

*Divna Ilikj Dimoski **
*Boban Misoski***

IMPACT OF THE EU DIRECTIVES ON DEFENDANT’S RIGHTS ON THE MACEDONIAN CRIMINAL PROCEDURE: DIRECTIVE ON THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS AND DIRECTIVE ON THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDING

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Abstract

The authors of this paper discuss the impact of the EU Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings to the Macedonian criminal procedure system. They refer to the common minimum standards set in the field of information about rights and about the accusation which must be given to persons suspected or accused of having committed a criminal offence, as well as the right to interpretation and translation, to enhance mutual trust among the Member States. The benchmark these Directives establish is projected through the complex of several rights. Firstly, there is the right to information about rights for suspects or accused persons. Additional rights are recognized when suspects are arrested and detained in which case information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner to assist those persons in understanding their rights. Subsequent is the right to access to the materials of the case, conditions and limitations to its exercise and as well as the right to provide information to suspects or accused persons where necessary, with translations or interpretation into a language that they understand. Moreover, the authors are evaluating whether these standards are properly incorporated into the Law on Criminal Procedure and they provide substantial recommendations for additional changes and amendments to the law in order to achieve the abovementioned criteria into Macedonian national law.

Keywords: EU directive, suspect, right to information, Letter of Rights, right to interpretation, right to translation, criminal procedure, Law on Criminal Procedure, Republic of North Macedonia

* Divna Ilikj Dimoski, Ph.D., Associate Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Law Faculty, Department of Criminal Procedure Law, e-mail: didana_mk@yahoo.com

** Boban Misoski, Ph.D., Associate Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Law Faculty, Department of Criminal Procedure Law, e-mail: bmisoski@yahoo.com

I. THE ROAD TOWARDS A SET OF EU DIRECTIVES ON THE RIGHTS OF THE SUSPECTS IN THE CRIMINAL PROCEEDINGS

The cluster of several EU Directives¹ aims towards harmonization of the minimum rights of the suspects and accused persons during criminal proceedings. In 2000, the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters. The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other's criminal justice systems, i.e. mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own.

Although all the Member States are party to the ECHR, experience has shown that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.² Hence, in 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. The Roadmap called for the adoption of measures regarding specific rights such as: the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). Later in 2009, the European Council welcomed the Roadmap and made it part of the Stockholm Programme — An open and secure Europe serving and protecting citizen.

These directives explicitly establish the rights of the suspects and accused persons in the criminal proceedings. They encompass the minimum standard that should be met in all criminal justice systems in EU countries. These rights set out in the directives may be extended to provide a higher level of protection, which should never fall below the standards provided by the ECHR as interpreted in the case-law of the European Court of Human Rights (ECtHR).

Since, the purpose of directives is to strengthen and secure the implementation of the ECHR guarantees in criminal proceedings, in one hand by the unification of the rights and in the other, by obliging the states to transpose these directives at the national level and implement them, it appears appropriate, in that sense, to mention that the ECtHR has recognized positive obligations to develop a legal framework to adequately protect the rights guaranteed by the ECHR

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DIRECTIVE 2010/64/EU on the right to interpretation and translation in criminal proceedings, DIRECTIVE 2012/13/EU on the right to information in criminal proceedings, DIRECTIVE 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, DIRECTIVE 2013/48/EU 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, DIRECTIVE (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings and DIRECTIVE (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

² DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0013>.

(“protection by the law”). “Protection by the law”, as one could paraphrase this positive obligation, arguably is the domain in which the Convention requirements restrict the freedom to act of national legislatures in the most far-reaching way, as it prescribes states to develop both substantive and procedural guarantees to pro-actively protect Convention rights.³

II. MAIN FEATURES OF THE EU DIRECTIVE 2012/13/EU ON THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

The Directive on the Right to Information in Criminal Proceedings⁴ relates to measure B of the Roadmap. It lays down common minimum standards to be applied in the field of information about rights and about the accusation to be given to persons suspected or accused of having committed a criminal offence. This Directive builds on the rights laid down in the Charter, and in particular Articles 6, 47 and 48 thereof, by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights. In this Directive, the term *accusation* is used to describe the same concept as the term *charge* used in Article 6(1) ECHR.

