



Infosheets on the Application of EU Procedural Rights Directives

Executive summary

These infosheets are part of the CrimiLAW project and aim at facilitating the understanding of how the procedural rights directives on access to a lawyer, the presumption of innocence and legal aid are implemented at national level.

The EU Procedural Rights Directives have been incorporated into the internal legal order by the introduction of the domestic Laws 4478/2017, 4569/2019 and 4689/2020, as approved in the years 2017, 2019 and 2020 respectively. The above provisions have also been included in an almost identical format in the New Code of Criminal Procedure (CCP), in force from 01/07/2019 and currently in place.

Objectively, the letter and spirit of the rights of the directives have been integrated into the above-mentioned domestic legislation to a very large degree. However, certain elements provided by the directives appear not to have been included explicitly in the domestic laws and so have been omitted from implementation.

The basic concept of the issues raised in the directives (e.g. access to a lawyer, the presumption of innocence, and legal aid) was widely accepted in domestic theory and practice long before the introduction of the directive's provisions. However, in the process of the integration of the directives into the domestic legal framework, certain critical points of these principles and values were more specifically mapped out and developed in more detail, for the better protection and interpretation of the rights.

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Right of access to a lawyer

Directive 2013/48/EU

This directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Framework Decision 2002/584/JHA ('European arrest warrant proceedings') to have access to a lawyer, to have a third party informed of their deprivation of liberty, and to communicate with third persons and with consular authorities while deprived of liberty.

After the introduction of Directive 2013/48/EU in the national legal system, the following provisions were put in place:

Article 47 - Law 4478/2017 - Subject matter and scope (Articles 1 and 2 of Directive 2013/48/EU)

Article 48 - Law 4478/2017 - The right of access to a lawyer in criminal proceedings (Articles 3 and 9 of Directive 2013/48/EU)

Article 49 - Law 4478/2017 - Amendment of Article 100 of the Code of Criminal Procedure (Article 4 of Directive 2013/48/EU)

Article 50 - Law 4478/2017 - Addition of Article 99B to the Code of Criminal Procedure (Articles 5, 7, 8 and 13 of Directive 2013/48/EU)

Article 51 - Law 4478/2017 - Addition of Article 99C to the Code of Criminal Procedure (Articles 6, 7 and 8 of Directive 2013/48/EU)

Article 52 - Law 4478/2017 - Amendment of Article 96 of the Code of Criminal Procedure (Article 9 of Directive 2013/48/EU)

Article 53 - Law 4478/2017 - Right of access to a lawyer, information of a third party and communication with third parties in the European arrest warrant proceedings (Article 10 of Directive 2013/48/EU)

Taking the above changes into consideration, critical provisions of the **Code of Criminal Procedure** were transformed as follows:

Article 95. – Right to information.

1. The suspect or accused person shall be informed immediately of at least the following rights: a) the right to be represented by a lawyer, b) the right to receive free legal advice and the conditions for it, c) the right to be informed about the accusation, d) the right to interpretation and translation, and e) the right to remain silent and not to incriminate themselves.
2. The information in accordance with para. 1 is provided in plain and intelligible language, orally or in writing, taking into account the specific needs of vulnerable suspects or accused persons. The object of the information must also be to indicate the consequences of waiving the exercise of rights. A report is drawn up for the information of the suspect or accused person and signed.

Article 96. – Letter of rights.

1. A suspect or accused person who is arrested or detained shall be provided immediately with a document listing their rights, which they are allowed to keep in their possession throughout the period of deprivation of liberty. This document contains information on the following rights: a) the right to be present with counsel, b) the right and conditions to provide free legal advice, c) the right to information about the accusation, d) the right to interpretation and translation, e) the right to remain silent and not to incriminate themselves, f) the right of access to the material of the case file, g) the right to inform the consular authorities and an additional person of their choice, (h) the right to emergency medical care, (i) the maximum number of hours or days during which the accused person may be deprived of liberty before being brought before a judicial authority, and (j) information on the possibilities of challenging the lawfulness of the arrest or detention.

