



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

María Barbancho Saborit

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

Paris, 30 June 2025



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STAT OF MATTER IN SPAIN

A. From a formal perspective:

- Spain arrived two years late with the transposition of **Directive 2010/64 on Translation and Interpretation**.
- 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).
- Also, with **Directive 343/2016 on the presumption of innocence** (the transposition deadline for which ended in April 2018) some problems have arisen.

Direct application - > 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.

STAT OF MATTER IN SPAIN

B. From a practical point of view:

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**.

HARMONIZATION AS THE CORNERSTONE OF THE MUTUAL TRUST IN JUDICIAL COOPERATION

❖ Existing mechanisms to challenge the lack of implementation?

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.

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, TRANSPOSED
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,
TRANSPOSED 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)

Adelaïde JACQUIN

**The impact of the European Arrest Warrant on the
application of the 3 procedural rights directives**

Paris, 30 June 2025



Co-funded the European Union

From Tampere to Stockholm: The Evolution of EU Criminal Justice

- Established in 2002 by Framework Decision 2002/584/JHA, the European Arrest Warrant (EAW) replaced traditional extradition with a simplified surrender system based on mutual recognition of criminal judicial decisions
- Despite being the so-called "*cornerstone*" of European judicial cooperation, the EAW revealed a critical challenge: disparities between national judicial systems undermined the presumed high level of trust between Member States.
- Mere adherence to the EU Charter of Fundamental Rights, ECHR, and ICCPR proved insufficient to ensure adequate mutual trust in other Member States' criminal justice systems.



