



EU PROCEDURAL RIGHTS DIRECTIVES

- latest developments for lawyers

7 July 2025

09:00-11:00 CET

Zoom Webinar



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Sveva Franco

The procedural right directives: views from the European Commission

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Outline

- I. The EU Procedural Rights *acquis*
- II. The EU Procedural Rights Directives: developments in their interpretation by the case-law of the CJEU
- III. The EU legal framework: *quid plus?*
- IV. The role of the Commission: monitoring and enforcement
- V. Challenges ahead

I. The EU Procedural Rights *acquis*

- Directive 2010/64/EU (27/10/2013) *Right to interpretation and translation*
- Directive 2012/13/EU (02/06/2014) *Right to information*
- Directive 2013/48/EU (27/11/2016) *Right of access to lawyer*
- Directive (EU)2016/343 (01/04/2018) *Presumption of innocence and right to be present at trial*
- Directive (EU) 2016/800 (11/06/2019) *Procedural safeguards for children*
- Directive (EU) 2016/1919 (26/10/2016) *Legal aid*

Non-binding instruments:

- Commission Recommendation of 27 November 2013 on **procedural safeguards for vulnerable persons** suspected or accused in criminal proceedings
- Commission Recommendation of 27 November 2013 on the right to **legal aid** for suspects or accused persons in criminal proceedings
- Recommendation (EU) 2023/681 on procedural rights of suspects and accused persons subject to **pre-trial detention and on material detention conditions**

II. The EU Procedural Rights Directives: developments in their interpretation by the case-law of the CJEU

Directive 2010/64 on the right to interpretation and translation

- Procedure or **mechanism** to ascertain whether suspect or accused person speaks and understand the language of the criminal proceedings.
- **Interpretation** available at all stages of the proceedings: during investigation and at trial (including communication with a lawyer).
- Translation of **essential documents**.
- **Right to challenge** negative decisions and complaint on quality (legal remedies).
- **Quality** of translation and interpretation.

CJEU case-law on Directive 2010/64

- **Scope of application:** the directive applies from the moment where a person is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal (**Case C-25/15, Balogh**)
- **Right to interpretation:** covers only situations giving rise to **oral communications** (oral interpretation of oral statements (**Case C-216/14, Covaci**))
- **Right to translation of essential documents:**
 - Article 3(1) and 3(2) provide only the minimum standard for what are considered 'essential' documents requiring translation in writing. **The list of essential documents in the Directive is thus non-exhaustive** (**Case C-216/14, Covaci**): e.g. a penal order imposing sanctions for minor offences is an essential document (**Case C-278/16, Sleutjes**)
 - Procedural national rules which impose to raise violations of those rights within a prescribed period, where that period begins to run before the person concerned has been informed, in a language which he or she understands, of the existence of those rights and of the content of essential documents, are precluded by the Directive (**C-242/22 PPU, TL**)

II. The EU Procedural Rights Directives: developments in their interpretation by the case-law of the CJEU

Directive 2012/13 on the right to information

- Information concerning the **fundamental procedural rights** (access to a lawyer, legal aid, right to be informed of the accusation, interpretation and translation, right to remain silent).
- **Letter of Rights on arrest**: information about the criminal act persons are suspected or accused of, about the reasons for arrest/detention and further rights.
- Right to **information about the accusation**.
- Right of **access to the materials of the case**.

CJEU case-law on Directive 2012/13

- **Right to information about the accusation:** Directive 2012/13 does not regulate the **procedures** whereby the information about the accusation is provided; however these procedures cannot undermine the objective referred to in Article 6 of the directive. (**Case C-216/14, Covaci and Case C-646/17, Moro**)
- **Timing of the right to information:**
 - The accused must receive detailed information on the charges and have the opportunity to acquaint himself with the case materials **in due time**, at a point in time that enables him to prepare his defence effectively. > **C-612/15, Kolev and Others I**
 - Suspects must be informed as soon as possible of their rights from the moment when they are subject to suspicions which justify the restriction of their liberty by the competent authorities by means of coercive measures and, **at the latest, before they are first officially questioned by the police**. > **C-467/18, EP**
- **Ex officio powers:** The prohibition for a trial court to raise *ex officio* a breach of the obligation to inform the suspect or accused persons of the right to remain silent is not precluded by the Directive, provided that the defendant was not deprived of the opportunity to have access to a lawyer and to have obtained legal aid, as well as their right to have access to their file. > **C-660/21, K.B. and F.S.**
- **Legal classification of the accusation:** A court or tribunal ruling on the substance in a criminal case cannot use a legal classification of the acts which differs from that initially used by the public prosecutor's office without informing the accused person of the new envisaged classification in due time, in order for the person to effectively exercise his/her rights of defence (even if in favour of the defendant). > **C-175/22, BK**

II. The EU Procedural Rights Directives: developments in their interpretation by the case-law of the CJEU

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

- Right of **access to a lawyer without undue delay**. In any event from whichever point is the earliest: questioning, evidence gathering, deprivation of liberty, summons to court.
- Also applies to persons subject to **European Arrest Warrant Proceedings**: executing and issuing Member State.
- Right to **communicate** with one's family, relatives and consular authorities for people in detention.

