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CCBE REFERENCE GUIDE TO ASSIST EU DEFENCE PRACTITIONERS

2020



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Introduction

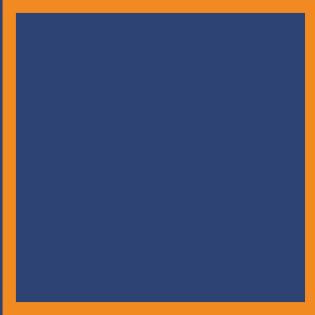
This Guide aims to provide an overview of EU legislation, case law and tools which aims to assist defence practitioners by providing references to relevant legislation, case law and other relevant material.

The Guide contains information on:

I.	Procedural safeguards: Procedural safeguards for suspects and accused persons in criminal proceedings	4
II.	European Arrest Warrant: Information on the EAW and EU caselaw from the EU Court of Justice on the EAW	12
III.	EU pre and post-trial measures	13
IV.	Detention – Criminal Detention Database	14
V.	Evidence issues	15
VI.	Case Law from the European Court of Human Rights (ECtHR) in the area of defence Rights and links to "Factsheets" summarising European Court of Human Rights case law on a range of issues	17
VII.	CCBE Factsheets specifically focussing on Rights of defendants in criminal proceedings and the criminal process in all EU Member States	19
VIII.	Charter of Fundamental Rights	20
IX.	European Public Prosecutor Office (EPPO)	24
X.	CCBE Guides on appearing before the Court of Justice of the European Union in Preliminary Reference Cases and on appearing before the European Court of Human Rights in Strasbourg	26
XI.	Conclusion	27
XII.	Annex – Example of a Factsheet (referred to in part VI)	28

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I. Procedural safeguards: Procedural safeguards for suspects and accused persons in criminal proceedings

Defence practitioners need to be aware that between 2010 and 2016 the European Union (EU) adopted 6 Directives to strengthen the procedural rights of suspected or accused persons in criminal proceedings.¹ These Directives are directly applicable in EU Member States.²

Essentially, these Directives provide a framework to harmonise certain criminal procedural standards within the EU in order to ensure the fairness of criminal proceedings and equivalent protection of citizens' rights across the EU. These common minimum standards are necessary for judicial decisions taken by one EU Member State to be recognised by other EU Member States as the EU's area of justice is based on mutual recognition and mutual trust.

To date the following Directives have been agreed:

1. Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings;
2. Directive 2012/13/EU on the right to information in criminal proceedings;
3. Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.
4. Directive 2016/343/EU on the presumption of innocence and the right to be present at the trial in criminal proceedings;
5. Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings;
6. Directive 2016/1919/EU on legal aid for suspects or accused persons in criminal proceedings.

¹ A Directive is a legislative instrument that is "binding as to the result to be achieved", but which leaves to the national authorities of the Member States "the choice of form and methods" by which they do so: Article 288 TFEU.

² Denmark has opted-out of the Directives and Ireland and the United Kingdom have opted-out of a number of the Directives.

1. The right to interpretation and translation (Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings)

1.1. WHAT DOES THIS DIRECTIVE DO?

It establishes minimum EU-wide rules on the right to interpretation and translation in criminal proceedings and in proceedings for the execution of the European Arrest Warrant.

1.2. DOES IT APPLY TO ALL EU MEMBER STATES?

Yes – except Denmark

1.3. KEY POINTS

- Right to interpretation**

Interpretation must be provided free of charge to suspected or accused persons who do not speak or understand the language of the criminal proceedings including during:

- ▷ police questioning
- ▷ essential meetings between client and lawyer
- ▷ all court hearings and any necessary interim hearings.

Interpretation via videoconference, telephone or internet can be used if the physical presence of the interpreter is not required to ensure fairness.

- Right to translation of essential documents**

Suspected or accused persons who do not understand the language of the proceedings must be provided with a written translation of documents that are essential for their defence. This includes:

- ▷ any decision depriving a person of his liberty
- ▷ any charge or indictment
- ▷ any judgment.

The competent authorities may decide to translate any other documents on a case-by-case basis. The suspected or accused persons or their legal counsel may also request the translation of other essential documents. In proceedings for the execution of a European Arrest Warrant, persons concerned must be provided with interpretation and with a written translation of the warrant, if necessary.

- Quality of interpretation and translation**

Translation and interpretation must be of sufficient quality to allow the persons concerned to understand the case against them and to exercise their right of defence. To this end, EU countries are required to set up a register of independent and qualified translators and interpreters, which should be available to legal counsel and relevant authorities.

1.4. WHEN DID THE DIRECTIVE ENTER INTO FORCE?

On 15 November 2010. It was to be transposed into EU countries' national law by 27 October 2013.

1.5. ADDITIONAL MATERIAL

- ▷ The full text is available in all EU languages [here](#).
- ▷ A useful toolkit prepared by Fair Trials is available [here](#).
- ▷ A paper from Fair Trials which includes the relevant case law from the European Court of Justice according to various Articles of the Directive – see [here](#)
- ▷ Commission [assessment](#) (in all EU languages) on the implementation of the Directive on the Right to Translation and interpretation (assessment dated 18.12.18)

2. The right to information (Directive 2012/13/EU on the right to information in criminal proceedings)

2.1. WHAT DOES THIS DIRECTIVE DO?

The directive sets out minimum standards for all EU countries regardless of a person's legal status, citizenship or nationality. It is designed to help prevent miscarriages of justice and reduce the number of appeals.

2.2. DOES IT APPLY TO ALL EU MEMBER STATES?

Yes – except Denmark

2.3. KEY POINTS

Suspects and accused persons must be informed promptly, either orally or in writing, of several procedural rights. These include:

- ▷ access to a lawyer,
- ▷ any entitlement to free legal advice,
- ▷ the right to be informed about the accusation,
- ▷ the right to interpretation and translation,
- ▷ the right to remain silent.

Furthermore, arrested persons must receive promptly a Letter of Rights from the law enforcement authorities (i.e. the police or justice ministry, depending on the EU country), written in simple language, providing information on further rights including:

- ▷ access to case documents,
- ▷ the right to inform one person and to contact consular authorities,
- ▷ the right to urgent medical assistance,
- ▷ to know the maximum period, in hours and days, that they will be detained before being brought before a judicial authority,
- ▷ whether they can challenge the lawfulness of the arrest.

Where a person has been arrested under a [European Arrest Warrant](#) they must be provided with a specific Letter of Rights by the law enforcement authorities reflecting the different rights that apply in that situation.

In addition, suspects or accused persons must be provided promptly with information about the criminal act they are suspected of having committed and (at a later stage) with detailed information on the accusation.

If the person is arrested or detained, they must also be informed about the reasons for this arrest or detention. They must also have access to the case materials which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention.

2.4. WHEN DID THE DIRECTIVE ENTER INTO FORCE?

The directive entered into force on 21 June 2012 and had to be transposed by EU countries by 2 June 2014.

2.5. ADDITIONAL MATERIAL

- ▷ The full text is available in all EU languages [here](#)
- ▷ Toolkit prepared by Fair Trials which examines the Directive's transposition into national law in several jurisdictions, as well as providing skills to enable use of the Directive in everyday criminal practice. To access the training manual, click [here](#)
- ▷ A paper from Fair Trials which includes the relevant case law from the European Court of Justice according to various Articles of the Directive – see [here](#)
- ▷ Commission [assessment](#) (in all EU languages) on the implementation of the Right to Information Directive (assessment dated 18.12.18)

3. Access to a lawyer ([Directive 2013/48/EU – right of access to a lawyer, to contact with third parties and consular authorities in the event of custody](#))

3.1. WHAT IS THE AIM OF THE DIRECTIVE?

It aims to ensure that suspects and accused persons in criminal proceedings and requested persons in [European arrest warrant](#) proceedings (hereafter ‘citizens’) have access to a lawyer and have the right to communicate while deprived of their liberty.

3.2. DOES IT APPLY TO ALL EU STATES?

Yes – except United Kingdom, Ireland and Denmark

3.3. KEY POINTS

- **Right of access to a lawyer**

Citizens must have access to a lawyer without undue delay:

- ▷ before they are questioned by a law enforcement (e.g. the police) or judicial authority;
- ▷ during an investigative or other evidence-gathering act (e.g. confrontation);
- ▷ from the moment of deprivation of liberty;
- ▷ in due time before they appear before a criminal court.