The Procedural Rights Roadmap

Measure A

The right to translation and interpretation

Measure B

The right to information regarding rights and the accusation

Measure C

The right to legal advice and legal aid

Measure D

The right to communicate with relatives, employers, and consular authorities

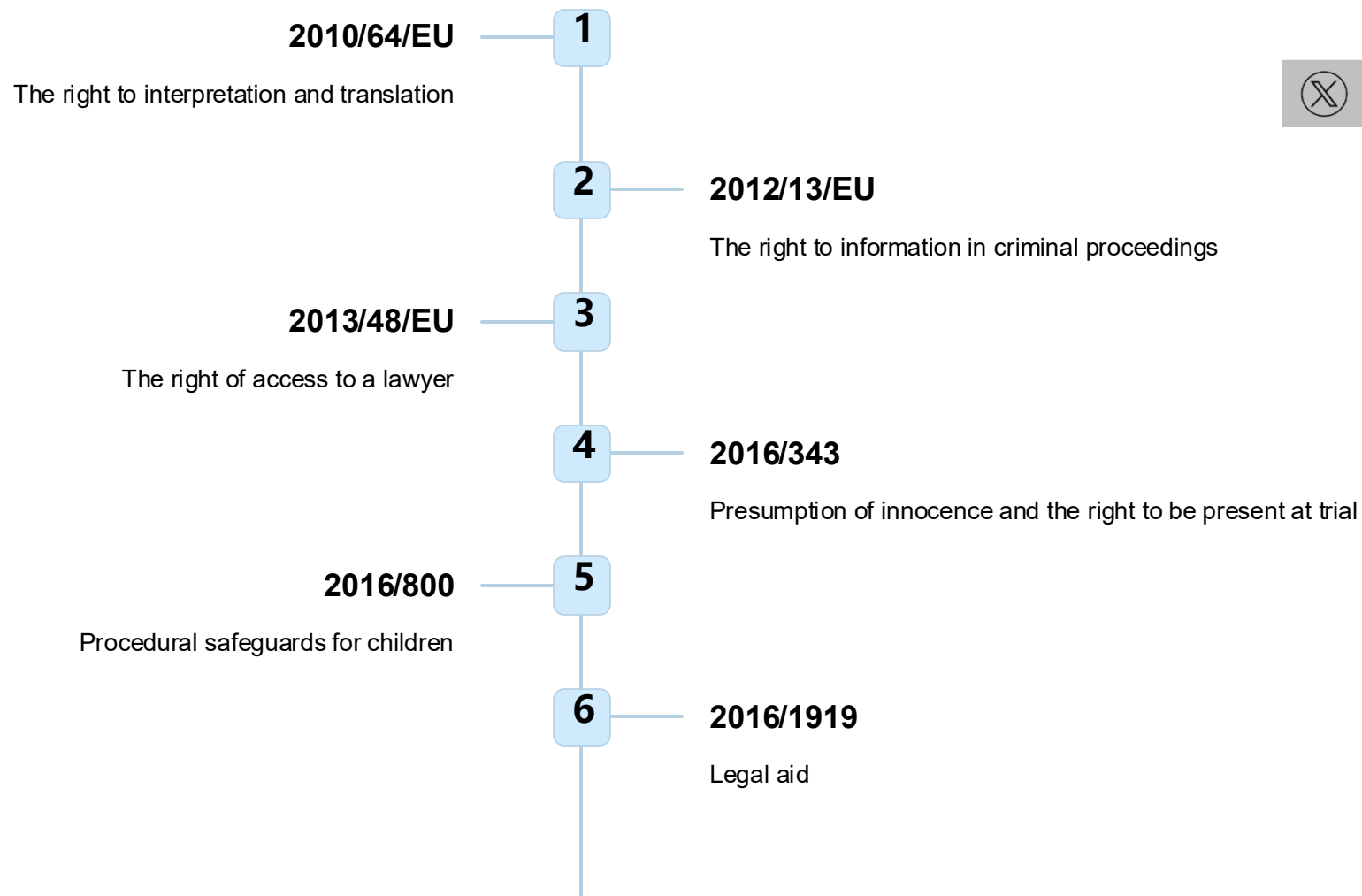
Measure E

Special safeguards for vulnerable persons



The Stockholm Programme (2009) incorporated this roadmap, emphasising its non-exhaustive nature and inviting exploration of other aspects like the presumption of innocence.

Six Directives on Procedural Rights

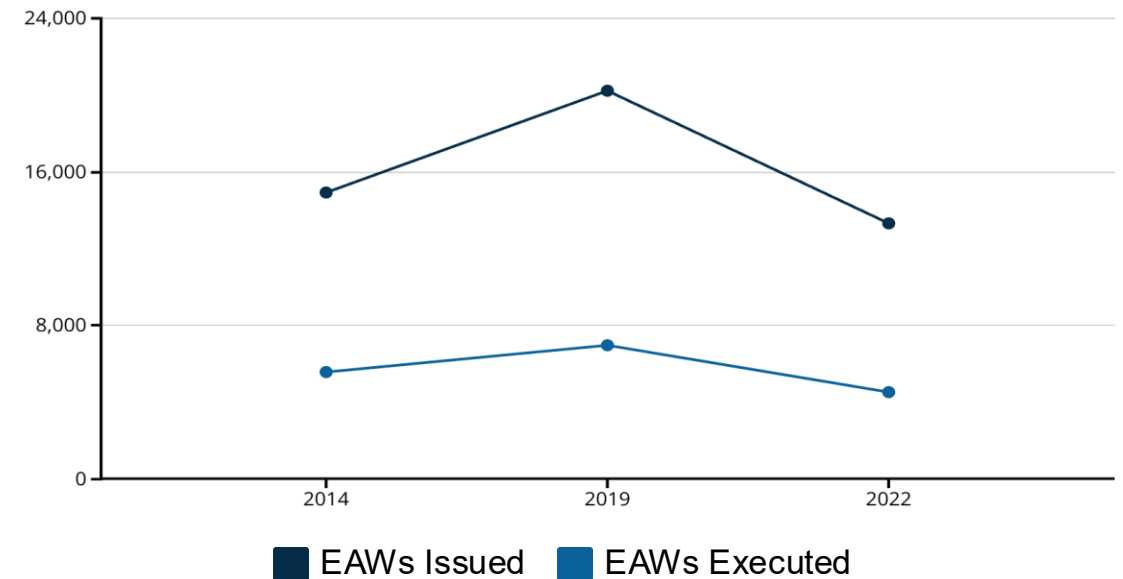


These instruments constitute a common foundation intended to strengthen mutual trust between Member States by ensuring a high and uniform level of protection of procedural rights.

The European Arrest Warrant: Key Facts

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- Created by Framework Decision 2002/584/JHA with 35 articles, the EAW can be issued to request enforcement of a custodial sentence or to initiate criminal proceedings.
- The EAW is based on mutual trust and recognition of criminal decisions within the EU, serving as the cornerstone of cooperation in criminal matters.
- Transposed into French law in Articles 695-11 et seq. of the Code of Criminal Procedure.



Exceptions and Guarantees

1 Mandatory Refusals

- Offence covered by amnesty in executing State
- Person already finally judged for same facts ("non bis in idem")
- Person not criminally responsible under local law (e.g., age)

2 Optional Refusals

- Act not an offence under local law
- Proceedings already underway locally for same facts
- Offence time-barred locally
- Person judged in third State for same facts
- Nationality, residence, or place of birth prevents execution
- Offence committed partly on territory of executing State

3 Guarantees

Executing State may request guarantees, e.g., a new trial where person was not personally summoned or informed of hearing date/place that resulted in decision rendered in absentia.

EAW Procedure and Fundamental Rights

Deadlines

- With consent: decision within 10 days
- Without consent: decision within 60 days (extendable by 30 days)
- Surrender: 10 days following decision

In 2022, average surrender time:

- With consent: 20.48 days
- Without consent: 57.29 days

Fundamental Rights Protection

The Framework Decision respects fundamental rights per Article 6 of the Treaty on European Union and the Charter of Fundamental Rights.

Since 2016, EAW execution has been suspended or refused in nearly 300 cases due to proven risk of fundamental rights violations.

Example: The Aranyosi and Căldăraru judgment addressed concerns about detention conditions in Hungary and Romania.



