only until he or she reaches the age of 18 years?

(7) Must the provisions referred to in [the fifth question], and also the principle of primacy and the principle of direct effect of directives, be interpreted as empowering (or obliging) a national court hearing a case in criminal proceedings coming within the scope of Directive [2016/800], and any State authorities, to disregard provisions of national law which are incompatible with the directive, such as those listed in [the sixth question], and to apply provisions of national law, such as Article 79(2) of the [CCP], interpreted in conformity with the directive, that is to say, to maintain the appointment of a public defence counsel for an accused person who was under the age of 18 years at the time of the charge but subsequently, in the course of the proceedings, reached the age of 18 years and in respect of whom the criminal proceedings remain pending, until the final conclusion of the proceedings, on the assumption that this is necessary in view of circumstances impeding the defence, or – on account of the expiry of the implementation period – to replace the abovementioned national rule with the directly effective rules of the directive?

(8) Must Article 4(1) to (3), in conjunction with recitals 18, 19 and 22, of Directive [2016/800 and] Article 3(2), in conjunction with recitals 19 and 26[,] of Directive [2012/13] be interpreted as meaning that the competent authorities (public prosecutor's office, police) must, at the latest before the initial official questioning of a suspect by the police or [by] another competent authority, promptly inform both the suspect and, at the same time, the holder of parental responsibility, of the rights which are essential for

safeguarding the fairness of the proceedings and of the procedural steps in the proceedings, including, more specifically, the obligation to appoint a defence counsel for a minor suspect and the consequences of not appointing a defence counsel of choice for the accused minor (appointment of a public defence counsel), and, as regards child suspects, that information must be given in simple and accessible language appropriate to the age of the minor?

(9) Must Article 7(1) and (2), in conjunction with recital 31, of Directive [2016/343 and] Article 3(1)(e) and (2) of Directive [2012/13] be interpreted as meaning that the authorities of a Member State conducting criminal proceedings involving a suspect/accused person who is a child are obliged to instruct a child suspect as to the right to remain silent and the right not to incriminate himself/herself, in a manner which is intelligible and appropriate to the age of the suspect?

(10) Must Article 4(1) to (3), in conjunction with recitals 18, 19 and 22, of Directive [2016/800] and Article 3(2), in conjunction with recitals 19 and 26, of Directive [2012/13] be interpreted as meaning that the requirements laid down in the abovementioned provisions are not satisfied by the service of general instructions shortly before the questioning of a minor suspect, without regard to the specific rights arising from the scope of Directive 2016/800, and by the service of such instruction only on a suspect acting without a defence counsel, without the involvement of the holder of parental responsibility, and in a situation in which such instructions are formulated in language inappropriate to the age of the suspect?

(11) Must Articles 18 and 19, in conjunction with recital 26, of Directive [2016/800] and Article 12(2), in conjunction with recital 50, of Directive [2013/48], combined with Article 7(1) and (2), in conjunction with Article 10(2) and recital 44[,] of Directive [2016/343] and the principle of a fair trial, be interpreted – in relation to statements made by a suspect during police questioning conducted without access to a lawyer and without the suspect being fairly informed of his or her rights, without the holder of parental responsibility being informed of the rights and general aspects of the conduct of the proceedings that the child is entitled to pursuant to Article 4 of the directive – as obliging (or empowering) a national court hearing a case in criminal proceedings coming within the scope of the abovementioned directives, and any State authorities, to ensure that suspects/accused persons are placed in the same position as that in which they would have been had the infringements in question not occurred, and therefore to disregard such evidence, in particular where the incriminating information obtained in such questioning was to be used to convict the person concerned?

(12) Must the provisions [set out in the eleventh question], and also the principle of primacy and the principle of direct effect, therefore be interpreted as requiring a national court hearing a case in criminal proceedings coming within the scope of the abovementioned directives, and any other State authorities, to disregard provisions of national law which are incompatible with those directives, such as abovementioned Article 168a of the [CCP], under which 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 injury or deprivation of liberty?

(13) Must Article 2(1) of Directive [2016/800], in conjunction with the second subparagraph of Article 19(1) TEU ... and the principle of effectiveness in [EU] law, be interpreted as meaning that a public prosecutor, as an authority participating in the administration of justice, upholding the rule of law and in that regard the host of the pre-trial proceedings, has a duty to ensure, at the pre-trial stage, effective legal protection coming within the scope of the abovementioned directive and that, in the effective application of [EU] law, he or she must guarantee his or her independence and impartiality?

(14) If the answer to any of the [first to twelfth questions] and especially the answer to [the thirteenth question] is in the affirmative, must the second subparagraph of Article 19(1) TEU (principle of effective legal protection), in conjunction with Article 2 TEU, in particular in conjunction with the principle of respect

for the rule of law as interpreted in the case-law of the Court of Justice ([judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19], EU:C:2021:1034), and the principle of judicial independence established in the second subparagraph of Article 19(1) TEU and in Article 47 of the [Charter], as interpreted in the case-law of the Court of Justice (judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117), be interpreted as meaning that those principles, in view of the possibility of pressure being exerted indirectly on judges and the possibility of the [Prokurator Generalny (Public Prosecutor General)] issuing binding instructions in [that] regard to lower-ranking public prosecutors, preclude national legislation stating that the prosecutor's office is to be dependent on an executive authority, such as the Minister for Justice, and also preclude the existence of national rules which limit the independence of the courts and the independence of the public prosecutor in the application of [EU] law, in particular:

