



Safeguards in Criminal Procedure in the light of EU legislation and ECHR jurisprudence

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Areas of EU legislation (criminal procedure-related)

TFEU – Art 82

- Mutual recognition of judicial decisions
- Procedural rights of suspects and accused persons
- Victims' rights and support

Mutual recognition

Existing mutual recognition instruments:

European Arrest Warrant - 2002

Freezing orders of property and evidence - 2003

Financial penalties - 2005

Confiscation orders - 2006

Transfer of prisoners and custodial sentences - 2008

Taking account of previous convictions - 2008

Probation decisions and alternative sanctions - 2008

European supervision order in pre-trial procedures - 2009

In absentia procedures - 2009

Prevention and settlement of conflicts of jurisdiction - 2009

European Investigation Order - 2014 (Directive)

Procedural safeguards for suspects and accused persons

Why necessary?

Mutual
recognition

Procedural
safeguards for
suspects and
accused
persons

ECHR rights

Safeguards for suspects and accused persons in criminal procedure stem from MS national laws;

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EU MS laws must be conform to ECHR and, where EU law applies, to CFREU

ECHR safeguards include : Art 5 and 6

CFREU safeguards include : Art 47 and 48

Procedural safeguards for suspects and accused persons

Directive 2010/64/EU (27/10/2013)

Interpretation and translation

Directive 2012/13/EU (02/06/2014)

Information

Directive 2013/48/EU (27/11/2016)

Access to lawyer; information of and communication with third persons and consular authorities

Directive (EU) 2016/343 (01/04/2018)

Presumption of innocence

Directive (EU) 2016/800 (11/06/2019)

Children

Directive (EU) 2016/1919 (25/05/2019)

Legal aid

Directive on interpretation and translation

- Procedure or mechanism to ascertain whether suspect or accused person speaks and understand the language of the criminal proceedings
- Interpretation available during investigation and at trial; including communication with a lawyer
- Translation of essential documents
- Right to challenge negative decisions and complaint on quality
- Quality of translation and interpretation

Directive on information

- Information concerning the fundamental procedural rights (lawyer, legal aid, accusation, interpretation and translation, right to remain silent)
- Letter of Rights
- Information about the criminal act persons are suspected or accused of, about the reasons for arrest/detention and about the accusation
- Access to the materials of the case

Directive on Access to a lawyer and communication upon arrest

- Right of access to a lawyer: questioning, evidence gathering, deprivation of liberty
- European Arrest Warrant Proceedings: executing and issuing Member State
- Right to communicate with one's family, relatives and consular authorities for people who are deprived of liberty

Right of Access to a lawyer

- Temporal scope of the Directive, Articles 2.1 to 2.3
- When does the right kick in? Article 3.2
- What does the right entail? Article 3.3
- What need Member States do – level of obligation Article 3.4
- Derogations – Article 3.5 and 3.6
- Confidentiality – Article 4
- Waiver – Article 9

Right to communicate upon arrest

- Right to have third person informed of deprivation of liberty, Article 5.1 and 5.3 (derogations)
- Special rules concerning children, Article 5.2 and 5.4 (derogations)
- Right to communicate with third persons, Article 6
- Right to communicate with consular authorities, Article 7

Directive on Presumption of innocence

- No public references to guilt before proved guilty, Article 4
- Presentation of suspects and accused persons, Article 5
- Burden of proof and *in dubio pro reo*, Article 6
- Right to remain silent and right not to incriminate oneself, Article 7
- Right to be present at the trial and right to a new trial, Article 8 and 9

Directive on procedural safeguards for children

Aim: enable children to understand and follow proceedings – fair trial – prevent re-offending by children and foster their social integration

- Access to and Assistance by a lawyer, Article 6
- Information of child and holder of parental responsibility/another appropriate adult, Articles 4 and 5
- Individual assessment, Article 7
- Medical examination, Article 8
- Audio-visual recording of questioning, Article 9

Directive on procedural safeguards for children

- Safeguards in case of deprivation of liberty, Articles 10-12 (measure of last resort, alternative measures to detention, separation from adults)
- Protection of privacy, Article 14
- Right to be accompanied by holder of parental responsibility/another appropriate adult, Article 15
- Presence at trial, Article 16
- Training, Article 20

Directive on Legal aid

- Scope, Article 2
- Legal aid in criminal proceedings, Article 4
- Legal aid in European arrest warrant proceedings, Article 5
- Decisions regarding the granting of legal aid, Article 6
- Quality and training, Article 7