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Judgment of the Court in Case C-660/21 | K.B. and F.S. (Raising *ex officio* of an infringement in criminal proceedings)

Protection of fundamental rights: EU law does not preclude, in principle, a prohibition on a national court raising of its own motion a breach of the obligation to inform a suspect promptly of his or her right to remain silent

However, the suspect must not have been deprived of a practical and effective opportunity to have access to a lawyer, having obtained legal aid if necessary, and must, like his or her lawyer (if any), have had a right of access to the file and the right to invoke that breach within a reasonable period of time

Two individuals who were near a heavy goods vehicle in a company car park at night attracted the attention of police officers, who immediately initiated an on-the-spot investigation for theft of fuel. The individuals were questioned at the scene without having been notified of their rights and were then placed in custody. They were not informed of their rights, including the right to remain silent, until a little later.

In the criminal proceedings, the tribunal correctionnel de Villefranche-sur-Saône (Criminal Court, Villefranche-sur-Saône, France) considers the rights of the accused persons, guaranteed by EU law¹, to have been infringed because of that late notification. In those circumstances, the vehicle search, the suspects' detention in custody and all the consequential acts should, in principle, be annulled. However, the French Cour de cassation (Court of Cassation) has interpreted the French Code of Criminal Procedure as prohibiting trial courts from raising of their own motion a breach of the obligation to inform a suspect or an accused person promptly of his or her right to remain silent.

The Criminal Court therefore asked the Court of Justice whether EU law precludes such a prohibition on a court raising such a breach of its own motion.

In its judgment, delivered today, the Court of Justice rules that **the prohibition** on a trial court raising the breach in question of its own motion with a view to the annulment of the criminal proceedings **respects**, in principle, **the right to an effective remedy** and **the right to a fair hearing** as well as the rights of the defence, where the **suspects or accused persons** or their **lawyers** have had a **practical and effective opportunity to invoke the breach concerned within a reasonable period of time and for that purpose have had access to the file.**

The Court notes however that, in order to ensure that the right to remain silent has practical effect, that finding applies only **in so far as**, throughout the period within which **the suspects or accused persons** could invoke such a breach, they – **practically and effectively** – **had the right of access to a lawyer** as laid down by EU law and as **facilitated by the system of legal aid**. It also makes clear that if they waive that opportunity, they must, in

¹ The obligation for the authorities to provide information promptly about the right to remain silent is laid down in Articles 3 and 4 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), transposed into national law.

principle, bear the possible consequences of that waiver where it has been given **in accordance with the conditions laid down by EU law**, which provides in particular that the suspect or accused person must have been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right of access to a lawyer and the possible consequences of waiving it, and that the waiver must be given voluntarily and unequivocally.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and the resume](#) of the judgment is published on the CURIA website on the day of delivery.

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