2. Where this is not available in the appropriate language, the suspect or accused person is informed of their rights orally in a language they understand. That document must then be issued, without undue delay, in a language that the suspect or accused person understands.

Article 97. – Right to have a person informed in the event of deprivation of liberty.

1. The accused person shall have the right to request that at least one person of their choice be informed, without undue delay, of the deprivation of liberty of the accused. If the accused person is a minor, the holder of parental responsibility is informed, unless this is contrary to the interests of the minor, in which case another appropriate adult or the authority responsible for the protection of minors is informed.
2. In exceptional cases and in order to prevent imminent danger either to the life, liberty or physical integrity of a person or to the investigation of the crime, the competent authorities may temporarily refrain from informing a third person of the deprivation of liberty of the accused person. In this case, it is examined whether another third person, designated by the accused, can be informed accordingly. If the accused person is a minor, the authority responsible for the protection of minors is informed in this case.
3. An accused person who is a foreign national and deprived of liberty shall have the right to request that the consular authorities of the State of which he/she is a national be informed without undue delay.

Article 98. – Right to communicate with third parties during the deprivation of liberty.

An accused person who is a foreign national and deprived of liberty shall have the right to communicate, without undue delay, with the consular authorities of the State of which he/she is a national. He/she also has the right to receive visits by their consular authorities, the right to talk and correspond with them, and the right to have legal representation arranged by the consular authorities, provided that those authorities have no objection.

Article 99. – Right of attendance of the accused person with a lawyer.

1. When the accused person is called to account, even in cross-examination with witnesses or other accused persons, they have the right to attend with a lawyer. For this purpose, they are called twenty-four hours before each investigative action.
2. This period may be shortened if the postponement creates a risk, the existence of which is specifically certified by a report of the investigator or the investigating officer.
3. The investigator has the obligation to ex officio appoint a lawyer for the accused person, unless the latter expressly and irrevocably declares that they waive this right. The investigator has the same obligation in misdemeanours, if the accused person expressly requests it.
4. Under no circumstances may the communication of the accused person with their lawyer be forbidden. This communication is completely confidential.

Article 90. – Waiver of the right to appoint a lawyer.

Without prejudice to the provisions requiring the mandatory appearance of counsel, the suspect or accused person shall have the right to refrain from the appointment of a lawyer, after having received orally or in writing clear and sufficient information in plain and intelligible language about the content of the right in question and the possible consequences of waiving it. The waiver shall be made in the manner set out in the provisions of the previous article and shall be the product of the person's free will and shall not contain any terms or conditions. The suspect or accused person may revoke the waiver at a later date, at any stage of the criminal proceedings.

Article 15 of the Law 3251/2004 about EAW Proceedings.

'Where the requested person is arrested on the basis of the European arrest warrant, they shall be immediately provided with a document containing information on their rights and shall be taken without delay to the public prosecutor at the Court of Appeal. The public prosecutor of the Court of Appeal shall, after having established their identity, inform them of the existence and content of the warrant, of their right to have recourse to the services of a legal counsel and interpreter in the executing Member State and in the issuing Member State, of the right to inform a third person and to communicate with third persons and with the consular authorities of the State of which they are a national, and the opportunity to consent to their transfer to the issuing State. For the above information and the relevant statements of the requested person, a report shall be drawn up in accordance with the terms of Articles 148 to 153 of the CCP.

'The rights of the accused person in domestic proceedings shall apply *mutatis mutandis* in the case of a requested person arrested on the basis of a European arrest warrant.'

The added value of the introduction of Directive 2013/48/EU in the national legal system consists of the better articulation, interpretation and protection of the rights referred to in the directive.

In that regard:

The right of the accused person to attend with a lawyer is perhaps the most essential manifestation of the right to be heard of the accused person, the deprivation of which cannot be imposed in any way.

However, the CCP does not explicitly provide for the exceptional circumstances, introduced by the directive at the pre-trial stage, under which state authorities may temporarily derogate from the application of the right to access e.g. where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty, where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person, or where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

These exceptional circumstances have not been incorporated into the CCP.