(a) Article 130(1) of the Ustawa z dnia 27 lipca 2001 roku o ustroju sądów powszechnych [Law on the organisation of the ordinary courts], which permits the Minister for Justice – in connection with the public prosecutor's obligation to report a situation in which a court gives judgment applying [EU] law – to order the immediate suspension of a judge's service activities pending a decision by the disciplinary court, for no longer than one month, when, on account of the nature of the offence committed by the judge and given effect in the direct application of [EU] law, the Minister for Justice considers that the authority of the court and the essential interests of the service so require;

(b) [Article] 1(2), [Article] 3(1)(1) and (3), [Article] 7(1) to (6) and (8) ... and [Article] 13(1) and (2) of the Ustawa z dnia 28 stycznia 2016 roku Prawo o prokuraturze (Law of 28 January 2016 on the Public Prosecutor's Office), the content of which, considered in conjunction with one another, indicates that the Minister for Justice, who is also the [Prokurator Generalny (Public Prosecutor General)] and the highest authority of the public prosecutor's office, may 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

61 The referring court requested that the present reference be dealt with under an expedited procedure pursuant to Article 105 of the Rules of Procedure of the Court of Justice. In support of its request, that court submits, first, that the questions referred go beyond the scope of the case in the main proceedings in view of the large number of cases involving minors who are suspects or accused persons which the Polish courts have to deal with each month, and that unlawful procedural acts irremediably breach fundamental principles of criminal procedure. Second, those courts rule on the basis of the provisions governing Polish criminal proceedings which, in the view of the referring court, do not guarantee the minimum standards of protection under EU law. Third, a prompt answer to the questions referred for a preliminary ruling is necessary in order to remove doubts as to whether a body of the executive, such as the Minister for Justice, can exercise influence over the application of EU law in criminal proceedings involving minors who are suspects or accused persons.

62 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.

63 It must be borne in mind, in that regard, that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency (judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 54 and the case-law cited).

64 In the present case, the President of the Court decided, on 21 October 2022, having heard the Judge-Rapporteur and the Advocate General, that it was appropriate to reject the request referred to in paragraph 61 above.

65 It is clear from settled case-law that the large number of persons or legal situations which may be affected by the decision that a referring court must give after making a request to the Court for a preliminary ruling does not, as such, constitute an exceptional circumstance justifying the application of the expedited procedure (judgment of 8 December 2020, *Staatsanwaltschaft Wien (Falsified transfer orders)*, C-584/19, EU:C:2020:1002, paragraph 36 and the case-law cited). The same is true of the fact that a significant number of litigants are potentially concerned by the decisions taken by the Polish courts on the basis of the provisions governing Polish criminal proceedings, the validity of which is called into question in the light of EU law (see, by analogy, judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 55).

66 Furthermore, neither the fact that the request for a preliminary ruling raises questions of criminal law nor the mere interest of individuals, while legitimate, in determining as quickly as possible the scope of their rights under EU law is such as to establish the existence of an exceptional circumstance (see, to that effect, judgment of 11 April 2024, *KB and Others*, C-114/23, C-115/23, C-132/23 and C-160/23, EU:C:2024:290, paragraph 23 and the case-law cited).

67 Lastly, as regards the doubts as to whether it is possible for a body of the executive, such as the Minister for Justice, to exercise influence over the application of EU law, the request referred to in paragraph 61 above does not contain any concrete evidence to support the conclusion that such a possibility could be avoided by triggering the accelerated procedure.

68 However, the President of the Court decided that the present case would be given priority, pursuant to Article 53(3) of the Rules of Procedure.

Consideration of the questions referred

Admissibility

69 The Polish Government submits that the questions referred for a preliminary ruling are inadmissible.

70 First, the first to twelfth questions are not necessary for the resolution of the dispute in the main proceedings. It is apparent from the request for a preliminary ruling that the referring court dismissed as inadmissible, in accordance with national law, the requests of the Prokurator Prokuratury Rejonowej w Słupsku (public prosecutor of the District Public Prosecutor's Office, Słupsk) to admit evidence from the statements made by the minor suspects in the context of the criminal investigation in the case in the main proceedings. That court thus removed from the case file the statements made by the minor suspects during that criminal investigation. In addition, the minor suspects each received the assistance of a court-appointed lawyer and, in the case of one of them, who reached the age of 18 during the proceedings, the referring court confirmed the appointment of that lawyer on the ground that the appointment was necessary because of circumstances impeding his defence.

71 Second, the thirteenth and fourteenth questions are purely hypothetical because they have no connection with the facts or purpose of the case in the main proceedings.

72 The thirteenth question and point (b) of the fourteenth question relate, in general, to the power held by the Minister for Justice, also carrying out the duties of Prokurator Generalny (Prosecutor General), to give binding instructions to lower-ranking prosecutors, which may also restrict or prevent the direct applicability of EU law. In that regard, the referring court has not specified how the relevant national provisions were applied to the main proceedings.

73 Point (a) of the fourteenth question concerns the possibility of temporarily suspending the judge responsible for the main proceedings from his or her duties. In the present case, the suspension in question took effect on 9 February and ended on 8 March 2022 and is therefore no longer ongoing. In addition, that suspension took place in proceedings which are unrelated to the case in the main proceedings. The basis of the relevant suspension measure was that the judge in question disputed the existence of another judge's employment relationship and the validity of that judge's appointment with the involvement of the Krajowa Rada Sądownictwa (National Council of the Judiciary). However, such a situation could not arise in the main proceedings, since the national court was sitting as a single judge. In any event, nothing relating to the appointment of judges in Poland appears in the grounds of the request for a preliminary ruling.

74 The Prokurator Regionalny w Gdańsku (Regional Prosecutor, Gdańsk) submits that the eleventh to fourteenth questions are inadmissible since an answer from the Court to those questions is not necessary for the purpose of resolving the dispute in the main proceedings.

75 In the light of the abovementioned arguments, it should be noted that the Court has repeatedly held 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 (judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 62 and the case-law cited).