More specifically, the law covers:

- ▷ the right to meet in private and to communicate with a lawyer;
- ▷ the right for the lawyer to participate effectively when the person is questioned, and to attend the investigative and evidence-gathering acts;
- ▷ the confidentiality of all forms of communication with a lawyer (meetings, correspondence, telephone conversations, etc.).

As regards persons subject to a European arrest warrant, the directive lays down the right of access to a lawyer in the executing EU country and to appoint a lawyer in the issuing country.

- **Rights in the event of deprivation of liberty**

Citizens deprived of liberty have the right, without undue delay:

- ▷ to have at least 1 person of their choice informed of their deprivation of liberty. If the arrested person is a child, the holder of parental responsibility should be informed as soon as possible;
- ▷ to communicate with at least 1 person of their choice.

If they are deprived of liberty in an EU country other than their own, they have the right to inform their consular authorities, to be visited by them, to communicate with them and to have legal representation arranged for by them.

- **Exceptions**

The directive allows for the possibility to derogate temporarily from certain rights in exceptional circumstances and under strictly defined conditions (for example, where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person).

3.4. FROM WHEN DID THE DIRECTIVE ENTER INTO FORCE?

It has applied since 26 November 2013 and had to become law in the EU countries by 27 November 2016.

3.5. ADDITIONAL INFORMATION:

- ▷ The full text is available in all EU languages [here](#)
- ▷ A Toolkit has been prepared by Fair Trials which discusses the Directive. This includes information on a general approach to using the Directive, and covers some specific issues of particular interest, including the participation of lawyers in police questioning, the waiver of the right of access to a lawyer and the scope for authorities to derogate from that right. The toolkit is available [here](#)
- ▷ A paper from Fair Trials which includes the relevant case law from the European Court of Justice according to various Articles of the Directive – see [here](#)
- ▷ Commission [assessment](#) on the implementation of the Access to Lawyer Directive (assessment dated 26.09.19)

4. Presumption of innocence: The right to be presumed innocent and to be present at trial (Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings)

4.1. WHAT IS THE AIM OF THE DIRECTIVE?

It aims to guarantee the presumption of innocence of anyone accused or suspected of a crime by the police or justice authorities; and the right of an accused person to be present at their criminal trial.

4.2. DOES IT APPLY TO ALL EU STATES?

Yes – except United Kingdom, Ireland and Denmark

4.3. KEY POINTS

- **Scope**

The directive applies to any individual (natural person) suspected or accused in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment a person is suspected or accused of having committed a criminal offence to the final verdict.

- **Rights**

The directive sets out fundamental rights of an accused or suspected person in a criminal proceeding:

- ▷ **Innocent until proven guilty**
 - EU countries must take steps to ensure that public statements by public authorities and judicial decisions (other than those on guilt) do not refer to the person as being guilty
 - EU countries must also take steps to ensure that suspected or accused persons are not presented as being guilty in court or in public by physically restraining them;
- ▷ **burden of proof** on the prosecution;
- ▷ ***in dubio pro reo*** principle;
- ▷ **right to remain silent** and not to incriminate oneself;
- ▷ **right to be present** at one's own trial — a trial can be held in the absence of a suspected or accused person when one of these conditions is met
 - the person has been informed in due time of the trial and of the consequences of non-appearance
 - the person is represented by a mandated lawyer appointed by the state.

- **Remedies**

EU countries must ensure that effective remedies are in place for breaches of these rights. Where the right to silence or the right not to incriminate oneself has been breached, EU countries must ensure that the rights of the

defence and the fairness of the proceedings are taken into account when assessing the statements concerned. Where a suspected or accused person was not present at their trial and the above conditions were not met, they have the right to a new trial or to another legal remedy that allows the merits of the case to be determined anew (including the presentation of new evidence).

4.4. FROM WHEN DID THE DIRECTIVE APPLY?

It applies from 31 March 2016. EU countries have to incorporate it into national law by 1 April 2018.

4.5. ADDITIONAL RESOURCES:

- ▷ The full text is available in all EU languages [here](#)
- ▷ There is also a “Toolkit” on the Directive which has been prepared by Fair Trials - please click [here](#)
- ▷ A paper from Fair Trials which includes the relevant case law from the European Court of Justice according to various Articles of the Directive – see [here](#)

5. Special safeguards for children ([Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#))

5.1. WHAT IS THE AIM OF THE DIRECTIVE?

It establishes [procedural safeguards for children](#) who are suspected or accused of a criminal offence. The safeguards are in addition to those which apply to suspected or accused adults. It is the fifth in a series of measures to establish minimum rules for procedural rights across the European Union (EU) in accordance with a [2009 Roadmap](#).

5.2. DOES IT APPLY TO ALL EU STATES?

Yes – except United Kingdom, Ireland and Denmark

5.3. KEY POINTS

The key elements of the directive are that children have the right of access to a lawyer and the right to be assisted by a lawyer. The assistance by a lawyer is mandatory when they are brought before a court to decide on pre-trial detention and when they are in detention. A child who has not been assisted by a lawyer during the court hearings cannot be sentenced to prison.

EU countries must also ensure that deprivation of liberty, and in particular detention, is imposed on children only as a last resort and for the shortest appropriate period. Children who are detained should be held separately from adults, unless it is considered to be in the child's best interest not to do so.

The directive also includes other safeguards, such as the right to:

- be promptly informed about their rights and about general aspects of the conduct of the proceedings;
- have information provided to a parent or another appropriate adult;
- be accompanied by that person during court hearings and at other stages of the proceedings;
- an individual assessment by qualified personnel;
- a medical examination if the child is deprived of liberty;
- protection of privacy during criminal proceedings;
- appear in person at trial;
- effective remedies

Judges, prosecutors and other professionals who deal with criminal proceedings involving children should have a specific competence or access to specific training.

5.4. FROM WHEN DID THE DIRECTIVE ENTER INTO FORCE?

It has applied since 10 June 2016. EU countries had to incorporate it into national legislation by 11 June 2019.

5.5. ADDITIONAL RESOURCES:

- ▷ The full text of the Directive in all EU languages is available [here](#).
- ▷ There is also a “Toolkit” on the Directive which has been prepared by Fair Trials - please click [here](#)
- ▷ A paper from Fair Trials which includes the relevant case law from the European Court of Justice according to various Articles of the Directive – see [here](#)

6. Legal Aid (Directive 2016/1919/EU on legal aid for suspects or accused persons in criminal proceedings³)

6.1. WHAT IS THE AIM OF THE DIRECTIVE?

Directive (EU) [2016/1919](#) sets out common minimum rules concerning the right to legal aid for suspects, accused persons and requested persons ensuring the effectiveness of Directive (EU) 2013/48. It requires EU countries to ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require. EU countries may apply a means test (to assess if the person lacks sufficient resources to pay for legal assistance), a merits test (to assess whether providing legal aid would be in the interest of justice), or both to determine whether legal aid is to be granted.

6.2. DOES IT APPLY TO ALL EU STATES?

Yes – except United Kingdom, Ireland and Denmark

6.3. KEY POINTS

For the purposes of this Directive, ‘legal aid’ means funding by a Member State of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer. The Directive establishes common minimum rules on the right to legal aid for:

- ▷ suspects and accused persons in criminal proceedings; and
- ▷ persons who are the subject of European arrest warrant (EAW) proceedings.

The Directive applies to suspects and accused persons in criminal proceedings who have a right of access to a lawyer and who are:

- ▷ deprived of liberty;
- ▷ required to be assisted by a lawyer in accordance with Union or national law; or
- ▷ required or permitted to attend an investigative or evidence-gathering act.

The Directive also applies to requested persons under an EAW who have the right to access a lawyer upon arrest by the executing State.

It should also be noted that the Directive also applies to persons who were not initially suspects or accused persons, but who become so during questioning.

The Directive applies to minor offences in certain situations (see Article 2 (4)). In any event, the Directive applies when a decision on detention is taken, and during detention, at any stage of the proceedings until the conclusion. Member States are under an obligation to ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require, and in this regard Member States may apply a means test, a merits test or both. The Directive provides that legal aid must be granted without undue delay, and at the latest before questioning by the competent authority, or before any investigative or evidence-gathering acts are carried out.

