



Training of lawyers on various areas of European Union Law (TRAVAR)

Adam Békés

The Right to Access to a Lawyer

Budapest, 10 April 2025



Co-funded the European Union

Key points of the Directive 2013/48/EU

1. The right of access to a lawyer in criminal proceedings
2. Confidentiality
3. The right to have a third person informed of the deprivation of liberty
4. The right to communicate, while deprived of liberty, with third persons
5. The right to communicate with consular authorities
6. General conditions for applying temporary derogations
7. Waiver of rights
8. The right of access to a lawyer in European arrest warrant proceedings

Relevance of ECtHR case law

The right of everyone charged with a criminal offence to be **effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial** (**Salduz v. Turkey 2008, § 51; Ibrahim and Others v. the United Kingdom 2016, § 255**).

A suspect **should be granted access to legal assistance from the moment there is a “criminal charge”** against him or her within the autonomous meaning of the ECHR (**Simeonovi v. Bulgaria, 2017, § 110; Beuze v. Belgium, 2018, § 119**).

ECtHR explained that the aims pursued by the right of access to a lawyer include the following:

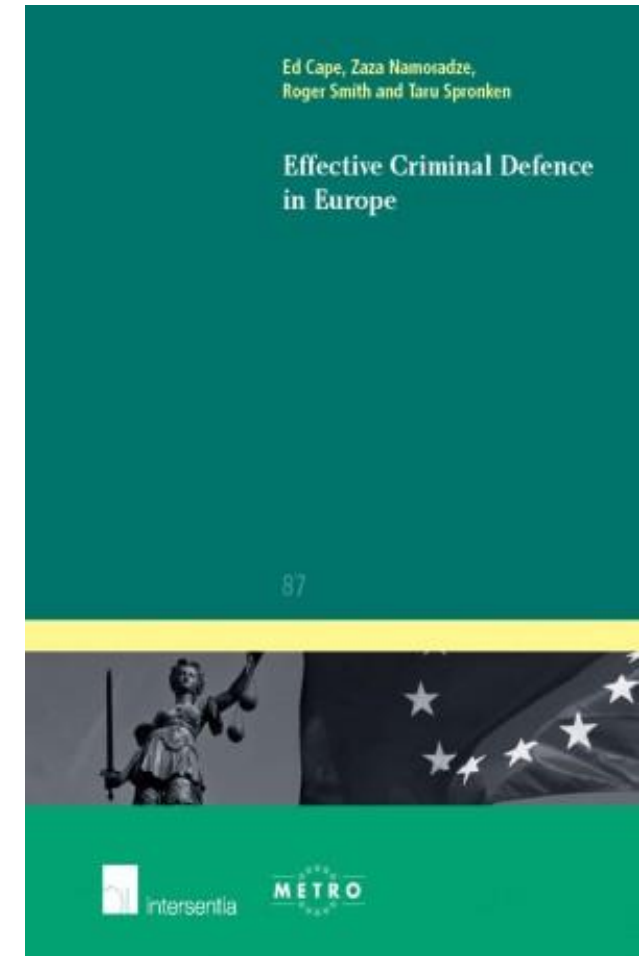
- Prevention of a miscarriage of justice and, above all, the fulfilment of the aims of Article 6, notably **equality of arms** between the investigating or prosecuting authorities and the accused;
- **Counterweight** to the vulnerability of suspects in police custody;
- **Fundamental safeguard** against coercion and ill-treatment of suspects by the police,
- Ensuring **respect for the right of an accused not to incriminate him/herself and to remain silent**,
In this connection, immediate access to a lawyer able to provide information about procedural rights is likely to prevent unfairness arising from the lack of appropriate information on rights.

In **Soytemiz v. Turkey, 2018, §§ 44-64**, the ECtHR stressed that the right to be assisted by a lawyer requires **not only that the lawyer is permitted to be present**, but also that he/she is allowed to **actively assist the suspect during**, inter alia, the questioning by the police and to intervene to ensure respect for the suspect's rights. The right to be assisted by a lawyer applies **throughout and until the end of the questioning by the police**, including when the statements taken are read out and the suspect is asked to confirm and sign them, as the assistance of a lawyer is equally important at this moment of the questioning.

ECtHR has indicated that account must be taken, on a **case-by-case basis**, in assessing the overall fairness of proceedings, of the whole range of services specifically associated with legal assistance: **discussion of the case, organisation of the defence, collection of exculpatory evidence, preparation for questioning, support for an accused in distress, and verification of the conditions of detention (Beuze v. Belgium [GC], 2018, § 136).**

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



„Historical” background in Hungary

- 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
 - ECtHR case law
 - Constitutional Court case law
- Act XC of 2017 – new Criminal Procedure Code
- Entered into force 1 July 2018

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.
- 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
- Problematic aspect in Europe
- In Hungary: Net. 7000 Huf equal to 16-17 € in Hungary
- 20 % for the preparation
- No billable hours: consultation in the office, preparation of docs and petitions, (cost of translation)



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 have informed and communicate, while deprived of liberty, with third persons, consular

- At the detention officers ask this question
- Mobile phone usage
- Problematic point



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The Presumption of Innocence

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First published Sep 18, 2017

Presumption of innocence in peril

Anthony Gray

Alternative Law Journal

Preview abstract

The presumption of innocence and the right to a fair trial

- Articles 47 and 48 of the Charter of Fundamental Rights of the European Union
- Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms
- Article 14 of the International Covenant on Civil and Political Rights
- Article 11 of the Universal Declaration of Human Rights.