76 Under Article 267 TFEU, the preliminary ruling sought must be 'necessary' to enable the referring court to 'give judgment' in the case before it (judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 63 and the case-law cited).

77 It is clear from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court by way of a request for a preliminary ruling unless a case is pending before it, in which it is called upon to give a decision which is capable of taking account of the preliminary ruling (judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 64 and the case-law cited).

78 In such proceedings, there must therefore be a connecting factor between that dispute and the provisions of EU law whose interpretation is sought, by virtue of which that interpretation is objectively required for the decision to be taken by the referring court (judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 65 and the case-law cited).

79 The first to twelfth questions concern, in essence, the interpretation of several provisions of Directive 2016/800, read in the light of Directives 2012/13, 2013/48 and 2016/343, in so far as those provisions govern the procedural rights of children who are suspects or accused persons in criminal proceedings.

80 It is apparent from the request for a preliminary ruling that the referring court is uncertain whether the Polish legislation governing criminal proceedings complies with those provisions and what conclusions should be drawn, in the context of the main proceedings, from a finding that national law is contrary to EU law. In that regard, it states that the answer to the first to twelfth questions is essential for the purpose of ruling on the admissibility of the evidence resulting from statements made by the minor suspects, in the absence of a lawyer, during the pre-trial stage.

81 The referring court indeed states that it rejected the requests of the Prokurator Prokuratury Rejonowej w Słupsku (public prosecutor of the District Public Prosecutor's Office, Słupsk) to admit evidence contained in incriminating statements made by the minor suspects in the absence of a lawyer during the pre-trial stage, thereby deciding to exclude that evidence. Similarly, as regards one of the minor suspects who reached the age of 18 in the course of the proceedings before it, that court states that it extended the appointment by the court of the lawyer for the benefit of that suspect.

82 However, it is apparent, first, from the file before the Court that that court has not taken a final decision as regards the admissibility of that evidence. Thus, the answer given to the questions referred will have an impact on that decision, in order to enable the referring court to rule on the substance of the case in the main proceedings. Second, as regards the decision to extend the appointment by the court of the lawyer of one of the suspects in the main proceedings, it appears that that decision was taken at a later stage in the proceedings and that it cannot, therefore, make good any breaches that occurred during the pre-trial stage.

83 It follows that, in the present case, an answer from the Court to the first to twelfth questions appears to be necessary in order to enable the referring court to settle questions raised in *limine litis*, before that court can, as required, rule on the substance of the case in the main proceedings (see, by analogy, judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 94 and the case-law cited).

84 Therefore, since the conditions set out in paragraphs 76 to 78 above have been met, the first to twelfth questions are admissible.

85 By contrast, the thirteenth and fourteenth questions do not meet those conditions.

86 In the first place, the thirteenth question and point (b) of the fourteenth question concern whether, during the pre-trial stage, the public prosecutor must disapply national provisions contrary to EU law in order to ensure the effectiveness of the rights of minors who are suspects and, to that end, whether his or her independence and impartiality must be preserved against possible interference by the executive.

87 In the present case, in the light of the matters set out in paragraphs 80 to 83 of the present judgment, it does not appear that an answer from the Court to those questions is necessary in order for the referring court to settle questions which arise in *limite litis* before it. It is apparent from the information provided by the referring court that, in the case in the main proceedings, the pre-trial stage has been completed and that it is now for that court to exclude evidence gathered in breach of procedural rights or to rule on the right of suspects to be assisted by a lawyer.

88 In those circumstances, the question whether, in the context of the pre-trial stage, the prosecutor has, under EU law, an obligation to disapply national provisions that are contrary to EU law in order to ensure the effectiveness of the rights of minors who are suspects 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.

89 In the second place, point (a) of the fourteenth question concerns whether Article 2 and Article 19(1) TEU and Article 47 of the Charter preclude national legislation which allows the Minister for Justice to order the immediate suspension of a judge from his or her duties.

90 It is true that, in the present case, it appears that the judge responsible for the case in the main proceedings was suspended from her duties pursuant to that legislation.

91 However, it is clear from the information contained in the request for a preliminary ruling that that suspension, which, moreover, is no longer in effect, was decided in a case separate from the case in the

main proceedings. In addition, as the Advocate General noted in point 56 of her Opinion, the fear, for that judge, of being again subject to such a suspension in the case in the main proceedings is only hypothetical.

92 That question does not therefore correspond to an objective need inherent in the resolution of the case in the main proceedings, but seeks to obtain from the Court a general assessment, disconnected from that case, of the national legislation (see, by analogy, judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 78).

93 The thirteenth and fourteenth questions are therefore inadmissible.

Substance

94 In view of the relationship between all the questions referred by the national court, it is appropriate to examine together, first, the first to fourth questions, second, the fifth to seventh questions, third, the eighth to tenth questions, and then, fourth, the eleventh and twelfth questions, it being specified that those questions must be examined solely in the light of the provisions of Directive 2016/800 which specifically concern children.

The first to fourth questions

95 By its first four questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6(1) to (3) of Directive 2016/800, read in the light of Article 18 of that directive, must be interpreted as precluding national legislation which, first, does not provide for children who are suspects or accused persons to be assisted by a lawyer – a court-appointed lawyer if necessary – before being questioned by the police or by another law enforcement or judicial authority and, at the latest, before they are first questioned and, second, allows those children to be questioned as suspects in the absence of such a lawyer during their questioning. In addition, that court asks whether, if the answer to those questions is in the affirmative, it is appropriate for a court hearing a criminal case to disapply such national legislation.