1. The European Arrest Warrant (EAW)

EAW Procedure in France

Training of Lawyers on
various areas of European
Union Law

Arrest and Police Procedure

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Person arrested during identity check. Judicial police notify person of EAW existence using INTERPOL, EUROPOL, or SCHENGEN channels.

Prosecutor General Notification

Person brought before prosecutor within 24 hours. EAW officially notified. Identity verified, consent to surrender and waiver of specialty rule checked. Person assisted by lawyer and interpreter if needed.

Investigative Chamber (CHINS) Notification

Notification before Chambre de l'Instruction. Bench judges ensure consent and any waiver of specialty rule. Waivers rare (about 10% of cases).

Decision to Surrender

If favourable, person escorted to borders. If unfavourable, person released, but request remains in system. Judges may request additional information in complex cases.

Directive 2013/48/EU: Right of Access to a Lawyer

Rights in the Executing State

Guaranteed access to a lawyer from the moment of arrest without undue delay, with rights to meet privately, communicate, and have lawyer present during hearings with participation recorded.

Rights in the Issuing State

Right to appoint a lawyer in the issuing Member State to assist the executing State lawyer, with authorities required to provide information to facilitate this appointment.

Additional Protections

Includes confidentiality of communications, right to inform third parties, communicate with consular authorities, and possibility to waive rights with safeguards against derogations.

Directive 2016/1919: Legal Aid in EAW Proceedings

This directive ensures the effectiveness of the right of access to a lawyer by providing financial support to those who cannot afford legal representation.

Rights in the Executing State

Right to legal aid in the executing Member State from arrest until surrender or final decision not to surrender

Rights in the Issuing State

Right to legal aid in the issuing Member State when exercising the right to appoint a lawyer there

Directive 2016/343: Presumption of Innocence

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While not expressly mentioning EAW proceedings in its scope, this directive applies to all criminal proceedings from the time a person is suspected until a final decision is reached.

Key Provisions Relevant to EAW Cases:

- Article 8: Right to be present at trial
- Article 9: Right to a new trial if conditions for trial in absentia were not met

These provisions are particularly important in EAW cases where surrender is requested for a person convicted in absentia.



2. The three directives on procedural rights in the context of MAE

Trials in *absentia*: A Critical Issue in EAW Cases

When a person is tried in their absence, special considerations apply to EAW proceedings. The executing authority must ensure that:

Proper Notification

The person was informed in due time of the trial and the consequences of non-appearance

Legal Representation

The person was represented by a mandated lawyer if they did not appear

Right to Retrial

If these conditions were not met, the person has the right to a new trial or another legal remedy allowing fresh determination of the case

French Case Law on Trials In Absentia in the context of the execution of an EAW

1 — **1 April 2020**

Cour de cassation upheld surrender to Italy after confirming the person could use Article 175 of Italian Code to obtain a new trial on the merits.

2 — **13 January 2021**

Court quashed surrender decision, ruling that abstract information about Italian remedies was insufficient; verification of specific circumstances required.

3 — **10 May 2022**

Court upheld surrender to Belgium based on mutual recognition principle, as Belgian objection procedure had been validated by issuing state's courts.

4 — **13 March 2024**

Court found insufficient justification for surrender to Italy where a minor had not been personally informed of hearings.

The Salah Abdeslam Case: Between France and Belgium

1. French Conviction

On June 29, 2022, the Special Criminal Court of Paris found Salah Abdeslam guilty of attempted murder of police officers during the Bataclan assault, as well as co-perpetrator of a “single scene of violence” (where several defendants committed acts of violence with homicidal intent together). He was sentenced to life imprisonment with an irreducible security period, making him ineligible for parole.

2. Belgian Conviction

On 23 April 2018, the Brussels Court sentenced Abdeslam to 20 years for "attempted terrorist murder" related to a March 2016 shootout with police.

3. Temporary Surrender

Under Article 24 of the Framework Decision, France agreed to Abdeslam's temporary surrender to Belgium for twelve months from July 2022.

4. Belgium's Refusal to Return

On 3 October 2023, the Brussels Court of Appeal prohibited Belgium from returning Abdeslam to France, ruling that French life imprisonment with a thirty-year security period violated Article 3 ECHR.

5. Resolution

Despite this ruling, Abdeslam was finally transferred back to France on 7 February 2024.