Regarding legal aid in EAW cases, Article 5 of the Directive provides that the executing Member State must ensure

³ For further information, the Directive is available in all languages at the following link: <https://bit.ly/2Ni49h1>

that requested persons have a right to legal aid upon arrest under an EAW until they are surrendered, or until the decision not to surrender them becomes final. The issuing State must ensure that requested persons who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State have the right to legal aid in the issuing Member State for the purpose of such proceedings in the executing member State, in so far as legal aid is necessary to ensure effective access to justice. The right to legal aid in EAW proceedings may be subject to a means test, which shall apply mutatis mutandis.

The Directive also provides that decisions on whether to grant legal aid and on the assignment of lawyers must be made, without undue delay, by a competent authority. Member States must also take appropriate measures to ensure that the competent authority takes its decisions diligently, respecting the rights of the defence. In addition, Member States must take necessary measures to ensure that suspects, accused persons and requested persons are informed in writing if their request for legal aid is refused in full or in part.

Member States shall also ensure that adequate training is provided to staff involved in the decision-making on legal aid in criminal proceedings, and in European arrest warrant proceedings.

The Directive provides that - with due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers - Member States shall take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.

Member States shall take the necessary measures to ensure that suspects, accused persons and requested persons have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced where the specific circumstances so justify.

The Directive concludes with provisions on remedies and the treatment of vulnerable persons.

6.4. FROM WHEN DID THE DIRECTIVE ENTER INTO FORCE?

The Directive had to be implemented by EU Member States before 25 May 2019.

6.5. ADDITIONAL RESOURCES:

- ▷ The full text of the Directive in all EU languages is available [here](#)
- ▷ There is also a “Toolkit” on the Directive which has been prepared by Fair Trials - please click [here](#)

II. European Arrest Warrant: Information on the EAW and EU caselaw from the EU Court of Justice on the EAW

The European arrest warrant (EAW) allows for faster and simpler surrender procedures and an end to political involvement in extradition procedures. EU countries can no longer refuse to surrender their own citizens to another EU country, if the citizen has committed a serious crime or is suspected of having committed such a crime in another EU country (this is subject to certain exceptions contained in Articles 3 & 4 of the Directive “Grounds for optional non-execution of the European arrest warrant”).

An EAW may be issued by a national judicial authority if the sought person is accused of an offence for which the maximum penalty is at least 1 year of prison or if the sought person has been sentenced to a prison term of at least 4 months

The judicial authorities in the EU country issuing the EAW should carry out a ‘proportionality check’. The assessment includes considering the seriousness of the offence, the length of sentence and the costs and benefits of executing an EAW. It is important that the EAW is not misused for trivial offences.

The following Directives apply to persons sought under an EAW:

- ▷ the right to interpretation and translation during criminal proceedings
- ▷ the right of suspects to be informed of their rights
- ▷ the right to have access to a lawyer and the right of persons in custody to communicate with family members and employers
- ▷ the right to legal aid

The text of the EAW in all EU languages can be found [here](#).

- **Additional resources**

Manual & Handbook

- ▷ The [European Criminal Bar Association](#) has published a manual on “How to defend a EAW case” which can be found here: <http://handbook.ecba-eaw.org/contents/>
- ▷ The European Commission published a handbook in all EU languages on how to issue and execute a European arrest warrant, to facilitate and simplify the daily work of concerned judicial authorities. The handbook provides detailed guidance on the procedural steps for issuing and executing an EAW. The handbook also provides for a complete explanation of the major case-law of the Court of Justice of the European Union interpreting particular provisions of the framework decision on the EAW. The handbook was published in October 2018 and is available here: https://e-justice.europa.eu/content_european_arrest_warrant-90--maximize-en.do

Case Law

- ▷ European Court of Justice Case law on the EAW: This very useful [link](#) provides information on 33 EU Court of Justice rulings specifically on the European Arrest Warrant. Where relevant, it also refers to the Charter of Fundamental Rights of the European Union (“Charter”), the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR).

III. EU Pre and post-trial measures

1. Decision on transferring prisoners to their home country

The 2008 [Framework decision on custodial sentences](#) allows prisoners to be transferred back to the country they normally live in. This is because prisoners are more likely to be rehabilitated if they can serve their sentence in their home country. The Decision improves communication between countries and allows transfers to take place within fixed time-limits. The Framework Decision is available in all EU languages [here](#)

EU countries had to incorporate this decision into their national law by 5 December 2011.

For the EU, the Decision replaces the [European Convention on the transfer of sentenced persons \(1983\)](#) and its [Additional Protocol \(1997\)](#), although these Conventions will continue to apply to non-EU countries.

2. Decision on probation in the offenders' home country

Probation and Alternative Sanctions: The 2008 [Framework decision on probation measures & alternative sanctions](#) makes it possible for a person to be sent back to the country where they normally live if they have been sentenced and released on probation, or given an alternative penalty in an EU country where they do not normally live. The Framework Decision is available in all EU languages [here](#)

This country will then supervise them in serving their sentence, since people are more easily rehabilitated in their home country.

EU countries had to incorporate this decision into their national law by 6 December 2011.

The decision replaces the relevant parts of the [1964 Council of Europe Convention](#) on conditionally sentenced or released offenders, although this Convention will continue to apply to non-EU countries.

3. Decision on alternatives to pre-trial detention

European Supervision Order (ESO): The 2009 [Framework Decision](#) applies the principle of mutual recognition to decisions on supervision measures as an alternative to pre-trial detention. The Framework Decision is available in all EU languages [here](#)

For suspects provisionally released in advance of their trial, this decision enables responsibility for non-custodial supervision to be transferred to the country where they normally live.

This allows EU citizens to return home, while awaiting trial in another EU country. Their home country will supervise them using non-custodial measures (e.g. requiring them to remain at a specified place or asking them to report to a police station every day). This avoids lengthy pre-trial detention abroad.

Countries had to incorporate this decision into their national law by 11 December 2012. A good explanation of the key provisions of this legislation and certain legal issues that could arise with reference to the case-law of the European Court of Human Rights and the Court of Justice of the European Union can be found [here](#).



IV. Detention – Criminal Detention Database

The Criminal Detention Database 2015-2019, which has been prepared by the Fundamental Rights Agency, combines in one place information on detention conditions in all 28 EU Member States. It does not 'rank' EU Member States, but informs - drawing on national, European and international standards, case law and monitoring reports – about selected core aspects of detention conditions, including cell space, sanitary conditions, access to healthcare and protection against violence. The database should be especially useful for legal practitioners involved in cross-border cases.

The database is available [here](#).

V. Evidence issues

1. Current situation

The rules on gathering evidence in criminal matters in the EU are based on ‘mutual assistance’ agreements. In particular:

- ▷ the [European Convention on Mutual Assistance in Criminal Matters](#) of the Council of Europe of 20 April 1959 and its additional protocols, plus bilateral agreements concluded under Article 26
- ▷ the [Convention implementing the Schengen Agreement](#) and its additional protocols
- ▷ the [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000](#) and its protocol.

From 2017

From 22 May 2017, obtaining evidence in the EU has been governed by the Directive on the European Investigative Order. This Directive is based on mutual recognition and replaces the corresponding measures in the above conventions. It applies between the EU countries bound by the Directive (following the adoption of the Directive, the [Framework Decision on the European Evidence Warrant](#) of 2008 (which had a more limited scope) was repealed by Regulation 2016/95 of 20 January 2016).

2. Convention on mutual assistance in criminal matters of 2000

The Convention is a commonly used instrument for obtaining evidence. It covers mutual assistance in areas such as:

- ▷ taking statements from suspects and witnesses
- ▷ the use of videoconferencing
- ▷ using search and seizure to obtain evidence
- ▷ telecommunications.

Its protocol contains rules on obtaining information on bank accounts and banking transactions.

3. Requesting mutual assistance

The requesting authority can contact the issuing authority directly. Unless the executing authority has grounds to refuse a request, the request should be executed as soon as possible – and by the deadline given by the requesting authority, if feasible. To ensure that the evidence obtained is admissible, the authorities of the executing country must comply with any procedures specified by the authorities in the requesting country – provided they are not contrary to fundamental principles of law in the executing country.