96 In the first place, under Article 6(1) of Directive 2016/800, children who are suspects or accused persons in criminal proceedings have, first, the right of access to a lawyer in accordance with Directive 2013/48, it being noted that, in accordance with recital 15 of that directive, the term ‘lawyer’ means, in the context of that directive, any person who, in accordance with national law, is qualified and entitled, including by means of accreditation by a competent body, to provide legal advice and assistance to suspects or accused persons.

97 In order to determine the extent of a child’s right to be assisted by a lawyer, it is necessary to have regard to the extent of the right of any suspect or accused person under Article 3 of Directive 2013/48.

98 As is apparent from recitals 18 and 26 of Directive 2016/800, Directive 2013/48 must be taken into account when interpreting the provisions of Directive 2016/800. However, the latter directive provides for additional safeguards to take account of the specific needs and vulnerabilities of children.

99 Second, Article 6(2) of Directive 2016/800 requires Member States to ensure that children are assisted by a lawyer in accordance with the provisions of that article in order to allow them to exercise their rights of the defence effectively.

100 As is apparent, in essence, from recitals 1, 25 and 29 of Directive 2016/800, that directive seeks to take account of the particular vulnerability of children in criminal proceedings and thus encourages them to exercise, inter alia, their right to be advised, defended and represented, laid down in the second paragraph of Article 47 of the Charter, and the rights of the defence guaranteed by Article 48(2) of the Charter (see, by analogy, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 104).

101 Third, the fundamental principle that children have the right to be assisted by a lawyer is fleshed out in Article 6(3) of Directive 2016/800 with respect to the moment from which that right must be granted (see, by analogy, judgment of 12 March 2020, *VW (Right of access to a lawyer in the event of non-appearance)*, C-659/18, EU:C:2020:201, paragraph 31).

102 Thus, under paragraph 3, children who are suspects or accused persons must have access to a lawyer without undue delay and, in any event, from the date of any of the four specific events listed in points (a) to (d) of that paragraph, whichever occurs first.

103 As regards, in particular, the pre-trial stage, children are to be assisted by a lawyer, in accordance with Article 6(3)(a) of Directive 2016/800, 'before they are questioned by the police or by another law enforcement or judicial authority', and, in accordance with Article 6(3)(b) of that directive, 'upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act'.

104 Fourth, Article 6(4) of Directive 2016/800 clarifies the scope of the right of children to be assisted by a lawyer.

105 Thus, it is apparent from Article 6(4)(a) of that directive that children 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. Article 6(4)(b) further provides that those children are to be assisted by a lawyer when they are questioned and that the lawyer must be able to participate effectively during questioning.

106 In that regard, as the Advocate General observed in point 70 of her Opinion, unlike Article 9 of Directive 2013/48, which concerns suspects or accused persons who are not children, Directive 2016/800 does not provide for the possibility for children to waive their right to be assisted by a lawyer.

107 In addition, Article 18 of that directive states that Member States must ensure that their national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer pursuant to Article 6 of that directive.

108 It follows from the foregoing considerations that children who are suspects or accused persons must be afforded the practical and effective opportunity under national law to be assisted by a lawyer, before they are first questioned by the police or by another law enforcement or judicial authority and, at the latest, from the time of that questioning.

109 Where a child, or the holder of parental responsibility, have not appointed a lawyer before that child is questioned by the police or by another law enforcement or judicial authority, that child must be entitled to a court-appointed lawyer who assists him or her during that questioning.

110 In the second place, as the Advocate General stated in point 68 of her Opinion, it follows from the mandatory nature of the need to ensure that children are assisted by a lawyer before they are first questioned by the police or by any other law enforcement or judicial authority responsible for that questioning that those authorities cannot carry out that questioning where the child concerned does not actually receive such assistance.

111 Article 6(7) of Directive 2016/800 states that, where the child is to be assisted by a lawyer in accordance with that Article 6 but no lawyer is present, the competent authorities shall postpone the questioning of the child, or other investigative or evidence-gathering acts, for a reasonable period of time in order to allow for the presence of a lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

112 It is true that Article 6(6) and (8) of Directive 2016/800 provides for certain derogations from the right to be assisted by a lawyer laid down in that directive. As is apparent from those provisions, those derogations must be decided by the competent authorities, on a case-by-case basis, in order to determine whether, in the light of the particular circumstances of each case and taking into account the best interests of the child, the derogation envisaged is justified, in compliance with the strict conditions laid down by those provisions.

113 Those provisions cannot, therefore, permit derogations, in a general and abstract manner, in the context of national legislation, from the right of children who are suspects or accused persons to be assisted by a lawyer in the pre-trial phase.

114 In the present case, it is apparent from the information provided by the referring court that the relevant provisions of national law, in particular Article 79(3) and Article 301 of the CCP, do not provide for the mandatory presence of a lawyer for children who are suspects during their questioning and, more generally, at the pre-trial stage. In accordance with those provisions, where those children are not detained, they are to be assisted by a lawyer in the course of questioning only where they have expressly requested such assistance. Furthermore, the absence of such a lawyer does not preclude the questioning of those children.

115 In those circumstances, it appears that such national legislation is not compatible with Article 6(1) to (3) of Directive 2016/800, which it is for the referring court to verify.

116 In that regard, in view of the referring court's questions, it should be recalled 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 conformity with EU law (judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C-205/20, EU:C:2022:168, paragraph 35 and the case-law cited).

117 The obligation to interpret national law in a manner consonant with EU law cannot, however, serve as a basis for an interpretation of national law *contra legem* (judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C-205/20, EU:C:2022:168, paragraph 36 and the case-law cited).

