



Uniwersytet  
Wrocławski

# EU Criminal Law

## Lecture

### **EU Procedural Rights Suspect and Defendant**

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## Rights of the suspect and defendant

2004 (withdrawn in 2009)

**DRAFT COUNCIL FRAMEWORK DECISION**

**on certain procedural rights in criminal proceedings throughout the European Union**

- ❖ The right to legal advice
- ❖ The right to free interpretation
- ❖ The right to free translation of relevant documents
- ❖ The right to specific attention (vulnerable suspects)
- ❖ The right to communicate with relatives and consular authorities
- ❖ Letter of Rights

## Rights of the suspect and defendant

Roadmap on procedural rights was adopted in 2009 by the Justice Council proposing five legislative measures on a 'step by step' basis:

- ❖ the right to interpretation and translation ;
- ❖ the right to information about rights (Letter of Rights);
- ❖ the right to legal advice, before and at trial and legal aid;
- ❖ the right for a detained person to communicate with family members, employers and consular authorities ;
- ❖ the right to protection for vulnerable suspects

## Rights of the suspect and defendant

### Stockholm Programme 2010

#### 2.4. Rights of the individual in criminal proceedings

The protection of the rights of suspected and accused persons in criminal proceedings is a **fundamental value of the Union, which is essential in order to maintain mutual trust between the Member States and public confidence in the Union**. The European Council therefore welcomes the adoption by the Council of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, which will strengthen the rights of the individual in criminal proceedings when fully implemented. That Roadmap will henceforth form part of the Stockholm Programme.

## Rights of the suspect and defendant

Stockholm Programme 2010

The European Council invites the Commission to:

- put forward the foreseen proposals in the Roadmap for its swift implementation, on the conditions laid down therein,
- examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, needs to be addressed, to promote better cooperation in this area.

Further reading: Kostoris chapter 2

## **Rights of the suspect and defendant**

**DIRECTIVE 2010/64/EU OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
of 20 October 2010  
on the right to interpretation and translation in  
criminal proceedings**

**DIRECTIVE 2012/13/EU OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
of 22 May 2012  
on the right to information in criminal  
proceedings**

## **Rights of the suspect and defendant**

**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**

## **Rights of the suspect and defendant**

**Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings**

**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**



## **Rights of the suspect and defendant**

**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**

## **Rights of the suspect and defendant**

### **DIRECTIVE 2010/64/EU on the right to interpretation and translation in criminal proceedings**

Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the fields of interpretation and translation in criminal proceedings.

## **Rights of the suspect and defendant**

### **Article 6(3)(e) European Convention on Human Rights**

**Everyone charged with a criminal offence has the following minimum rights:**

- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.**

### **Article 48 Charter of Fundamental Rights of the EU**

- 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.**

## Rights of the suspect and defendant

### DIRECTIVE 2010/64/EU

Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

#### SCOPE OF APPLICATION

The right to translation/interpretation shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, 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 they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

## Rights of the suspect and defendant

### DIRECTIVE 2010/64/EU - interpretation

Suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation **during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.** The Directive is also applicable to EAW proceedings.

**Interpretation should also be available for communication between suspected or accused persons and their legal counsel.**



## Rights of the suspect and defendant

### DIRECTIVE 2010/64/EU - interpretation

Suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation.

Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

## **Rights of the suspect and defendant**

### **DIRECTIVE 2010/64/EU - translation**

Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

The competent authorities shall, in any given case, decide **whether any other document is essential**. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.

#### **LIMITATIONS:**

There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

## Rights of the suspect and defendant

### DIRECTIVE 2010/64/EU - translation

#### LIMITATIONS:

Oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

Suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.



## Rights of the suspect and defendant

### DIRECTIVE 2010/64/EU - translation

Any waiver of the right to translation of documents shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

Translation provided shall be of a **quality sufficient to safeguard the fairness of the proceedings**, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

## Rights of the suspect and defendant

### DIRECTIVE 2010/64/EU

Member States shall meet the costs of interpretation and translation, **irrespective of the outcome of the proceedings.**

#### Cases:

- Case C-216/14 Covaci
- Case C-25/15 Balogh
- Case C-278/16 Sleutjes

## Rights of the suspect and defendant

Judgment of the Court (Fifth Chamber) of 12 October 2017  
Criminal proceedings against **Franck Sleutjes**  
Request for a preliminary ruling from the Landgericht  
Aachen

‘Is Article 3 of [Directive 2010/64] to be interpreted as meaning that the term “judgment” (Urteil) in Paragraph 37(3) of the [StPO] also includes penalty orders (Strafbefehle) within the meaning of Paragraph 407 et seq. of the [StPO]?’

