

Procedural Safeguards in Criminal Justice: the EU's Roadmap

prof. Raimundas Jurka
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Contents of Presentation

1. General outlines on the EU's roadmap on procedural guarantees;
2. Approximation (harmonization) of different legal provisions in criminal proceedings regarding procedural safeguards;
3. Current procedural guarantees:
 - 3.1. Right to translation and interpretation;
 - 3.2. Information on Rights and Information about the Charges;
 - 3.3. The right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest;
 - 3.4. Other guarantees...

1. General outlines on the EU's roadmap on procedural guarantees

1.1. Stockholm Programme (2010), which includes RESOLUTION OF THE COUNCIL of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (2009/C 295/01) - *as the legal ground.*

1.2. Subpar. 2.4 of Stockholm Programme – the procedural rights of suspects and accused persons must be protected during criminal proceedings. This will help ensuring mutual confidence in the justice area of EU between its citizens... - *as the goal of this measure.*

1.3. EU's Roadmap – to implement for the period of 2010-2014 and its *status quo* goal – to simplify, approximate or even unify the legal provisions of national criminal procedure rules – *as the ambition of and after Lisbon Treaty (Art. 82).*

1. General outlines on the EU's roadmap on procedural guarantees

1.4. The administration of justice must not be impeded by unjustifiable differences between the Member States' judicial systems: criminals should not be able to avoid prosecution and prison by crossing borders and exploiting differences between national legal systems.

1.5. A solid common European procedural base is needed...

1.6. Historically – the EU's Roadmap – *revived continuation* of the initiatives of Commission of 2003-2004 period. Commission delivered Proposal for a COUNCIL FRAMEWORK DECISION on certain procedural rights in criminal proceedings throughout the European Union. ***But...***

1.7. ...this Commission's Proposal became *unattractive* whereas member states got the point – it is impossible to “home” all procedural rights guarantees in one document.

1. General outlines on the EU's roadmap on procedural guarantees

1.8. *Getting back to EU's Roadmap* – this is the mechanism, that makes preconditions to face provisions of EHRC, EU Charter of Fundamental Rights and approximate national judicial practice of member states (M., Jimeno – Bulnes, 2010).

1.9. From EU's Roadmap to Europe of Rights...

1.10. A solid common European procedural base is needed... *because* the "...EHRC role is weakening..." (B.M., Spronken, D. L. F., de Vocht, 2011).

1.11. International Conference on the 7th of June, 2012 (Brussels): discussions – what is the problem with EHRC and the need of EU's Roadmap? *Answer* – member states are not able to cope with the violations of EHRC provisions...

1. General outlines on the EU's roadmap on procedural guarantees

1.12. ...*because* the national legal acts of certain member states really differ.... Especially concerning procedural rights and freedoms of criminal procedure participants...

1.13. So, the EU's Roadmap's mission is:

- i. Creation of common minimum standards for ensuring procedural rights;*
- ii. Approximation of different legal provisions in criminal proceedings regarding procedural safeguards;*
- iii. Eliminating essential differences between the legal status (rights, freedoms and duties) of suspects, defendants in national legal systems...*
- iv. Reducing the numbers of petitions to EHRC;*
- v. Strengthening of the principle of MUTUAL RECOGNITION;*
- vi. Making similar rules of the "game", but no effect of CORPUS JURIS system, that was proposed in 1997.*

1. General outlines on the EU's roadmap on procedural guarantees

1.14. The EU's Roadmap's includes:

i. Measure A: Translation and Interpretation

The suspected or accused person must be able to understand what is happening and to make him/herself understood. A suspected or accused person who does not speak or understand the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspected or accused persons with hearing impediments.

ii. Measure B: Information on Rights and Information about the Charges

A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a Letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings.

1. General outlines on the EU's roadmap on procedural guarantees

1.14. The EU's Roadmap's includes:

iii. Measure C: Legal Advice and Legal Aid

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.

iv. Measure D: Communication with Relatives, Employers and Consular Authorities

A suspected or accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty, it being understood that this should not prejudice the due course of the criminal proceedings. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than his or her own shall be informed of the right to have the competent consular authorities informed of the deprivation of liberty.