CJEU case-law on Directive 2013/48

- **Scope:**

- Directives 2012/13 and 2013/48 apply to judicial proceedings authorising, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons in a state of insanity. > **C-467/18, EP**
- Directive 2012/13 and 2013/48 apply 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 for the application of the directives.** > **C-209/22, AB**

- **Right of access to a lawyer:**

- does not preclude national legislation requiring to dismiss a lawyer instructed by two accused persons, against their wishes, on the ground that there is a conflict of interest between those persons, and not precluding those persons to instruct a new lawyer. **C-612/15, Kolev and Others I**
- Grounds for restrictions of the right of access to a lawyer are exhaustively listed under Article 3(5) and (6) and should be strictly interpreted. > **C-659/18, VW**
- If the exceptions in Article 3(6)(b) have not been transposed into the national legal order, the police authorities of the Member State concerned cannot rely on that provision to derogate from the application of the right of access to a lawyer. > **C-15/24, Stachev**
- National courts must be able to assess whether evidence has been obtained in breach of such a requirement and where appropriate disregard the evidence. > **C-15/24, Stachev**
- **Waiver and vulnerability:** > **C-15/24, Stachev**

II. The EU Procedural Rights Directives: developments in their interpretation by the case-law of the CJEU

Directive 2016/343 on the presumption of innocence and right to be present at trial

- Prohibition of **public references to guilt** before finally proved guilty.
- **Burden of proof** on prosecution and *in dubio pro reo*.
- **Right to remain silent** and right not to incriminate oneself (*nemo tenetur*).
- Right to be **present at the trial** and **right to a new trial**. Conditions for trials *in absentia*.

CJEU case-law on Directive 2016/343

- **Prohibition of public references to guilt:** it does not preclude the adoption of preliminary decisions of a procedural nature, based on suspicion or on incriminating evidence, provided that such decisions do not refer to the person in custody as being guilty > **C-310/18 PPU**, *Milev* and **C-8/19 PPU**, *RH*
- **Burden of proof:** Article 6 does not apply to a national law that makes the release of a person held in detention on remand pending trial conditional on that person establishing the existence of new circumstances justifying that release. > **C-653/19 PPU**, *DK*
- **Right to be present at the trial**
 - ✓ the right to be present at trial is not infringed where, when duly informed about the trial, the suspect/accused decided unequivocally not to appear at one of the hearings or did not appear for a reason beyond his control but was informed of the steps taken in his absence, and was allowed to demand to participate fully > **Case 688/18**, *TX and UW*
 - ✓ Article 8 does not preclude an accused person from being able, at his or her express request, to participate in the hearings in his or her trial by **videoconference**, provided that the right to a fair trial is guaranteed. > **C-760/22**, *FP and others*
- **Right to a new trial**
 - ✓ **Direct effect of the right to a new trial where the conditions of Article 8(2) are not met.** The concerned person may be denied that right if it is apparent from precise and objective indicia that he or she received sufficient information to know that he or she was going to be brought to trial and, by deliberate acts and with the intention of evading justice, prevented the authorities from informing him or her officially of that *trial*. > **C-569/20**, *IR*, and **C-644/23**, *IR* and **C-135/25**, *M.S.T.*
 - ✓ It is not precluded to envisage a procedure to request for a new trial. Such procedure should be available both for convictions and acquittals in absentia. > **C-400/23**, *VB*

II. The EU Procedural Rights Directives: developments in their interpretation by the case-law of the CJEU

Directive 2016/800 on procedural safeguards for children

- **Assistance by a lawyer** as core element.
- **Right to information** of child and holder of parental responsibility/another appropriate adult.
- Right to an **individual assessment** (specific needs concerning protection, education and social integration).
- Right to a **medical examination**.
- **Specific safeguards** in case of **deprivation of liberty**.
- Protection of **privacy**.

CJEU case-law on Directive 2016/800

C-603/22, M.S. and Others (Droits procéduraux d'une personne mineure)

- national legislation which, first, does not provide for children who are suspects or accused persons to be assisted by a lawyer – a court-appointed lawyer if necessary – before being questioned and, at the latest, before they are first questioned and, second, allows those children to be questioned as suspects in the absence of such a lawyer, is precluded.
- national legislation which provides that the right to be assisted by a court-appointed lawyer automatically ends for persons who were children at the time when they became the subject of criminal proceedings, but who have subsequently reached the age of 18, without a possibility to assess the appropriateness of the application of the provisions of the directive on the basis of the circumstances of the case, including the maturity and vulnerability of those persons, is precluded.
- national legislation which does not provide that children who are suspects or accused persons in criminal proceedings are to receive, with the holder of parental responsibility, at the latest before those children are first questioned, in simple and accessible language, information on their rights is precluded.
- national legislation which, in criminal proceedings, does not allow a court to declare as inadmissible incriminating evidence contained in statements made by a child during questioning by the police in breach of the right of access to a lawyer is **not precluded**, provided, that that court is in a position, first, to verify that that right, has been respected and, second, to draw all the inferences from that breach, in particular as regards the probative value of the evidence obtained in those circumstances.