The provision of common minimum standards in the field has been advocated⁵ by all the European institutions, especially the Commission, which, underlined that: “It is not always the case that suspects, and even sometimes the law enforcement officers questioning them, have full knowledge of the relevant rights. If suspects were properly aware of their rights on arrest there would be fewer allegations of a miscarriage of justice and violations of the ECHR. A simple and inexpensive way to ensure an adequate level of knowledge is to require the Member States to produce a short, standard written statement of basic rights (the “Letter of Rights”) and to make it compulsory for all suspects to be given this written notification in a language they understand at the earliest possible opportunity and certainly before any questioning takes place”.⁶

Hence, there was first published a Green Paper on the “Procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union,”⁷ and the adoption of a Framework Decision was later proposed, which would require all Member States to prepare a Letter of Rights for the suspect, containing a statement of fundamental rights. Despite the interest expressed in this initiative, the text was not approved because of disagreement within the Council. In fact, the laws of the Member States differ from each other, not only on “whether” to recognize those rights but also on “how” to grant such guarantees to the suspect or accused. However, the protection of the defense rights in criminal proceedings has found new life in the conclusions of the Stockholm Programme. Precisely within this program, the Commission’s

³ For detailed explanation and analysis of the so-called “Protection by the law” see: Laurens Lavrysen, “Protection by the Law: The Positive Obligation to Develop a Legal Framework to Adequately Protect ECHR Rights” in: Yves Haeck / Eva Brems (Eds.), *Ius Gentium: Comparative Perspectives on Law and Justice 30: Human Rights and Civil Liberties in the 21st Century* (Springer 2014), 69-131.

⁴ DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0013>.

⁵ Ed Cape / Jacqueline Hodgson / Ties Prakken / Taru Spronken (Eds.): *Suspects in Europe – Procedural Rights at the Investigative Stage of the Criminal Process in the European Union*, Intersentia Antwerpen – Oxford, 2007.

⁶ Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union {SEC(2004) 491} /* COM/2004/0328 final - CNS 2004/0113 */ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52004PC0328&from=LV>

⁷ Green Paper on the “Procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0075>.

initiative became concrete, with the issue of the Directive in question.⁸

1. Scope of Application of the Directive

According to the scope of application, as portrayed in Article 2, the Directive applies from the time persons are made aware by the competent authorities that they are 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 suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal. This means that if, according to the national law, a suspect must be informed about the investigation against him, the standards set in the Directive's provisions will refer to the suspects under investigation i.e. persons in the pretrial phase of the criminal procedure. On this question, some authors earlier expressed concern regarding "the silence about the precise moment when they should be guaranteed by national authorities. In particular, neither the Explanatory Memorandum nor the different measures contemplated make a single reference about the procedural stages at which each right contained in the different measures should be protected and, the extent to which such procedural guarantees should be required only at the trial... or if their protection should already start in pre-trial proceedings or in investigative periods".⁹ But, correctly they conclude "...as is stated in the Roadmap, the purpose is to maintain "Strasbourg-proof". For this reason, it is desirable to protect all procedural rights not only during the trial but also during the investigative stage".¹⁰

2. Three Aspects of the Directive

The subject matter of the Directive on the right to information covers three different aspects: right to information about rights, right to information about the accusation and right of access to the materials of the case.

a). Right to information about rights

The competent authorities should inform suspects or accused persons promptly of their rights, which are essential to safeguarding the fairness of the proceedings. In order to allow the practical and effective exercise of those rights, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority. In this sense, the Directive requires that the states must ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights:

- the right of access to a lawyer;
- any entitlement to free legal advice and the conditions for obtaining such advice;
- the right to be informed of the accusation, under Article 6;
- the right to interpretation and translation;
- the right to remain silent

This information can be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

⁸ Giuseppina Laura Candito, "The Influence of the Directive 2012/13/EU on the Italian System of Protection^[1] of the Right to Information in Criminal Procedures", in: Stefano Ruggeri (Ed.), *Human Rights in European Criminal Law, New Developments in European Legislation and Case Law after the Lisbon Treaty*, Springer, 2015, 229-261.

⁹ Mar Jimeno-Bulnes, *Towards Common Standards on Rights of Suspected and Accused Persons in Criminal Proceedings in the EU?*, CEPS 'LIBERTY AND SECURITY IN EUROPE', 2010.