The importance of Directive 2016/343 – key points

1. **Presumption of innocence**
2. Public references to guilt
3. **Presentation of suspects and accused persons**
4. Burden of proof
5. **Right to remain silent and right not to incriminate oneself**
6. Right to be present at the trial
7. Right to a new trial

Very strong connection with other fundamental rights – access to a lawyer, legal aid, right to information, effective interpretation – **the aim to avoid improper compulsion by the authorities**

Charter Of Fundamental Rights Of The European Union

Article 48 is the same as **Article 6(2) and (3) of the ECHR**, which reads as follows:



"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

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

- (a) to be **informed promptly**, in a **language which he understands and in detail**, of the **nature and cause of the accusation** against him;
- (b) to have **adequate time and facilities for the preparation of his defence**;
- (c) to defend himself in person or through **legal assistance of his own choosing** or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have **examined witnesses against him** and to **obtain the attendance and examination of witnesses** on his behalf under the same conditions as witnesses against him;
- (e) to have the **free assistance of an interpreter** if he cannot understand or speak the language used in court."

In accordance with Article 52(3) (scope and interpretation of rights and principles), this right has the same meaning and scope as the right guaranteed by the ECHR.

Highlighted aspects in projects

➤ Fair Trials toolkit

- <https://www.fairtrials.org/articles/information-and-toolkits/toolkit-the-presumption-of-innocence-directive/>

➤ Hungarian Helsinki Committee

- <https://helsinki.hu/en/suspects-in-restrains-the-importance-of-appearance-how-suspects-and-accused-persons-are-presented-in-the-courtroom-in-public-and-in-the-media-sir/>
- https://helsinki.hu/wp-content/uploads/Legal-Comparative-Report-FINAL-Designed_2019_06_27-2.pdf
- https://helsinki.hu/en/wpcontent/uploads/sites/2/2020/09/Toolkit_for_journalists.pdf

➤ ECHR guide on Article 6

- https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_eng

Remain silent and right not to incriminate oneself

Art. 7.

Point 5. 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.**

➤ Murray, Saunders, Heaney and McGuinness

Point 4. Member States may allow their judicial authorities to take into account, when sentencing, cooperative behaviour of suspects and accused persons.

➤ **what can be the offer or pressure for this cooperation without violation of Art. 7 or Art. 6 of ECHR**

Famous cases - ECHR

- **CASE OF JOHN MURRAY v. THE UNITED KINGDOM**
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57980%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57980%22]})
- **CASE OF SAUNDERS v. UNITED KINGDOM**
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58009%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58009%22]})
- **CASE OF JALLOH v. GERMANY**
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-76307%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-76307%22]})

Case Murray

The applicant had been arrested on suspicion of offences relating to **terrorism**. He **chose to remain silent during the questioning** despite being cautioned that if he did so, under a national law, a court, judge or jury may draw negative inferences. Subsequently, in concluding that the applicant was guilty, the trial judge drew adverse inferences against the applicant from the fact the he chose to stay silent.

- The ECtHR held that its role was to assess whether the exercise by an accused of the right to silence cannot under any circumstances be used against him at trial or, alternatively, whether informing him in advance that, under certain conditions, his silence may be so used, is always to be regarded as "improper compulsion".

Conclusion

The fact of remain silent is a **RIGHT**

- cannot be risk in defence strategy
- cannot be evidence
- cannot avoid the right with tricky ways (questions, “friendly” small talks)
- cannot be reference in sentencing

Case Saunders

This case concerned a man who had been convicted of offences of conspiracy, false accounting and theft. During the investigation, the police relied on a domestic law which made it an offence to refuse to answer questions posed by Inspectors appointed by the **Department of Trade and Industry**, and provided that the answers to such questions would be admissible in court. Having been given the option of either incriminating himself or being found guilty of contempt of the court, the applicant agreed to answer questions and give statements during nine interviews, which were presented during his trial and taken into account in the assessment of guilt.

- The ECtHR stated that "the public interest" cannot be invoked to justify the use of answers compulsorily obtained in a non-judicial investigation to incriminate the accused during the trial proceedings.

Conclusion

We have to carefully approach the non-criminal proceedings

- Dawn raid
- OLAF, Authorities of competition (DGComp), Tax authorities
- Difference between “client” and witness
- The results shall be used in criminal investigation?

Case Jalloh

Upon his arrest on suspicion of involvement in a drug dealing offence, Mr Jalloh was seen swallowing a small plastic bag, which was believed to contain drugs. On authorisation of the public prosecutor, an emetic was forcibly administered in order to provoke the regurgitation of the bag. In the hospital, he was held down and immobilised by four police officers. **By force, the doctor injected him with apomorphine and administered the emetic through a tube introduced into his stomach through the nose which resulted in Mr Jalloh regurgitating one bag containing cocaine.**

Case of Ibrahim and others v. UK

„It is important to recognise that the privilege against self-incrimination does not protect against the making of an incriminating statement *per se* but, as noted above, against the obtaining of evidence by coercion or oppression.”

3 detected problems:

- 1. The first is where a suspect is obliged to testify under threat of sanctions and either testifies in consequence or is sanctioned for refusing to testify.**
- 2. The second is where physical or psychological pressure, often in the form of treatment which breaches Article 3 of the Convention, is applied to obtain real evidence or statements.**
- 3. The third is where the authorities use subterfuge to elicit information that they were unable to obtain during questioning.**

Witness v. defendant in the same procedure

Case study: Mr. M. was the CFO of company seated in Budapest. The CEO of the company committed offence misappropriation of funds between 2008 and 2010. When the foreign owner of the company made a due diligence, they discovered the false agreements and invoices. The owner obliged Mr. M to make a denunciation at the police. Mr. M. as witness and representative of the company was heard 12 times during the investigation. Just before the closing of the investigation Mr. M. became accused as aider of the CEO.