## Rights of the suspect and defendant

(28) As to whether, in the present case, that right concerns the penalty order in question, it must be borne in mind that Article 3(1) of Directive 2010/64 provides for the right of suspected or accused persons who do not understand the language of the criminal proceedings in question to obtain a written translation of all ‘documents which are essential’.

(30) ...the penalty order provided for under German law is adopted on the basis of a simplified procedure, under which, in essence, service of the order is, first, effected only after the court has ruled on the merits of the accusation and, second, represents the first opportunity for the accused person to be informed of the accusation against him. Furthermore, where that person does not lodge an objection within two weeks from its service, the order acquires binding authority and the penalties provided for become enforceable.

## Rights of the suspect and defendant

(31) In those circumstances, such a penalty order represents both an indictment and a judgment within the meaning of Article 3(2) of Directive 2010/64.

(32) ... the right to translation provided for is designed to ensure that the persons concerned are able to exercise their right of defence and to safeguard the fairness of the proceedings .

(33) Where a penalty order such as that at issue in the main proceedings is addressed to an individual only in the language of the proceedings in question even though the individual has no command of that language, that individual is unable to understand what is alleged against him, and cannot therefore exercise his rights of defence effectively if he is not provided with a translation of that order in a language which he understands.

## Rights of the suspect and defendant

(34) It follows from all the foregoing considerations that the answer to the question referred is that Article 3 of Directive 2010/64 must be interpreted as meaning that a measure, such as an order provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a 'document which is essential', within the meaning of Article 3(1) of that directive, of which a written translation must, in accordance with the formal requirements laid down in that provision, be provided to suspected or accused persons who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus of safeguarding the fairness of the proceedings.

## Rights of the suspect and defendant

Judgment of the Court (First Chamber)  
of 15 October 2015

Criminal proceedings against **Gavril Covaci**  
Request for a preliminary ruling from the Amtsgericht  
Laufen

Are Articles 1(2) and 2(1) and (8) of Directive 2010/64 to be interpreted as precluding a court order that requires, under Paragraph 184 of the Law on the judicial system, accused persons to bring an appeal only in the language of the court, here in German, in order for it to be effective?

## Rights of the suspect and defendant

- (26) In order to reply to that question, it is necessary to observe that Article 1(1) of Directive 2010/64 provides for the right to interpretation and translation in, inter alia, criminal proceedings. Furthermore, Article 1(2) of that directive states that that right is to apply to persons from the time that they 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 they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.
- (27) Consequently, **the situation of a person such as Mr Covaci, who wishes to lodge an objection against a penalty order which has not yet acquired the force of res judicata and of which he is the addressee, clearly falls within the scope of that directive**, with the result that that person must be able to exercise the right to interpretation and translation guaranteed by that directive.



## Rights of the suspect and defendant

- (28) As regards the question whether a person in a situation such as that of Mr Covaci may rely on that right in order to lodge an objection against such an order in a language other than that of the procedure applicable before the competent national court, it is necessary to refer to the content of Articles 2 and 3 of Directive 2010/64. Those two articles respectively govern the right to interpretation and the right to translation of certain essential documents, that is to say the two aspects of the right provided for in Article 1 of that directive and referred to in the actual title of the directive.
- (32) Indeed, that is why, by listing the circumstances in which interpretation must be provided to suspected or accused persons, Article 2(1) and (2) of Directive 2010/64 refer — albeit in a non-exhaustive way — only to situations giving rise to oral communications, such as police questioning, all court hearings and any necessary interim hearings, and communication with legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

## Rights of the suspect and defendant

- (33) In other words, in order to safeguard the fairness of the proceedings and ensure that the person concerned is able to exercise his right of defence, **that provision ensures that, when he is called upon to make oral statements himself within the context, inter alia, of criminal proceedings, either directly before the competent judicial authorities or to his legal counsel, that person is entitled to do so in his own language.**

## Rights of the suspect and defendant

- (44) Article 3 of Directive 2010/64 concerns, in principle, only the written translation into the language understood by the person concerned of certain documents drawn up in the language of the proceedings by the competent authorities.
- (47) It follows that the right to translation provided for in Article 3(1) and (2) of Directive 2010/64 does not include, in principle, the written translation into the language of the proceedings of a document such as an objection lodged against a penalty order, drawn up by the person concerned in a language of which he has a command, but which is not the language of the proceedings.