118 It should also be borne in mind that the principle of primacy places the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law under a duty, where it is unable to interpret national legislation in compliance with the requirements of EU law, to give full effect to the requirements of that law in the dispute before it, if necessary disapplying of its own motion any national legislation or practice, even if adopted subsequently, which is contrary to a provision of EU law with direct effect, and it is not necessary for that court to request or await the prior setting aside of such national legislation or practice by legislative or other constitutional means (judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C-205/20, EU:C:2022:168, paragraph 37).

119 In the present case, in view of the clear, precise and unconditional wording of Article 6(1) to (3) of Directive 2016/800, that provision does have direct effect.

120 It is thus for the referring court to interpret, so far as possible, the provisions of national law referred to in paragraph 114 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 it.

121 In the light of all the foregoing, the answer to the first to fourth questions is that Article 6(1) to (3) of Directive 2016/800, read in the light of Article 18 of that directive, must be interpreted as precluding national legislation which, first, does not provide for children who are suspects or accused persons to be

assisted by a lawyer – a court-appointed lawyer if necessary – before being questioned by the police or by another law enforcement or judicial authority and, at the latest, before they are first questioned and, second, allows those children to be questioned as suspects in the absence of such a lawyer during their questioning.

The fifth to seventh questions

122 As a preliminary point, it should be noted that, by its fifth to seventh questions, the referring court asks the Court to interpret, inter alia, several provisions of Directive 2016/800, in particular Article 2(1) and (2) and Article 6(1) to (3) and (7), read in conjunction with Article 18 of that directive.

123 It is apparent from the request for a preliminary ruling that the referring court is uncertain as to whether the right of persons who were children at the time when they became the subject of criminal proceedings to be assisted by a court-appointed lawyer, which is the subject of the first to fourth questions referred for a preliminary ruling, ends when those persons have reached the age of 18.

124 Thus, those questions must be understood as relating, in essence, to Article 2 of Directive 2016/800, which defines the scope of that directive, and in particular to paragraphs 1 and 3 of that article.

125 In those circumstances, it must be held that, by its fifth to seventh questions, which it is appropriate to examine together, the referring court asks whether Article 2(1) and (3) of Directive 2016/800 must be interpreted as precluding national legislation which provides that the right to be assisted by a court-appointed lawyer automatically ends for persons who were children at the time when they became the subject of criminal proceedings, but who, subsequently, have reached the age of 18, in so far as such legislation does not permit a determination of whether the application of that directive or of some of its provisions and, consequently, of the rights set out therein is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of those persons. In addition, that court asks whether, if those questions are answered in the affirmative, it is necessary for a court hearing a criminal case to disapply such national legislation.

126 Under Article 2(1) of Directive 2016/800, that directive applies to children who are suspects or accused persons in criminal proceedings and it applies until the final determination of the question whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal. In that regard, Article 3(1) of that directive defines the concept of ‘child’ as a person below the age of 18.

127 As regards persons who were children at the time when they became the subject of criminal proceedings but who, subsequently, have reached the age of 18, the first sentence of Article 2(3) of Directive 2016/800 states that, with the exception of the articles referred to in that provision which refer to the holder of parental responsibility, that directive applies to those persons where its application is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of those persons.

128 It follows that persons who were children when they became the subject of criminal proceedings continue to enjoy the rights as provided for by Directive 2016/800, and in particular the right to be assisted by a lawyer, in accordance with Article 6 of that directive, when those persons have reached the age of 18 during those proceedings and it has been held that the application of that directive is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of those persons.

129 It must be stated that, in the event that it is found, in criminal proceedings, that the application of Directive 2016/800 or of some of its provisions is not appropriate, a person who has reached the age of 18 would fall within the scope of Directives 2012/13, 2013/48 and 2016/343, applicable to suspects and

accused persons in criminal proceedings irrespective of their age. In that case, they would enjoy the rights provided for by those directives, under the conditions laid down therein.

130 As is apparent from the very wording of the first sentence of Article 2(3) of Directive 2016/800, the question of the application of that directive or of some of its provisions to persons who have reached the age of 18 during the proceedings to which they are subject depends on all the circumstances of the individual case and must therefore be assessed on a case-by-case basis.

131 In those circumstances, the requirement that the application of Directive 2016/800 or of some of its provisions must be appropriate in no way allows a Member State to exclude, in a general and abstract manner, all persons who have reached the age of 18 during the proceedings to which they are subject from the benefit of the rights established by Directive 2016/800, and in particular the right to be assisted by a lawyer in accordance with Article 6 of that directive.

132 That interpretation that the Member States cannot set, by legislation, the absolute age limit for the benefit of the rights conferred by that directive at 18 years of age is supported by the second sentence of Article 2(3) of Directive 2016/800, which provides that Member States may decide not to apply that directive to persons who have reached the age of 21.

133 Article 2(3) of Directive 2016/800 therefore precludes national legislation which provides, automatically, that the right to be assisted by a court-appointed lawyer, in accordance with Article 6(1) to (3) of Directive 2016/800, read in the light of Article 18 of that directive, ends for persons who have reached the age of 18 during the criminal proceedings to which they are subject but who were children at the time when those proceedings were brought against them, in so far as such legislation does not permit a determination of whether the application of that directive or of some of its provisions and, consequently, of the rights set out therein is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of those persons.

134 In the present case, it is apparent from the information provided by the referring court that the provisions of national law, in particular Article 79(1)(1) of the CCP, provide that, in criminal proceedings, the accused person must be assisted by a lawyer only if he or she is below the age of 18. In practice, the Polish courts consider, on that legal basis, that the participation of a lawyer in the proceedings is no longer mandatory once the accused or suspected person has reached the age of 18, which has the effect of automatically releasing the court-appointed lawyer from his or her mandate.