II. The EU Procedural Rights Directives: developments in their interpretation by the case-law of the CJEU

Directive (EU) 2016/1919 on legal aid and relevant case-law

- **Legal aid to be granted swiftly**, at the latest before questioning, especially by the police, or before certain investigative or evidence-gathering acts.
- Clear **criteria to grant legal aid**: means test & merits test.
- Right to legal aid in **European arrest warrant proceedings**: both in the executing and issuing Member State.

C-530/23, Baralo:

- ✓ Member States are under an obligation to ensure that the vulnerability of an accused person or of a suspect is ascertained and acknowledged before that person or suspect is questioned or before specific investigative or evidence-gathering measures and that such persons or suspects have access to a lawyer with the benefit of legal aid for the purposes of those proceedings without undue delay.
- ✓ decisions on the potential vulnerability of a suspect or an accused person and the refusal to grant legal aid to a vulnerable person and to choose to question that person in the absence of the lawyer, must be reasoned and may be the subject of an effective remedy.
- ✓ national legislation which, in criminal proceedings, does not allow for a court to declare inadmissible incriminating evidence contained in statements made by a vulnerable person during questioning in breach of the rights laid down by Directive 2013/48 or 2016/1919, is **not precluded** provided that that court is in a position to verify that those rights have been respected and, to draw all the inferences from that breach, in particular as regards the probative value of the evidence obtained in those circumstances.

III. The EU legal framework: *quid plus*?

**Facilitate mutual
trust among MS
and mutual
recognition**

**Effective
enforcement
mechanism**

**Direct effect of
unconditional
rights**

IV. The role of the Commission: monitoring and enforcement

- The role of the Commission as '**Guardian of the treaties**'
- **Compliance assessment** – Completeness and conformity of transposition (gaps in law and practice) - together with external contractor
- **Sources:**
 - ✓ Notified legislation, case-law, guidelines and codes of conduct for practitioners
 - ✓ Stakeholder feedback, practical implementation measures, projects and initiatives

IV. The role of the Commission: monitoring and enforcement

Directive	Transposition deadline	Completeness	Conformity
Directive 2010/64 on the right to interpretation and translation	27/10/2013	Complete transposition	1 infringement pending (BG)
Directive 2012/13 on the right to information	02/06/2014	Complete transposition	2 infringement pending (LV, BG)
Directive 2013/48 on the right of access to a lawyer	27/11/2016	Complete transposition	7 infringements pending (BG, PL, CZ, EE, HU, IT, SK).
Directive 2016/343 on the presumption of innocence	01/04/2018	Complete transposition	17 infringements pending (LV, HU, PL, HR, ES, BG, SE, SI, SK, EL, MT, LU, BE, PT, NL, IT, LT).
Directive 2016/800 on procedural safeguards for children	11/06/2019	16 infringements pending (BG, EL, EE, PT, AT, HU, SE, LV, PL, BE, ES, LU, FI, SK, BE, NL)	-
Directive 2016/1919 on legal aid	26/10/2016	Complete transposition	Assessment completed. Infringements proceedings to be opened in Autumn 2025

V. Challenges ahead

- **Timely and correct implementation** of the directives in all EU Member States, as well as effective implementation in practice
- Remaining **gaps** in common minimum rules at EU level:
 - i. Binding safeguards for **vulnerable adults** in criminal proceedings;
 - ii. Binding safeguards for **detention conditions and pre-trial detention**;
 - iii. Legal professional privilege;
 - iv. Defence rights and **digitalisation of justice** (videoconferencing, AI)
 - v. Minimum rules on mutual **admissibility of evidence** and related defence rights.



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Salvador Guerrero Palomares
Latest developments on the presumption of innocence

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LEGAL FRAMEWORK

- Article 6(2) ECHR:
 - “Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”
- Article 48.1 CFR:
 - “Everyone who has been charged shall be presumed innocent until proved guilty according to law”.
- Article 3 Directive (EU) 2016/343:
 - “Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.”



Directive (EU) 2016/343, 9th March.

- Codifies ECtHR jurisprudence on the presumption of innocence.
- • Two aspects:
 - Rule of trial (art. 6 and 7).
 - Burden of the proof.
 - In dubio pro reo.
 - Right not to incriminate oneself.
 - Extrajudicial application (art. 4 and 5).
 - Prohibition of public statements implying guilt.
 - Prohibition on presenting suspects or accused persons as guilty through the imposition of physical restraint measure (unless necessary).



PRACTICAL REALITIES

- Judicial bias towards conviction.
- Burden of proof often shifted to defense.
- Media trials and public statements implying guilt.
- Incomplete transposition (or non transposition at all) of the Directive.



ECTHR CASE: NEALON AND HALLAM V. UK (11TH JUNE 2024)

- **SUMMARY:** Convictions overturned, compensation denied.
- **LEGAL ISSUE:** Does the denial of compensation on this basis infringe the presumption of innocence?
- **JUDGMENT:** No violation as language didn't imply guilt.
- **CRITICISM:** The standard introduced makes protection weaker. The judgment departs from the previous judgments (Sekanina v. Austria, Vlielaand Body and Marcelo Lanni v. Spain).
- Dissenting opinion of 5 Judges.



