



INSTITUTE FOR EUROPEAN LAW



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Closing Academic Year Event on the EU Directives on Procedural Rights in Criminal Matters

Almost 15 years after the Roadmap, where do we stand, where do we go?

29 June 2023 – 5 p.m. – 7 p.m.

Location: KU Leuven – Campus Brussels (hybrid)

Introduction

In its Resolution of 30 November 2009, the Council adopted the Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings. The Roadmap contains a step-by-step approach, whereby the Commission had to submit proposals for measures relating to several fundamental procedural rights.¹ The Roadmap was endorsed by the Europe Council in the Stockholm Programme of 11 December 2009. In the latter, the European Council stressed that the protection of the rights of suspected and accused persons in criminal proceedings is a fundamental value of the Union, ‘which is essential in order to maintain mutual trust between the Member States and public confidence in the European Union’.² The respect of fundamental rights by the Member States is considered the bedrock for mutual trust. The fact that all Member States are parties to the ECHR was deemed insufficient to ensure mutual trust in each other’s criminal justice systems. This was due to the varying, but also inadequate, levels of respect for the fundamental rights enshrined in the ECHR in some Member States. That same year, the Lisbon Treaty entered into force and provided a specific legal basis (Article 82(2)(b) TFEU) which empowers the EU to adopt minimum rules on the rights of individuals in criminal procedure.

Since then, six directives on procedural rights have been adopted whose common goal is to lay down common minimum rules on the rights of suspects and defendants in the EU and to facilitate the application of these rights. They concern the right to interpretation and translation, the right to information, the right of access to a lawyer and the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities, the right of presumption of innocence and the right to be present at the trial, procedural safeguards for children who are suspects or accused persons in criminal proceedings, and the right to legal aid.

The adoption of the procedural rights directives contributes to a more value-based EU criminal law, along with the Charter of Fundamental Rights. The latter includes provisions on the right to an effective remedy and a fair trial (Art. 47) and on the presumption of innocence and the rights of the defence (Art. 48).³ While the new legislative strata of EU rights are supposed to ensure adequate protection of fundamental rights in the EU Member States, they also pose many challenges in the context of the multi-layered system of fundamental rights that

¹ Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, 1–3.

² Stockholm Programme – An open and secure Europe serving and protecting the citizens, December 2009.

³ E. Sellier and A. Weyembergh, ‘Introduction’, in E. Sellier and A. Weyembergh (eds), *Criminal Procedures and Cross-Border Cooperation in the EU Area of Criminal Justice*, Editions de l’Université de Bruxelles, 2022, 16.

is Europe. Before being safeguarded in the Charter and in EU legislation, procedural rights were enshrined in national legal systems and in the European Convention on Human Rights. EU legislation threatens to create new tensions and inconsistencies between the different layers of procedural rights in Europe, without enhancing the protection of fundamental rights. Fifteen years after the Roadmap, one may ask what the directives have added to the protection of procedural rights in Europe and how they have been articulated with the existing layers of procedural rights.

This Closing Academic Year Event proposes to look back and forward at these legislative developments. In particular, the speakers have been invited to reflect on three themes.

First, Irene Wieczorek will discuss the nature of the directives, their level of harmonisation and the relationship with the EU Charter of Fundamental Rights. The six directives establish minimum standards to be directly implemented in the Member States without other connection with EU law since they do not require the presence of a cross border element or of other substantial criminal rules. This is relevant from the perspective of EU fundamental rights, also because the content of these acts of secondary law overlaps with that of some articles of the Charter.⁴ The question that arises therefore is: How has the CJEU dealt with these directives? Do they have a potential to enlarge the scope of EU law? What are the consequences of the overlapping of fundamental rights in the directives and the Charter?

Second, Michele Panzavolta will examine the challenges arisen from the implementation of the directives at national level. In a report of March 2021 on the directive on the presumption of innocence, the Commission expressed its discontent with regard to its implementation in several Member States.⁵ Following to that, in September 2022 it announced the activation of several infringement proceedings for failure to correctly or fully transpose two of the six directives.⁶ The presentation will therefore answer to the following questions: what are the challenges in the implementation of the Directives at national level and what is their added value for procedural criminal laws of the Member States?

Third, Nasiya Daminova will explore the cross-influences and interactions between the procedural rights and the ECHR. At ECHR level, there is extensive ECtHR case-law on the safeguards protected under the procedural rights directives. This case-law relates primarily to the right to a fair trial, which is enshrined in Article 6 ECHR. The procedural rights directives incorporate and codify to a large extent the safeguards of the ECHR and the ECtHR case-law. However, they also contain a number of innovative features compared to the latter. The presentation will look at the following questions: What is the relationship between the EU

⁴ Sara Iglesias Sanchez, “The Scope of Application of EU Fundamental Rights in the Area of Freedom, Security and Justice”, in Sara Iglesias Sanchez and Maribel Gonzalez Pascual (eds), *Fundamental Rights in the Area of Freedom Security and Justice*, Cambridge, CUP, 2021, 36.

⁵ Report from the Commission to the European Parliament and the Council, on the implementation of 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, COM(2021) 144 final, [here](#)

⁶ Press Release, September Infringements package: key decisions, 29 September 2022, [here](#).



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procedural rights directives and the ECHR? How do the ECJ and the ECtHR take these instruments into account in their respective case law?

Fourth, Anna Mosna will assess the applicability of criminal defence rights in administrative punitive proceedings. As the division between criminal law and administrative law fades, core criminal procedural safeguards are being increasingly extended to administrative proceedings leading to sanctions of, essentially, criminal nature. In early 2021, the CJEU handed down a judgement in the *DB v. Consob* case extending the right to silence as enshrined in the Charter and in the ECHR to administrative punitive proceedings. Reflecting on this case-law, this presentation addresses the following questions: What features require an extension of defence rights also to administrative punitive proceedings? To what extent do fundamental rights of the Charter and the ECHR apply in this context? What scope of application do defence rights as enshrined in the Roadmap Directives have?

Programme

- 17h00 **Ilaria Gambardella and Victor Davio** (KU Leuven)
Introduction
- 17h10 **Irene Wieczorek** (Durham University) – *online*
How has the CJEU dealt with these directives? Do they have a potential to enlarge the scope of EU law? What are the consequences of the overlapping of fundamental rights in the directives and the Charter?
- 17h30 **Michele Panzavolta** (KU Leuven)
Procedural rights directives 2.0. Some reflections on the logic, limits and future of harmonisation of procedural rights by means of directives
What are the challenges in the implementation of the Directives at national level and what is their added value for procedural criminal laws of the Member States? Will these Directive suffice to ensure defence rights protection vis-à-vis new challenges of digitalisation? Is further harmonisation necessary?
- 17h50 **Nasiya Daminova** (Tampere University)
What is the relationship between the EU procedural rights directives and the ECHR? How do the ECJ and the ECtHR take these instruments into account in their respective case law?
- 18h10 **Anna Mosna** (KU Leuven)
Roadmap beyond criminal law: what defence rights in administrative punitive proceedings?
What features require an extension of defence rights also to administrative punitive proceedings? To what extent do fundamental rights of the Charter and the ECHR apply in this context? What scope of application do defence rights as enshrined in the Roadmap Directives have?
- 18h50 **Élise Muir** (KU Leuven) *Conclusion*