135 In accordance with the case-law referred to in paragraphs 116 to 118 above, it is for the referring court to interpret, so far as possible, the national provisions governing the right of access to a lawyer, in a manner consistent with EU law, in order to ensure the full effectiveness of that law. If it is not possible to make such an interpretation, it will be for the referring court, since Article 2(1) and (3) of Directive 2016/800 satisfies the conditions set out in paragraph 119 of the present judgment and has direct effect, to disapply, of its own motion, the national provisions which appear to be incompatible with it.

136 In the light of all the foregoing reasons, the answer to the fifth to seventh questions is that Article 2(1) and (3) of Directive 2016/800 must be interpreted as precluding national legislation which provides that the right to be assisted by a court-appointed lawyer automatically ends for persons who were children at the time when they became the subject of criminal proceedings, but who have subsequently reached the age of 18, in so far as such legislation does not permit a determination of whether the application of that directive or of some of its provisions and, consequently, of the rights set out therein is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of those persons.

The eighth to tenth questions

137 By its eighth to tenth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4(1) of Directive 2016/800, read in the light of Article 5(1) thereof, must be interpreted as precluding national legislation which does not provide that children who are suspects or accused persons in criminal proceedings are to receive, with the holder of parental responsibility, at the latest before those children are first questioned by the police or by another law enforcement or judicial authority, in simple and accessible language, which takes into account the specific needs and vulnerabilities of those children, information on their rights in accordance with Article 3 of Directive 2012/13, and on the rights established by Directive 2016/800.

138 As is apparent from recital 1 of Directive 2016/800, the purpose of that directive is to establish procedural safeguards so that children who are suspects or accused persons in criminal proceedings are able to understand and to follow those proceedings. Article 1 of that directive thus defines common minimum rules concerning, inter alia, the right to information, which is specifically governed by the provisions set out in Article 4 of that directive.

139 In the first place, in accordance with the first sentence of Article 4(1) of Directive 2016/800, Member States are to ensure that when children are made aware that they are suspects or accused persons in criminal proceedings, they are informed promptly about their rights in accordance with Directive 2012/13, and about general aspects of the conduct of the proceedings.

140 As regards the right to be informed, as provided for in Article 1 of Directive 2012/13, the Court has already held that it was apparent from Article 3 of that directive that that right concerns, inter alia, the right of suspects or accused persons to be informed, at least, of the various procedural rights referred to in that article, which include the right of access to a lawyer, any entitlement to free legal advice and the conditions for obtaining such advice, the right to be informed of the accusation, the right to interpretation and translation and the right to remain silent (see, to that effect, judgment of 9 November 2023, *BK (Reclassification of the offence)*, C-175/22, EU:C:2023:844, paragraph 33 and the case-law cited).

141 In that regard, as is apparent from recital 31 of Directive 2016/343, the information that accused persons receive about their procedural rights under Article 3 of Directive 2012/13 relates not only to the right to remain silent, but also to the right not to incriminate oneself, which are two rights that Member States must guarantee to such persons, in accordance with Article 7 of Directive 2016/343.

142 In addition, the second subparagraph of Article 4(1) of Directive 2016/800 provides that children must be informed of the rights established more specifically by that directive and, in particular, of the rights listed in point (a) of the second subparagraph of Article 4(1) thereof.

143 That information relates, in particular, first, to the right of those children to be assisted by a lawyer, as provided for in Article 6 of that directive, where necessary appointed by the court, in accordance with Article 18 of that directive.

144 Second, that information also relates to the right to have the holder of parental responsibility informed, as provided for in Article 5 of Directive 2016/800, and to the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings, as provided for in Article 15(4) of that directive. As is apparent from the wording of Article 5(1) of that directive, the holder of parental responsibility is to be provided, as soon as possible, with the same information that the child has a right to receive in accordance with Article 4 of Directive 2016/800.

145 In the second place, it should be noted that, under the first and second subparagraphs of Article 4(1) of Directive 2016/800, the information that children must receive about their rights in accordance with that provision, where they are made aware that they are suspects or accused persons, must be provided to them 'promptly'.

146 In that respect, as regards Directive 2012/13, to which the first and second subparagraphs of Article 4(1) refer, the Court has held that, in order to be effective, the communication of rights must take place at an early stage in the proceedings. It is evident from Article 2 of that directive that the directive applies ‘from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence’. Article 3 of that directive thus provides that ‘Member States shall ensure that suspects or accused persons are provided promptly with information concerning ... procedural rights ... in order to allow for those rights to be exercised effectively’ (judgment of 19 September 2019, *Rayonna prokuratura Lom*, C-467/18, EU:C:2019:765, paragraph 50).

147 The right to be informed of one’s rights aims to safeguard the fairness of the criminal proceedings and to guarantee the effectiveness of the rights of the defence from the first stages of those proceedings. In that respect, recital 19 of Directive 2012/13 makes clear that the right to be informed of one’s rights must be observed ‘at the latest before the first official interview of the suspect or accused person by the police’. In addition, the period immediately following the deprivation of liberty is when there is the greatest risk of improper extraction of confessions, so that ‘it is essential that a suspected or accused person is informed of his rights promptly, i.e. without delay after his arrest and in the most effective way’, as is apparent from point 24 of the Commission proposal for a directive of 20 July 2010 (COM(2010) 392 final), which gave rise to Directive 2012/13 (see, to that effect, judgment of 19 September 2019, *Rayonna prokuratura Lom*, C-467/18, EU:C:2019:765, paragraphs 51 and 52).

148 In view of the reference to Directive 2012/13 in Article 4(1) of Directive 2016/800, it follows from the latter provision that children must be provided with information on their rights as soon as possible from the moment they are informed that they are suspects or accused persons in criminal proceedings. Information about those rights must be provided, at the latest, before those children are first questioned by the police or by another law enforcement or judicial authority (see, by analogy, judgment of 19 September 2019, *Rayonna prokuratura Lom*, C-467/18, EU:C:2019:765, paragraph 53).