Question: *The witness testimonies of Mr. M. could be take into account in the court proceedings?*

Pre-trial phase: incentives to encourage suspects to waive their right to a trial and plead guilty

- The disappearing trial – Jago Russel

<https://journals.sagepub.com/doi/10.1177/2032284417722281>

- Offering lower sentences
- Shortening the court proceedings

Question: The incentives could harm the right not to incriminate oneself?

Make a plea agreement

- Formal truth vs. material truth – the reality
- Decision point at the lawyer: what is the correct strategy ? To make a good deal shall be enough? To be opportunist?
- Opportunist approach?

Statistics from Hungary

- In Hungary, the statistics for the four years between **2019 and 2022** show that the **offer of motions for simplified sentence** in the **total number of indictments (about 47-48 thousand per year)** is about **70%**, while the **offer of moderate motions** in the remaining indictments is practically complete, about **85%**. The defendant accepts them in full, which is around 60%.
- This means that, for example, in 2022, out of 48,930 indictments, minus the number of simplified sentence and the number of accepted motions to quantify, only 6,134 indictments have actually been on trial, i.e. 12.5% of the total number of indictments.

Presentation of suspects

- Shall take appropriate measures to ensure that suspects are not presented as being guilty through the use of measures of physical restraint
- Usage of handcuffs
- Usage of boxes in court rooms
- Clothes
- Walking around in the court building
- Usage of main entrance of the court

Training of Lawyers on
various areas of European
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Training of lawyers on various areas of European Union Law (TRAVAR)

Balázs Gyalog
Legal Aid

Budapest, 10 April 2025



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Directive (EU) 2016/1919 on Legal Aid

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

Introduction

- Overview of Directive (EU) 2016/1919
- Ensures access to legal aid for suspects and accused persons, establishes minimum standards for legal aid in criminal proceedings
- Applies in criminal proceedings and European Arrest Warrant (EAW) cases
- Strengthens fair trial rights across the EU
- Will not limit or derogate from any rights/procedural safeguards ensured by the provisions of Charter of Fundamental Rights of the European Union („the Charter”) and the European Convention for the Protection of Human Rights and Fundamental Freedoms („ECHR”), as well as other laws providing higher level of protection

Scope & Purpose

- Applies to all EU Member States (except Denmark)
- Ensures access to legal aid for:
 - – Suspects and accused persons in criminal proceedings
 - – Requested persons in EAW proceedings
- Fair and transparent procedure
- Preventing arbitrary denials

Applies to:
Scope of the Directive II.

-those deprived of liberty

-required to be assisted by a lawyer in
accordance with EU or national law

-suspects and accused persons in criminal
proceedings

-individuals subject to European Arrest Warrant
proceedings

it covers:

-legal aid funding for access to a lawyer

-procedural safeguards ensuring effective legal
representation

Legal Aid in Criminal Proceedings

- Right to legal aid from early stages
- Covers legal representation and advice
- Applies to persons unable to afford a lawyer

Legal Aid in EAW Proceedings

- Requested persons entitled to:
 - – Legal aid in executing state
 - – Legal assistance in issuing state (if needed)
- Ensures fairness in cross-border cases

Criteria & Eligibility

- Legal aid based on:
 - – Means test (financial situation)
 - – Merits test (fairness of proceedings)
- Ensures those in need receive adequate representation

Procedural Safeguards

- Prompt legal aid decision
- Right to appeal if denied
- Confidential communication with lawyers

Implementation & Challenges

- Member States responsible for national implementation
- Challenges:
 - Funding and resource constraints
 - Variations in national legal aid systems

Legal Aid Challenges in EAW Cases

Lack of harmonization in legal aid provision across the EU

Requested persons may not receive adequate legal assistance in the issuing state

Delays in processing legal aid applications can impact fair trial rights

Some Member States impose restrictive financial thresholds for legal aid eligibility

Hungarian Regulation & Practice

Act on Criminal Procedure (Be.)

Act on Legal Representatives (Üttv.)

Decree on the Fees Payable to the Public Defender (32/2017. (XII. 27.)
IM rendelet)

Case law

European Court of Human Rights

Salduz v. Turkey

Court of Justice of the European Union

Case C-660/21, Procureur de la République France vs. K.B., F.S.

Conclusion & Q&A

- Conclusion
 - Legal aid strengthens fair trial rights
 - EU directive ensures harmonized protection
- Q&A
 - Open for discussion and questions



Training of lawyers on various areas of European Union Law (TRAVAR)

Maria Barbancho Saborit

**Presentation on the influence of the 3 EU Directives
on Procedural rights in Spain**

Budapest, 10 April 2025



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HARMONIZATION AS THE CORNERSTONE OF THE MUTUAL TRUST IN JUDICIAL COOPERATION

❖ Ways to challenge the lack of implementation of the minimum standards?

a) **Monitoring implementation through Commission Reports** to the EU Parliament and Council assessing into which extend MS have transposed the Directives.

b) Member States can infringe their duties to provide this minimum standards. **Article 258 Treaty on the Functioning of the European Union:**

*If the Commission considers that a Member State **has failed to fulfil an obligation under the Treaties**, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.*

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

STAT OF MATTER IN SPAIN

1. **First**, this is because Spain has been on occasion **slow** when it comes to fulfilling the task of incorporating European standards into its legal system:

Spain arrived two years late with the transposition of **Directive 2010/64 on Translation and Interpretation** and we **have not yet done our homework** in relation to **Directive 2016/800** on procedural safeguards for children (the deadline for which ended in June 2019) or **Directive 343/2016** on the **presumption of innocence** (the transposition deadline for which ended in April 2018).