ECTHR CASE: C.O. V. GERMANY (17TH SEPTEMBER 2024)

- **SUMMARY:** The applicant, C.O., involved in the so-called "Cum-Ex" tax fraud scheme, was not tried or convicted yet. Nevertheless, co-defendants were sentenced in decisions that detailed C.O. alleged role, describing him as an instigator or co-perpetrator.
- **LEGAL ISSUE:** Does such a portrayal, in the judgment of others, infringe Article 6(2) ECHR when the person concerned has not been tried?
- **JUDGMENT:** no violation had occurred due to cautious language.
- **CRITICISM:** Overly formalistic approach undermines the right.



CJEU Case C-175/22 (9TH NOVEMBER 2023)

- **SUMMARY:** Court reclassified charges without notifying accused.
- **LEGAL ISSUE:** Is Directive 2016/343 violated if the Court assume by itself a reclassification of the charges?
- **JUDGMENT:** no violation of the Presumption of innocence, if the accused persons have had the opportunity to exercise their rights of defence specifically and effectively in that regard, having been informed, in due time, of the cause of the accusation, that is to say, not only of the material acts of which they are accused and on which the accusation is based, but also, in detail, of the legal classification given to those acts.
- **CRITICISM:** Court adopting prosecutorial role undermines impartiality.

CONCLUSIÓN

- Presumption of innocence is a cornerstone of justice.
- Recent case law shows formalistic interpretations that undermines the protection of the right.
- Greater effort needed to ensure real application, which is a shared responsibility among all legal actors.



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Nicola Canestrini

**Latest developments on the right of interpretation and translation, and
the right of access to a lawyer**

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EUROPEAN UNION AND FUNDAMENTAL RIGHTS

TEU

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights (..)" **art. 2**

"Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law." **art. 6**

ECtHR

EU Charter

canestriniLex

mutual
recognition

FSJ
post Tampere 1999

trust
rights

rights of individuals in criminal procedure (art 82 TFEU)

fundamental rights

“Both the principle of **mutual trust** between the Member States and the principle of **mutual recognition**, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained.

More specifically, the principle of mutual trust **requires**, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider **all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.**”

CJEU, Dorobantu 2019

ECHR

CHARTA

☑ art 2

life

☑ art 3

prohibition of torture

☑ art 4

prohibition forced labour

☑ art 5

liberty security

☑ art 6

fair trial

☑ art 8

private and family life

☑ art 10

free speech

☑ art 2

☑ art 4

☑ art 5 1/2

☑ art. 6

☑ artt. 47, 48

☑ art. 7

☑ art. 11

"6/1. Everyone is entitled to a fair and public hearing (..)

6/3. Everyone charged with a criminal offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 47 - Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48 - Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

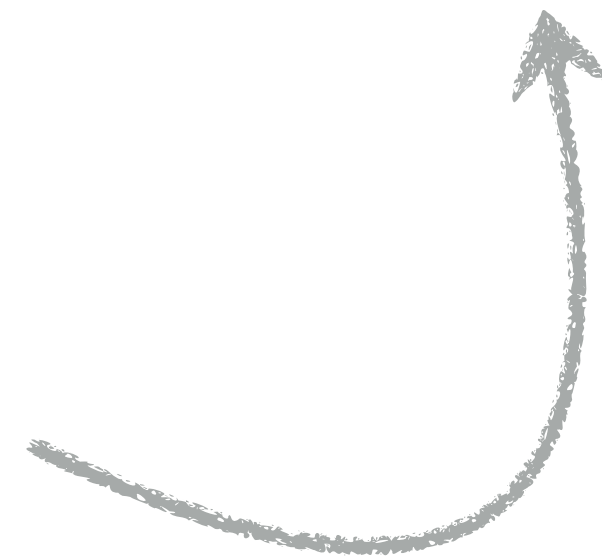
“ALTHOUGH ALL THE MEMBER STATES ARE PARTY TO THE ECHR, EXPERIENCE HAS SHOWN THAT THAT ALONE DOES **NOT ALWAYS** PROVIDE A SUFFICIENT DEGREE OF TRUST IN THE CRIMINAL JUSTICE SYSTEMS OF OTHER MEMBER STATES.”

WHEREAS N. 6 DIR. 64; N. 7 DIR. 13; N. 5 DIR. 48 , ..

“STRENGTHENING MUTUAL TRUST REQUIRES A
MORE CONSISTENT IMPLEMENTATION OF THE
RIGHTS AND GUARANTEES SET OUT IN ARTICLE 6
OF THE ECHR. IT ALSO REQUIRES, BY MEANS OF
THIS DIRECTIVE AND OTHER MEASURES, FURTHER
DEVELOPMENT WITHIN THE UNION OF THE
MINIMUM STANDARDS SET OUT IN THE ECHR AND
THE CHARTER.”