Life Imprisonment: European Standards

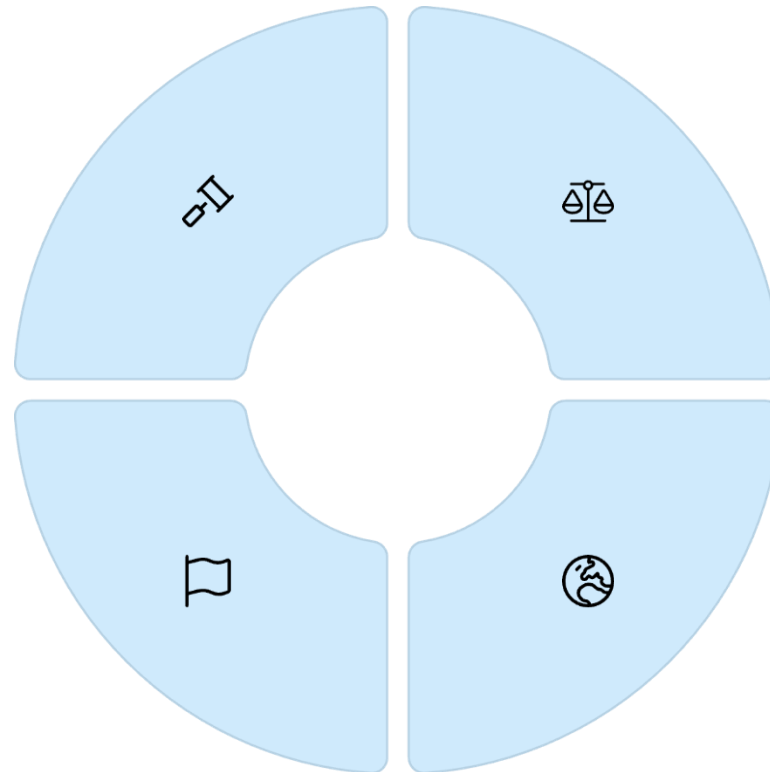
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ECHR Requirements

The European Court of Human Rights demands that life imprisonment must include a real hope of release to avoid violating Article 3 (prohibition of inhuman treatment).

EU Member States

While some countries have abolished perpetual sentences, many retain life imprisonment. Spain reintroduced "reviewable permanent prison" in 2015.



French Constitutional Council

Has ruled that provisions depriving persons of any possibility of sentence adjustment are contrary to the principle of proportionality of penalties.

European Committee

The Committee for Prevention of Torture has strongly criticized irreducible sentences as they exclude the possibility of reintegration.

The Rule of Law Crisis in the EU



Persistent Challenges

The "Liberties Rule of Law" report (March 2025) highlights persistent undermining of rule of law foundations across the Union.



Key Concerns

Violations persist in judicial independence, anti-corruption efforts, media freedom, balance of powers, civic space, and fundamental rights protection.



Impact on EAW

These challenges directly affect mutual trust between Member States, which is essential for the proper functioning of the European Arrest Warrant system.

The Future of the EAW

Paradoxical Development

The adoption of directives on procedural rights reveals both:

- A symptom of relative failure due to persistent disparities in rights protection
- A lever for strengthening harmonization of procedural standards

The current dynamic oscillates between consolidation and weakening of mutual trust, highlighting the ongoing tension between unified European justice and discordant national realities.

Way Forward

The cross-analysis of the EAW and procedural directives invites reflection on:

- The Union's capacity to overcome contemporary challenges
- The need to balance efficient judicial cooperation with robust rights protection
- The importance of consolidating an area of freedom, security, and justice that upholds fundamental European values



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

Adam BÉKÉS

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

Paris, 30 June 2025



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Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

Commission Notice — Handbook on how to issue and execute a European arrest warrant (2017/C 335/01)

COMMISSION STAFF WORKING DOCUMENT , Statistics on the practical operation of the European arrest warrant – 2022, SWD(2024) 137 final

Act CLXXX of 2012 on criminal cooperation with Member States of the European Union

Act XC of 2017, on Criminal Procedural Code

Handbook of the European law advisors team of Budapest Metropolitan Court (2022)

Statistics

- The issuing judicial authorities of the 26 Member States issued a total of **13 335** EAWs in **2022**.
- In 2021, the 27 Member States issued **14 789** EAWs, in 2020 it was **15 938** EAWs.

13 Member States issued significantly **more EAWs for prosecution purposes**: Belgium (361 out of 471 EAWs issued by Belgium were for prosecution purposes), Cyprus (44 out of 45), Denmark (85 out of 87), Greece (71 out of 128), Spain (415 out of 641), Finland (56 out of 85), France (838 out of 1 540), Croatia (243 out of 376), Ireland (38 out of 38), Lithuania (164 out of 241), Luxembourg (153 out of 169), Latvia (99 out of 166) and the Slovak Republic (134 out of 228).