Application of the doctrine that arises from the Adelener case: once the date for transposition of the Directives has expired, the courts of Member States (MS) have the obligation to interpret their domestic law in the light of the letter and spirit of the Directive to achieve its objectives (in the same sense, Judgment of the **Spanish Constitutional Court of 30 January 2017, rec. 7301/2014**). Consequently, Spanish judges must apply all of these European standards once the deadlines have passed.

2. Second, despite the legislative efforts that Spain has been making, on many occasions **practice is quite different from the letter of the law**. Many of these reforms require, in parallel, **new tools to enforce the rights recognised on paper**.



The Spanish text of transposition of the Directive 2010/64, on Translation and Interpretation, that openly proclaims that the changes introduced “*may not lead to an increase in staff, salaries or other personnel costs.*” Hard to believe but true. This has led, among other consequences, to rendering the **provisions of Art. 123 of the Spanish Criminal Procedural Law on simultaneous translations practically illusory**.

Some Directives adopted in 2016 have yet to be transposed into the Spanish legal system:

Directive 2016/343/EU of 9 March 2016 on the **strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings** and Directive 2016/800/EU of 11 May 2016, on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

1. EU DIRECTIVE ON THE PRESUMPTION OF INNOCENCE

A. The right not to incriminate oneself and to remain silent:

Spanish Supreme and Constitutional Courts assume that the **silence of the accused, in principle, should not be negatively evaluated and that they agree that such silence cannot serve as the sole basis for a criminal conviction, they have however taken the view that at times that it can be considered an additional element together with other incriminating evidence to override the presumption of innocence** (Judgments of the Supreme Court of April 24 2008, of July 21 2006; in a similar sense, Judgments of the Constitutional Court 202/2000, of April 24 2000 and 61/2005, of March 14 2005). To quote the words of the Supreme Court, depending on the circumstances, ***“it may be justified that negative consequences are drawn from the silence when, with objective incriminating evidence in this regard, an explanation can be expected from the accused”***.

2. EU DIRECTIVE ON THE PRESUMPTION OF INNOCENCE

B. References to guilt by public authorities

In Spain there is no express reference in procedural laws to the way public authorities may refer to a suspect or accused person and no effective mechanism has been provided to repair the possible damage that may occur if the public authority violates the limits required by the presumption of innocence. From “accused” to “subject under investigation”.

C. Information by the media about the course of the proceedings:

Recent reports from the UE Fundamental Right Agency about the application of the presumption of innocence in Europe show that **public opinion generated by news regarding criminal investigations pressurises and influences the decision of judges in a case**; by way of example, one of the judges interviewed by the UE Fundamental Right Agency expressed his difficulty in escaping from it with the following words: ***“If not (following the wing), public opinion will eat me up”***

3. EU DIRECTIVE ON THE PRESUMPTION OF INNOCENCE

4. Justice

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Letters of formal notice and additional letter of formal notice

The Commission calls on BULGARIA, SPAIN, and POLAND to correctly transpose the EU rules on the presumption of innocence and the right to be present at trial

The European Commission decided to open an infringement procedure by sending a letter of formal notice to **Spain** (INFR(2024)2033) and **Poland** (INFR(2024)2034), as well as to send an additional letter of formal notice to **Bulgaria** (INFR(2023)2093) for failing to correctly transpose the Directive on the strengthening of the presumption of innocence and the right to be present at the trial in criminal proceedings ([Directive 2016/343/EU](#)). The Directive is one of [six Directives](#) adopted by the EU to create common minimum standards ensuring that the fair trial [rights of suspects and accused persons](#) in criminal proceedings are sufficiently protected across the EU. The Commission considers that certain national transposition measures notified by the three Member States fall short of the requirements of the Directive. The Commission sent a first letter of formal notice to Bulgaria in September 2023, but found additional issues in the Bulgarian transposition of the provisions concerning trials in absentia and the right to a new trial. Concerning both Poland and Spain, the Commission found that the measures notified by these Member States do not correctly transpose the provisions of the Directive on public references to guilt, as well as those on the use of measures of physical restraint when presenting suspects and accused persons in court or in public. Poland failed to correctly transpose the conditions of application of the burden of proof, the right to silence and the right not to incriminate oneself, the requirements for trials in absentia, as well as the provision on the right to effective remedies. In addition, under Polish law, persons suspected of having committed a criminal offence do not benefit of the rights of the Directive before they are made aware of their status as a suspect or accused person by the competent authorities, thus giving rise to an incorrect transposition of the scope of the Directive. The Commission is therefore sending a letter of formal notice to Spain and Poland and an additional letter

RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS (Directive 2012/13/EU, of May 22, 2012, transposed in Spain by the Organic Law 5/2015 and the Law 13/2015)

Even though the Spanish regulation provided considerable guarantees prior to 2015, the transposition of Directive 2012/13/EU, which involved reforming Arts. 118, 520 and 775 of the Spanish Criminal Procedural Law, **improved greatly the protection of those deprived of liberty.**

Among other changes, since then, such persons have to be informed in a clear and understandable way and it has to be done immediately. The catalogue of their rights that must be communicated and the way to do so has considerably improved; the duty to hand over a letter of rights in writing has been imposed.

The right of access (not the right of delivery, as stated by the Directive) to the so-called “essential elements” of the case, required to prepare a defence and to challenge the arrest, is now fully guaranteed. It should be done in due time and in any case, prior to the taking of statement.

**RIGHT TO INTERPRETATION AND TRANSLATION (DIRECTIVE 2010/64/EU, OF OCTOBER 20, 2010,
TRANPOSED INTO OUR LEGAL SYSTEM BY LO 5/2015, OF APRIL 27)**

One of the **instrumental guarantees of the right of defence**, as an authentic right of the defendant within the list of guarantees under the new Art. 118 of the Spanish Criminal Procedural Law.