4. The Directive on the European investigation order

The European investigation order is a judicial decision issued in or validated by the judicial authority in one EU country to have investigative measures carried out in another EU country to gather evidence in criminal matters. The Directive on the European Investigation Order was adopted on 3 April 2014. Denmark and Ireland opted out.

The aim of the directive was to introduce the mutual recognition principle while maintaining flexibility in mutual legal assistance and protecting fundamental rights.

It covers all investigative measures (except setting up a joint investigation team). It can be issued in criminal, administrative or civil proceedings if the decision could give rise to proceedings before a criminal court.

The issuing authorities can only use a European investigation order if the investigative measure is:

- necessary,
- proportionate, and
- allowed in similar domestic cases.

Under the new Directive, investigative measures must be carried out by the executing EU country as quickly and with the same level of priority as they would in similar domestic cases.

Investigative measures must also be executed 'as soon as possible'. The Directive lays down deadlines (a maximum of 30 days to decide to recognise and execute the request and 90 days to execute the request effectively).

EU countries can refuse the request on certain grounds. The following general grounds for refusal apply to all measures:

- ▷ immunity or privilege or rules limiting criminal liability relating to freedom of the press
- ▷ harm to essential national security interests
- ▷ non-criminal procedures
- ▷ ne bis in idem principle
- ▷ extraterritoriality coupled with double criminality
- ▷ incompatibility with fundamental rights obligations.

There are additional grounds for refusal for certain measures:

- ▷ lack of double criminality (except for a list of serious offences)
- ▷ impossible to execute the measure (investigative measure does not exist or is not available in similar domestic cases, and there is no alternative).

Additional materials:

- ▷ Under certain circumstances, the Directive does not preclude the application of other international conventions on mutual legal assistance by judicial authorities. Therefore, practitioners need a clear idea as to the situations in which it is compulsory to use an EIO, when it would be merely convenient to use it, or when it would be impossible to gather evidence abroad by means of an EIO.
- ▷ Against this background, there is a very useful [article](#) which analyses the Directive and establishes a number of rules that clarify the scope and possibilities of application of the new instrument. These rules will help legal practitioners to decide whether an EIO is possible or not in any given case. They also offer guidance on the question of which provisions have been replaced by the EIO Directive and when certain conventions retain their applicability for trans-border evidence-gathering purposes.

VI. Case Law from the European Court of Human Rights (ECtHR) in the area of defence Rights and links to “Factsheets” summarising European Court of Human Rights case law on a range of issues

1. Guide on Article 6 “Right to a fair trial” of the European Convention on Human Rights

The following is an excellent [Guide](#) (updated April 2019) on Article 6 of the European Convention on Human Rights – “Right to a fair trial” (the criminal limb). This 111 page Guide will assist legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court and it analyses and sums up the case-law on the criminal limb of Article 6 of the European Convention on Human Rights until 30 April 2019. Readers will find the key principles in this area and the relevant precedents. The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.

2. ECHR Factsheets

The ECtHR has published an excellent resource in the form of Factsheets on many issues of direct relevance to defence practitioners. The following is an example of the [Factsheet](#) concerning “police arrest and assistance of a lawyer” (this document contains interesting case law regarding police arrest and access to a lawyer)

Example - Factsheet concerning police arrest and assistance of a lawyer

There is an enormous body of other Factsheets. These are an excellent resource. See the following topics under which is a link and explanation to the relevant case law available:

Health

[Detention and mental health](#)

[Prisoners' health-related rights](#)

Right to free elections

[Prisoners' right to vote](#)

Criminal Field

[Domestic violence](#)

[Police arrest and assistance of a lawyer](#) (already listed above)

[Protection of minors](#)

[Right not to be tried or punished twice](#)

[Secret detention sites](#)

[Terrorism](#)

[Trafficking in human beings](#)

[Violence against women](#)



Detention

[Accompanied migrant minors in detention](#)
[Detention and mental health](#)
[Detention conditions and treatment of prisoners](#)
[Extradition and life imprisonment](#)
[Hunger strikes in detention](#)
[Life imprisonment](#)
[Migrants in detention](#)
[Prisoners' right to vote](#)
[Prisoners' health-related rights](#)
[Secret detention sites](#)
[Unaccompanied migrant minors in detention](#)

Expulsion / Extradition

[Accompanied migrant minors in detention](#)
[Collective expulsions of aliens](#)
["Dublin" cases](#)
[Interim measures](#)
[Unaccompanied migrant minors in detention](#)
Children and parents
[Accompanied migrant minors in detention](#)
[Children's rights](#)
[International child abductions](#)
[Parental rights](#)
[Protection of minors](#)
[Unaccompanied migrant minors in detention](#)

3. Legal professional privilege

This [link](#) contains a summary of the caselaw from the ECtHR regarding legal professional privilege (dated January 2019)

The case law covers the following issues regarding [Legal professional privilege](#):

- ▷ Disclosure of bank statements in criminal proceedings,
- ▷ Interception of communications, phone tapping and secret surveillance
- ▷ Obligation to report suspicions
- ▷ Restrictions on divulgence of classified information to defence counsel and right to a fair trial
- ▷ Searches and seizures carried out at a lawyer's offices or home



VII. CCBE Factsheets specifically focussing on Rights of defendants in criminal proceedings and the criminal process in all EU Member States

The CCBE has prepared Factsheets specifically focussing on rights of defendants in criminal proceedings and the criminal process. These Factsheets cover all EU Member States and are in all EU Languages. If your client is suspected or accused of a criminal offence, these factsheets take you through the criminal process and the various steps involved. The Factsheets all follow the same structure and explain your rights and obligations at each stage. They include information on the national criminal procedure system in all EU Member States as prepared by national defence practitioners which details practical rights during the investigation of a crime (preliminary charge (including questioning), arrest (including European Arrest Warrant cases), preliminary statutory hearing and remand in custody, intrusive measures, decision on whether or not to bring charges against a suspect), and information on preparing for trial by the defence as well as practical information on rights during the trial and rights after the trial. The factsheets also provide information on how minor offences, such as road traffic offences, are dealt with.

The factsheets are available in all EU languages [here](#). An example of a Factsheet can be found in the Annex.



VIII. Charter of Fundamental Rights

1. General information

Articles 47-50 of the [EU Charter of fundamental rights](#) (available in all EU languages) protects the following rights:

- ▷ [right to an effective remedy and to a fair trial](#)
- ▷ [presumption of innocence and right of defence](#)
- ▷ [principles of legality and proportionality of criminal offences and penalties](#)
- ▷ right not to be tried or punished twice in criminal proceedings for the same criminal offence

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Explanatory note

The first paragraph is based on Article 13 of the ECHR:

'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.'

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles 251 to 281 of the Treaty on the Functioning of the European Union, and in particular in the fourth paragraph of Article 263. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, 'Les Verts' v European Parliament (judgment of 23 April 1986, [1986] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case-law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR judgment of 9 October 1979, Airey, Series A, Volume 32, p. 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanatory note

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
- b) *to have adequate time and facilities for the preparation of his defence;*
- c) *to defend himself in person or through legal assistance of his own choosing*
- d) *or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- e) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- f) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Explanatory note:

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

*'1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.'*

In paragraph 2, the reference to ‘civilised’ nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case-law of the Court of Justice of the Communities.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Article 4 of Protocol No 7 to the ECHR reads as follows:

*"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
 3. No derogation from this Article shall be made under Article 15 of the Convention."*

Explanatory note

The “non bis in idem” principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

In accordance with Article 50, the “non bis in idem” principle applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the acquis in Union law; see Articles 54 to 58 of the Schengen Convention, Article 7 of the Convention on the Protection of the European Communities’ Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the “non bis in idem” principle are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

2. Additional Information

- ▷ All Articles can be found [here](#) together with the case law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) with direct references to the EU Charter of Fundamental Rights, as well as a selection of national case law with direct references to the Charter from all EU Member States.



IX. European Public Prosecutor Office (EPPO)

The European Public Prosecutor's Office will be an independent and decentralised prosecution office of the European Union, with the competence to investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud. The [Regulation establishing the European Public Prosecutor's Office](#) under enhanced cooperation was adopted on 12 October 2017 and entered into force on 20 November 2017. At this stage, there are 22 participating EU countries.

Currently, only national authorities can investigate and prosecute fraud against the EU budget. But their powers stop at national borders. Existing EU-bodies such as Eurojust, Europol and the EU's anti-fraud office (OLAF) lack the necessary powers to carry out criminal investigations and prosecutions.