149 It should also be noted that the provision of that information, at the latest before they are first questioned, is the only means capable of ensuring the effectiveness of the rights about which children must be informed, in particular of the right to be assisted by a lawyer in accordance with Article 6 of Directive 2016/800 and, therefore, of enabling them effectively to exercise their right of defence, as is apparent from the answer to the first to fourth questions.

150 In the third place, it is apparent from Article 4(2) of Directive 2016/800 that the information referred to in Article 4(1) thereof must be given to them in writing or orally, or both, in ‘simple and accessible language’.

151 In that respect, as regards Article 3(2) of Directive 2012/13, the EU legislature has imposed on Member States the obligation to ensure that information provided for under the right to information about rights ‘shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons’ (see, to that effect, judgment of 19 September 2019, *Rayonna prokuratura Lom*, C-467/18, EU:C:2019:765, paragraph 47).

152 It follows from recital 18 of Directive 2016/800 that the information to be provided to children, in accordance with Article 4 of that directive, must be provided taking into account the specific needs and vulnerabilities of children.

153 It follows that those children must receive that information in sufficiently simple and accessible language which enables them – taking into account, inter alia, the specific needs and vulnerabilities of those children – to understand effectively, before they are questioned by the police or by another law enforcement or judicial authority, that they have the rights referred to in Article 4(1) of Directive 2016/800. Those rights include, inter alia, the right to be assisted by a lawyer, as provided for in Article 6 of that

directive, the right to have the holder of parental responsibility also informed of those rights, in accordance with Article 5 of that directive, and the right of the holder of parental responsibility to accompany those children during stages of the procedure other than court hearings, in accordance with Article 15(4) of Directive 2016/800.

154 In the present case, the referring court states that, in accordance with Polish law, the minor suspects are given, before questioning, an information form for adults, which does not contain any specific information intended for children. In addition, there is no provision for that form to be provided to the holders of parental responsibility for those children.

155 It is apparent from the requirements set out in paragraph 153 above that, where national law provides for a standard document to inform, in writing, suspects or accused persons of their rights in accordance with Article 3 of Directive 2012/13, that document cannot be used to inform children who are in the same situation, in accordance with Article 4 of Directive 2016/800.

156 Such a document, since it is intended for persons who are adults, does not meet the need for the information on the rights which those children enjoy to be given in writing or orally, or both, in simple and accessible language for them, and, moreover, is not intended to inform those children of the rights specifically established by that directive.

157 In accordance with the case-law referred to in paragraphs 115 to 118 above, it is for the referring court to interpret, so far as possible, the national provisions governing the information given to persons who are suspects or accused persons in a manner consistent with EU law, so as to ensure that EU law is fully effective. If it is not possible to adopt such an interpretation, it will be for the referring court, since Article 4(1) of Directive 2016/800 satisfies the conditions set out in paragraph 119 above and has direct effect, to disapply, of its own motion, any national provisions which appear to be incompatible with that directive.

158 In the light of all the foregoing, the answer to the eighth to tenth questions is that Article 4(1) of Directive 2016/800, read in the light of Article 5(1) thereof, must be interpreted as precluding national legislation which does not provide that children who are suspects or accused persons in criminal proceedings are to receive, with the holder of parental responsibility, at the latest before those children are first questioned by the police or by another law enforcement or judicial authority, in simple and accessible language, which takes into account the specific needs and vulnerabilities of those children, information on their rights in accordance with Article 3 of Directive 2012/13, and on the rights established by Directive 2016/800.

The eleventh and twelfth questions

159 As a preliminary point, it should be noted, first, that the eleventh question concerns the interpretation of Articles 18 and 19 of Directive 2016/800, in order to determine, in essence, whether those provisions require a court hearing a criminal case not to take account of incriminating statements made by children who are suspects or accused persons, during questioning by the police, in breach of the rights which those children have under that directive.

160 In so far as Article 18 concerns the right to legal aid and that right is linked, as is apparent from paragraph 107 above, to the exercise of the right of access to a lawyer, it must be held that that question essentially concerns the interpretation of Article 19 of that directive, relating to remedies.

161 Second, it is apparent from the file before the Court that the referring court excluded the evidence contained in incriminating statements that, in the present case, the minor suspects made during the pre-trial stage in the absence of a lawyer, where the conditions laid down for that purpose by Article 168a of the CCP were not satisfied.

162 Accordingly, it must be understood that, by its eleventh and twelfth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 19 of Directive 2016/800 must be interpreted as precluding national legislation which, in criminal proceedings, does not allow a court to declare as inadmissible incriminating evidence contained in statements made by a child during questioning by the police in breach of the right of access to a lawyer, provided for in Article 6 of Directive 2016/800. In addition, that court asks whether, if those questions are answered in the affirmative, it is necessary for a court hearing a criminal case to disapply such legislation.

163 Under Article 19 of Directive 2016/800, Member States are to ensure that children who are suspects or accused persons in criminal proceedings have an effective remedy under national law in the event of a breach of their rights under that directive.

164 In accordance with that article, children who are suspects or accused persons must therefore be able to challenge effectively the breach of those rights, which include, as is apparent from the answers to the first to tenth questions, the rights guaranteed in Articles 4 to 6 of Directive 2016/800.

165 However, Article 19 of that directive does not govern the potential consequences which the trial court must draw, in the absence of such a challenge, from that failure to take account of the admissibility of evidence obtained in breach of the rights conferred by that directive.

166 The same is true of Directive 2012/13, to which Article 4 of Directive 2016/800 refers, and of Directive 2013/48, to which Article 6 of Directive 2016/800 refers, and which contain provisions similar to those of Article 19 of Directive 2016/800.