Statistics

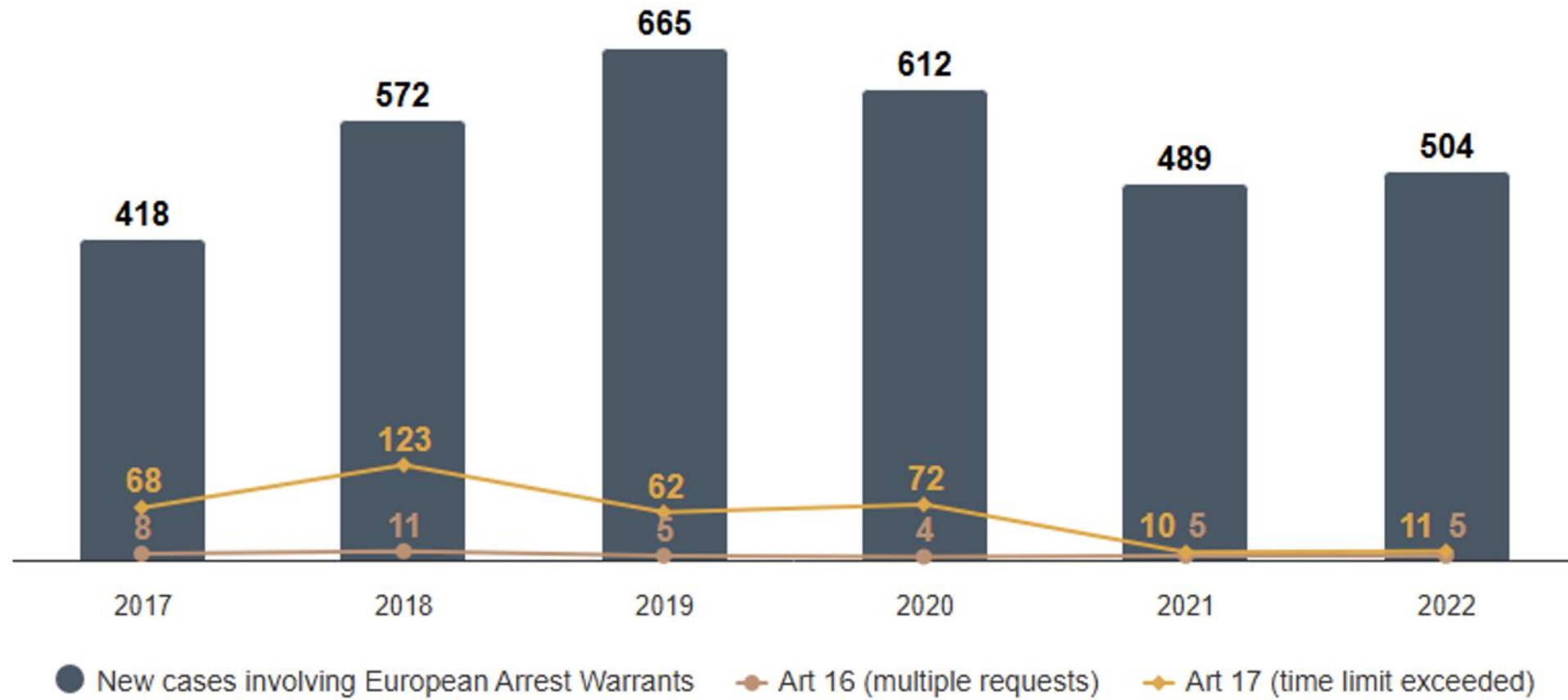
Two Member States issued significantly more EAWs for the **execution of a sentence or detention order**:

Poland (1.126 out of 1.476) and

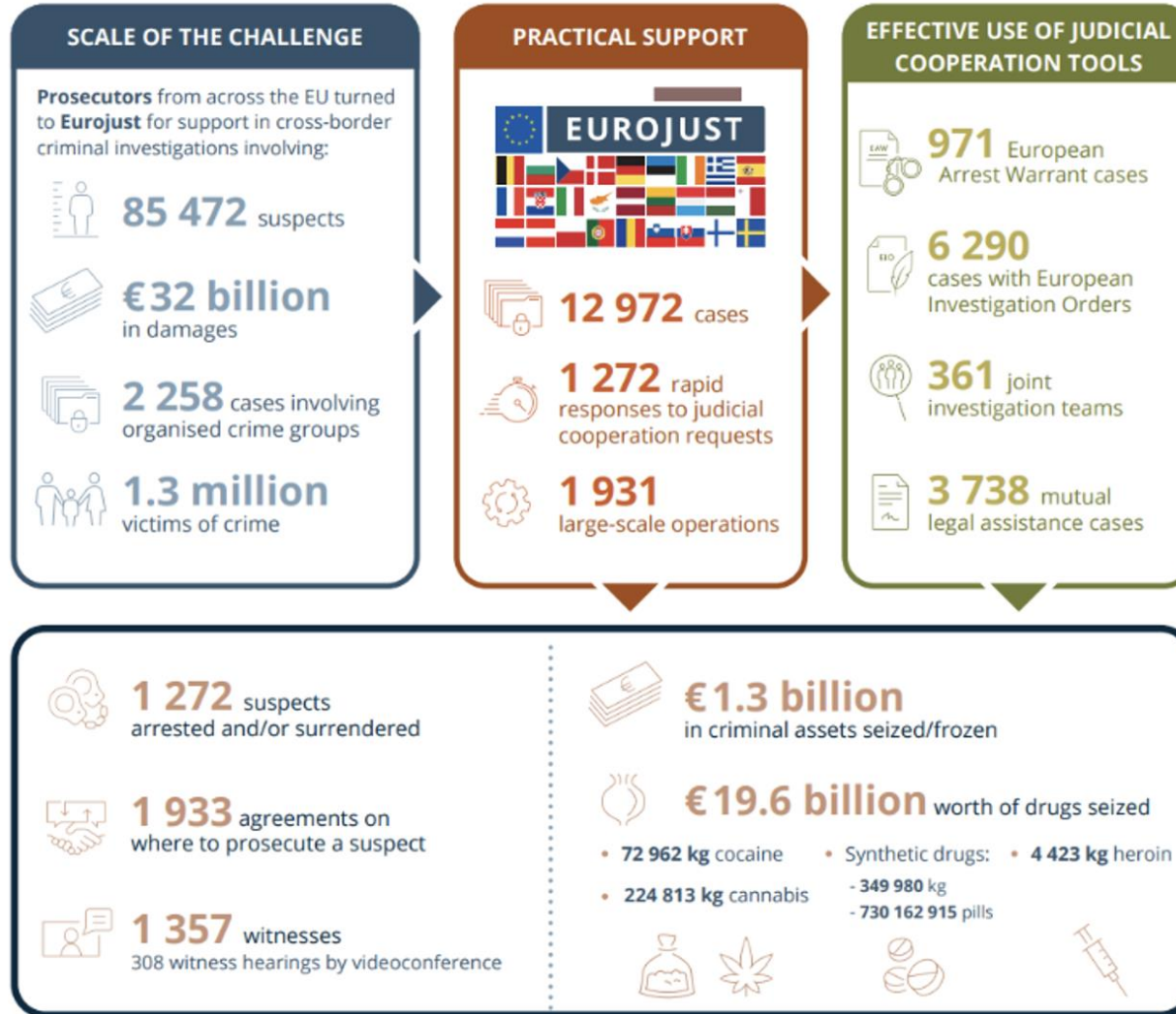
Romania (748 out of 826).