The European Public Prosecutor's Office is currently being set up, with the aim of becoming operational at the end of 2020. The European Public Prosecutor's Office will have its seat in Luxembourg.

The European Public Prosecutor's Office will operate as a single office across all participating EU countries and will combine European and national law enforcement efforts in a unified, seamless and efficient approach. The European Public Prosecutor's Office will be built on two levels: the central and the national level. The central level will consist of the European Chief Prosecutor, its two Deputies, 22 European Prosecutors (one per participating EU country), two of whom as Deputies for the European Chief Prosecutor and the Administrative Director. The decentralised level will consist of European Delegated Prosecutors who will be located in the participating EU countries. The central level will supervise the investigations and prosecutions carried out at the national level. As a rule, it will be the European Delegated Prosecutors who will carry out the investigation and prosecution in their EU country.

The rights of the suspects and accused persons will be guaranteed by comprehensive procedural safeguards based on existing EU and national law. The European Public Prosecutor's Office will ensure that its activities respect the rights guaranteed by the Charter of Fundamental Rights of the EU, including the right to fair trial and the right to defence. The procedural acts of the European Public Prosecutor's Office will be subject to judicial review by the national courts. The European Court of Justice – by way of preliminary rulings – has residual powers to ensure a consistent application of EU law.

1. EPPO Reference material

All EPPO related material (structure and characteristics etc) can be found [here](#)

The following links may also be of interest:

- ▷ [EPPO Brochures \(multiple languages\)](#)
- ▷ [EPPO Factsheets \(multiple languages\)](#)
- ▷ [EPPO Infographic](#)
- ▷ [Council Regulation \(EU\) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office \('the EPPO'\)](#)
- ▷ [Directive \(EU\) 2017/1371 of 5 July 2019 on the fight against fraud to the Union's financial interests by means of criminal law](#)
- ▷ [Press release of the European Commission welcoming the decision of 20 Member States to establish the European Public Prosecutor's Office of 8 June 2017](#)
- ▷ [Fact Sheet of the European Commission concerning Frequently Asked Questions on the European Public Prosecutor's Office of 8 June 2017](#)
- ▷ [Communication from the Commission to the European Parliament and the European Council of 12 September 2018: an initiative to extend the competences of the European Public Prosecutor's Office to cross-border terrorist crimes](#)
- ▷ [Annex to the Communication from the Commission to the European Parliament and the European Council of 12 September 2018](#)
- ▷ [Fact Sheet of the European Commission for the State of the Union 2018 – A reinforced European Public Prosecutor's Office to fight terrorist crimes](#)

2. Additional material of particular interest to defence lawyers

- ▷ The European Academy of Law has arranged seminars on the European Public Prosecutor "Defence in Future EPPO Proceedings". To date (25.11.2019) 3 of the 4 seminars which the ERA is organising on the EPPO have taken place.
- ▷ All presentations from Seminars 1-3 can be found [here](#) (and are well worth looking at).



X. CCBE Guides on appearing before the Court of Justice of the European Union in Preliminary Reference Cases and on appearing before the European Court of Human Rights in Strasbourg

The CCBE has produced Guides to assist lawyers pleading before the European Courts.

The following are available:

- ▷ “THE EUROPEAN COURT OF HUMAN RIGHTS Questions & Answers for Lawyers” – available in English [here](#) and French [here](#)
- ▷ “Practical Guidance for Advocates before the Court of Justice of the European Union in Preliminary Reference cases” – available in English [here](#), French [here](#) and Spanish [here](#)
- ▷ Fair Trials also has a very useful and practical [Preliminary Reference Toolkit](#) for practitioners.



XI. Conclusion

It is hoped that the preceding material will be of assistance to Defence practitioners and provide Guidance and ease of reference on EU legislation, procedures, and caselaw in addition to information on national procedures through the Factsheets.



Annex – Example of a Factsheet (referred to in part VI)

The following is an example of a Fact sheet. The CCBE prepared Factsheets specifically focussing on rights of defendants in criminal proceedings and the criminal process. These Factsheets cover all EU Member States and are in all EU Languages. If your client is suspected or accused of a criminal offence, these factsheets take you through the criminal process and the various steps involved. The Factsheets all follow the same structure and explain your rights and obligations at each stage. They include information on the national criminal procedure system in all EU Member States as prepared by national defence practitioners.

The factsheets are available in all EU languages [here](#).

Sample Factsheet:

- Denmark – Summary of the criminal process

The following is a summary of the usual stages of the criminal process.

- The police investigate all criminal matters. This includes questioning suspects, victims and witnesses.
- If the police suspect that you have committed a crime, you will be charged. Once you have been charged, you have certain fundamental rights, for example the right to legal advice in serious cases.
- The police decide whether or not to arrest you.
- If you have committed a serious crime, you may - after presentation of the case to a judge - be remanded in custody while the case is being investigated.
- Once the investigation has been completed, the case is sent to the Prosecution Service, which decides whether the charges should be dropped or the case should go to trial.
- If the Prosecution Service decides to proceed with the case, it can do so by issuing a fixed penalty notice, an indictment or a summons for directions.
- Criminal cases are tried by the district courts as court of first instance. The number of judges depends on the gravity of the case and on whether you plead guilty or not guilty.
- The court's judgment can usually be appealed to the high court. You can either appeal for a retrial of your case or appeal against the sentence.
- You will be entitled to compensation for false imprisonment if the case against you is withdrawn or if you are acquitted.
- The Danish Prison and Probation Service answers questions concerning the serving of sentences.

You can find details about all stages of the criminal process and about your rights in the factsheets. The information is not a substitute for legal advice and is for guidance only.

The rules concerning the criminal process, including police investigations, the preparation of the trial by the prosecution and the trial itself, are set out in the Danish Administration of Justice Act.

Please note that special rules apply in Greenland and the Faroe Islands.

Under the Treaty of Lisbon, Denmark has opted out from EU justice and home affairs cooperation and consequently does not participate in such cooperation in the same way as the other Member States. In each individual case you must therefore find out whether specific EU legislation applies in Denmark.

Click on the links below to find the information that you need

[1 - Getting legal advice](#)

[2 - My rights during the investigation of a crime](#)

- Preliminary charge, including questioning
- Arrest (including European arrest warrant)
- Preliminary statutory hearing and remand in custody
- Intrusive measures
- Decision on whether or not to bring charges against you
- Preparing for trial by the defence

[3 - My rights during the trial](#)

[4 - My rights after the trial](#)

[5 - Road traffic and other minor offences](#)

Related links

- [The Danish legal system](#)
- [Database of full-text legislation](#)
- [Finding a Danish lawyer](#)
- [Information on the serving of sentence](#)

1 - Getting legal advice

It is very important that you get legal advice if you are somehow involved in a criminal process. The factsheets tell you when and in what circumstances you are entitled to be represented by a lawyer. They also tell you what a lawyer will do for you. This general factsheet tells you how to find a lawyer and how the costs of the lawyer will be met if you cannot afford to pay for the lawyer's services.

Finding a lawyer

You have the right to be represented by a lawyer of your own choice. The lawyer must be entitled to appear before the Danish courts. You can find a list of all Danish lawyers [here](#). On that website you can also see whether a lawyer specialises in criminal law, tax law or any other branch of law that is relevant to your case.

For each court in Denmark, the Danish Ministry of Justice has appointed a group of local lawyers with special experience in criminal cases. These lawyers are independent lawyers who run their own private law firms. The court can give you a list of these lawyers. If you do not ask for a specific lawyer, one of the lawyers on this list will be assigned to your case if the appointment of a legal representative is mandatory, for example if the police take you into custody.

Paying for a lawyer

If the court has appointed a lawyer for you, his or her fee will usually be paid from public funds. In connection with its ruling, the court will also determine the lawyer's fee. The fee will be determined on the basis of rates used by the courts in all criminal cases in which a legal representative has been appointed, whether or not it is a lawyer chosen by you.

The court will also decide who is ultimately to pay the lawyer's fee. If you are found guilty, you will usually have to pay the amount of the fee to the public authorities (the State of Denmark). The State will seek to recover as much of the amount as you can afford to pay.

