

2014-2019: STRENGTHENING DEFENCE RIGHTS IN THE EUROPEAN UNION

Defence rights are a critical issue across the whole European Union and should remain central to its justice policy over the coming years.

The European Union (EU) has made significant progress over the past three years to strengthen defence rights across its 28 member states. Three core directives were adopted over the last four years, but in order to achieve the transformation envisioned by European leaders in 2009, continued work is required. We urge the EU to deliver on this vision over the coming years, and take action to:

- **Complete the Stockholm ‘roadmap’** and adopt the inter-connected directives on the right to legal aid, and the rights of vulnerable suspects;
- **Ensure member states effectively implement the adopted measures**, both in legislation and practice; and
- **Take legislative action to address key gaps** including a directive that would set minimum standards on the use of pretrial detention.

We see this as complementary to the support for victims of crime and encourage full implementation of the Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime.

Complete the Stockholm ‘Roadmap’

The roadmap, while taking a step-by-step approach, was designed to create an integrated system. Urgent action should, therefore, be taken to advance the outstanding directives on access to legal aid and the rights of vulnerable suspects. Otherwise the progress achieved to date will be undermined. Access to a lawyer, for instance, remains illusory if no system is in place to support indigent defendants.

Effective Implementation

Provisions such as the right of access to a lawyer, or to receive information on your rights, are undermined unless realised in practice, in police stations and courts across the EU. We urge a comprehensive approach including:

▶ Legislative Support

To help member states embed the new directives in domestic law and procedures, including through the exchange of best practices and development of useful guidance materials.

▶ Pilot Programmes

To support programmes that test new systems for implementation. For example, the lack of systematised legal aid programmes is one of the key obstacles to effective implementation of defence rights and could initially be addressed through pilots that provide emergency legal advice at police stations.

▶ Support for Research & Monitoring by Civil Society

To support civil society in its work to raise awareness, conduct trainings, identify trends and challenges and provide crucial, on the ground, information about implementation.

▶ Training & Exchange Programmes

To deliver training programmes for all criminal justice actors, including defence lawyers. Where possible, programmes should be integrated into national curricula, carried out on a regular basis, and supported by national information points. Initiatives that assist practitioners to develop their own national guidance notes and reference materials around specific themes should be supported.

▶ Improved Data Collection

To require member states to collect, and regularly publish, data that demonstrates the level of implementation of defence rights.

▶ Effective Monitoring & Follow up

To ensure the Commission undertakes regular activities to verify the actual implementation of defence rights. This could include pro-active monitoring, requests for information and the inclusion of defence rights as part of a future monitoring mechanism on the rule of law. The Commission should take swift action to identify infringements and, where necessary, bring proceedings in the Court of Justice.

Further Legislative Protection

One in four detainees across the EU is in pretrial detention and prisons are, in many countries, running over-capacity. Responses to the 2011 Green Paper on Detention all recognised the problem of excessive pretrial detention. A core group from both government and civil society called for legislative action, which was also echoed by the European Parliament.

We see a number of components that would form the core of a legislative proposal on the use of pretrial detention, including:

- **the principle of detention as a last resort;**
- **the use of alternatives to pretrial detention;**
- **requirements that detention orders are substantiated by written, reasoned decisions; and**
- **implementation of a system of regular review.**

Key aspects related to the presumption of innocence should be addressed including a robust guarantee of the stand-alone right to silence. The roadmap was also not exhaustive and gaps will become apparent through the operation of the adopted directives. Areas for action might include minimum standards on sentencing and parole and issues around effective remedies.

Anthony, a British national, was arrested in Spain on drug charges. He denied any involvement but his case was placed under a ‘secret, summary’ regime. He was refused access to legal assistance and thus unable to prepare his case or apply for bail. He spent almost four years in pretrial detention before he was eventually acquitted.

“Pre-trial detention must...be seen as a measure of an exceptional nature. It should be applied only when all other options are judged to be insufficient.”

— Thomas Hammarberg, Commissioner for Human Rights, Council of Europe, 2006–2012

Engagement with Civil Society

As organisations comprising academics, practitioners and civil society we aim to ensure that defence rights are a reality across all EU member states. Combining our thematic expertise with experience in research, advocacy and litigation, we contributed to many aspects of the roadmap and remain committed to this work over the next five years. Our inputs included a multi-country study on procedural defence rights, research on the implementation of police station advice schemes, practical examples from national and cross border cases and we actively advocated strong legislative provisions that built on ECHR case law.

We encourage the EU to establish a clear framework for engagement with civil society including regular consultative groups bringing together the experience of policy makers with practitioners, support for the services of specialised NGOs, and the use of research and monitoring reports.



FAIR TRIALS
INTERNATIONAL