It could be argued that these differences correspond to the higher percentage of ***in absentia proceedings*** in some of these Member States, leading to lower numbers of EAWs being issued for prosecution purposes.

EUROJUST - EAW

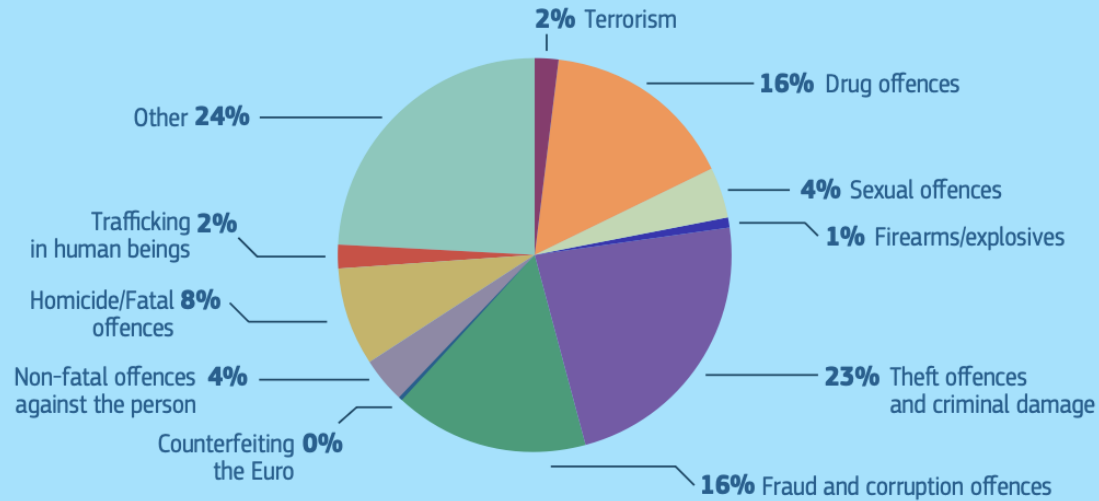


#JusticeDone – Operational outcomes* in 2024



European arrest warrant offences

In 2019, 274 European arrest warrants were issued for terrorism offences, France issuing 119 and Belgium 83.



Average time from arrest to surrender



WITH CONSENT

When the person consented to surrender



WITHOUT CONSENT

When the person did not consent to surrender



Detected issues in Hungary, Budapest Metropolitan Court

1. The necessity of a national arrest warrant
2. Catalogued crimes
3. The concept of issuing authority
4. Examination of proportionality
5. Multiple requests (multiple EAWs in parallel)
6. Considerable reasons of refusal
7. "Apocryphal" grounds for refusal

The necessity of a national arrest warrant

- analysis and interpretation of the provision of the EAW determining its content and form Article 8(1)(c)
- **Bob-Dogi case, C-241/15.**
- Although Framework Decision 2002/584/IB does not contain a definition of the term '**arrest warrant**' within the meaning of Article 8(1)(c), it defines the concept of a EAW it also states that **the form to be used for its issue must contain information on the availability of the underlying enforceable judgment, arrest warrant or other enforceable judicial decision** having the same effect, clearly indicating that the concept of 'arrest warrant' refers solely to the national arrest warrant, which must be interpreted as a judicial decision linked to the European arrest warrant but distinct from it.

