THE 20TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The Implementation of European Directives in Criminal Procedure: Legal Framework, Challenges and Perspectives

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Abstract: The implementation of European Union directives in the field of criminal procedure represents a crucial process for harmonizing national legislation and strengthening a European area of justice. This article analyzes the legal foundations of transposing directives into domestic law, the manner of their integration into Romanian criminal procedural legislation, the practical obstacles encountered, as well as the effects on international judicial cooperation and the protection of fundamental rights. This process aims to ensure minimum procedural safeguards for individuals involved in criminal proceedings, particularly for suspects and defendants, in the spirit of protecting fundamental rights.

Keywords – directive; criminal procedure; trial; law; European protection

1. Introduction

In the context of European integration and the strengthening of a common area of freedom, security, and justice, the harmonization of national legislation with European Union law has become a major imperative for the Member States. In the field of criminal law, this harmonization goes beyond criminalization and sanctions, extending significantly to the procedures through which these norms are applied. As such, European directives in the field of criminal law especially those regulating the procedural rights of suspects and accused persons play a crucial role in the standardization and balancing of criminal justice systems within the Union.

In recent years, the European Union has adopted a series of directives aimed at strengthening the fundamental rights of individuals involved in criminal proceedings, such as the right to a fair trial, access to a lawyer, the right to information, translation and interpretation, and the protection of vulnerable persons. These legal instruments represent an important step toward a criminal justice system centered on the individual and on the respect for human dignity, regardless of national borders.

However, the transposition and implementation of these directives into the domestic law of the Member States, including Romania, pose numerous legal, institutional, and practical challenges. From adapting

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the national legal framework to meet the new European requirements, to providing professional training for judges and auxiliary staff, judicial systems are facing a complex process of reform and adaptation.

This paper aims to provide a detailed analysis of the legal framework governing the implementation of European directives in criminal procedure, to highlight the challenges encountered in the transposition and effective application process, and to explore the perspectives opened by this legislative and institutional dynamic, both nationally and at the European level. Through a critical and analytical approach, the study seeks to identify the most relevant difficulties encountered in practice and to formulate possible solutions or directions for future development.

2. The European Regulatory Framework on Procedural Rights

Over the last decade, the European Union has shown an increasing interest in guaranteeing minimum standards of procedural rights in criminal proceedings, in order to ensure a uniform level of protection of citizens' fundamental rights. This legislative approach is essential for the effective functioning of the principle of mutual recognition of criminal judgments between Member States and for strengthening mutual trust between their judicial authorities.

a. Legal Basis

The legal basis for the adoption of directives in the field of criminal procedural law is Article 82(2) of the Treaty on the Functioning of the European Union (TFEU). It allows for the establishment of minimum standards of rights of individuals in criminal proceedings, "in so far as is necessary to facilitate the mutual recognition of judgments and judicial decisions" (Art. 82(2) TFEU).[1]

b. Roadmap for Strengthening Procedural Rights

A key moment in normative development was the adoption in 2009 of the Roadmap on strengthening procedural rights of suspects and accused persons in criminal proceedings (Council of the EU, Document 16797/09 – Roadmap on procedural rights in criminal proceedings, 2009). This roadmap identified a series of fundamental rights that were to be regulated at the European Union level through separate legislative instruments. Thus, the European Commission and the Council prioritized six essential procedural rights:

• the right to translation and interpretation;

• the right to information;

• the right to legal assistance;

• the right to communicate with relatives and employer;

• the protection of vulnerable persons;

• and the right to remain silent and not to incriminate oneself.

c. Main European Directives on the Subject

To date, several relevant directives have been adopted, which form the backbone of the European regulatory framework on procedural rights in criminal matters:

• Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings;

[1] Available online: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A12012E%2FTXT).

• Directive 2012/13/EU on the right to information in criminal proceedings;

• Directive 2013/48/EU on the right of access to a lawyer and the right to communicate upon arrest;

• Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and the right to be present at trial;

• Directive (EU) 2016/800 on special safeguards for minors suspected or accused in criminal proceedings;

• Directive (EU) 2016/1919 on free legal aid for suspects or accused persons.

These instruments aim to create a coherent system of protection of fundamental rights in criminal proceedings, based on the standards of the ECHR, but also with some of their own developments in the context of EU law.

d. Relationship with the European Convention on Human Rights (ECHR)

Although EU directives are based on the rights enshrined in the Charter of Fundamental Rights of the European Union, they are also directly influenced by the case law of the European Court of Human Rights (ECHR). For example, the right to remain silent and the presumption of innocence are enshrined in both Strasbourg case law and EU law, but with specific nuances.

This overlap of legal systems requires a coherent interpretation, and the Court of Justice of the European Union (CJEU) plays an essential role in harmonizing the application of directives at Member State level.

e. Obligation of Transposition and Direct Applicability

Member States are obliged to transpose directives into national law within a certain period. Although directives do not have full direct applicability (unlike regulations), under certain conditions, some provisions may have vertical direct effect, if they are sufficiently clear and unconditional, in relation to state authorities.