It is **recognised at the earlier stages of proceedings, even at police headquarters**: from the first interrogation or in previous conversations with the lawyer, being guaranteed throughout the course of the procedure, including all investigative activities and, of course, the oral trial.

obligation is foreseen of translating all documents that are “essential” to guarantee the right of defence (with some exceptions) and to do so within a reasonable period, the applicable procedural deadlines being suspended in the meantime.

Is free of charge with the costs borne by national administrations regardless of the outcome of the proceedings. Finally, although this step came late, a single Register of Sworn Translators and Sworn Interpreters has been created (see Art. 13 of the Spanish Royal Decree of 4 August 2020), following the indications of the Directive.

**RIGHT TO INTERPRETATION AND TRANSLATION (DIRECTIVE 2010/64/EU, OF OCTOBER 20, 2010,
TRANPOSED INTO OUR LEGAL SYSTEM BY LO 5/2015, OF APRIL 27)**



The country's apparent compliance with the Directive must be viewed with scepticism, as the expansion of rights was not accompanied by increased funding. Even that Spain has witnessed a large increase in the last 20 years in the number of proceedings that involve the services of interpreters and translators and that the First Provision of the LO 5/2015 states explicitly that *'the measures contained in this legal regulation must not necessitate additional funding for personnel, nor higher salaries, nor increases in other personnel costs.'*

Spain has failed to meet the quality requirements for interpretation and translation as set out by the Directive. On the one hand, anyone who knows the required language is permitted to be involved as an interpreter, without Spanish regulations requiring a degree, the justification being reasons of urgency that are not specified. The laws don't define which skills, precisely, are required, nor do they establish a specific language proficiency threshold. For translation, however, more strict criteria apply: only sworn translators are authorised to use the certification stamp that attests to the accuracy of translations provided to courts and other authorities.

EU DIRECTIVE RIGHT TO ACCESS TO A LAWYER

Some aspects of the right of access to a lawyer have been improved: particularly **the introduction of a confidential interview between the lawyer and the person under investigation, prior to the interrogation** of any authority, including the police authority (Art. 520.6 d) LECrim). This possibility had previously only been provided for in criminal proceedings against minors

Act 3/2018 of 11 June 2018 completed an aspect omitted at the time of transposition in 2015, namely the right to **DOUBLE DEFENSE** of the requested person in case of a European Arrest Warrant and surrender procedure; i.e., the appointment of a lawyer in the issuing country for the person detained in Spain.

The transposition also clarified the right by expressly stating that the presence of the lawyer must be taken into account in all statements made by the person under investigation as well as in proceedings involving identity parades, face-to-face confrontations, and reconstruction of the scene of a crime

EU DIRECTIVE RIGHT TO LEGAL AID

The transposition into Spanish law of Directive (EU) 2016/1919 of 26 October 2019 “on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European Arrest Warrant proceedings”, took place by June . Prior to the reform, **Spanish law already offered broad coverage of free legal aid**. For this reason, and also because of its close relationship with the right of access to a lawyer, transposition of the Directive has been simple and rapid. Some novelties:

Guarantee effective assistance *ex officio*. This does not end with the mere designation of a lawyer: as has been stated for years by the European Court of Human Rights, “mere appointment does not guarantee the effectiveness of their assistance” (*Kamasinski v. Austria*). Thus any beneficiary of this right can request the replacement of the designated professional if they believe that this is justified (Art. 20 of the Spanish Legal Free Legal Aid Act).

EU DIRECTIVE RIGHT TO LEGAL AID

Introduction of a reducing the time available to the lawyer to go to the detention facility from eight to three hours from the moment he receives the order (Art. 520.5 LECrim).

Extension of free defense counsel and representation when the intervention of a lawyer is not mandatory (this relates to procedures for minor offences).



Training of lawyers on various areas of European Union Law (TRAVAR)

Angyal-Szűrös László

**The impact of the EAW on Directive 2013/48/EU,
Directive (EU) 2016/343 and Directive (EU) 2016/1919**

Budapest, 10 April 2025



Co-funded the European Union

- **European Arrest Warrant**
- **Procedural Rights Directives – fair trial issues**
- **Jurisprudence**
- **Conclusions**

European Arrest Warrant ("EAW")

The European arrest warrant is a simplified cross-border judicial surrender procedure for the purpose of prosecution (P) or executing (E) a custodial sentence or detention order.

- Judicial cooperation – to ensure that open borders and free movement in the Union are not exploited by those seeking to evade justice
- Extradition or Surrender?

European Arrest Warrant ("EAW")

- Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)
 - simplified procedure
 - cooperation between judicial authorities
 - the principle of mutual recognition of judgments and judicial decisions – **mutual trust**

the European arrest warrant system is based on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter (C-491/10 PPU - Aguirre Zarraga)

European Arrest Warrant ("EAW")

- proportionality (P:12,E:4)
- double criminality (categorized offences)
- grounds for refusal
 - list of grounds is exhaustive (**C-123/08 - Wolzenburg**)
 - mandatory grounds
 - optional grounds

European Arrest Warrant ("EAW")

Mandatory grounds:

- the offense is covered by amnesty
- the person has already been judged for the same offence (ne bis in idem);
- the person is a minor;

Optional grounds:

- lack of double criminality for offences other than the 32 listed in the Framework Decision on EAW;
- there is a pending criminal procedure in the executing country for the same acts;
- statute of limitations applies;
- the person has been judged in absentia, without respect of certain conditions.

European Arrest Warrant ("EAW")

Question1:

Does there exist any ground for refusal concerning the breach of the requested person's fundamental right?