WHEREAS N. 7 DIR. 64; N. 8 DIR. 13; N. 6 DIR. 48

*EU
procedural
rights!*



Presumption of Innocence

Pre-Trial Detention F

SWEDISH ROADMAP

(STOCKHOLM PROGRAM 2009)

*Vulnerable Accused
and Suspected
Persons E*

*“procedural
rights”*

Access to a Lawyer C1

*Legal Aid Reform
C2*

*Right to
Interpretation and
Translation A*

*Right to
Information B*

*Presumption of innocence
and presence*

2016/343

Right to Interpretation and Translation

Legal aid

2016/1919

2010/64

*Right to
Information*

2012/13

*The Roadmap is designed to
operate as a whole; only when all
its components are implemented
will its benefits be felt in full.*

(WHEREAS 9 DIRECTIVE 2013/48/UE).

*Children
safeguards*

2016/800

Access to a Lawyer

2013/48

Vulnerable suspects

2013/C 378/2

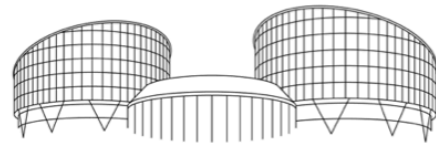
canestriniLex

Job done.

**“NOT RIGHTS THAT ARE
THEORETICAL OR ILLUSIONARY
BUT RIGHTS THAT ARE
PRACTICAL AND EFFECTIVE”**

European Court of Human Rights, Artico vs. Italy, 1980

*Directive 64/2010 seeks to ensure (..) the right to interpretation and translation (..) with a view to ensuring that those persons have a **fair trial** (exercise their rights of defence and to safeguard the fairness of the proceedings)*



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GUIDE ON ARTICLE 6

RIGHT TO A FAIR TRIAL (criminal limb)

IT IS SHOWN OR THERE ARE REASONS TO BELIEVE THAT THE ACCUSED HAS INSUFFICIENT KNOWLEDGE OF THE LANGUAGE IN WHICH THE INFORMATION IS GIVEN, **THE AUTHORITIES MUST PROVIDE HIM WITH A TRANSLATION** (BROZICEK V. ITALY, § 41; TABAÏ V. FRANCE (DEC)).

WHILST ARTICLE 6 § 3 (A) DOES NOT SPECIFY THAT THE RELEVANT INFORMATION SHOULD BE GIVEN IN WRITING OR TRANSLATED IN WRITTEN FORM FOR A FOREIGN DEFENDANT, A DEFENDANT NOT FAMILIAR WITH THE LANGUAGE USED BY THE COURT MAY BE AT A PRACTICAL DISADVANTAGE IF HE IS NOT ALSO PROVIDED WITH A WRITTEN TRANSLATION OF THE INDICTMENT INTO A LANGUAGE WHICH HE UNDERSTANDS (KAMASINSKI. AUSTRIA, § 79; HERMI V. ITALY [GC], § 68).

HOWEVER, SUFFICIENT INFORMATION ON THE CHARGES MAY ALSO BE PROVIDED THROUGH AN ORAL TRANSLATION OF THE INDICTMENT IF THIS ALLOWS THE ACCUSED TO PREPARE HIS DEFENCE (KAMASINSKI V. AUSTRIA, § 81; HUSAIN V. ITALY (DEC.)).

THERE IS NO RIGHT UNDER THIS PROVISION FOR THE ACCUSED TO HAVE A FULL TRANSLATION OF THE COURT FILES (X. V. AUSTRIA (DEC), P. 70).

quality

*(fair trial and rights of defense, arts.
2.8; 3.9; art 5.)*

training (art. 6)

no costs for individuals (art. 4)

interpretation

assessment

mechanism (2.4-5)

*register of independent
translators and
interpreters*

defense as well

translation

essential (?)

list of essential documents

reasonable period of time

*waiver translation: informed,
unequivocal and voluntarily
(3.8)*

quality?

how is competence of interpreters / translators assessed?

registered interpreter translator is not necessary

(see ECtHR Amanda Knox Case, 2019)

assessment by police forces?

challenging need or quality?

reasonable period of time for translation?

essential documents?

implicit waiver?

time limit for raising lack of translation / quality?

REMEDIES?

The Knox case

Amanda Knox: European court orders Italy to pay damages

American wants conviction of malicious accusation over Meredith Kercher's murder overturned



📷 Amanda Knox. Photograph: NBC NewsWire/Reuters

The European court of human rights has ordered Italy to pay Amanda Knox €18,400 for police failures to provide her access to a lawyer and a translator during questioning over the 2007 killing of her British flatmate [Meredith Kercher](#) in Perugia.