¹⁰ *Ibid.*

Where suspects or accused persons are arrested or detained, information about procedural rights should be given by means of a *written Letter of Rights* drafted in an easily comprehensible manner to assist those persons in understanding their rights. This Letter of Rights should be provided promptly to each arrested person when deprived of liberty by the intervention of law enforcement authorities in the context of criminal proceedings. It should include basic information concerning any possibility to challenge the lawfulness of the arrest, obtaining a review of the detention, or requesting provisional release where, and to the extent that, such a right exists in national law. To help the Member States draw up such a Letter of Rights, a model of such Letter of Rights is provided in Annex I of the Directive. The shown model is indicative and understandably, states may include other procedural rights that apply according to the national law.

Also, Member States must ensure that, when providing information in accordance with the Directive, suspects or accused persons are provided, where necessary, with translations or interpretation into a language that they understand, under the standards set out in the Directive on the right to interpretation and translation in criminal proceedings.

Letter of Rights on arrest. As early as in the Green Paper of 19 February 2003 on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union, activities are aimed at achieving common minimum standards of procedural guarantees for the accused, taking into account the different systems of criminal proceedings. In this sense, it is underlined that of particular importance is for the information given to the defendants to be standardized to a single model, i.e. through the establishment and formulation of the so-called Letter of rights, which is actually a written instruction of the accused about those rights, which is of unique content, it is simple, clear and specific and translated into a language the accused understands.¹¹ The Commission stated that is important for both the investigating authorities and the persons under investigation to be fully aware of what rights exist and suggested that a scheme be instituted requiring Member States to provide suspects and defendants with a written note of their basic rights – a “Letter of Rights”. This is especially important having in mind the acknowledgement that there are divergent standards for suspects' procedural rights within the EU and that this could obstruct the full acceptance of the principle of mutual recognition.

In the proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union of 28 April 2004, the Commission proposed a written Letter of Rights notifying suspects of their rights to be introduced as one of the common minimum standards to be regulated in a framework decision. To require the Member States to produce a short, standard written statement of basic rights and to make it compulsory for all suspects at the earliest possible opportunity, especially before the first police interrogation, in a language that the suspect would be able to understand, was according to the Commission a simple and inexpensive way to ensure an adequate level of knowledge. As there was insufficient consensus between the Member States for the proposals the original draft framework decision was significantly diluted. At the end of 2006, a more limited compromise of a proposal was put forward by the Austrian Presidency, listing general rights such as the right to information, right to legal assistance and the right to interpretation. In this proposal, the concept of a written Letter of Rights was abolished and the right to information was phrased in general terms. The German Presidency prioritized this proposal but even a more watered-down version could not find agreement at the Justice and Home Affairs Council on 19-20 April 2007 or on 13 June 2007. The

¹¹ Taru Spronken / Melissa Attinger, *Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union*, 2009, available at: <http://arno.unimaas.nl/show.cgi?fid=3891>.

Swedish Presidency again took up the issue of procedural safeguards by presenting a Roadmap for strengthening the procedural rights of suspected and accused persons in criminal proceedings.¹² The roadmap was incorporated into the Stockholm Programme for the period 2010-2014, which was adopted by the European Council on 10/11 December 2009.¹³

Essentially two issues caused the controversy regarding a framework decision, which would regulate procedural safeguards. Some Member States did not believe the European Union had the competence to deal with these measures and other Member States believed that there needed to be strong evidence that the proposal offered “added value” in terms of the European Convention on Human Rights.¹⁴

Detailed approach on the chronological events which led to the indicative model of Letter of Rights and the Directive, consideration on the existing practice in EU member states, as well as analysis of the normative framework can be found in the study of the Letter of Rights by Taru Spronken, presenting the results of the research project “EU-wide Letter of Rights in Criminal Proceedings: Towards Best Practice”, which aimed to obtain up-to-date information on the way suspects in the EU Member States are informed in writing of their rights in criminal proceedings and to develop a model for an EU-wide Letter of Rights. The indicative Model Letter of Rights included in the Directive on the right to information in criminal proceedings was inspired by the model developed in this study.¹⁵

The Directive specifies that the Member States must ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They must be allowed to read the Letter of Rights and also must be allowed to keep it in their possession throughout the time that they are deprived of liberty.

The Letter of Rights must contain information on the right of access to a lawyer; any entitlement to free legal advice and the conditions for obtaining such advice; the right to be informed of the accusation; the right to interpretation and translation; the right to remain silent, as they are stated in the Directive regarding the right to be informed about rights (Article 3). But also, in addition to those information, the Letter of Rights must contain information about the right of access to the materials of the case; the right to have consular authorities and one person informed; the right of access to urgent medical assistance and the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.

Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand, and which also should be simple and accessible. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand must then be given to them without undue delay.

b. Right to Information About the Accusations

The opportunity of the accused to become acquainted with the case against him i.e. to be informed about the charges against him is one of the essential rights and preconditions to preparing a defense. This right is of utmost importance, for the accused to be able to decide how he/she will defend himself/herself, whether he will give a statement or he will decide to remain

¹² Resolution of the Council of Europe of 30 November 2009 on a Roadmap for strengthening the procedural rights of suspected and accused persons in criminal proceedings, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009G1204%2801%29>.

¹³ Taru Spronken, EU-Wide Letter of Rights in Criminal Proceedings: Towards Best Practice, 2010, available at: <http://arno.unimaas.nl/show.cgi?did=24161>.

¹⁴ Ibid.

¹⁵ Ibid.

silent as well as to decide what kind of statement he will give. Hence, to respond to the charges, it is not sufficient that the accused is aware of the charges, but also of the reasons and evidence which they are based on.¹⁶

This right of the accused is considered as one of the elements of the equality of arms principle, because the obligation that the authorities have to inform the accused about the charges and to disclose the evidence, represents a way of compensation for the factual inequality between the state authorities and the accused.¹⁷

The right of the accused to be informed of the charges against him and to have an insight into the case files derives from Article 6 of the European Convention, namely the right of the accused to be informed promptly, in a language he understands and in detail of the nature and cause of the charges against him and of the right to have adequate time and facilities for the preparation of his defense. Practically, as the Court has pointed out in *Mattocia v. Italy*¹⁸, the defendant's right to be aware of the charges against him is directly related to the latter - the right to adequate time and facilities for the preparation of his defense.¹⁹ That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

The information provided to suspects or accused persons about the criminal offence they are suspected or accused of having committed should be given promptly, and at the latest before their first official interview by the police or another competent authority, and without prejudicing the course of ongoing investigations. A description of the facts, including, where known, time and place, relating to the criminal act that the persons are suspected or accused of having committed and the possible legal classification of the alleged offence should be given in sufficient detail, taking into account the stage of the criminal proceedings when such a description is given, to safeguard the fairness of the proceedings and allow for an effective exercise of the rights of the defence.

Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

At the latest on submission of the merits of the accusation to a court, detailed information must be provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

c. Right of Access to the Materials of the Case

The reasoning of the ECtHR is that the principle of fairness obliges the public prosecutor to disclose all the evidence to the defense – whether for or against the suspect,²⁰ as well as the material appropriate to call into question the credibility of the prosecution witnesses.

Where a person is arrested and detained at any stage of the criminal proceedings, Member States must ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or their lawyers.

That access must be granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers

¹⁶ Stefan Trechsel, *Human Rights in Criminal Proceedings*, Oxford University Press, 2005, 222.

¹⁷ *Guy Jaspers v. Belgium*, Application no. 8404/78, para. 55.

¹⁸ *Mattocia v. Italy*, Application no. 23969/94, 2000, para. 60.

¹⁹ *Guy Jaspers v. Belgium*, Application no. 8404/78, para. 56; *Foucher v. France*, para. 27; *Jasper v. UK*.

²⁰ *Edwards v. United Kingdom*, 28.11.1992, Series A, No. 247-B.

to safeguard the fairness of the proceedings and to prepare the defence. For the purpose of this Directive, access to the material evidence should include access to materials such as documents, and where appropriate photographs and audio and video recordings. Such materials may be contained in a case file or otherwise held by competent authorities in any appropriate way in accordance with national law. Access to the materials of the case, as provided for by this Directive, should be provided free of charge, without prejudice to provisions of national law providing for fees to be paid for documents to be copied from the case file or for sending materials to the persons concerned or to their lawyer.

It is interesting that the provisions of the Directive also talk about exclusion i.e. derogation from this rules. Namely, provided that it does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the state in which the criminal proceedings are instituted. Any refusal of such access must be weighed against the rights of the defence of the suspect or accused person, taking into account the different stages of the criminal proceedings. The restrictions on such access should be interpreted strictly and in accordance with the principle of the right to a fair trial under the ECHR and as interpreted by the case-law of the ECtHR. Furthermore, Member States must ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.