Catalogued crimes

- The law of the issuing **Member State shall determine whether the offence in question falls within the categories** of offences referred to in Article 2(2) of Framework Decision 2002/584/IB. - **Advocaten voor de Wereld case C-303/05.**
- The classification of the offence in question as a listed offence shall be determined in accordance with the law of the issuing Member State, and if the issuing judicial authority has classified the offence as listed, the **executing judicial authority may not review that classification.**
- **However,** the executing judicial authority **may and must examine** whether the **catalogued offence is punishable by at least 3 years' imprisonment.**

Catalogued crimes, X-case, C-717/18,

- In the main proceedings, the Spanish court sentenced the perpetrator to imprisonment for **glorifying terrorism**, who had left Belgium. In order to enforce the sentence, the Spanish judicial authorities issued a European arrest warrant, in which they classified the offence as a listed offence, namely terrorism.
- Upon the final conviction of the person in Spain, the glorifying terrorism was not yet punishable by imprisonment of at least three years.
- The criminal law provisions of the issuing Member State shall be taken into account **when the decision establishing criminal liability is taken**, and **not in the version in force at the time of the European arrest warrant being issued**.

The concept of issuing authority

With regard to the concept of the issuing authority in relation to the European arrest warrant, the Court of Justice, in the **Poltorak and Kovalkovas case** (C-452/16., C477/16.), first pointed out, in its interpretation of Article 6(1) of Framework Decision 2002/584/IB, that neither **the police** of a Member State nor **an administrative authority acting in a judicial capacity**, including the **Ministry of Justice**, cannot be regarded as a judicial authority competent to issue a European arrest warrant.

The concept of issuing authority

In the **Özcelik** case, the Court pointed out that a national arrest warrant issued by the police for the purpose of conducting criminal proceedings constitutes a 'judicial decision' within the meaning of Article 1(1) of Directive 2012/29.

The approval of the **national arrest warrant by the public prosecutor's office provides sufficient evidence** for the executing judicial authority that the European arrest warrant is based on a decision subject to judicial review and complies with the principle of mutual trust between Member States.

The concept of issuing authority

OG and PI C-508/18., C-82/19. cases

- In Germany, the provincial minister of justice is authorised to instruct the provincial chief public prosecutor, which means that the public prosecutor's office is subject to the control of the executive and cannot therefore be regarded as an independent judicial authority competent to issue European arrest warrants.
- In **2019**, the German judicial authorities prevented the judicial authorities of Member States from refusing to surrender arrested persons on the basis of a judgment of the Court of Justice by **re-validating 2.379 EAWs previously issued by public prosecutors.**

The concept of issuing authority

- The Court also examined the **Swedish, Belgian** and **French** public prosecution authorities in relation to the classification of 'issuing authorities' and found that all three Member States had established that authority' and found that in all three Member States, the prosecutors were **independent**, as they performed their duties without instructions in individual cases and the minister could only issue general criminal policy instructions to them.
- XD-ügy (Openbaar Ministerie vs. XD), C-625/19., JR és YC-ügy C-566/19. PPU. és 626/19.

The concept of issuing authority

- It can be concluded that the independence of the prosecution service from the executive power and effective judicial protection are not conjunctive, but rather complementary where appropriate, substitutive conditions, and that only a thorough examination of the specific legal system of the Member State concerned can determine whether a prosecutor qualifies as a judicial authority within the meaning of the Framework Decision.

Examination of proportionality

- Framework Decision 2002/584/IB only mentions in its preamble that the framework decision **does not go beyond what is necessary to achieve that objective**, in accordance with **the principle of proportionality**:
 - the **seriousness of the crime** (based on, for example, the extent of the damage or danger caused);
 - the **likely punishment** if the person is found guilty
 - for **the acts charged** (e.g. whether a custodial sentence involving a period of imprisonment is likely in the case in question);
 - the likelihood that the **person will be detained after surrender** in the issuing Member State;
 - the **interests of the victims of the offence**

- Fine, public work punishment, suspended imprisonment - NO
- Proposed sanction in case of waiver of trial in the indictment – NO
- Collection of crimes in different indictments – NO
- Hungarian legislative solution: only imprisonment to be executed

Multiple requests (multiple European arrest warrants in parallel)

- It must first be examined whether they were issued by the **same Member State or by two or more Member States**.
- Two or more European arrest warrants issued by two or more Member States, the **competent authorities of the Member States concerned shall communicate and cooperate with each other**.
- What impact the decision will have on criminal proceedings in Member States, **which criminal proceedings will be slowed down greater loss**.
- It must also be examined whether any **Member State has fundamental objections to further surrender**. The seriousness of the acts must then be assessed, followed by the **time of perpetration** and, finally, the **place of perpetration**.