182. THE COURT RECALLS THAT, UNDER PARAGRAPH 3(E) OF ARTICLE 6 OF THE CONVENTION, AN ACCUSED PERSON WHO DOES NOT UNDERSTAND OR SPEAK THE LANGUAGE USED IN COURT IS ENTITLED TO THE FREE SERVICES OF AN INTERPRETER FOR THE TRANSLATION OR INTERPRETATION OF ALL THE ACTS OF THE PROCEEDINGS INSTITUTED AGAINST HIM, INsofar AS HE NEEDS, IN ORDER TO BENEFIT FROM A FAIR TRIAL, UNDERSTAND THE MEANING OR HAVE IT EXPLAINED IN THE LANGUAGE USED IN COURT. THE ASSISTANCE PROVIDED IN TERMS OF INTERPRETATION MUST ALLOW THE ACCUSED TO KNOW WHAT HE IS ACCUSED OF AND TO DEFEND HIMSELF, IN PARTICULAR BY PROVIDING THE COURT WITH HIS VERSION OF THE FACTS. **THE RIGHT THUS ENSHRINED MUST BE PRACTICAL AND EFFECTIVE.** THEREFORE, THE COMPETENT AUTHORITIES NOT ONLY HAVE THE DUTY TO APPOINT AN INTERPRETER, BUT ALSO, ONCE ALERTED IN A GIVEN CASE, THE DUTY TO EXERCISE A CERTAIN DEGREE OF EX-POST CONTROL WITH REGARD TO THE QUALITY OF THE INTERPRETATION PROVIDED.

183. FURTHERMORE, AS WITH THE ASSISTANCE OF A LAWYER, THAT OF AN INTERPRETER MUST BE GUARANTEED FROM THE INVESTIGATION STAGE, UNLESS IT IS DEMONSTRATED THAT THERE ARE COMPELLING REASONS FOR LIMITING THIS RIGHT.

184. THE COURT ALSO INDICATES THAT IT IS NOT APPROPRIATE TO LAY DOWN, FROM THE POINT OF VIEW OF ARTICLE 6 § 3 (E) OF THE CONVENTION, DETAILED CONDITIONS REGARDING THE MANNER IN WHICH THE SERVICES OF AN INTERPRETER MAY BE PROVIDED TO ASSIST ACCUSED PERSONS. AN INTERPRETER IS NOT AN AGENT OF THE COURT WITHIN THE MEANING OF ARTICLE 6 § 1 OF THE CONVENTION AND IS NOT SUBJECT TO ANY FORMAL REQUIREMENT OF INDEPENDENCE OR IMPARTIALITY AS SUCH. **HIS SERVICES MUST PROVIDE THE ACCUSED WITH GENUINE ASSISTANCE IN CONDUCTING HIS DEFENCE AND IT MUST NOT BE POSSIBLE FOR HIS BEHAVIOUR TO PREJUDICE THE FAIRNESS OF THE PROCEEDINGS.**

185. IN THE PRESENT CASE, IT APPEARS FROM THE CASE FILE THAT, AS A.D. HERSELF ADMITTED, **THE ROLE** PLAYED BY THE LATTER WHILE THE APPLICANT, WHO WAS CRIMINALLY CHARGED UNDER ARTICLE 6 § 1 OF THE CONVENTION, WAS PRESENTING HER VERSION OF THE FACTS, WENT BEYOND THE INTERPRETING FUNCTIONS THAT SHE WAS REQUIRED TO PROVIDE. THE COURT OBSERVES THAT A.D., IN EFFECT, WANTED TO ESTABLISH A HUMAN AND EMOTIONAL RELATIONSHIP WITH THE CLAIMANT, TAKING ON THE ROLE OF MEDIATOR AND ADOPTING A MATERNAL ATTITUDE WITH WERE ABSOLUTELY NOT REQUIRED IN THE CASE IN QUESTION.

186. THE COURT OBSERVES THAT, ALTHOUGH THE APPLICANT RAISED THESE COMPLAINTS BEFORE THE NATIONAL COURTS, SHE DID NOT BENEFIT FROM A PROCEDURE THAT COULD SHED LIGHT ON HER ALLEGATIONS. THE AUTHORITIES FAILED TO ASSESS THE BEHAVIOUR OF A.D., VERIFYING WHETHER HER DUTIES AS INTERPRETER HAD BEEN CARRIED OUT IN ACCORDANCE WITH THE GUARANTEES PROVIDED FOR IN ARTICLE 6 §§ 1 AND 3 E), AND TO CONSIDER WHETHER HER BEHAVIOUR HAD HAD AN IMPACT ON THE OUTCOME OF THE CRIMINAL PROCEEDINGS INITIATED AGAINST THE APPLICANT. (..)

187. IN THE COURT'S VIEW, THIS INITIAL DEFICIENCY THEREFORE HAD REPERCUSSIONS ON OTHER RIGHTS WHICH, ALTHOUGH DISTINCT FROM THE ONE THE VIOLATION OF WHICH IS ALLEGED, ARE CLOSELY LINKED TO IT, AND **COMPROMISED THE FAIRNESS OF THE PROCEEDINGS AS A WHOLE.**

188. IN VIEW OF THE ABOVE, THERE HAS BEEN A VIOLATION OF ARTICLE 6 §§ 1 AND 3 E) OF THE CONVENTION IN THE CASE IN QUESTION.

ECtHR, *Knox vs Italy*, 24 gennaio 2019

canestriniLex

Compensation of interpreters

Does unfair compensation of interpreters affect fairness of the trial? (Tr Firenze, April 24)

4 June 2024, Tribunale di Firenze

Tag

translation

fair trial

Actual poor quality of the interpretation depends on the very modest amount provided by the Italian legislation for the remuneration of interpreters: Florence court raises request for a preliminary ruling to the Italian Constitutional court.




