



Training of Lawyers on EU Instruments on procedural rights in Criminal proceedings (CRIMILAW)


**The application of the three procedural rights directives and of the
European Arrest Warrant in Hungary**

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Presentation on the influence of
Directive 2013/48/EU, Directive (EU)
2016/343 and Directive (EU) 2016/1919
and the EAW in the national law –
HUNGARY

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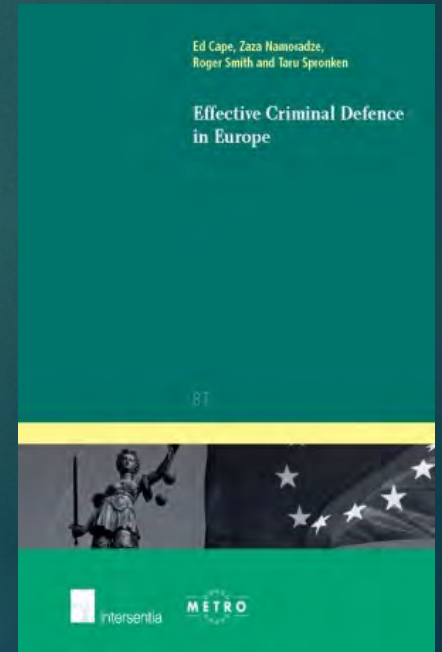
„Historical” background

- ▶ 2011 – Gov’s plan to renew the procedural codes (civil, public, criminal)
- ▶ 2014 – speed up the procedure of codification
- ▶ Expert committee – „problem maps”
 - ▶ EU directives
 - ▶ ECHR case law
 - ▶ Constitutional Court case law
- ▶ Act XC of 2017 – new Criminal Procedure Code
- ▶ Entered into force 1 July 2018

DIRECTIVE 2013/48/EU right of access to a lawyer

Art. 3. (1)

- ▶ Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of **defence practically and effectively**.
- ▶ Right of effective defence - CPC. 3. § principle
- ▶ No definition for „effective”
- ▶ Pros and cons: quality issue/lawyer's liability/argument against authorities



How can get a lawyer?

- ▶ POA (private lawyer)
- ▶ Appointed by the authorities (public defender)
 - ▶ Old reg.: authorities had the right to appoint the „favourite” lawyers
 - ▶ New reg.:
 1. Authority send a claim to the Hungarian Bar Association
 2. Automatic program
 3. Listed lawyers
 4. Automatic selection – regional, ABC order
 5. No extra qualification



Quality control?

- ▶ Issue from time to time
 - ▶ Lawyer is „independent” but „officially prejudiced”
 - ▶ Lawyer’s right same as the rights of defendant
 - ▶ Ethical regulation issued by the Bar Ass.
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- ▶ How would be possible? – secrecy, client’s decision
 - ▶ Organised trainings, bar association’s accredited educational bodies, credit system



„Price” of the quality

- ▶ Public defender – hourly rate
- ▶ Net. 6000 Huf equal to 16-17 €
- ▶ 20 % for the preparation

- ▶ No billable hours: consultation in the office, preparation of docs and petitions



Art. 3. (2) access to a lawyer without undue delay

- ▶ Min. 2 hours from the call, email
- ▶ In case of public defender: if no answer – deputy public defender (appointed by the authority) (only for that time)
- ▶ (Art. 3 (3) a)) right to meet in private and communicate with the lawyer representing them - 1 hour consultation

Art. 3. (3) b) right for their lawyer to be present and participate effectively

- ▶ **Must be present:**

- ▶ juvenile (14-18)
- ▶ detained

- ▶ **Obligatory to get lawyer:**

- ▶ Juvenile
- ▶ No Hungarian speaker
- ▶ Detained
- ▶ Crime shall be punished by min 5 years or more imprisonment
- ▶ Consideration

Rights at the interrogation


- ▶ Lawyer has the right:
 - ▶ Explain warnings
 - ▶ Make proposal (medical condition)
 - ▶ Ask questions
 - ▶ Comment
 - ▶ File motion
 - ▶ Ask the full documentation

Lawyer's right to be present

- ▶ On confrontation - OK
- ▶ On reconstructions of the scene of crime - OK
- ▶ On interrogation of witness – NO

Art. 5, Art. 6., Art. 7. right to informed and communicate, while deprived of liberty, with third persons, consular

- ▶ At the detention officers ask this question
- ▶ No problem
- ▶ Mobile phone usage



Directive 2016/343 presumption of
innocence and of the right to be
present at the trial in criminal
proceedings

Art. 3. Presumption of innocence

- ▶ 1. § of CPC principle
- ▶ Experiences: Hungarian Helsinki Committee's questionnaire
- ▶ Effectiveness of prosecution – appx. 95 %
- ▶ Different approaches: lawyers, judges, investigators/prosecutors



Article 5 - Presentation of suspects and accused persons

- ▶ Regulation is harmonised
- ▶ Practice is wrong



Article 6 - Burden of proof

- ▶ CPC 5. § principle - prosecution, defence, **court** are separate
 - ▶ At the court the trial presence of prosecutor is compulsory in every cases – based on a Constitutional Court's decision
- ▶ CPC 7. § (4) A fact which has not been proved beyond a reasonable doubt cannot be assessed against the accused.

Article 7 - Right to remain silent and right not to incriminate oneself

CPC 7. § (3) In criminal proceedings, no one shall be obliged to testify against himself or to give evidence against himself.

Remain in silence **any time**

No effect for the right of comment and ask questions

Make testimony and remain in silence can be **swaped any time**

Right to use „**cherry picking**” at different questions

Cannot be evidence – experience HHC questionnaire

Article 8 - Right to be present at the trial


Old CPC: obligation

New CPC: right to be present

Diefference: preparation session and trial

Lawyer acts as a mandated

Judge can order the presence of the defendant



DIRECTIVE 2016/1919

on legal aid for suspects and accused
persons in criminal proceedings and for
requested persons in European arrest
warrant proceedings

Legal Aid – public defender

Means test – relates to the official minimum amount of pension – **68 €**

Complicated application form

The written information is very formal, legal language

Merit test

It seems work well

Judges use for appointing lawyer

EAW – experiences

- ▶ General opinion: it works well!
- ▶ Some practical aspects:
 - ▶ Judicial authority: court and prosecution (no police) – police department can issue the national arrest warrant which must be previous than the EAW
 - ▶ If we know just a photo and fake personal data - variable court decisions
 - ▶ Sometimes the issuance is slow
 - ▶ House arrest shall be used until the handover

Hungary related cases

- ▶ Judgment in Case C-268/17

The execution of a European arrest warrant cannot be refused on the ground that a decision of the Public Prosecutor's Office has closed a criminal investigation when, during that investigation, the requested person was interviewed as a witness only

Hungary related cases

- ▶ Judgment in Joined Cases C-404/15 and C-659/15 PPU –

The execution of a European arrest warrant must be deferred if there is a **real risk of inhuman or degrading treatment because of the conditions of detention** of the person concerned in the Member State where the warrant was issued



Q&A session