European Arrest Warrant ("EAW")

Answer1:

The principle of mutual trust requires that, save in exceptional circumstances, each Member State considers all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law – (C-404/15 and C-659/15 PPU Aranyosi and Căldăraru)

Article 1(3), read together with recitals 12 and 13 of the Framework Decision on EAW, clarifies that the Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles.

European Arrest Warrant ("EAW")

Through the application of the European Arrest Warrant, Member States are obliged to assess the respect of fundamental rights as guaranteed by EU law.

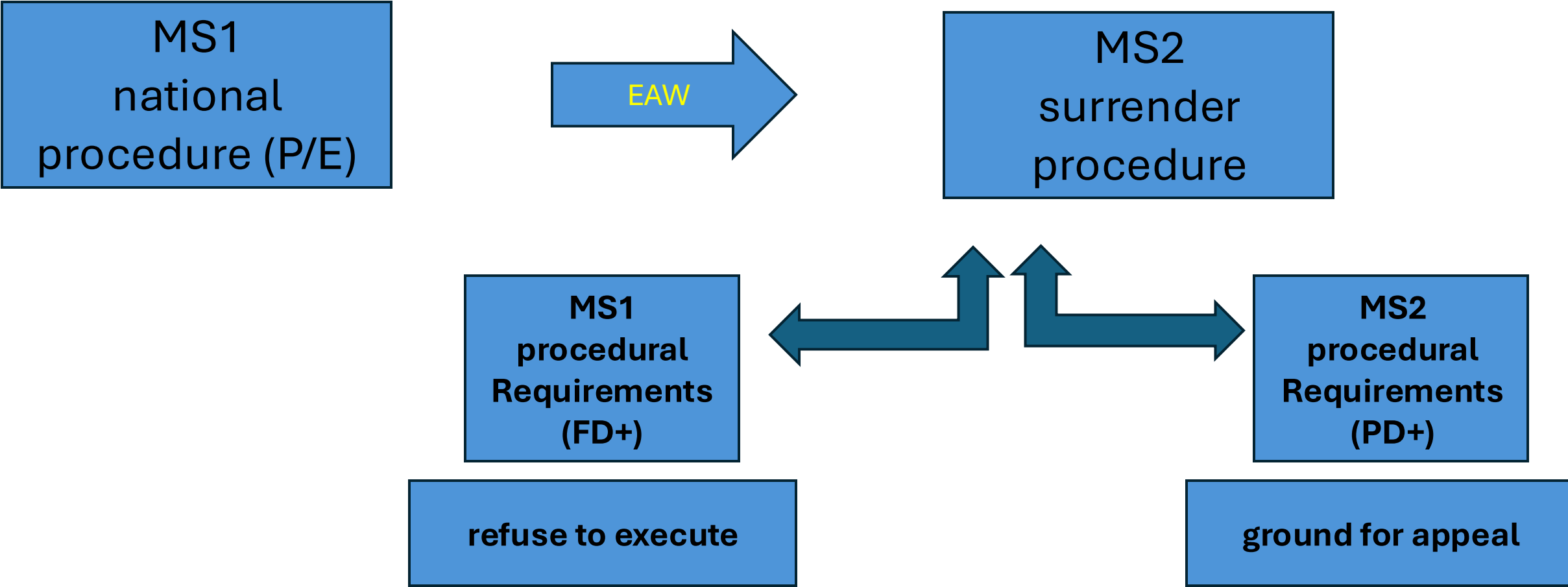
- Charter
- Secondary Law (procedural rights directives)
- CJEU Jurisprudence
- ECtHR Jurisprudence (Art. 52(3) of the Charter)

Procedural Rights Directives

- The right to be presumed innocent and to be present at trial (Directive 2016/343)
- The right of access to a lawyer (Directive 2013/48)
- Legal aid for suspects and accused persons (Directive 2016/1919)
- *The right to information (Directive 2012/13)*
- *The right to interpretation and translation (Directive 2010/64)*
- *etc.*

Art 52(3) of the Charter!

Procedural Rights Directives



Procedural Rights Directives

- Framework Decision + Jurisprudence
 - Procedural Rights Directives + Jurisprudence
 - EAW procedure impact:
 - same rights covered
 - same jurisprudence
 - same approach in view of a fair trial
- = same interpretation of EU standards regardless of the type of procedure?

Directive 2016/343 – in absentia decision

- Art. 4a of the FD – optional ground for refusal
- Art. 8 of the Directive
 - summonned – in due time – legal consequences
 - aware of the scheduled trial – legal counsellor
 - retrial

Directive 2016/343 – in absentia decision

Question 2:

The summons was served at the address given by the person sought. The summons was received by the brother of the person sought, who stated that he would give it to the person sought. There is no evidence that delivery was made. The requirements of Art (8) 2 of the Directive or Art. 4a of FD have been satisfied?

Directive 2016/343 – in absentia decision

Answer 2:

*If it cannot be ascertained from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, **does not in itself satisfy the conditions** set out in that provision. (C-108/16 PPU Dworzecki)*

Directive 2016/343 – in absentia decision

Question 3:

The accused was present at the first instance and lodged an appeal. In the appeal, he made a motion to hear an additional witness. In the second instance proceedings, the accused left for an unknown destination. The court of the second instance heard the witness and delivered a judgment. In its reasoning, the court stated that the accused was present in the first instance proceedings and then voluntarily left the second instance proceedings. Were the in absentia conditions satisfied?

