

ECBA SPRING CONFERENCE

After the resolution on 30.09.2009 the European Council has adopted a Conduct Sheet regarding the strengthening and consolidation of the procedural rights of those who are suspect in or stand accused within the framework of criminal procedure.

The Conduct Sheet provides measures regarding the right to translation and interpretation (measure A), the right to be informed regarding one's rights and regarding the allegations brought forward (measure B), the right to judicial council and judicial assistance (measure C), the right to communication with relatives, employers and consular authorities (measure D), as well as special guarantees for persons suspected or accused, who are vulnerable.

The Romanian state has complied with this resolution and by consequence of adopting Directives 2013/48/EU, 2010/64/EU and 2012/3/EU new judicial regulations were adopted, consisting of two codes, the Criminal Justice Code and the Criminal Procedure Code, on 01.02.2014.

Part of the changes encompassed by the Criminal Procedure Code shall be presented in the present paper.

The suspect's or the accused's right to information provided by Directive 2012/13/UE shall be analysed from the standpoint of access to a lawyer, the suspect's or accused's possibility to inform a third party regarding the measure of his or her deprivation of freedom/ attachment, provided for by Directive 2013/48/EU.

One of the main provisions of Directive 2012/13/UE is represented by the prompt information of persons who stand suspect in or accused of in criminal matters regarding their rights by power of internal law/legislation.

The Romanian Code of Procedure provides in art.78, that the suspect enjoys the right conferred to the defendant, these rights themselves, being in turn presented in art.83 of the same Code.

After analyzing art.3 paragraph 1 of Directive 2012/13/UE it can be observed that all rights provided by the above mentioned article, are inserted in the framework of national legislation. From this point of view, it can be said that national legislation respects the minimal right to information, as it is understood by the Directive mentioned.

In practice, the criminal investigation authorities provide a protocol/verbal process by which the suspect or defendant is informed of his rights in compliance with art.83 and art.307C.pr.pen, which, in turn, he signs.

Regarding the right to legal representation, national legislation provides norms which guarantee this right, providing court appointed lawyers in some situations, or, in all situations the possibility to employ chosen attorneys.

Other points of interest regard the respecting of rights in cases in which measures restricting freedom have been taken.

National norms provide that, in case of existing reasonable proof the author of a crime becomes a suspect. He is informed before the first interview session, about his standing in the trial, the crime he is suspect in, as well as his rights, as provided by art.83 C.pr.pen.

Furthermore, before his first statement is taken, he is informed of the possibility of making no declaration at all and of the right to a chosen or appointed attorney.

The suspect or defendant benefits correctly from this right, the new legislation having express provisions, which obligate the criminal investigation authority to allow a period of two hours for the chosen attorney to present himself.

Communication between the lawyer and his client takes place under the terms and conditions of confidentiality.

In regard to the suspect's right to be assisted by a lawyer, national norms provide that in the situation of building the defense, if there is the case of an existing proposal of measures depriving of or restricting rights, the lawyer has the right to be informed of any material pertaining to the file.

This stipulation is introduced by art.94 paragraph 7 and the new Criminal Procedure Code clarifies which the rights the suspect or accused benefit from in criminal matters. In the old legislation this right was not expressly provided, but the practice was for the lawyer to be informed of the documents in the case.

With all the clarifications brought by current norms, one problem may be the short amount of time the lawyer has to prepare the defense in some situations. For example, a particular situation is represented by the limited time a lawyer has in the case of a detained person, brought before a rights and freedoms judge, who is to decide regarding arrest measures. There are also files consisting of several parties, which can make it impossible for the lawyer to review said files. It is hard to believe that in a file consisting of 20 parties can be studied in a timely manner by several lawyers in order to be presented before a rights and freedoms judge.

This should not be confused with the lack of provision, by current procedural norms, of a right to effectively review the file; problems arise when it comes to the practice of this right before the court.

The suspect or the accused benefit from the right to be assisted by a lawyer chosen or appointed during the entirety of the procedures of being taken into preventive/temporary arrest, replacement, maintaining or revoking temporary arrest, as well as during any challenges brought to the arrest measures.

Moreover, the suspect or accused is made aware, before each hearing held on the occasion measures restricting freedom being taken of the crime he stands accused of and of the possibility to not make any statement.

At the same time, on the occasion of a measure restricting freedom being taken, regardless of the authority making disposition of the measure, a copy of the disposition is communicated to the suspect or accused in the criminal matter.

Regarding the possibility of informing the suspect or accused in the criminal matter after temporary arrest measures have been taken, the following are immediately brought to his attention in a language he understands: the reasons for the arrest, the possibility to have access to emergency medical assistance, the duration of the detention period and the possibility to ask for the revocation of the measure, replacement of the measure, or the possibility to challenge the measure. These rights are brought to his attention in writing and if he refuses to sign a letter is redacted to note this aspect.

Moreover, the rights and freedoms judge permits the alerting of a person designated by the suspect or accused, or according to art.210, paragraph 2 of the Criminal Procedure Code, in case said suspect or accused is not a Romanian citizen he has the possibility to alert his country's consular mission, the official council of his state or an international humanitarian organization.

After the analysis of the provisions of the two directives it can be clearly concluded that, the new Criminal Procedure Code fully meets all the minimal demands/standards instituted by the two directives, with the reserve regarding the concrete possibility of being informed of the evidence on file and the forming of a defense in the case of temporary arrest, in the situation in which the suspect or the accused in the criminal matter is already detained. This is due to the short time-frame in which the judge must set the hearing for the resolution of the complaint, respectively, within 24 hours of the previous privative measure. This situation appears in the context of files with several parties and several trial subjects.

Regarding the possibility to be informed about the components of the file, it must be stipulated that the suspect or the accused in the criminal matter is offered the possibility to be informed directly or through his lawyer of all the components of the file, with limitations

imposed in the criminal investigation phase for strong reasons, such as the good evolution of the criminal trial. Even so, this restriction must be motivated, and after the filing of the criminal action, the time-frame can be no longer than 10 days. The suspect or the accused has access to the statements taken during the criminal trial, at any time.

In the judgment phase, access cannot be restricted.

Under this aspect, an improvement to the legislation can be observed, which comes as a preamble to the Directives presented, before the terms set by them, the Codes entering into force on 01.02.2014. In the old regulation these aspects were not clear cut, the possibility of suspect to have access to the file being an ambiguous procedure. In many cases the suspect did not have the possibility to study the criminal investigation file.

After analyzing Directive 2010/64/EU, as well as the Romanian criminal procedure norms, it can be concluded that the Directive is correctly represented in the Romanian legislation, the suspect or accused in the criminal matter having the possibility to benefit from quality interpreters and translators, given that at the level of the Ministry of Justice there is a special registry, from which they can be selected.

Furthermore, this right is concretely exercised in article 12 of the Criminal procedure Code, elevating this right to the rank of principle, as well as the right to a defense and information of those suspect or accused.

In case the translation is lacking, the suspect or accused in the criminal matter has the possibility of benefiting from the ways of challenging, rising this issue.

Although the Directive refers only to documents relevant to the cause, national legislation offers the possibility of translating all documents, thus offering more than the minimal standards set by the Directive.

JUDGE

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