If you are acquitted, or if the court's ruling is substantially more lenient than anticipated by the prosecutor, the court will typically order the authorities to pay the lawyer's fees and expenses. The court may also choose to let the authorities pay part of the lawyer's fees and expenses. This could be the case if court hearings were held in vain due to circumstances beyond your control.

You may appeal against the decision on the amount of the lawyer's fee and the ultimate liability for its payment to the high court within two weeks of the decision.

It is not possible to apply for free legal aid in criminal proceedings, and such legal aid will normally not be covered by legal expenses insurance policies.

Related links

- ▷ [Part 66 of the Danish Administration of Justice Act](#)
- ▷ [List of lawyers in Denmark](#)

2 - My rights during the investigation of a crime and before the case goes to court

What are the stages of a criminal investigation?

Criminal matters are investigated by the police. The police will typically investigate a case because they have been notified that a person has been a victim of violence or theft, or because the police, or possibly a citizen, have apprehended a person in the act of committing a crime.

Preliminary charge

At first, the police will seek to establish whether a criminal offence has been committed, and whether there are one or more identifiable suspects who may be charged with the crime. In that connection, the police will typically want to question the suspect.

Arrest

The police may detain a suspect.

Preliminary statutory hearing and pre-trial detention (including European arrest warrant)

If the police wish to detain a suspect in order not to jeopardise the police investigations or for some other reason, the suspect must be brought before a court within 24 hours of his or her arrest so that the matter can be submitted to a judge.

Intrusive measures

In addition to questioning the suspect and potential witnesses, the police may obtain information during the investigation by means of intrusive measures such as searches, surveillance of telecommunications, telephone tapping, etc. Most intrusive measures must be approved by a court before they are used.

Decision as to whether or not to file charges against a suspect

The purpose of the police investigation is to provide information that makes it possible for the prosecutor to decide whether or not to file charges against a suspect. If there is insufficient evidence to prove that a suspect has committed a criminal offence, the prosecution will drop the case.

At the local level, the police and the prosecution service are under the same management, so the prosecution service will often be involved at an early stage of the case, including the planning of the investigation.

Preparing for trial by the defence

For more information about the right to be informed about the investigation and to influence it, see [here](#).

My rights during the investigation

Click on one of the following links for further information about your rights at each stage of the case.

- ▷ [Preliminary charge, including questioning \(1\)](#)
- ▷ [Arrest \(2\)](#)
- ▷ [Preliminary court hearing and pre-trial detention \(including European arrest warrant\) \(3\)](#)
- ▷ [Intrusive measures, including searches \(4\)](#)
- ▷ [Decision whether or not to bring charges against a suspect \(5\)](#)
- ▷ [Preparation of the case by the defence \(6\)](#)

Preliminary charge, including questioning (1)

Why am I being charged?

You are charged because the police strongly suspect that you have committed a crime and that the police investigation will from now on focus on you and not some other person.

What does it mean that I am charged?

It means that you will be told what kind of crime the police believe you have committed. The police must tell you which provision of law they believe you have violated. You have the right to follow the investigation of your case through a lawyer, and in case of serious criminal offences you have the right to a court-appointed lawyer.

Why do the police want to question me?

The police want to question you to find out whether their suspicion that you have committed a criminal offence is correct or not. The police will use your statement in their further investigations. Later, the prosecutor will use your statement to decide whether the case should be tried as a guilty plea case.

Where and when may the police question me?

There are no special rules as to where and when the police may question you. The questioning must be conducted so that your rights are not unduly violated. The police are generally not allowed to contact you at your place of work. The police will typically start asking you questions at the crime scene. In many cases, the police will ask you to go to the police station for a more detailed interview.

What if I don't speak the language?

If you don't speak the local language, you have the right to an interpreter who can interpret to and from your own language. The police will provide the interpreter, and you do not have to say anything until the interpreter arrives.

Do I have to make a statement to the police?

You must state your name, address and date of birth to the police. You do not have to say anything else. You do not have to tell the truth. The police must inform you of these rights before the interview. It depends on your case and the gravity of the charges whether it would be favourable to your case that you make a statement to the police. If you don't know whether you should answer questions, you should ask your lawyer.

Will I be able to speak to a lawyer?

You have the right to speak to a lawyer of your own choice before you decide whether you will agree to a police interview. If you don't know a lawyer, the police will find one for you.

Your lawyer has the right to be present during the interview but may not advise you on how to answer specific questions.

Can I check that the police have understood my statement correctly?

The police must write down your statement. You may read the report or have it read to you and then comment on it. It is up to you to decide whether or not you want to sign the report. Many lawyers will advise you not to do so if you do not understand the language.

What happens if I say something which is bad for my case?

If you have said anything that may harm your case, the police may use the information in their investigations. As a general rule, a police report is not evidence and cannot be used against you at trial on its own. The prosecutor may ask questions about details of the report. Changing your statement may harm your credibility.

Arrest (2)

Why am I being arrested?

You can be arrested when the police have reason to suspect that you have committed a criminal offence, if arrest is necessary to prevent you from committing other criminal offences, to ensure your presence or to ensure that you do not speak to others. You may also be arrested on the basis of a [European Arrest Warrant](#) issued by another EU Member State.

Can the police arrest me in all types of cases?

You will not be arrested if arrest would be disproportionate to the gravity of the offence with which you are charged. For example, it is highly unlikely that you will be arrested if you are suspected of having committed an offence for which the maximum penalty is a minor fine.

Where will the arrest be made?

The arrest will usually be made at the local police station. You will normally be held in a waiting cell until the police can question you (see [Preliminary charge, including questioning \(1\)](#)).

Can I see a doctor if I need one?

If you are ill, injured or under severe influence of alcohol or drugs, you have the right to see a doctor. You should tell the police that you need to see a doctor, also if you need special medication.

Can I contact a lawyer?

If you have been arrested, you have the right to contact a lawyer of your own choice before you decide whether you want to agree to a police interview. In certain cases, the police may refuse to let you have a specific lawyer. You may complain about this to the court.

Both the police and your lawyer must explain to you that you can have a court-appointed lawyer and who will have to pay for him or her.

Can I contact my embassy if I am from another country?

If you are a foreign national, you have the right to contact your country's embassy. The police can help you contact the embassy.

Can I contact my family?

You have the right to let your family or employer know that you have been arrested. The police may refuse to comply with your request to contact them if they believe that such contact could interfere with the case. The police may choose to inform your family on your behalf.

For how long can I be held under arrest?

You must be released as soon as the grounds for your arrest no longer apply. If you have not been released within 24 hours, you must be brought before a court (preliminary statutory hearing) so that a judge can decide whether you should be released, whether your arrest should be extended (which is possible for up to 3 x 24 hours), or whether you should be held in custody ([Preliminary statutory hearing and custody \(3\)](#)).

When may an arrest be extended beyond 24 hours?

If the judge who hears the case at the preliminary statutory hearing finds that the evidence produced is inadequate for deciding whether you should be held in custody, your arrest may be extended for 3 x 24 hours from the time when the first hearing ended.

Preliminary statutory hearing and custody (3)

Why am I being held in custody?

You are held in custody because the police believe that it is necessary to detain you for a while or as long as the investigation is ongoing. You may also be held in custody to ensure that you will be available for extradition to another Member State under a [European Arrest Warrant](#).

Who decides whether I must be remanded in custody?

A judge decides whether the conditions for holding you in custody are met. Before the judge decides whether you should be held in custody as requested by the police, a hearing is held (preliminary statutory hearing). During that hearing, the prosecutor will present the police's understanding of the case, and you will also have an opportunity to present your point of view. The judge will decide whether to remand you in custody, but not whether you are guilty as charged.

Can I be remanded in custody in all types of cases?

You may be remanded in custody on the following conditions:

- ▷ The police must be able to explain why they suspect that you have committed an offence for which you may be sentenced to imprisonment for 18 months or more.
- ▷ The potential sentence must be more than 30 days of imprisonment.

- ▷ The police must be able to satisfy the judge that it is important that you are not released as long as the police investigation is ongoing, for one of the following reasons:
- ▷ The police believe you will evade punishment.
- ▷ There is reason to believe that you will continue to commit the same type of crime.
- ▷ There is reason to believe that you will impede the investigation if released.
- ▷ The crime is so serious that it would be offensive to others if you were allowed to go free while awaiting trial.