Directive 2016/343 – in absentia decision

Answer 3:

The phrase “trial resulting in the decision” also includes the trial in the court of appeal. Meaning that in case the trial process in the first instance was held in compliance with the guarantees of Article 4a, but a violation of these guarantees occurred throughout the trial in the court of appeal, the entirety of the trial which resulted in the final judgment will be considered in absentia. (C- 270/17 – Tupikas)

Directive 2016/343 – in absentia decision

Question 4:

The requested person was convicted in absentia and a European arrest warrant was subsequently issued. The issuing Member State confirmed that the person may request a retrial after the surrender. Any other condition of Article 4a of the FD shall not apply. The court of the issuing Member State will examine the request and decide whether or not it is justified. *Was the in absentia guarantee satisfied?*

Directive 2016/343 – in absentia decision

Answer 4:

The guarantee cannot be conditional.

- Case of Sejdoovic v. Italy (ECtHR)
- Art 8(4) of the Directive

A new trial must allow a fresh determination of the merits of the case, including examination of new evidence, which may lead to the original decision being reversed.

- **C-416/20 PPU TR**

In that context, any possible non-conformity of the national law of the issuing Member State with the provisions of Directive 2016/343 cannot constitute a ground which may lead to a refusal to execute the European arrest warrant.

Directive 2013/48 – the right of access to a lawyer

- Surrender procedure and national criminal procedure
 - Persons subject to an EAW have the right of access to a lawyer in the executing Member State upon arrest pursuant to the EAW (Art. 10.(1))
 - EAW procedure without arrest?
- Suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest – see. Art. 3(2)

Directive 2013/48 – the right of access to a lawyer

Article 2(1) of Directive 2013/48/EU must be interpreted as meaning that the directive applies to a situation in which a person, in respect of whom there is information to the effect that he or she is in possession of illicit substances, is subject to a personal search and seizure of those substances. The fact that national law does not recognise the concept of ‘suspect’ and that that person has not been officially informed that he or she is an ‘accused person’ is irrelevant in that regard.
(C-209/22 AB)

Directive 2013/48 – the right of access to a lawyer

The right to access to lawyer can be waived only if:

- the concerned person is fully informed
 - the waiver is voluntary and unambiguous
 - the waiver can be revoked
-
- mandatory defence?

Directive 2013/48 – the right of access to a lawyer

Article 9(1) and (2) of Directive 2013/48 must be interpreted as meaning that the statement of waiver of the right of access to a lawyer by an **illiterate suspect** cannot be regarded as complying with the requirements laid down in Article 9(1) of that directive, where that suspect has not been informed, **in a manner which takes due account of his or her particular circumstances**, of the possible consequences of such a waiver and where that waiver has not been recorded in accordance with national procedural law, in such a way as to enable compliance with those requirements to be verified. (**C-15/24 PPU**)

Directive 2013/48 – the right to access to a lawyer

In addition, requested persons have the right to appoint a lawyer in the issuing Member State. The role of that lawyer is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under the Framework Decision on EAW. (Handbook on how to issue and execute a European Arrest Warrant)

- What does that mean in practice?

Directive 2016/1919 – legal aid

- right to legal aid or means test ?
- there are no harmonized conditions to the means test
 - the threshold differs in MS
- Legal aid both in issuing and executing MS

Directive 2016/1919 – legal aid – Hungary

- mandatory defence in EAW procedure
- Act. CLXXX of 2012 Article 33
 - Criminal costs incurred in Hungary remain the responsibility of the state.

Conclusions

- EAW as a tool for protecting procedural rights
- Is the mutual trust principle strengthened or weakened?
- Real impact on procedural directives and national law



Training of lawyers on various areas of European Union Law (TRAVAR)

Adrian Haratau

**Presentation on the application of the European
Arrest Warrant in Romania**

Budapest, 10 April 2025



Co-funded the European Union

1. Introduction to the Topic

- ✓ Definition of the EAW – judicial decision for arrest and surrender within the EU.
- ✓ Historical background – replacing classical extradition.
- ✓ Main objective – efficiency and simplification in cross-border judicial cooperation.
- ✓ Why this topic matters – critical implications for legal practitioners.
- ✓ Presentation structure – legal analysis, case studies, jurisprudence, and conclusions.

2. Legal Framework: EU and Romania

- ✓ Council Framework Decision 2002/584/JHA as the legal foundation.
- ✓ Full transposition through Title III of Romanian Law no. 302/2004.
- ✓ Constitutional changes – Article 19 para. (2) of the Romanian Constitution.
- ✓ Role of procedural codes and the judiciary.
- ✓ Direct application and supremacy of EU law over national rules.

3. Mutual Recognition and Judicial Trust

- ✓ **Mutual recognition as the core principle of the EAW system.**
- ✓ **Trust between judicial systems of EU member states.**
- ✓ **CJUE case law: Mantello (C-261/09) and R (C-396/11).**
- ✓ **Strict limitations on refusal to execute an EAW.**
- ✓ **Romanian practice: consistent application of mutual trust principle.**

4. Formal and Substantive Conditions of the EAW

- Mandatory formal elements of an EAW.
- Clear identification of the requested person.
- Legal classification and factual description of the offence.
- Minimum penalty requirement.
- Judicial review limited to formal and legal criteria.

5. Grounds for Refusing Execution of an EAW

- Mandatory refusal grounds under Article 99(1) of Law 302/2004.
- Optional refusal grounds under Article 99(2).
- Illustrative jurisprudence: Vrancea Tribunal 2025.
- Importance of well-reasoned judicial refusal.
- Impact on international judicial cooperation.

6. Issuing Procedure of the EAW in Romania

- Judicial authorities involved in issuing the EAW.
- Procedural steps according to the phase of the criminal process.
- Existence of an enforceable national decision is required.
- Completion and transmission of the EAW form.
- Case law: practical issues in validation and rejection.