## Rights of the suspect and defendant

- (49)... it is important to note that Article 3(3) of Directive 2010/64 expressly allows the competent authorities to decide, in any given case, whether any document other than those provided for in Article 3(1) and (2) of that directive is essential within the meaning of that provision.
- (50) **It is therefore for the referring court, taking into account in particular the characteristics of the procedure applicable to the penalty order concerned in the main proceedings, which were noted in paragraph 41 of this judgment, and of the case brought before it, to establish whether the objection lodged in writing against a penalty order should be considered to be an essential document, the translation of which is necessary.**

## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees arising from the Charter and from the ECHR.

Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the field of information in criminal proceedings.

## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Directive should apply to suspects and accused persons regardless of their legal status, citizenship or nationality.

The competent authorities should inform suspects or accused persons promptly of those 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.**

## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

References in this Directive to suspects or accused persons who are arrested or detained should be understood to refer to any situation where, in the course of criminal proceedings, suspects or accused persons are deprived of liberty within the meaning of Article 5(1)(c) ECHR, as interpreted by the case-law of the European Court of Human Rights.

#### Article 5(1)(c) ECHR

the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

## **Rights of the suspect and defendant**

### **DIRECTIVE 2012/13/EU on the right to information in criminal proceedings**

#### **SCOPE OF APPLICATION:**

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.



## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

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.

## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Information should be given orally or in writing and in a **simple and accessible form**, as well as taking into account any particular needs of vulnerable suspects or vulnerable accused persons. The information should be given in a language the suspect or accused understand.



### **Indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant**

The sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information.

You have been arrested on the basis of a European Arrest Warrant. You have the following rights:

#### **A. INFORMATION ABOUT THE EUROPEAN ARREST WARRANT**

You have the right to be informed about the content of the European Arrest Warrant on the basis of which you have been arrested.

#### **B. ASSISTANCE OF A LAWYER**

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

#### **C. INTERPRETATION AND TRANSLATION**

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to a translation of the European Arrest Warrant in a language you understand. You may in some circumstances be provided with an oral translation or summary.

#### **D. POSSIBILITY TO CONSENT**

You may consent or not consent to being surrendered to the State seeking you. Your consent would speed up the proceedings. [Possible addition of certain Member States: It may be difficult or even impossible to change this decision at a later stage.] Ask the authorities or your lawyer for more information.

#### **E. HEARING**

If you do not consent to your surrender, you have the right to be heard by a judicial authority.

## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Member States shall ensure that suspects or accused persons who are **arrested or detained** are provided promptly with a **written Letter of Rights**.

The Letter should cover rights mentioned on earlier slide and:

- (a) the right of access to the materials of the case;
- (b) the right to have consular authorities and one person informed;
- (c) the right of access to urgent medical assistance; and
- (d) the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.
- (e) Information about possibility to challenge deprivation of liberty.

## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Member States shall ensure that suspects or accused persons are provided with **information about the criminal act they are suspected or accused of having committed**.

Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, **detailed information is provided on the accusation**, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the **reasons for their arrest or detention**, including the criminal act they are suspected or accused of having committed.

## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that **documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available (free of charge) to arrested persons or to their lawyers.**

Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.

## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Judgment of the Court (Grand Chamber) of 5 June 2018.

Criminal proceedings against **Nikolay Kolev and Others**.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad.

What is the appropriate time for providing information on accusation and allowing access to case file (Article 6 and 7 of the Directive)?

(99) Article 6(3) of Directive 2012/13 must be interpreted as not precluding the disclosure of detailed information on the charges to the defence after the lodging before the court of the indictment that initiates the trial stage of proceedings, but before the court begins to examine the merits of the charges and before the commencement of hearing of argument before the court, and after the commencement of that hearing but before the stage of deliberation, where the information thus disclosed is the subject of subsequent amendments, provided that all necessary measures are taken by the court in order to ensure respect for the rights of the defence and the fairness of the proceedings.



## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Judgment of the Court (Grand Chamber) of 5 June 2018.

Criminal proceedings against **Nikolay Kolev and Others**.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad.