167 It is true that Article 12(2) of Directive 2013/48 provides that Member States are to 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 to that right was authorised, the rights of the defence and the fairness of the proceedings are respected. Article 10(2) of Directive 2016/343 contains a similar provision as regards statements and evidence obtained in breach of the right to remain silent or the right not to incriminate oneself.

168 However, those provisions are not intended to govern the national rules and systems concerning the admissibility of evidence since, as is apparent from their very wording, they apply 'without prejudice' to those national rules and systems.

169 It follows that, as EU law currently stands, it is, in principle, for national law alone to determine the rules relating to the admissibility in criminal proceedings of evidence obtained in breach of the rights conferred by Directive 2016/800 (judgment of 30 April 2024, *M.N. (EncroChat)*, C-670/22, EU:C:2024:372, paragraph 128).

170 In the absence of EU rules on the matter, it is for the national legal order of each Member State to establish, in accordance with the principle of procedural autonomy, procedural rules for actions intended to safeguard the rights that individuals derive from EU law, provided, however, that those rules are no less favourable than the rules governing similar domestic actions (the principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (the principle of effectiveness) (judgment of 30 April 2024, *M.N. (EncroChat)*, C-670/22, EU:C:2024:372, paragraph 129 and the case-law cited).

171 In that regard, as regards the principle of effectiveness in particular, it should be noted that the objective of national rules on the admissibility and use of information and evidence is, in accordance with the choices made by national law, to prevent information and evidence obtained unlawfully from unduly prejudicing a person who is suspected of having committed criminal offences. That objective may be achieved under national law not only by prohibiting the use of such information and evidence, but also by

means of national rules and practices governing the assessment and weighting of such material, or by factoring in whether that material is unlawful when determining the sentence (judgment of 2 March 2021, *Prokuratuur (Conditions of access to data relating to electronic communications)*, C-746/18, EU:C:2021:152, paragraph 43 and the case-law cited).

172 In deciding whether to exclude information and evidence obtained in contravention of the requirements of EU law, regard must be had, in particular, to the risk of breach of the adversarial principle and, therefore, of the right to a fair trial entailed by the admissibility of such information and evidence (judgment of 2 March 2021, *Prokuratuur (Conditions of access to data relating to electronic communications)*, C-746/18, EU:C:2021:152, paragraph 44).

173 In that regard, it should be noted that the right to information, provided for in Article 4 of Directive 2016/800, and the right of access to a lawyer, provided for in Article 6 of that directive, give specific expression to the fundamental rights to a fair trial and to respect for the rights of the defence, as enshrined in particular in Article 47 and Article 48(2) of the Charter (see, by analogy, judgment of 1 August 2022, *TL (Absence of an interpreter and of translation)*, C-242/22 PPU, EU:C:2022:611, paragraph 42).

174 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 child during questioning by the police in breach of the rights laid down by Directive 2016/800, 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.

175 In accordance with the case-law referred to in paragraphs 115 to 118 above, it is for the referring court to ascertain whether the relevant national provisions comply with the requirements referred to in the preceding paragraph and, if necessary, to interpret those provisions, so far as possible, in conformity with EU law in order to ensure their full effectiveness. If it is not possible to make such an interpretation, it will be for the referring court, in view of the fact that, as stated in paragraph 119 above, Article 6(1) to (3) of Directive 2016/800 has direct effect, to disapply, of its own motion, any national provisions which appear to be incompatible with it.

176 In the light of all the foregoing reasons, the answer to the eleventh and twelfth questions is that Article 19 of Directive 2016/800 must be interpreted as not precluding national legislation which, in criminal proceedings, does not allow a court to declare as inadmissible incriminating evidence contained in statements made by a child during questioning by the police in breach of the right of access to a lawyer, provided for in Article 6 of Directive 2016/800, provided, however, that, in criminal proceedings, that court is in a position, first, to verify that that right, read in the light of Article 47 and Article 48(2) of the Charter, has 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.

Costs

177 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 (Third Chamber) hereby rules:

- 1. Article 6(1) to (3) of 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, read in the light of Article 18 of that directive,**

must be interpreted as precluding national legislation which, first, does not provide for children who are suspects or accused persons to be assisted by a lawyer – a court-appointed lawyer if necessary – before being questioned by the police or by another law enforcement or judicial authority and, at the latest, before they are first questioned and, second, allows those children to be questioned as suspects in the absence of such a lawyer during their questioning.

2. Article 2(1) and (3) of Directive 2016/800

must be interpreted as precluding national legislation which provides that the right to be assisted by a court-appointed lawyer automatically ends for persons who were children at the time when they became the subject of criminal proceedings, but who have subsequently reached the age of 18, in so far as such legislation does not permit a determination of whether the application of that directive or of some of its provisions and, consequently, of the rights set out therein is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of those persons.

3. Article 4(1) of Directive 2016/800, read in conjunction with Article 5(1) of that directive,

must be interpreted as precluding national legislation which does not provide that children who are suspects or accused persons in criminal proceedings are to receive, with the holder of parental responsibility, at the latest before those children are first questioned by the police or by another law enforcement or judicial authority, in simple and accessible language, which takes into account the specific needs and vulnerabilities of those children, information on their rights in accordance with Article 3 of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, and on the rights established by Directive 2016/800.

4. Article 19 of Directive 2016/800

must be interpreted as not precluding national legislation which, in criminal proceedings, does not allow a court to declare as inadmissible incriminating evidence contained in statements made by a child during questioning by the police in breach of the right of access to a lawyer, provided for in Article 6 of Directive 2016/800, provided, however, that, in criminal proceedings, that court is in a position, first, to verify that that right, read in the light of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union, has 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.