News

Italian Constitutional Court Rules in Favor of Fair Trials' Argument on Interpreter Compensation

13 February 2025 | Article by Fair Trials

Fair Trials, in collaboration with the European Criminal Bar Association (ECBA), has successfully intervened with a written opinion before the Italian Constitutional Court in a case concerning the compensation of court interpreters led by defence lawyer and LEAP Advisory Board Member Nicola Canestrini. On February 10, 2025, the Italian Constitutional Court published its [Judgment NO. 16/25](#), addressing the legality and adequacy of compensation for interpreters.



“THE RIGHT TO AN INTERPRETER, AS A GUARANTEE FUNCTIONAL TO THE EXERCISE OF THE RIGHT OF DEFENSE, MUST BE ENSURED IN A MANNER THAT EFFECTIVELY SAFEGUARDS THE RIGHT TO A FAIR TRIAL (ARTICLE 6 ECHR), WHICH INCLUDES THE RIGHT TO BE ADEQUATELY HEARD AND UNDERSTOOD IN JUDICIAL PROCEEDINGS.”

“THE PRINCIPLE OF REASONABLENESS PROHIBITS MEASURES THAT, WITHOUT ADEQUATE JUSTIFICATION, COMPROMISE THE EFFECTIVENESS OF CONSTITUTIONAL GUARANTEES, INCLUDING THE RIGHT TO A FAIR TRIAL.”

CORTE COSTITUZIONALE 16/2025

Room for improvement

Translation of judgment: mandatory under EU law, but not in Italy (Italian Supreme Court, 4408/25)

11 February 2025, Italian Supreme Court

Tag

translation

A non Italian speaking defendant who complains about the violation of his defense rights, as a result of the failure to translate the measure adopted against him and the procedural sequence that originates from that act, cannot simply complain about the omission he has the burden of indicating the existence of a concrete, current and verifiable interest in the appeal, the mere allegation of an abstract or potential prejudice not being relevant in this sense.

*defense
briefs?*

(Covaci, 2015)



".. neither directive 2010/64 nor Directive 2012/13 specifies the consequences of an infringement of the rights provided for therein (..)

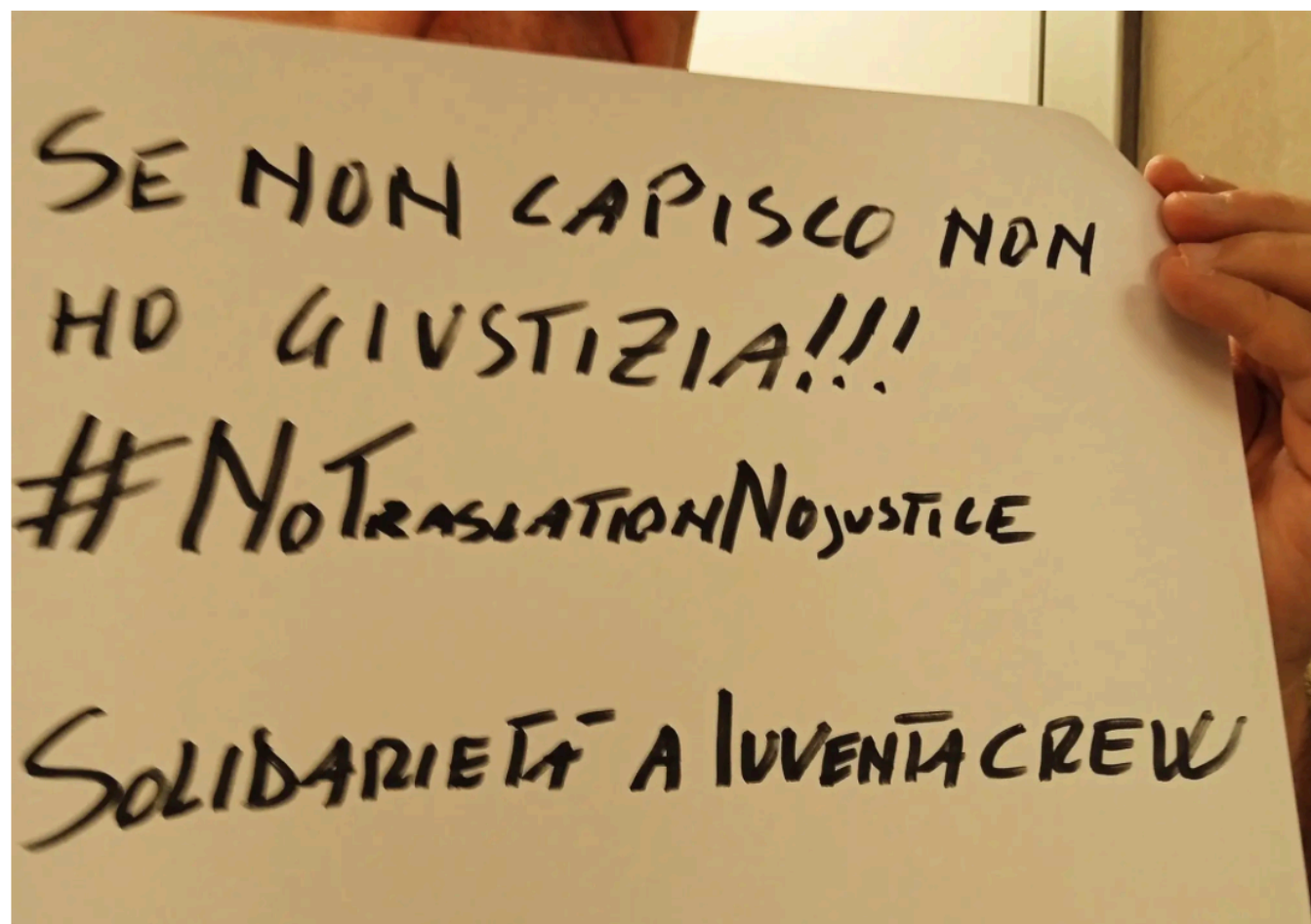
(..) "Directive 2010/64/EU (.. and..) Directive 2012/13/EU, read in the light of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union and the **principle of effectiveness**, must be interpreted as **precluding national legislation under which the infringement of the rights provided for by those provisions of those directives must be invoked by the beneficiary of those rights within a prescribed period.**"