(100) Article 7(3) of that directive must be interpreted as meaning that it is for the national court to be satisfied that the defence has been granted a genuine opportunity to have access to the case materials, such access being possible, in some cases, after the lodging before the court of the indictment that initiates the trial stage of the proceedings, but before that court begins to examine the merits of the charges and before the commencement of any hearing of argument by that court, and after the commencement of that hearing but before the stage of deliberation where new evidence is placed in the file in the course of proceedings, provided that all necessary measures are taken by the court in order to ensure respect for the rights of the defence and the fairness of the proceedings.





## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Judgment of the Court (Grand Chamber) of 5 June 2018.

Criminal proceedings against **Nikolay Kolev and Others**.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad.

(87) Those provisions should be interpreted in the light of their context and their objective (see, to that effect, judgment of 20 December 2017, *Spain v Council*, C-521/15, EU:C:2017:982, paragraph 158).

(88) In that regard, it is apparent from recitals 10 and 14 of Directive 2012/13 that the aim of that directive is, by means of the establishment of common minimum rules governing the right to information in criminal proceedings, to increase the mutual confidence of the Member States in their respective criminal justice systems. As stated, in essence, in recital 14 and also in recital 41 of Directive 2012/13, to that end the directive builds on the rights laid down in, inter alia, Articles 47 and 48 of the Charter and seeks to promote those rights.



## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

Judgment of the Court (Grand Chamber) of 5 June 2018.

Criminal proceedings against **Nikolay Kolev and Others**.

Request for a preliminary ruling from the Spetsializiran nakazatelen sad.

(89) For that reason, as stated in recitals 27 and 28 of that directive and in Articles 6 and 7 thereof, it is precisely the objective of those provisions to allow for an effective exercise of the rights of the defence and to ensure the fairness of the proceedings (see, to that effect, with respect to Article 6, judgment of 22 March 2017, Tranca and Others, C-124/16, C-188/16 and C-213/16, EU:C:2017:228, paragraph 38 and the case-law cited).



## **Rights of the suspect and defendant**

### **DIRECTIVE 2012/13/EU on the right to information in criminal proceedings**

**JUDGMENT OF THE COURT (Fifth Chamber)**

**28 January 2021 Case C-649/19, criminal proceedings against IR**

**Do the rights of an accused person under Article 4 (in particular the right under Article 4(3)), Article 6(2) and Article 7(1) of Directive 2012/13 apply to an accused person who has been arrested on the basis of a European arrest warrant?**



## **Rights of the suspect and defendant**

### **DIRECTIVE 2012/13/EU on the right to information in criminal proceedings**

#### **Article 4**

##### **Letter of Rights on arrest**

1. Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.

#### **Article 5**

##### **Letter of Rights in European Arrest Warrant proceedings**

1. Member States shall ensure that persons who are arrested for the purpose of the execution of a European Arrest Warrant are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing Framework Decision 2002/584/JHA in the executing Member State.



## **Rights of the suspect and defendant**

### **DIRECTIVE 2012/13/EU on the right to information in criminal proceedings**

48 According to Article 5(2) of that directive, an indicative model letter is set out in Annex II thereto.

49 That article must be read in the light of recital 39 of Directive 2012/13, which specifies that the right to written information about rights on arrest provided for in that directive should apply only *mutatis mutandis* to persons arrested for the purposes of the execution of a European arrest warrant; that recital refers, to that end, to the only indicative model set out in Annex II to that directive to help Member States draw up a Letter of Rights for such persons.

50 It must be noted that that indicative model is different from the one set out in Annex I to that directive and referred to in Article 4 thereof, which concerns the Letter of Rights to be provided to suspects and accused persons who are arrested or detained.



## **Rights of the suspect and defendant**

### **DIRECTIVE 2012/13/EU on the right to information in criminal proceedings**

52 It must be pointed out that no provision of Directive 2012/13 establishes that persons arrested on the basis of a European arrest warrant should receive a written letter combining the information contained in the two indicative models set out in Annexes I and II to that directive.

53 Furthermore, since the provisions in respect of which interpretation is sought by the referring court refer to suspects or accused persons who are arrested or detained, Article 5 of Directive 2012/13, read in the light of recital 39 thereof, suggests that those provisions do not concern persons who are arrested for the purposes of the execution of a European arrest warrant.

54 That conclusion is confirmed by recital 21 of that directive, according to which references in that directive to suspects or accused persons who are arrested or detained should be understood to refer to any situation where, in the course of criminal proceedings, suspects or accused persons are deprived of liberty within the meaning of Article 5(1)(c) ECHR, as interpreted by the case-law of the European Court of Human Rights.



