



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 Greece**

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Greek Lawyer



The project is co-financed with the support of the European Union's Justice programme



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

Comparative law and best practices on the application of the 3 procedural rights directives and the EAW in Greece.

Trainer: Alexis Anagnostakis



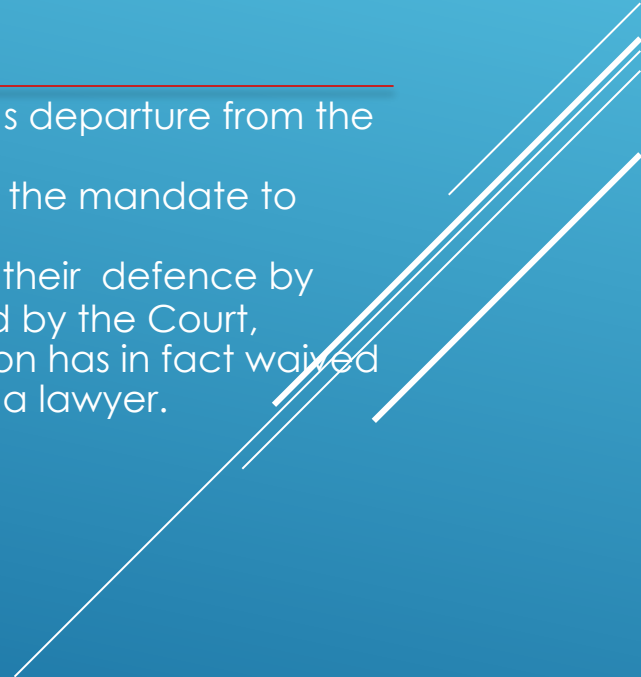
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1413/2010 SUPREME COURT OF CASSATION (CRIM) 17N

Limits of the behaviour that can be interpreted as a waiver by the accused person of the right to a (legal aid) lawyer.

By the defendant's departure from the Court,
the revocation of the mandate to their lawyers,
and the refusal of their defence by lawyers appointed by the Court,
the accused person has in fact waived their right to have a lawyer.

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- ▶ The Judgment sets the limits of the behaviour that can be interpreted as a waiver by the accused person of the right to a lawyer.
- ▶ Such is the abuse of the right in order to delay or block the procedure.
- ▶ The question is whether the accused person, even with abusive behaviour, can be deprived of such a fundamental right.

Article 340 Code of Criminal Procedure – Personal appearance of the accused person.

1. The accused person must appear in person at the Court during the hearing, and may also appoint a lawyer as their defence counsel.

In felonies, the President of the Court obligatorily appoints a lawyer to the accused persons who do not have one, from a list drawn up in January of each year by the managing board of the relevant Bar Association.

If the accused person does not appear or is not legally represented by a lawyer, they are tried as if they were present, provided that they have been legally summoned and informed that in the case of non-appearance or non-representation they will be tried in absentia.





- ▶ Aspect of the right to a lawyer is that the accused can be represented by a lawyer and not need to be present in the Court. Such representation substitutes their physical presence, if they choose for any reason not to attend the Court in person.

If the accused person refuses their defence by the appointed lawyer, the President of the Court appoints another lawyer from the same list. In the event of a second refusal by the accused person, the Court proceeds with the trial of the felony without appointing a lawyer.

In trials for a felony, which, due to their gravity and subject matter, are to have a long duration, the President of the Court appoints, by the same procedure, two (2) or three (3) lawyers from the same list to the accused person who does not have a lawyer. The accused person cannot refuse their defence by the lawyer or the lawyers appointed by the President; however, by a reasoned application thereof, may request from the Court to revoke the appointment of only one (1) lawyer, so the defence is continued by the others, if more than one had been appointed.

The accused can refuse the lawyer only once.

How compatible is that with the right to access a lawyer of their own choice?

What if both lawyers look incompetent or the accused feels that that they do not serve the defence interests?

Can the right to a lawyer be fulfilled by an “one shot” choice?

On the other hand, continuous refusal of a legal aid lawyer can lead to a perpetual procrastination or delay of the trial, probably with the aim of blocking/cancelling the trial.

PRE-TRIAL PHASE.

Article 99 of the Code of Criminal Procedure

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.

Please note that the legislation does not recognize any derogations for the right to have the lawyer present. There are no derogations based on geographical remoteness (e.g. the lawyer is far away and we cannot wait for them) or risk to people or investigation needs (e.g. there is a bomb ticking somewhere and only if the defendant testifies without lawyer can the world be saved).

The only thing is that the time limit of 24 hours for the defendant's summons can be reduced.




