



# Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

Prof. Dr. Karsai Krisztina, DSc

University of Szeged; Faculty of Law

## MODULE 2

### Shaping Factors for the Area of Freedom, Security and Justice

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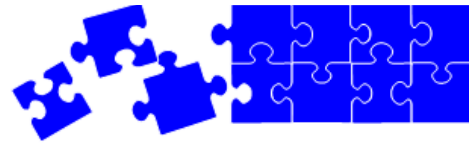
#### Reading Lecture 7

#### GREEN BADGE – Procedure & Rights

##### 1. In this lecture you will learn about...

- the dynamic of the evolution within the AFSJ (justice and home affairs),
- the criteria of the development (from the traditional point of view of criminal justice being a closed national system) and
- the roadmap for strengthening the procedural rights of the citizens.

**Learning time – approximately 2 hours**



# Criteria of Europeanization



union law

unfolding the legal relationship between EU law and national criminal law



functional integration

protecting EU supranational interests through criminal law



ius puniendi

development of supranational ius puniendi



competence gaining at supranational level

extension of justice and home affairs competencies in the supranational framework



cooperation in criminal matters

facilitation and juridification of cooperation between MS



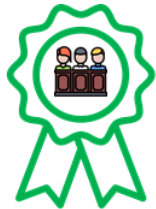
procedural law & fundamental rights

approximation of criminal procedure; fundamental rights context; European standards



## 2. Green Badge

Read the following text!



procedural law & fundamental rights

approximation of criminal procedure; fundamental rights context; European standards

The main components of the current Area of Justice have been demonstrated in Module 1 RL 5. by analysing the development from a historical perspective, we can identify the milestones that have led to the acknowledgement of **procedural rights** at a European level and the expansion of the **protection of human rights** related to criminal procedure. These are the milestones with a green badge as they are essential in the policy development of the EU because the inclusion of these institutions in the supranational governance of the EU mirrors the development of the EU approaching a value community – the shift from an economical to a political union.

Read the following text!

## 3. Procedural rights

The EU works to ensure that the basic rights of suspects and accused persons are protected. **Common minimum standards are necessary** for judicial decisions taken by one EU country to be recognised by the others. To turn this area of justice based on mutual recognition and mutual trust into reality, the European Commission is continuously



working on strengthening citizens' rights in criminal proceedings. When designing and implementing criminal law, it is important for the EU **to strike the right balance** between on one hand, measures that protect the rights of suspects and accused and on the other, facilitating investigation and prosecution of crime.<sup>1</sup>

Mutual recognition presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. For the purpose of enhancing mutual trust within the European Union, it is important that, complementary to the Convention, there exist European Union standards for the protection of procedural rights which are properly implemented and applied in the Member States.

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

RESOLUTION OF THE COUNCIL

of 30 November 2009

on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings

(Text with EEA relevance)

(2009/C 295/01)

The Council stated in its resolution that

*“recent studies show that there is wide support among experts for European Union action on procedural rights, through legislation and other measures, and that there is a need for enhanced mutual trust between the judicial authorities in the Member States (1). These sentiments are echoed by the European Parliament (2). In its Communication for the Stockholm programme (3), the European Commission observes that strengthening the rights of defence is vital in order to maintain mutual trust between the Member States and public confidence in the European Union. Furthermore discussions on procedural rights within the context of the European Union over the last few years have not led to any concrete results. However, a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual. Efforts should be deployed to strengthen procedural guarantees and the respect of the rule of law*

<sup>1</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/rights-suspects-and-accused\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/rights-suspects-and-accused_en)



*in criminal proceedings, no matter where citizens decide to travel, study, work or live in the European Union.”<sup>2</sup>*

Based on the roadmap, much progress has been made to date, as the EU has adopted **6 directives on procedural rights** for suspects and accused persons. The EU established rules on the right to information<sup>3</sup> which applies across the EU since 2 June 2014, the right to interpretation and translation<sup>4</sup> which applies across the EU since 27 October 2015, right to have a lawyer,<sup>5</sup> which applies across the EU since 27 November 2016, the right to be presumed innocent and to be present at trial,<sup>6</sup> special safeguards for children suspected and accused in criminal proceedings<sup>7</sup> and the right to legal aid.<sup>8</sup>

Check the content of the directives in the following summaries.

Directive 2012/13/EU	The directive covers <b>the right to information of suspects and accused persons</b> regarding their rights in criminal proceedings and the accusation against them, and the right to information of persons subject to a European arrest warrant regarding their rights. This includes the provision of a "letter of rights" on arrest or when subject to European arrest warrant proceedings and the right of access to materials of the case.
Directive 2013/48/EU	The directive covers <b>the right of access to a lawyer</b> in criminal proceedings and for those subject to a European arrest warrant; the right to have a third party informed of deprivation of liberty; and the right to communicate with third persons and with consular authorities while deprived of liberty.

<sup>2</sup>[https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2009:295:TOC&uri=uriserv:OJ.C\\_.2009.295.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2009:295:TOC&uri=uriserv:OJ.C_.2009.295.01.0001.01.ENG)

<sup>3</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

<sup>4</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings

<sup>5</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

<sup>6</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

<sup>7</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

<sup>8</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings



Directive (EU) 2016/343	The directive covers <b>the presumption of innocence</b> for natural persons only; restrictions on public references to, or indications of, guilt of suspects or accused persons; the right to remain silent and the privilege against self-incrimination; and the right to be present at trial.
Directive (EU) 2016/800	The directive applies to children, who are defined as those under the age of 18. It <b>covers the rights to information of the child</b> and the party with parental responsibility for her/him; a significant number of other rights (e.g. to legal assistance, medical examination, audio-visual recording of questioning, limitations on deprivation of liberty, protection of privacy); and the right to be accompanied by the party with parental responsibility.
Directive (EU) 2016/1919	The directive establishes minimum rules <b>regarding the right to legal aid for suspects and accused persons</b> in criminal proceedings, and for persons subject to a European arrest warrant. Member States must ensure that the particular needs of vulnerable persons are taken into account in its implementation. The directive states explicitly that Member States may apply a means test, a merits test, or both in decisions regarding the granting of legal aid.
Directive 2010/64/EU	The directive covers <b>the rights to interpretation and to translation</b> of "essential documents" in criminal proceedings and proceedings for the execution of a European arrest warrant. Costs are to be met by the Member State, regardless of outcome.

<https://www.youtube.com/watch?v=Q1WG5zDy458>

**Watch the video!**



#### 4. Questions for review

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1. What is the mentioned roadmap about?
2. What are the results of the program of the roadmap?
3. Does the right to remain silent belong to the presumption of innocence?
4. Upon whom does the burden of proof rest in a criminal procedure? What does it mean?

#### References

<http://www.ejtn.eu/Documents/About%20EJTN/Criminal%20Justice%202018/CR201804-Vilnius/Guide%20to%20directives.pdf>



[https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2009:295:TOC&uri=uriserv:OJ.C\\_.2009.295.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2009:295:TOC&uri=uriserv:OJ.C_.2009.295.01.0001.01.ENG)

[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/rights-suspects-and-accused\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/rights-suspects-and-accused_en)

### ***Further Readings***

Cornelia Riehle – Allison Clozel: 10 years after the roadmap: procedural rights in criminal proceedings in the EU today. ERA Forum 20, 321-325 (2020)

<https://doi.org/10.1007/s12027-019-00579-5>

<https://link.springer.com/article/10.1007/s12027-019-00579-5>

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