

## **The European Legislation on Procedural Safeguards in Criminal Proceedings**

Procedural rights in criminal proceedings have been given an increasing consideration in the EU over the last years.

Despite the existence of common principles and minimum standards coming both from the ECHR and the EU Charter, provisions governing procedural rights of suspected or accused persons in Europe vary significantly from one member state to another. The case law of the European Court of Human Rights shows that violations of defense rights, as set out in Articles 5 and 6 of the European Convention on Human Rights do occur.

Access to effective defense in criminal proceedings has a different extension in the Member States depending both on the specific legal system and its practical application. This has an indirect but major repercussion on the EU policy of mutual trust and recognition.

The provisions of the European Convention on Human Rights and the case law of the European Court of Human Rights are not uniformly implemented and respected by the Member States and this situation generates different standards throughout the European Union.

The need to enhance mutual trust became even more imperative with the implementation of the mutual recognition program of judicial decision in criminal proceedings. Legislation adopted at EU level in the last few years has improved the effectiveness of prosecutions and enforcement of sentences across the EU, yet there was a consensus that the absence of measures at EU level to promote the rights of citizens as suspects or accused in criminal proceedings in another member state have created a sense of imbalance in EU justice policies.

Measures such as the Framework Decision on the European Arrest Warrant have caused a necessity and an urgency for the EU to take into debate the fundamental rights, especially the rights of the defense, in a more substantial way.

Initially a draft Framework Decision referring to five basic rights was proposed by the Commission in 2004, but was not supported by all member states (six EU countries did not support it). However the need for such measures was strongly advocated by the European Parliament, by many EU countries and also by experts and practitioners, emphasizing the urgency to find the right balance between freedom, justice and security.

The European Union's priorities for the area of justice, freedom and security for the period 2010-14 were introduced following agreement on the Stockholm Programme. Through the Stockholm Programme the Commission was asked to make proposals for strengthening the procedural rights in order to ensure that the basic rights of suspects and accused persons are sufficiently protected. This political mandate gave rise to the Commission's Procedural Rights Agenda.

A Roadmap on procedural rights was adopted in 2009 by the Justice Council, aiming to ensure the right to a fair trial across the European Union, to reach common minimum standards of procedural rights in

criminal proceedings and create the basis for mutual trust. The Roadmap proposed five legislative measures on a 'step by step' approach:

1. The right to interpretation and translation ;
2. The right to information about rights (Letter of Rights);
3. The right to legal advice, before and at trial and legal aid;
4. The right for a detained person to communicate with family members, employers and consular authorities;
5. The right to protection for vulnerable suspects ;

The Directive on interpretation and translation and on the right to information in criminal proceedings were adopted on 20 October 2010 and on 22 May 2012 respectively. Then, after long negotiations in October 2013, the Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, was adopted by the European Parliament and the Council.

In November 2013 the European Commission presented a package of proposals on the presumption of innocence and the right to be present at trial, on special safeguards for children suspected and accused in criminal proceedings, and on provisional legal aid, aiming to further strengthen procedural safeguards. These proposals were accompanied by a communication and by two recommendations on safeguards for vulnerable persons suspected or accused in criminal proceedings, and on the right to legal aid in criminal proceedings.

In June 2014, the Stockholm Programme was joined by a set of "strategic-guidelines" in place of a new justice and home affairs programme showing the determination for further efforts to strengthen the rights of accused and suspect persons in criminal proceeding.

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