7. Translation and Transmission Challenges

- Translation required into the official language of the executing state.
- Need for standardized legal terminology.
- Role of SIS and the SIRENE Bureau.
- Frequent issues: inconsistencies, ambiguity, incomplete data.
- Consequences: delay or refusal of execution.

8. Execution of the EAW in Romania

- Reception and review of the EAW by competent courts.
- Verification of the person's identity and legal requirements.
- The defense lawyer's role in the execution stage.
- Preventive measures: arrest, judicial control, house arrest.
- Recent challenges in harmonizing national and EU jurisprudence.

9. Proportionality Principle and EAW

- Definition of proportionality under EU law.
- CJUE rulings: Aranyosi and Căldăraru.
- Application of proportionality in Romanian case law.
- Examples of disproportionate EAWs for minor offenses.
- Recommendations for invoking proportionality in defense.

10. CJUE Jurisprudence and Its Impact

- CJUE as the authoritative interpreter of EAW rules.
- Key decisions: Mantello, Radu, Bob-Dogi, Aranyosi, Căldăraru.
- Romanian courts must conform to EU case law.
- National rulings revised in light of CJUE jurisprudence.
- Need for consistent and professional training.

11. Rights of the Requested Person

- Right to be informed and access case documents.
- Right to legal assistance and defense.
- Right to be heard and to challenge surrender.
- Protection of fundamental rights (ECHR, EU Charter).
- Lawyer's role in ensuring fair trial guarantees.

12. Preventive Measures in Practice

- Criteria for ordering arrest pending surrender.
- Alternatives: judicial control and house arrest.
- Mandatory hearing of the requested person.
- Overuse of arrest in recent Romanian practice.
- Importance of individualized preventive measures.

13. Case Study: Vrancea Tribunal 2025

- Execution appeal submitted in Romania.
- Italy refused surrender due to long-term residence.
- Italian authorities assumed enforcement of sentence.
- National enforcement warrant annulled.
- EAW not annulled, but formally withdrawn under Article 95.

14. Case Study: Bucharest Tribunal 2024

- Execution appeal based on sentence served in Germany.
- German court granted pardon and confirmed enforcement.
- Recognition of execution as legal impediment in Romania.
- National enforcement and EAW annulled.
- Case sets precedent on cross-border enforcement acknowledgment.

15. Insights from Recent Case Law

- Romanian courts show growing procedural balance.
- Increased use of optional refusal grounds under Article 99(2).
- Translation and communication remain problematic.
- Growing alignment with CJUE jurisprudence.
- Need for unified and specialized judicial practice.

16. Case Study: Bucharest Court of Appeal 2023

- Appeal based on disproportionality of the sentence.
- Reference to Article 49(3) EU Charter and Article 6 TEU.
- Court denied cancellation due to lack of legal grounds.
- CJUE recognized as final interpreter of EAW scope.
- Clarifies limits for challenging EAW via fundamental rights.

17. Postponement of Surrender (Art. 114)

- Legal grounds for postponing surrender under Article 114.
- Ongoing criminal proceedings in Romania for other offenses.
- Medical conditions or pregnancy may delay surrender.
- Presence of child under 1 year or humanitarian concerns.
- Postponement can last up to 3 months in special cases.

18. Withdrawal of the EAW (Art. 95)

- EAW may be withdrawn by issuing authority (Article 95).
- Distinction between annulment and withdrawal.
- Withdrawal occurs when surrender becomes impossible.
- Case study: Italy assumes enforcement, Romania retracts EAW.
- Cooperation prevents unnecessary retention in SIS.

19. Judicial Cooperation Across Borders

- Information exchanged via the SIRENE Bureau.
- Role of Eurojust and the European Judicial Network.
- Use of electronic platforms (SIS II, ECRIS).
- Common challenges: delays, mistranslations, incomplete data.
- Examples of good practices in cross-border cooperation.

20. The Role of Defense Lawyers

- Defense starts at the moment of arrest.
- Check legality of EAW's content and grounds.
- Raise exceptions: fundamental rights, proportionality.
- Collaborate with lawyers from issuing states.
- Crucial role in safeguarding procedural guarantees.

21. Interpretation Challenges of the Framework Decision

- Divergent interpretations across EU member states.
- Jurisdictional conflicts between national courts.
- Ambiguity in key terms: judicial authority, offence, sentence.
- Complexities in applying in absentia rulings.
- CJUE's role in clarifying the Framework Decision.

22. EAW and Other Legal Instruments

- Relationship between the EAW and the European Investigation Order (EIO).
- Framework Decision 2008/909/JHA – recognition of criminal judgments.
- Overlaps with inmate transfer procedures.
- Strategic choice of legal instrument based on case specifics.
- Best practices: combining tools for effective defense.

23. Post-Brexit Extradition with the UK

- Brexit ended the UK's participation in the EAW system.
- Return to 1957 Council of Europe Extradition Convention.
- Longer procedures, limited procedural rights.
- New cooperation mechanisms under the EU–UK Trade Agreement.
- Need for adjusted defense strategies in UK-related cases.

24. Future Reforms of the EAW Mechanism

- Ongoing discussions to revise the EAW Framework Decision.
- Calls to expand the list of EAW-eligible offenses.
- Proposals to simplify and digitalize the procedure.
- Calls for stronger protection of fundamental rights.
- Proposal for an EU-wide supervisory mechanism.

25. Conclusions and Professional Recommendations

- The EAW is essential but demands legal precision.
- Recent case law reflects the need for balanced application.
- Defense lawyers are key to protecting fundamental rights.
- Alignment with CJUE jurisprudence is crucial.
- Ongoing legal education and procedural awareness are needed.