3. Transposition of the Directives into Romanian Criminal Procedure

Romania has transposed these Directives mainly through amendments to the Code of Criminal Procedure and other complementary normative acts. A relevant example is the transposition of Directive 2012/13/EU, which introduced into national law the obligation to inform the suspect or defendant of his or her rights, from the criminal investigation stage.

As regards Directive 2010/64/EU, this led to the introduction of clear provisions on the right to translation and interpretation, including the obligation to translate essential documents – the arrest warrant, the indictment, the court decision – into a language that the person concerned understands (Art. 12-13 of Law no. 302/2004 on international judicial cooperation in criminal matters).

Another significant example is Directive 2013/48/EU, which was transposed by guaranteeing effective access to a lawyer and by regulating confidential communication between the lawyer and the client, even during detention or pre-trial detention (Art. 89 CPP: Right to defence and to consult a lawyer).

4. Problems and Challenges in the Application of the Directives

Although Romania has formally implemented the transposition, the practical application of the European directives raises numerous difficulties:

• Unequal access to interpretation and translation, especially in remote areas or in the case of less widely spoken languages;

• Inadequate training of judicial personnel, who sometimes do not fully know the content of the directives and the rights conferred by them;

• Lack of uniformity in judicial practice, especially regarding the exact moment of informing the suspect or appointing a lawyer ex officio;

• Insufficient financial resources, which affect the state's capacity to ensure quality interpretation and efficient legal assistance.

5. Implications for Judicial Cooperation

Judicial cooperation in criminal matters between the Member States of the European Union is based on the principle of mutual recognition of judicial decisions, established as a "cornerstone" of the construction of a European area of criminal justice (Communication from the Commission to the European Parliament and the Council on the mutual recognition of decisions in criminal matters, COM(2005) 195 final). In this context, the harmonisation of the procedural rights of suspects and accused persons plays an essential role for the efficient and fair functioning of this cooperation mechanism.

a. Increasing Mutual Trust Between Judicial Authorities

One of the most important implications of the implementation of the directives on procedural rights is the strengthening of mutual trust between the judicial authorities of the Member States. This trust is the basic condition for a Member State to accept, for example, the execution of a European arrest warrant (EAW) issued by another State (Art. 1(2) of Framework Decision 2002/584/JHA on EAW).

In the absence of a common regulatory framework guaranteeing the effective protection of fundamental rights, the occurrence of refusals of execution or requests for additional information is inevitable. Thus, uneven transposition or poor application of the directives can seriously affect the efficiency of cooperation.

b. Standardization vs. Procedural Sovereignty

The directive does not standardize national criminal laws in full, but imposes common minimum standards. In practice, however, this partial standardization has generated tensions between the procedural sovereignty of the States and the need for regulatory convergence. Member States have had to adapt their national procedures to comply with the new procedural rights, which has required not only legislative changes but also logistical and financial reorganisation of the judicial systems (Douglas-Scott, 2011).

Some states have perceived this as an interference in their criminal justice system, and transposition has sometimes been formal or incomplete (Fair Trials International, The Road Ahead: The EU's Agenda on Procedural Rights, 2018), which can lead to inequalities between citizens depending on the Member State in which they are tried.

c. Impact on Cooperation Instruments (e.g. EAW, EIO)

Among the most affected cooperation mechanisms are:

• European Arrest Warrant (EAW): several cases before the CJEU and national courts have raised the issue of refusal of surrender in situations where there are suspicions that the fundamental rights of the person sought would not be respected in the issuing State.

• European Investigation Order (EIO): uneven implementation of the directives may call into question the validity and legality of evidence obtained in one state and used in another (Bunyan, 2012).

Therefore, procedural incompatibility between Member States, in the absence of effective application of the directives, may affect the probative value of evidence or the automatic recognition of judgments.

d. The role of the CJEU and Case-Law Convergence

The Court of Justice of the European Union (CJEU) has played an essential role in clarifying and strengthening the principles of judicial cooperation, including by establishing limits to mutual recognition in cases where fundamental rights risk being violated. Cases such as Aranyosi and Caldararu or Dorobantu have highlighted that procedural rights cannot be sacrificed in the name of the efficiency of cooperation (Brière & Weyembergh, 2018).

This jurisprudence has imposed on states the obligation to verify detention conditions, access to a lawyer and other fundamental rights, which implies an individualised assessment and can lead to a slowdown in the cooperation process.

e. Prospects: Towards Rights-Based Cooperation

In the long term, the full and coherent implementation of European directives can transform criminal judicial cooperation from a technical mechanism into a system based on common values, in particular respect for human dignity, the rule of law and human rights. Strengthening judicial networks, such as Eurojust, and deepening the professional training of magistrates in EU law are essential conditions for the success of this process (Ligeti & Robinson, 2014).

6. Conclusion

The implementation of European directives in criminal procedure is a continuous and complex process, which involves not only legislative amendments, but also a paradigm shift in the domestic legal culture. Formal transposition must be accompanied by effective enforcement, appropriate training of the actors involved and the provision of the necessary resources.

Compliance with European standards in criminal procedure contributes not only to the protection of the fundamental rights of citizens, but also to the strengthening of the rule of law and international judicial cooperation.

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