In rare cases you may avoid custody even though the conditions for holding you in custody are met, that is if imprisonment would be extremely burdensome for your personal circumstances. It is important that you inform your lawyer of such circumstances.

Where will the preliminary statutory hearing be held?

The preliminary statutory hearing will be held at the local court. You will normally be held in a waiting cell until you enter the courtroom.

Must I testify during the preliminary statutory hearing?

You do not have to make a statement or tell the truth. It depends on the nature of your case and the gravity of the charges whether it would be favourable for you to make a statement before the court. You should consult your lawyer to determine whether it would be best for you to testify or not.

Will I be able to speak to a lawyer?

The court will appoint a lawyer to represent you in court. If you do not ask for a particular lawyer, the court will appoint the lawyer on duty that particular day. For more information, see [Factsheet 1](#).

You have the right to discuss the case with your lawyer before the hearing. If you and the lawyer do not speak the same language, you are entitled to the help of an interpreter. Your lawyer will protect your interests during the hearing and may also ask you questions.

Can I check that the court has understood my testimony correctly?

The judge will enter the essential elements of your testimony in the court records. Your statement will be read out loud to ensure that it has been understood correctly.

What happens if I say something which is bad for my case?

Your testimony in court may be used as evidence in the case.

For how long can I be remanded in custody?

The judge will decide during the hearing whether you should be released or remanded in custody. In some cases, the judge will rule that your period of detention must be extended by 3 x 24 hours (see [Arrest \(2\)](#)).

If you are imprisoned, the judge will fix a maximum time limit of four weeks. This means that you must either be released before the expiry of that period, or your case must be brought before a judge again to ensure that the conditions for continued imprisonment are met. There is no maximum limit for the time you may be kept in custody. This will depend on the nature of the case.

You must be released as soon as the reason for your arrest no longer applies.

What is solitary confinement?

Sometimes the police will request that you be kept in solitary confinement so that you have no contact with other prisoners. You may only write to or telephone others under police supervision. It is the judge who decides whether you should be kept in solitary confinement.

Can I appeal against the ruling on custody and solitary confinement?

You can appeal against a ruling on custody or solitary confinement to the high court. The usual way to do this is to say that you want to appeal at the hearing where your case is heard.

Can I avoid custody if I surrender my passport or post bail?

The criminal code makes it possible for you to avoid being detained if you surrender your passport or post bail. However, this rarely happens in practice.

Intrusive measures (4)

During their investigation, the police may obtain information by using various intrusive measures, some of which are described below.

Are the police allowed to take my fingerprints and a photo of me?

The police may take your fingerprints and a photo of you on the following conditions:

- ▷ You are suspected of having committed an offence and the measure is necessary for the police investigation.
- ▷ The police have good reason to suspect that you have committed an offence for which you may be sentenced to imprisonment for 18 months or more.

Are the police allowed to take DNA or blood samples from me?

The police may take a DNA sample or blood sample from you on the following conditions:

- ▷ There are reasonable grounds to suspect that you have committed an offence for which you may be sentenced to imprisonment for 18 months or more, and the measure is considered to be very important to the investigation.
- ▷ A blood sample may be taken if alcohol or drug intake is an element of the crime of which you are suspected.

Are the police allowed to search me and my clothes?

The police may search your outer clothing on the same conditions as those applying to the taking of photographs.

Are the police allowed to check my mobile phone and search my car?

The police may check your mobile phone to find your telephone number and the IMEI number of your telephone and may also search your car on the following conditions:

- ▷ The police have good reason to suspect that you have committed a prosecutable offence.
- ▷ The search is assumed to be very important to the investigation.

Are the police allowed to search my home?

The police may search your home on the following conditions:

- ▷ The police have good reason to suspect that you have committed an offence that can be prosecuted.
- ▷ The search is considered to be very important to the investigation.
- ▷ The offence may lead to imprisonment.
- ▷ The police can substantiate that they are likely to find evidence relating to the crime or objects that the police should seize for other reasons.

Who decides that an intrusive measure is to be used?

The court decides whether your home may be searched. If there is reason to fear that evidence may disappear if the search is not conducted immediately, the police may conduct the search without having obtained a search warrant. The search must be brought before the court within 24 hours after it has been conducted. If you give your written consent to a search of your home, the police can make the decision to search your home.

The police decide whether to take your fingerprints, DNA and blood samples and a photo of you. The police also have the right to check your mobile phone, search your car, etc.

Can I complain?

If you want to complain about the investigation carried out by the police you can file such a complaint with the court.

Court decisions concerning searches and the planning of the investigation may be appealed against to the high court within two weeks of the court's decision.

Can I demand that the police destroy the fingerprints, photographs, DNA traces and blood sample results?

If the prosecution drops the case, or if you are acquitted, the police must destroy their photo of you. The police may keep your fingerprints and DNA samples but must destroy them after a certain period of time.

Can I claim compensation?

If you have been detained, imprisoned or exposed to an intrusive measure, and it subsequently turns out that the detention, imprisonment or intrusive measure was unjustified, you will generally be entitled to compensation. The Director of Public Prosecutions issues an annual notice about the rates to be used when determining the amount of such compensation.

Decision on whether or not to bring charges against you (5)

Once the police have concluded their investigation, your case will be sent to the prosecution service, who will decide how to proceed.

Can I plead guilty to all or some of the charges before the trial?

If you have admitted during the police investigation that you are guilty of the most serious charges against you, the prosecution will usually try to have the case treated as a guilty plea.

What is an indictment?

The indictment forms the basis of the hearing of the case in court. The indictment must specify the statutory provisions that you are accused of having violated and must contain a description of how you have committed the offence(s). The description must be so precise that you can prepare your defence on the basis of it.

Can I be charged with offences other than those the police have charged me with?

The prosecution service prepares the indictment. If the prosecution service has a view on the case that differs from that of the police, the indictment may contain new or different counts.

Can new counts be added to the indictment?

The prosecution must try to collect all pending charges against you so that a collective verdict can be delivered. The indictment may therefore contain new counts if you have been charged with an offence on several occasions.

Special rules apply if you have been extradited to Denmark under a [European Arrest Warrant](#) or under an extradition agreement. If you are indicted on new counts, you should consult your lawyer about them.

Can the indictment be changed?

An indictment can be changed or extended if a new indictment is prepared and served, which can be done until the date on which the court proceedings begin.

If the prosecutor in the case believes that the sentence for a count should be stricter than stated in the indictment, such a change is only possible if the Public Prosecution Service agrees to change the indictment. If it is changed, you must be notified within two months.

Once the court proceedings have started, only very limited changes may be made to the indictment. The court decides whether a change will be allowed.

Can I be charged with an offence that I have already been charged with in another Member State?

It cannot be ruled out that you may be charged with an offence which you have already been charged with in another country. However, you cannot be found guilty of a charge if you have already been sentenced for or acquitted of it in another country.

Will I receive information about the witnesses against me?

The prosecutor must file the indictment with the court together with a list of evidence stating the names of witnesses. Your lawyer will receive a copy of this list. You usually have a right to know the identity of the witnesses.

Preparation of defence (6)

On what basis can my lawyer and I prepare my defence?

Your lawyer will normally receive copies of all reports prepared by the police during their investigation. You have a general right to see the material. Your lawyer may only give you a copy of the material if permitted to do so by the police.

Am I entitled to see all the material produced by the police?

The police can order your lawyer not to give you certain information about the case material if this is deemed necessary to protect the interests of foreign powers or to provide evidence. Such an order may only be issued in serious cases, and only until you have testified in court.

Who decides whether I can see all the material?

The police will submit the material and decide whether a prohibitory injunction should be issued for part of or all of the case. The police's decision can be appealed against to the court, which will then decide the matter.

Can I participate in all hearings of the case?

Generally, you have the right to be present at all court hearings where the court decides whether you should be remanded in custody, or at which accomplices or witnesses will be examined before the trial.

If requested to do so by the police, the court can decide not to allow you to be present at the hearings. In that case, you have the right to be told what happened at the hearing. The court may rule that you are not to receive such information. You have a right to be told what happened at a hearing you could not attend. At the latest, you must be told when you have testified before the court.

Can my lawyer participate in all hearings of the case?

Your lawyer is entitled to participate in all hearings of the case. This also applies to hearings where the court is to decide whether to allow bugging or telephone tapping, searches or other intrusive measures that require prior court approval.