What is of great importance is that the Directive provides that the suspects or accused persons or their lawyers should have the right to challenge the possible failure or refusal of the competent authorities to provide information or to disclose certain materials of the case in accordance with this Directive.²¹

3. The Impact of the Directive on the Right to Information on the Macedonian Criminal Procedure

A number of research studies attempt to verify whether, under the new concept, the defence has an honest chance to rebate state accusations as guaranteed by the relevant international instruments, including those recently endorsed in EU.²²

Before getting into an analysis of the stage of transposition of this Directive, or whether our criminal procedure provisions are in accordance with the Directive, it must be noted that we will refer to current Law on Criminal Procedure (LCP)²³, but also we will discuss the Proposal on the LCP²⁴, which although has not yet been adopted, has a significant number of provisions that are amended and changed, some of which regarding the rights of the suspects and accused persons, derived from this Directive.

The present LCP, in Article 70 is fully harmonized with the standards set in the Directive regarding the right to information of suspects and accused persons. Explicitly, Article 70 among

²¹ This right does not entail the obligation for Member States to provide for a specific appeal procedure, a separate mechanism, or a complaint procedure in which such failure or refusal may be challenged.

²² For a detailed analysis of the rights of the defence in the Republic of North Macedonia in the light of the EU Directives see: Dance Danilovska Bajdevska / Nada Naumovska (Eds.), *Effective Defence in Criminal Proceedings in Republic of Macedonia*, Foundation Open Society – Macedonia, Skopje, 2014.

²³ Law on Criminal Procedure, Official Gazette no. 150/2010, 100/2012, 142/2016, 198/2018.

²⁴ Proposal on the Law on Criminal Procedure, https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=49560.

other basic rights of the accused, provides that every accused has the right to be informed on time and in detail, in a language that he understands, about the criminal offence that he is accused of and any evidence against him, as well as to have enough time and possibilities to prepare his defense, and especially to have access to the case file and be familiar with any available incriminating or exculpatory evidence, as well as to communicate with a defense counsel of his own choice.²⁵ Also, Article 206 indicates that the accused before each questioning must be advised about a number of rights including the right to be informed for what he is accused of and what are the grounds for suspicion against him or her. But, the Proposal on the LPC goes a step further, stipulating in the added paragraph 2 of Article 206²⁶ that the information about those rights is also given in *writing*, nonetheless the accused is not being arrested or detained. This provision (after the adoption) will represent a higher standard than the one required in the Directive since Directive's provision state that the written Letter of Rights shall be given to suspects or accused persons who are arrested or detained.

On the other hand, the current LCP is not in accordance with the Directive's requirement in Article 4 that the suspects or accused persons who are arrested or detained, must be given Letter of Rights in written form. That is to say, that the present LCP in Article 69 only provides that the person who has been invited, brought in or deprived of liberty shall be immediately informed, in a language that he understands, of the reasons for the invitation, bringing in or deprivation of liberty and any suspicion or criminal charges against him, as well as of his rights, and the person shall not be asked to give a statement. In the following paragraphs of the Article 69 other rights of the person who is invited, brought in and deprived of liberty are elaborated, but it is not stipulated that those rights will be given in written form. In the Proposal on the LCP, this issue is addressed, wherein Article 69 new paragraph 5 is added specifying that these persons must receive Letter of Rights in written form.

As far as the information about the accusations is concerned, according to the present LCP, the suspect will not be served with an investigation order, meaning unless he is questioned or detained before the public prosecutor enacts the order to conduct the investigation, then he will have no way of finding out about the accusations against him, as well as about the fact that the investigation has been opened against him. The Proposal LPC corrects this and provides that the person shall be notified of the order being made, although the order itself is not given to him. This notification must contain the description of the criminal offence as well as the legal qualification.²⁷ Also, the latest upon submission of the indictment to the court, the person must be given detailed information on the charges against him, including the legal qualification of the offence, and in what capacity he is accused of participating in it.

²⁵ Article 70 of the LCP. Other basic rights of the accused are: the right to be tried in his or her presence and to defend in person or with the assistance of a defense counsel of his or her own choice, and if the person is indigent, to get a defense counsel free of charge when that is required by the interest of justice; the right to freely present his or her defense; not to be coerced into testifying against himself or herself and people that are close and plead guilty; to have a possibility to speak about the facts and the evidence that he or she is charged with and to present all facts and evidence that would support his or her defense case; to examine the witnesses of the prosecution on his or her own or through the defense counsel, as well as to be able to ensure the presence and examination of the defense witnesses, under the same conditions as is the case with the prosecution witnesses; and during the main hearing to be able to consult with his or her defense counsel, but not to be able to discuss the way he or she will answer individual questions.