(CJEU, 242/22 PPU, TL)





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#NoTranslationNoJustice

OCTOBER 1, 2022

European countries are employing many different methods to prevent people from reaching safety. While still not providing legal and safe routes, EU states rely instead on a systematic criminalisation of people on the move and those in solidarity with them.

The denial of adequate translation and substantial interpretation is a hurdle that foreign language speakers often cannot overcome, as their right to effectively taking part in their own proceedings is systematically denied by authorities, from the first contact with police up to the prosecutors and judges. These unfair conditions basically affect all foreign language defendants, like us the iuventa- crew as well, but more severely those who do not have sufficient socio-economic capital or broad social or solidarity networks to protect themselves.

FOLLOW our campaign! We aim to report on the violation of the right to adequate translation and interpretation in the courts, police stations or other authorities. We want to spotlight testimonies and experiences and make them evident in their manifold effects.

“THE REQUIREMENTS OF INTERNATIONAL CRIMINAL LAW ENFORCEMENT MUST NOT INFRINGE UPON FUNDAMENTAL RIGHTS.”

Italian Constitutional Court, Judgment
280/1985

LinkedIn



Nicola Canestrini

International Criminal Defense in
Italy | ICC Counsel | Criminal law
national expert @ CCBE |
International Extradition &
European Arrest Warrant
canestriniLex :: avvocati | Università
degli Studi di Ferrara

canestriniLex



EU PROCEDURAL RIGHTS DIRECTIVES

- latest developments for lawyers

Alexis Anagnostakis

Latest developments on the right to legal aid

7 July 2025, 09:00-11:00 CET, Zoom Webinar



Co-funded by the EU

“Justice Without Lawyers is Just Ice”

Artur's Story: A Polish construction worker arrested in Germany. No lawyer. No interpreter. He didn't understand the charges — and got 18 months in prison.

Saloua's Case : A Moroccan student in Spain, wrongfully accused. No legal aid for 72 hours. Confessed under pressure.

The "Legal Aid Desert" Investigation

2023 CCBE Report:

76 EU districts had no available criminal legal aid lawyers

Rural areas: up to 72-hour delays for legal representation

Some regions: 1 lawyer per 200+ km radius

"In some parts of Europe, you're more likely to find a unicorn than a legal aid lawyer."

The Money Problem: Why Lawyers Walk Away

"You can't expect Rolls Royce defense on a bicycle budget"

The Crisis:

Legal aid rates as low as €25/hour in some states

38% drop in participating lawyers since 2020

Greek lawyers' 2023 strike shut down courts for months

CCBE's "Fair Pay for Fair Justice" Demands

- Rates tied to case complexity
- Annual inflation adjustments
- Guaranteed payment timelines
- Minimum rate floors across EU
- Travel compensation for rural areas

The "Ghost Defendant" Scandal

2023 Investigation Revealed:

Lawyers assigned to dozens of cases daily

Many defendants never meeting their lawyer before trial

Others receiving just minutes of case review

Quality Reform Measures

The Necessary Reforms:

Maximum caseload caps

Mandatory pre-trial client meetings

Regular quality reviews

Specialized training requirements

Independent oversight boards

CCBE's Criminal Legal Aid Manifesto

5 Core Demands:

Legal aid within 2 hours of arrest

Client choice from a certified panel

Caseload limits to ensure quality

Specialized defense training and certification

The Human Face: Artur's Story Revisited

After new legal aid standards implementation:

Cases like Artur's could be reopened

With translation and qualified counsel, outcomes can change

Justice is being restored

Take Action: Be Part of the Solution

For Legal Professionals:

Volunteer for training and certification

Advocate within your bar association

For Civil Society:

Monitor court access and representation quality

Educate vulnerable communities about their rights