The right of attendance with a lawyer can be exercised both in the investigation and in the preliminary investigation, while the predominant opinion, mainly followed by case law, is that the accused does not have the right to attend with a lawyer during the examination of witnesses.

Defendant-lawyer communication cannot be prohibited under any circumstances. It follows that in no way is it allowed to prevent or control the written, oral or general communication with the lawyer, whether the accused is detained or not, even in order to identify very serious crimes.

If any evidence is produced by surveillance or generally by control of the communication between the lawyer and the accused person, its use is prohibited for the detriment of the latter, otherwise the process is totally invalid.

Right to be presumed innocent

Directive (EU) 2016/343

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.

After the introduction of Directive 2016/343/EU in the national legal system, the following provisions were put in place:

Article 5 - Law 4596/2019 - Purpose, object and scope (Articles 1, 2 of Directive 2016/343/EU)

Article 6 - Law 4596/2019 - Presumption of innocence (Article 3 of Directive 2016/343/EU)

Article 7 - Law 4596/2019 - Public references to the guilt of a person (articles 4 and 10 par. 1 of Directive 2016/343/EU)

Article 8 - Law 4596/2019 - Burden of proof in criminal proceedings (Article 6 of Directive 2016/343/EU)

Article 9 - Law 4596/2019 - Right to remain silent and not to incriminate oneself (Article 7 of Directive 2016/343/EU)

Article 10 - Law 4596/2019 - Guarantees for the appearance of the accused in criminal proceedings (Article 8 of Directive 2016/343/EU)

The added value of the introduction of the directive consists of the better articulation, interpretation and protection of the following rights which already existed, more specifically:

- Suspects and accused persons are presumed innocent until proven guilty under the law.
- The accused has no obligation to prove their innocence and the Court is not obliged to justify why it was not convinced of the guilt.
- The presumption of innocence horizontally crosses all the phases from the preliminary procedure to the final conviction, in which case the final revocation of the presumption of innocence arises.
- All procedural measures against the suspect/accused person, up to their irrevocable conviction, must be taken in the light of the presumption of innocence, in view of the "open" nature of criminal proceedings.

The directive brought about the following changes in Greece:

- Judges and prosecutors examine *ex officio* all evidence on the grounds of guilt or innocence of the accused, as well as any evidence concerning their personality which affects the sentencing.
- The accused is not obliged to provide evidence of the facts alleged in their favour.
- Judges and prosecutors are obliged to investigate any evidence or evidence cited in their favour by the accused, if this is useful in order to establish the truth.
- Any doubt as to guilt shall be for the benefit of the accused or suspect.
- The suspect or accused person has the right to remain silent and not to incriminate him- or herself.

- The exercise of the right not to incriminate oneself does not prevent the lawful gathering of evidence, which exists regardless of the will of suspects and accused persons. The exercise of the right to remain silent and not to incriminate oneself cannot be used at the expense of suspects and accused persons.
- The suspect or accused person has the right to bring an action for damages before the competent Court, in accordance with the provisions of Articles 105 and 106 of the Introductory Law of the Civil Code, in order to remedy the damage they suffered as a result of the infringement of their presumption of innocence by statements of public authorities which occurred at any stage of the procedure before the adoption of judgment at first or second instance, which refer directly to the pending criminal proceedings and either encourage the public to believe in their guilt or make an assessment of the facts by which they prejudge the judicial judgment of the case.

Right to legal aid

Directive (EU) 2016/1919

This Directive lays down common minimum rules concerning the right to legal aid for:

- (a) suspects and accused persons in criminal proceedings; and
- (b) persons who are the subject of European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).

After the implementation of the directive, the following provisions were introduced:

Article 41 - Law 4689/2020 - Beneficiaries of legal aid (Article 1 of the Directive)

Article 42 - Law 4689/2020 - Application for legal aid and ex officio appointment of a lawyer (Articles 1 and 2 of the Directive)

Article 43 - Law 4689/2020 - Appointment of a lawyer or legal aid lawyer (article 7 par. 1-3 of the Directive)

Article 44 - Law 4689/2020 - Imputation of expenses in case of legal aid with untrue elements (Article 4 par. 2, 3 and article 5 par. 3 of the Directive)

Article 45 - Law 4689/2020 - Procedure for granting legal aid in criminal matters (Articles 2, 3, 4, 5, 6, 7, 8 and 9 of the Directive)

The added value of the introduction of the directive consists of the better articulation, interpretation and protection of the rights contained in the directive.