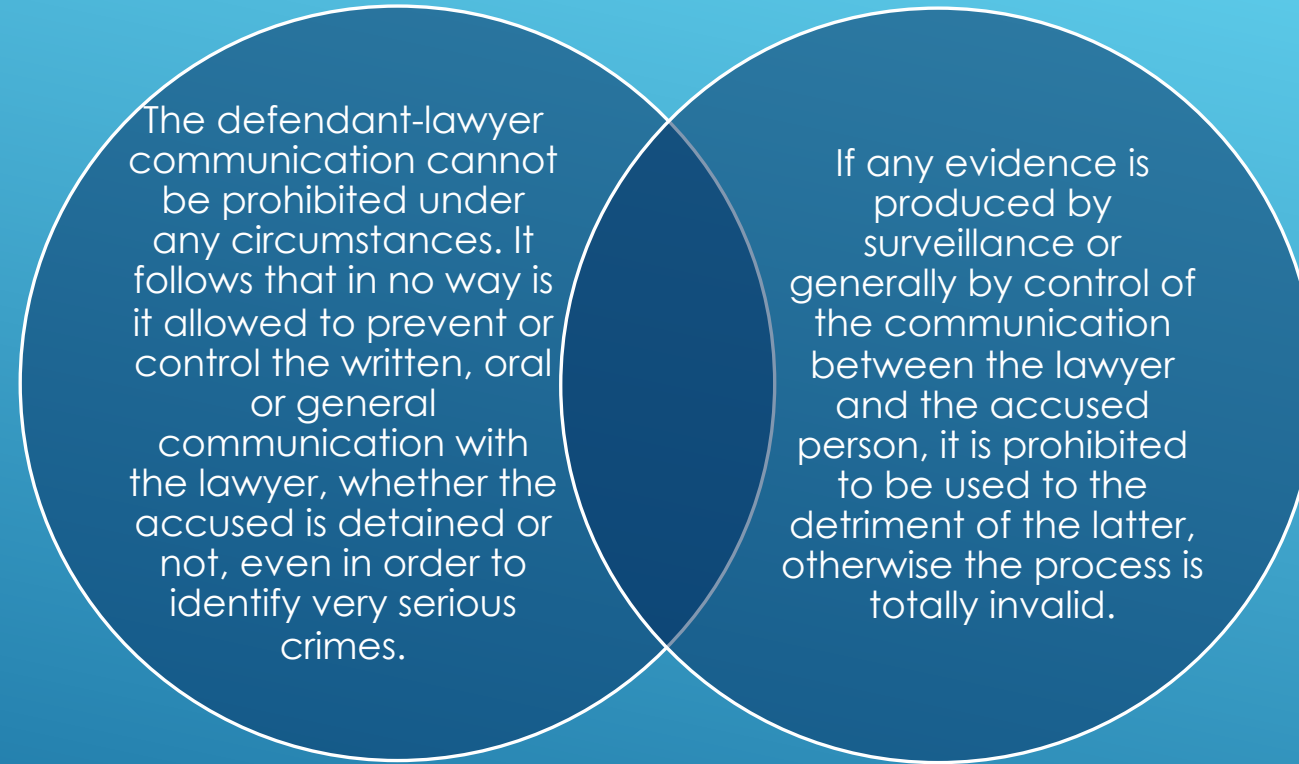
Restrictions on the right. The possible shortening of the deadline according to para. 2 is only applicable in the case of a risk of the postponement of the investigative action, e.g. due to the possible disappearance of proof or evidence in general, or due to an insurmountable inability to examine a witness, or due to a limitation period.

The presence of the lawyer at the time the accused person-client is called to account is exhausted in the safeguarding of the interests of the latter from a hypothetical violation thereof by the investigator.

To this end, the lawyer may submit observations after the examination of the accused person, when e.g. the investigator states an answer of the accused person in an earlier question thereof, in a way that substantially alters its meaning.

It should also be noted that the lawyer cannot be called to account for the accused person or answer any questions instead of them.

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Article 90 of the Code of Criminal Procedure

Waiver of the right to appoint a lawyer

The suspect or accused person has the right to waive the appointment of a lawyer, having previously received oral or written clear and sufficient information in simple and understandable language about the content of the specific right and the possible consequences of the waiver thereof.

The waiver must be the product of the free will of the person and must not contain any term or condition. The suspect or accused person may subsequently revoke the waiver, at any stage of the criminal proceedings.

Article 92 of the Code of Criminal Procedure

In which acts the parties are attending

1. The parties have the right to attend with a lawyer in any investigative act, with the exception of the examination of witnesses and accused persons. For this purpose, the parties are summoned in time to attend themselves or to be represented by their lawyers.

2. If the accused person is under detention, they should be brought in, unless their bringing in causes difficulties, in which case they are represented by their lawyer.

Article 91 of the Code of Criminal Procedure

Right to free legal aid

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.

Article 71 of the Code of Criminal Procedure

Presumption of innocence

Suspects and accused persons are presumed innocent until proven guilty under the law.

- ▶ Concerning the issue of infringement of the presumption of innocence in the case of irrevocable acquittal of the accused person and their subsequent conviction for compensation for the same act by a civil Court in the civil proceedings, the case-law of the Supreme Court of Cassation was divided.
- ▶ Certain judgments were in favour of the affirmation of infringement of the presumption of innocence in this case, in accordance with those accepted by ECtHR.

However, there was also a contrary case-law in the same Court, with the result that the matter was referred to ordinary Plenary.

In accordance with the final decision of the Plenary Session of the Supreme Court of Cassation:

- ▶ The presumption of innocence means that the civil court cannot be indifferent to the criminal acquittal of the accused person, nor is it allowed to use the acquittal to derive arguments for guilt.
- ▶ The assumptions and the general reasoning of the judgment of the civil court must not directly or indirectly call into question the correctness of the acquittal judgment of the criminal court, in particular by invoking that:
 - ▶ (a) the innocence of the accused person is the product of doubts and not of the court's assurance of innocence;
 - ▶ (b) the judgment was taken by a majority and not unanimously;
 - ▶ c) it was based on the failure to prove the mental element of the offense (intent);
 - ▶ (d) the public prosecutor of the court disagreed;
 - ▶ (e) an appeal was lodged by the Public Prosecutor of the Supreme Court of Cassation against the acquittal.

That is to say, the civil court must avoid characterizations and judgements related to the criminal offense, so as not to give the impression that it is not only dealing with civil claims, but also investigates the commission of the criminal offense by making statements of imputation of criminal liability to the irrevocably acquitted person, stating e.g. that they have committed the offenses.





Public statements on the guilt of a person



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 prejudice the judicial judgment of the case.



the
end

- ▶ Any questions, interventions or oppositions??
- ▶ Be happy :)