²⁶ para. 2 of the Proposal on the LCP, https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=49560.

²⁷ Article 292 para. 4 of the Proposal on the LCP, https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=49560.

The Macedonian provisions regarding the right of access to the materials of the case are in compliance with the Directive. Article 70 provides that every accused person has the right to have enough time and possibilities to prepare his defense and especially to have access to the case file and be familiar with any available incriminating or exculpatory evidence. Then, this right is provided in a few other articles in the LCP, such as articles 157, 159, 167. According to Article 79, which refers to the counsel's access to the case file, during the criminal procedure, the defense counsel shall have the right to review the case file and any available evidence, in accordance with the provisions of the LCP. The defense counsel shall have the right to access and to get a copy of all reports and other files related to actions to which the defense had a right to be present at, and which are being kept at the public prosecution office.

But, unlike the Directive, the present LCP does not allow for an exception from the right of access to the materials of the case if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation. In the Proposal on the LCP, this exception is included and it is possible to restrict this right of the defence. The preconditions for the restriction are as in the Directive. The restriction is limited to a period of 30 days at most. The public prosecutor decides on the restriction. In accordance with the Directive's requirement that Member States must ensure that a decision to refuse access to certain materials is taken by a judicial authority or is at least subject to judicial review, the Proposal on LCP provides that the defence can appeal on the prosecutor's decision to refuse the access. The judge of the pretrial procedure decides on the appeal.²⁸

What is especially important, in the view of the Directive's provision that states must ensure that the defence the right to challenge the possible failure or refusal of the competent authorities to provide information in accordance with the Directive, is the alteration made in Article. 415 para., 3 of the LCP. Different from the present provision, which stipulates that the substantial violation of the criminal procedure provisions stands only if the violation of the rights of the defence affected or if it could have affected the lawfulness and rightfulness of the judgment or on the right to fair trial²⁹, the new one in the Proposal on the LCP states that there is a substantial violation of the criminal procedure provisions when the right of the accused to a fair trial is violated.³⁰

III. THE MAIN CHARACTERISTICS OF THE EU DIRECTIVE 2010/64/EU ON THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS AND ITS IMPACT ON THE MACEDONIAN CRIMINAL PROCEDURE

The Directive on the Right to Interpretation and Translation in Criminal Proceedings³¹ relates to

²⁸ Article 79 para. 2 and 3 of the Proposal on the LCP, https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=49560.

²⁹ Article 425 para. 3 of the LCP.

³⁰ Article 415 para. 3 of the Proposal on the LCP, https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=49560.

³¹ 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, available at: <https://eur-lex.europa.eu/eli/dir/2010/64/oj>.

measure A of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. It lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings. The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the ECHR, as interpreted in the case-law of the ECtHR. This Directive facilitates the application of that right in practice. The aim of this Directive is to ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings to ensure their right to a fair trial.

Right to interpretation. The core of this Directive is the requirement from the state to ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings. Also, where necessary, the state shall ensure that interpretation is available for communication between suspects or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings. The right to interpretation under these provisions includes appropriate assistance for persons with hearing or speech impediments. Where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.

Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.

In the same time, it must be provided by the state that suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

Right to translation of essential documents. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they can exercise their right of defense and to safeguard the fairness of the proceedings. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect. But at the same time, the Directive stipulates that there shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to know the case against them. As far as the quality of the translation is concerned, the translation must be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and can exercise their right of defence. As an exception, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

The Directive requires for the state to meet the costs of interpretation and translation resulting from the interpretation and translation, irrespective of the outcome of the proceedings.

What is especially significant is that Member States, same as with the interpretation, must ensure that suspected or accused persons have the right to challenge a decision finding that there

is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings. Also, states must take concrete measures to ensure that the interpretation and translation provided meets the required quality and to promote the adequacy of interpretation and translation and efficient access thereto, they should establish a register or registers of independent translators and interpreters who are appropriately qualified.

Although LCP is in great deal harmonized with the Directive, it is our opinion that improvements must be made regarding the Directive's provisions on the opportunity to challenge the quality of the interpretation and the translation as well as a decision finding that there is no need for the interpretation/translation. Also, the improvement of the quality of the interpretation and translation, as well as the training of the interpretations are also targeted in other laws, such as Law on Courts etc.

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