1. General outlines on the EU's roadmap on procedural guarantees

1.14. The EU's Roadmap's includes:

v. Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable

In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition.

vi. Measure F: A Green Paper on Pre-Trial Detention

The time that a person can spend in detention before being tried in court and during the court proceedings varies considerably between the Member States. Excessively long periods of pre-trial detention are detrimental for the individual, can prejudice the judicial cooperation between the Member States and do not represent the values for which the European Union stands. Appropriate measures in this context should be examined in a Green Paper.

2. Approximation (harmonization) of different legal provisions

2.1. Approximation (harmonization) of different legal provisions on procedural safeguards should be understood as *elimination* of *disparate elements* in national criminal procedure laws.

2.2. This *elimination* goes together with another one – *creating similar provisions* – similar provisions on the right to translation, right to defense, right to know accusations,. etc.

2.3. EU's law *implantation* into National law is not the mechanic one. All this procedures depend on Constitutional system, traditions and other issues...

2.4. Approximation of national rules strengthens the principle of Mutual Recognition as the “corner stone” of cooperation between member states (*for instance – free movement of evidence in Europe, etc....*).

3. Current procedural guarantees:

3.1. Right to translation and interpretation

3.1.1. 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.

3.1.2. This Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

3.1.3. Art. 1: when this right starts working and what is the nature of legal proceedings this right must be implemented.

Art. 2: what are the procedural actions during which this right must be implemented; interpretation should be made while defense lawyer and his/her client is communicating (*protection of communication secret?*); the test for defining the level of understanding criminal proceedings language (*is it necessary?*); right to challenge the quality of translation and interpretation.

3. Current procedural guarantees:

3.1. Right to translation and interpretation

Art. 3: right to obtain translated documents within a reasonable time; the question of discretion what essential procedural documents should be translated (*possible abuse from the state?*); procedural document could be translated partly as well if current part is not important (*the document is integral*).

Art. 4: Member States shall meet the costs of interpretation and translation, irrespective of the outcome of the proceedings.

3. Current procedural guarantees:

3.2. Information on Rights and Information about the Charges

3.2.1. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

3.2.2. This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.

3.2.3. Art. 2: when this right starts working and what is the nature of legal proceedings this right must be implemented.

Art. 3: right to get the minimum scope of information as soon as possible, i.e.: right to lawyer; free legal consultations; right to be informed about the charges; right to translation and interpretation; right to silence (*this is minimum scope, but possible higher level of protection in national law*)

3. Current procedural guarantees:

3.2. Information on Rights and Information about the Charges

Art. 4: right to information after being arrested or detained; this information must be provided promptly including these rights as well (in addition to information, set out in Art. 3):

- *right of access to the materials of the case;*
- *right to have consular authorities and one person informed;*
- *right to urgent medical assistance;*
- *right to find out the duration of coercive measures against him/her;*
- *right to appeal decisions on making arrest, etc.*

Art. 6: right to information about the accusation must be implemented:

- *promptly, in details for exercising effective defence;*
- *to know the reasons and grounds of the decision to arrest or detain;*
- *right to know the time, scope and the reasons of changing accusations.*

3. Current procedural guarantees:

3.2. Information on Rights and Information about the Charges

Art. 7: right of access to the materials of the case.

(discussion – the problem of accessing the materials of the case. What is the procedure in current member state, what are the grounds of refusing to let accessing the materials, etc.)

Access to materials shall be provided free of charge.

3. Current procedural guarantees:

3.3. The right of access to a lawyer in criminal proceedings...

3.3.1. Discussion on provisions on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.

3.3.2. **Objective** – lays down rules concerning the right of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Council Framework Decision 2002/584/JHA to have access to a lawyer and to communicate upon arrest with a third party.

3.3.3. **Scope** – provisions applies from the time a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he 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 the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal (*discussion – when this right really starts working?*).

3. Current procedural guarantees:

3.3. The right of access to a lawyer in criminal proceedings...

3.3.4. The right of access to a lawyer in criminal proceedings – *when it starts?*

3.3.5. Content of the right of access to a lawyer – *different in Member States?*

3.3.6. The right to communicate upon arrest – *are there any interferences from the state?*

3.3.7 Confidentiality – *the scope? What is the key-moment of time, when the secret begins?*