## Rights of the suspect and defendant

### DIRECTIVE 2012/13/EU on the right to information in criminal proceedings

56 An interpretation of Article 4, Article 6(2) and Article 7(1) of Directive 2012/13, in the light of the context of those provisions, to the effect that those provisions **do not apply to persons who are arrested for the purposes of the execution of a European arrest warrant, is also confirmed by the objectives of that directive.**



## **Rights of the suspect and defendant**

**Directive (EU) 2016/343 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**

The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.

By establishing common minimum rules on the protection of procedural rights of suspects and accused persons, this Directive aims to **strengthen the trust of Member States in each other's criminal justice systems and thus to facilitate mutual recognition of decisions in criminal matters.** Such common minimum rules may also **remove obstacles to the free movement of citizens throughout the territory of the Member States.**





## **Rights of the suspect and defendant**

**Directive (EU) 2016/343 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**

This Directive acknowledges the different needs and levels of protection of certain aspects of the presumption of innocence as regards natural and legal persons. As regards natural persons, such protection is reflected in well-established case-law of the European Court of Human Rights. The Court of Justice has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as they do to natural persons.

**At the current stage of development of national law and of case-law at national and Union level, it is premature to legislate at Union level on the presumption of innocence with regard to legal persons. This Directive should not, therefore, apply to legal persons.**



## **Rights of the suspect and defendant**

**Directive (EU) 2016/343 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**

### **Scope of application**

**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.**



## **Rights of the suspect and defendant**

Directive (EU) 2016/343 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

### **Presumption of innocence**

Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.



## Rights of the suspect and defendant

### Public references to guilt

Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty.

This shall be without prejudice to **acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities** and which are based on suspicion or incriminating evidence as well as **public dissemination of information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest.**



## **Rights of the suspect and defendant**

### **Public references to guilt**

**Member States shall ensure that appropriate measures are available in the event of a breach of the obligation to protect presumption of innocence.**

### **Presentation of suspects and accused persons**

**Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.**

**That shall not prevent Member States from applying measures of physical restraint that are required for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.**

## Public references to guilt

***CASE OF MIROSŁAW GARLICKI v. POLAND [ECTHR]***

***(Application no. 36921/07), 14 June 2011***

**Presentation of suspects and accused persons**





## Rights of the suspect and defendant

Member States shall ensure that **the burden of proof** for establishing the guilt of suspects and accused persons is on the prosecution.

This shall be without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.

Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including where the court assesses whether the person concerned should be acquitted (**in dubio pro reo rule**)





## Rights of the suspect and defendant

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.

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

The exercise of the right not to incriminate oneself shall not prevent the competent authorities from **gathering evidence which may be lawfully obtained through the use of legal powers of compulsion and which has an existence independent of the will of the suspects or accused persons (e.g. blood samples, DNA)**.

The exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.





## Rights of the suspect and defendant

Member States shall ensure that suspects and accused persons have the right to be present at their trial.

Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person **can be held in his or her absence**, provided that:

(a)

the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or

(b)

the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.



## **Rights of the suspect and defendant**

**Member States shall ensure that suspects and accused persons have the right to be present at their trial.**

**Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons and a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced.**

**In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy.**



## **Rights of the suspect and defendant**

### **Right to a new trial**

**Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.**



## **Rights of the suspect and defendant**

**Judgment of the Court (Sixth Chamber) of 13 February 2020.  
Criminal proceedings against TX and UW.  
Request for a preliminary ruling from the Spetsializiran  
nakazatelen sad.**

**Article 8(1) and (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 must be interpreted as not precluding national legislation which provides, in a situation where the accused person has been informed, in due time, of his trial and of the consequences of not appearing at that trial, and where that person was represented by a mandated lawyer appointed by him, that his right to be present at his trial is not infringed where:**



## **Rights of the suspect and defendant**

**Judgment of the Court (Sixth Chamber) of 13 February 2020.  
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Request for a preliminary ruling from the Spetsializiran  
nakazatelen sad.**

- he decided unequivocally not to appear at one of the hearings held in connection with his trial; or
- he did not appear at one of those hearings for a reason beyond his control if, following that hearing, he was informed of the steps taken in his absence and, with full knowledge of the situation, decided and stated either that he would not call the lawfulness of those steps into question in reliance on his non-appearance, or that he wished to participate in those steps, leading the national court hearing the case to repeat those steps, in particular by conducting a further examination of a witness, in which the accused person was given the opportunity to participate fully.