

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**

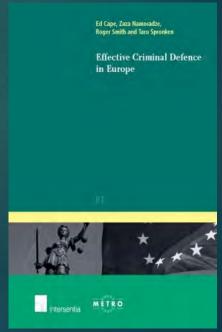
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"Historical" background

- 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



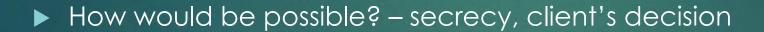
How can get a lawyer?

- POA (private lawyer)
- Appointed by the authorities (public defender)
 - ▶ Old reg.: authorites 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 reginal, 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.



 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 toinformed 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 questionare
- Effectivness of prosecution appx. 95 %
- Different approches: 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 questionare

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 previuos than the EAW
 - If we know just a photo and fake personal data variable court decisions
 - Sometimes the issuance is slow
 - House arraest 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