After the introduction of the directive, a specific provision was included, namely [Article 91 of the CCP](#) that provided that the suspect or accused person is entitled to free legal aid, which includes the provision of legal advice and legal assistance and their representation before the Court.

This provision makes it mandatory to provide legal aid – advice for the suspect or accused person – at any stage of the criminal proceedings and for any crime.

According to the Law [3226/2004](#), which pre-existed the directive, the provision of legal aid in criminal matters consists of the appointment of a lawyer.

The beneficiary of legal aid shall be any suspect or accused person, irrespective of their nationality or place of residence or habitual residence, provided that the following conditions are met:

- a) the average annual personal or family income of the last three (3) years does not exceed:
 - i) for a single person, the amount of six thousand (6,000) euros, increased by one thousand (1,000) euros for each dependent child and up to four (4) children, or
 - ii) for a married person or one who is part of a cohabitation agreement, the amount of eight thousand (8,000) euros, increased by one thousand (1,000) euros for each dependent child and up to four (4) children;
- b) at the stage of the preliminary examination, the preliminary investigation referred to in Article 245 para. 2 of the CCP, and the main interrogation, an offence is investigated for which a sentence of deprivation of liberty is provided for of at least two (2) years and the person is called for explanations as a suspect or to submit their defence as an accused, or an investigative act is carried out, during which the accused and/or the counsel are entitled to attend, such as, inter alia, during: (i) an identification parade, (ii) witness cross-examination, or (iii) reconstruction of the crime;

- c) at the stage of the main proceedings at first instance, the hearing concerns an offence for which a sentence of deprivation of liberty is provided of at least two (2) years;
- d) in appeal cases for an offence for which there is a penalty of deprivation of liberty of at least two (2) years or the accused has been sentenced to a custodial sentence of at least six (6) months, as well as in the case where an appeal has been lodged against an acquittal and the trial concerns an offence for which a penalty is provided for deprivation of liberty of at least two (2) years.

The beneficiary of legal aid is also any requested person under an application for extradition from another State or a European arrest warrant issued or executed by the Greek authorities, irrespective of their nationality or place of residence or habitual residence, provided that the above economic criteria are met.

In the case of a requested person pursuant to an application for extradition by another State, a legal aid counsel is appointed from the moment of the arrest of the requested person until the person's surrender or until the decision not to extradite them becomes final.

The beneficiary of legal aid can also be a victim of crime entitled to the support of the prosecution (private prosecution) under similar financial conditions.

Beneficiaries of legal aid regarding any criminal claims also include the victims of the criminal acts provided for in Articles 187A, 187B (terrorism offences), 323A (human trafficking), 324 (child abduction), 339 (sexual acts with minors), 342 (child abuse), 348 para. 2 (facilitation of child abuse), 348A (child pornography), 351A of the Penal Code (sexual act with a minor with payment), and articles 29 para. 5, 6 and 30 of Law 4251/2014 (immigration offences), as well as the minor victims of the acts provided for in articles 336 (rape), 338 (child sexual abuse), 343 (sexual abuse), 345 (sexual acts between relatives), 348 (facilitation of child abuse), 348B (child pornography), 348C (child solicitation for sexual reasons) and 349 (pimping) of the Penal Code.

In order to be entitled to inclusion in the legal aid scheme, lawyers should have at least five (5) appearances before the court as defence or prosecution lawyers, and in appeal cases before the Supreme Court the lawyer also must have been awarded the competence to appear and plead before the Supreme Court.

The element of quality of legal aid services and training, introduced by the directive, is still not mentioned in the CCP.

The same applies to the State's obligation to ensure that adequate training is provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings, and to take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.

The above provisions about quality of legal aid services and training, according to the correct assessment, have also not been fully incorporated into practical implementation in the internal criminal legal order.