Considerable reasons of refusal

- a) the act is **not a criminal offence** under the law of the **executing Member State** – except taxes and state incomes
- b) **ongoing procedure** for the same crimes in the executing Member state
- c) a **final decision has been taken** in a Member State against the person sought for the same crimes which is obstacle of further criminal proceedings
- d) under the law of the executing Member State, the **offence is no longer punishable or the penalty has been extinguished** (statute of limitation)
- e) has been convicted by a **final judgment of a third State for the same acts**

Hungarian experiences

1. driving a vehicle without a driving licence or with an invalid technical inspection certificate is still not a criminal offence in Hungary
2. Hungary should deny, for example, the bankruptcy offences committed in Germany where the managing director, having realised that the company was insolvent, did not initiate bankruptcy or liquidation proceedings.
3. Often the issuing authority was not even aware of the proceedings in the executing Member State, which raises the question of whether it will maintain the arrest warrant at all.
 - The court of the issuing Member State should therefore be asked whether the arrest warrant is still valid.
 - If the arrest warrant is no longer valid, the executing Member State should be requested to return the person to the issuing Member State or to release him or her.

- There is no official register from which Hungarian or other Member State authorities can ascertain whether a person has been acquitted of a criminal offence, whether proceedings against them have been discontinued or whether the complaint has been dismissed. This can lead to extraordinary legal remedies, even in domestic criminal proceedings without any international element, due to double jeopardy, especially if the defendant is absent and there is no one to indicate what decision has been taken by another court that is not included in the criminal record.

"Apocryphal" grounds for refusal

- Aranyosi and Caldaru, Varga and Others v. Hungary (14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13)
 - due to the characteristic overcrowding of penal institutions, it violated the fundamental rights of the complainants
 - The ECtHR has also established a standard according to which all detainees must be provided with their own sleeping space in the cell, which must be at least 3 m²
- ML case (Generalstaatsanwaltschaft case, C-220/18.)
 - execution of a prison sentence imposed on a Hungarian convict brought before the German court, 78 questions on the conditions of Hungarian penal institutions.

- Luca Menci case, C-524/15
 - Rule of law, Hungary
- L and P case, C-412/20
 - Rule of law, Poland
- The courts of the United Kingdom have often shown a noticeable lack of confidence in the European arrest warrant and the decision of the issuing Hungarian court.



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

Camille Rollin

Legal Aid in criminal matters in France

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TRAVAR PROJECT – Notes on Legal Aid in Criminal Matters in France

Introduction to Legal Aid

Legal aid is a fundamental mechanism guaranteeing access to justice for disadvantaged individuals. It allows anyone without sufficient resources to be assisted by a lawyer and to have their legal costs covered, in whole or in part, by the State. This system aims to ensure the right to a fair trial and the effective participation of the accused in criminal proceedings.

International and European Legal Framework

- **European Convention on Human Rights (ECHR):** Article 6 guarantees the right to legal assistance, free of charge if the person cannot afford it, when the interests of justice so require.
- **Charter of Fundamental Rights of the EU:** Articles 47 and 48 reinforce these principles, ensuring effective access to justice and the presumption of innocence.
- **Directive (EU) 2016/1919:** By establishing common minimum rules regarding the right to legal aid for suspects, accused persons, and persons subject to surrender proceedings, this directive aims to strengthen the trust of Member States in the criminal justice systems of other Member States and, consequently, to facilitate the mutual recognition of decisions in criminal matters.

Transposition into French Law

France already had a developed system, but the transposition of the European directive led to:

- Clarification of the granting criteria (financial resources, seriousness of the case, complexity of the file).
- Acceleration of the processing of applications, especially during police custody or immediate appearance.
- Strengthening the information provided to litigants about their rights.
- Guaranteeing an effective remedy in case of refusal of aid.

Eligibility Criteria for Legal Aid

1. **Means Test:**
 - Thresholds revised annually
 - Consideration of dependents and exclusion of certain social benefits from the calculation.
 - Beneficiaries of certain social benefits are presumed eligible.
2. **Absence of Legal Protection Insurance** covering the dispute.
3. **Nationality and Residence:**
 - Available to French nationals, EU citizens, or foreigners habitually and legally residing in France.
 - Exceptions for certain proceedings
4. **Admissibility and Seriousness of the Application:**

- The case must not be manifestly inadmissible or unfounded.
5. **Nature of the Proceedings:**
- Legal aid can be requested for most judicial proceedings, whether civil, criminal, or administrative.
6. **Special Situations:**
- Certain individuals (e.g. victims of serious crimes, minors) may receive aid without a means test.

Application Procedure

- Submission of a CERFA form with supporting documents to the legal aid office (BAJ) of the competent court.
- Decision is usually rendered within 2 to 4 months, more quickly in urgent cases.

Role and Remuneration of the Lawyer

- Lawyers registered on specific lists agree to be appointed to assist legal aid beneficiaries.
- Fixed remuneration by the State according to a scale set by decree
- No additional fees may be requested from the client, except in the case of partial legal aid.

Current Challenges

- **Quality of Defense:** Low remuneration and heavy workloads can affect the quality of assistance.
- **Effective Access:** Obstacles persist, especially outside major cities.
- **Big-scale cases:** French legal aid system is not quite adapted to big scale cases with a lot of victims.

Conclusion

Legal aid is a cornerstone of equality before the law. Despite European progress, further efforts are needed to ensure rapid, effective, and high-quality access to defense for all.