Can my lawyer participate in the police investigation?

Your lawyer must be informed of the investigation and is entitled to participate in that part of the investigation that may serve as evidence in the case against you. Examples are identification parades, reconstructions, etc.

Can my lawyer conduct his/her own investigation?

Your lawyer will normally ask the police to make further investigations if you believe they have failed to obtain information that could help your case. If the police refuse to make such further investigations, the matter may be brought before the court, which may order the police to conduct the relevant investigations.

Your lawyer may also choose to make his/her own investigation. However, that rarely happens in practice. If your lawyer conducts his/her own investigation of the case, he or she may not obstruct the police investigation, and your lawyer's own investigation must comply with the codes of ethical conduct that apply to lawyers.

Can my lawyer summon witnesses to testify in court?

Your lawyer can ask for certain witnesses to be summoned to testify in court. If the prosecution objects to those witnesses being heard, the court will decide whether the hearing of the witnesses in question is relevant.

Related links

- ▷ [Danish Administration of Justice Act](#)
- ▷ [Danish Act on the establishment of a central DNA register](#)
- ▷ [Director of Public Prosecutions](#)
- ▷ [Danish Extradition Act](#)

Where will the trial be held?

The trial will be held in the local city court and will be open to the public. If you have admitted that you have committed the offence or offences with which you are charged, the prosecution will ask for proceedings on an admission of guilt. In that case, the court will only consist of one professional judge. The same applies if the only penalty claimed is a fine.

If you have not admitted your guilt, your case will also be heard by lay judges, and the court will then consist of one professional judge and two lay judges.

If the prosecutor demands imprisonment for four years or more, the case will be heard by a jury. The court will then consist of three professional judges and six jurors. Exceptions are cases concerning narcotics-related crime and economic crime, which are heard by professional and lay judges regardless of the sentence demanded.

Can the charges be changed during the trial?

If the case is to be heard as a guilty plea case, it can be agreed that the charges will be adjusted to fit the crime that you can plead guilty to.

As soon as the trial against you has begun, only minor elements of the charges may be changed. The charges may not be extended without your consent.

What are my rights during the trial?

You must be present during the entire trial. The court may allow you to leave a hearing when you have made your own testimony.

If you have been notified of a hearing, but fail to attend court without a lawful excuse, the court may decide that the witnesses are to be examined in your absence. The court may give its decision in your absence if the prosecution has asked for imprisonment for up to six months and you have given your consent that the trial may be concluded. If you receive an unconditional sentence of up to three months of imprisonment, the case may be concluded even without your consent.

Since 1 November 2009 it has been possible to attend legal proceedings by means of a video link if the maximum sentence asked for is a fine or imprisonment for up to one year. However, not all courts have installed the equipment needed to give you this option.

If you do not speak and understand the language of the court, you have the right to the help of an interpreter during the entire trial. The interpreter will also assist you if you need to speak with your lawyer during a hearing.

If you do not already have a lawyer, the court will appoint one for you if you plead not guilty to the charges made against you, and if the sentence asked for is more than a fine. If you plead guilty in a case in which the prosecution asks for a prison sentence, the court will appoint a lawyer for you if you ask for one. If you disagree with your lawyer or for some other reason wish to have a new lawyer, your wish will usually be granted.

You do not have to answer any questions during the trial or to tell the truth. You cannot be punished for giving untruthful evidence during the trial. Your lawyer can advise you on whether your interests are best served if you make a statement in your case.

What are my rights in relation to the evidence against me?

The use of written evidence during trial is governed in detail by law. Other than that, there are almost no rules, and you are free to produce any kind of evidence. You and your lawyer can challenge the admissibility of witnesses or evidence, in particular if they are irrelevant to your case or if evidence has been unlawfully obtained. The court decides whether or not to admit such witnesses or evidence challenged by you. In most cases, unlawfully obtained evidence will be declared inadmissible in court. The court will consider the weight of the evidence in question after having heard the other evidence.

You can ask for certain witnesses to be called to testify at a hearing or for a certain piece of evidence to be produced in support of your case. This could for example be a passenger list which shows that you were not at the scene of the crime when it was committed. If the prosecution disagrees with the relevance of certain evidence, the court will decide on the matter.

The party who called a witness will examine the witness first. Afterwards, the other party will have an opportunity to cross-examine the witness. When deciding on its verdict, the court will assess the certainty and reliability of the witness statements given during the trial.

Will my criminal record be taken into account?

Information about previous convictions will be taken into consideration if it follows from the description of the offence that it is a repeat offence. In rare cases, information about the mode of operation used in a previous case can be invoked to substantiate guilt or innocence in the pending case. It will normally affect the length of your sentence if you have previously been convicted of a similar offence, or if you committed the offence during the probation period following a suspended sentence or during release on parole.

Normally, no inquiries will be made about any previous convictions you may have in another Member State.

What happens at the end of the trial?

The case ends with the court's ruling. The outcome can be one of the following:

- ▷ Acquittal
- ▷ Fine
- ▷ Suspended sentence, which may also be an order for treatment or an order for community service
- ▷ Unconditional prison sentence

In case of a suspended sentence, the court will normally fix a prison sentence that you will not be required to serve if you do not commit another offence during the probation period, which is typically one or two years. As conditions for probation, the court may require that you remain under the supervision of a probation officer, are treated for alcohol abuse or other types of abuse, receive psychiatric treatment and/or perform a certain number of hours of unpaid community service determined by the court.

There are special sanctions for juvenile offenders (offenders under the age of 18).

What is the role of the victim during the trial?

The victim is considered a witness like all other witnesses. However, in certain cases the victim has the right to a lawyer who is separately appointed by the court and/or to be awarded damages during the trial, provided that the claim for damages is simple and well documented and that the court's award of damages does not cause any material inconvenience.

Related links

- ▷ [Danish Administration of Justice Act](#)

4 - My rights after the court has made its decision

Can I appeal?

The court makes its decision at a hearing. You can appeal against the decision, verdict or sentence to the high court. You can either ask for acquittal or reduction of your sentence. If you believe that serious mistakes were made during the trial of your case before the district court, you can ask for the case to be sent back to the district court for a retrial with new judges.

You can appeal orally against the conviction, verdict or sentence at the hearing at which the decision is pronounced. You can also appeal in writing to the district court or the prosecution service. Your appeal must be filed within two weeks. If you have a lawyer, he or she will typically take care of the practicalities in connection with your appeal. If your sentence is a fine of DKK 3,000 or less, you need permission from the Danish Board of Appeal Permission to appeal the decision. Your application to the Board of Appeal Permission must be submitted within two weeks of the decision.

What happens if I appeal?

If you appeal against the court's decision, the case will be heard by the high court. This hearing, too, is open to the public. There is no time limit as to when the case must be heard by the high court.

If you have been remanded in custody, the high court must hear your case before any other cases. The high court must also decide whether you should remain in custody until and during the appeal proceedings.

If you appeal for acquittal, your case will be retried by the high court. In that case, you are entitled to produce new evidence. You should discuss with your lawyer as quickly as possible what new evidence should be introduced in the appeal case. As soon as the prosecution has disclosed what evidence it will rely on in the high court proceedings, your lawyer will normally have 14 days to disclose your evidence. You may be able to obtain an exemption from the 14-day time limit.

If you only appeal for a reduction of your sentence, the high court will only consider the sentence. In such cases the parties will not produce any evidence to the high court, but your lawyer may ask the court to obtain additional information about your personal circumstances which is relevant to the fixing of the sentence or the question of extradition.

What happens at the appeal hearing?

If you have appealed for acquittal, the case will be retried by the high court. In practice, the high court will often begin by reading out the statements made by you and the witnesses in the district court proceedings. However, if you and your lawyer disagree with this procedure, the statements must be given anew.

If you have appealed for a reduction of your sentence, the high court will take the evidence presented in the district court into account and will decide on the sentence on that basis.

The high court will announce its decision at the hearing. The high court can decide to uphold the district court judgment, to increase or reduce the sentence, or to acquit you. If you are acquitted or if the sentence is reduced, the costs of the appeal will be paid for out of public funds. The same applies if the prosecution appealed against the judgment and the high court only affirms it. In all other circumstances you are likely to be ordered to pay the costs of the appeal proceedings.

What happens if the appeal is successful/unsuccessful?

The high court judgment will supersede the district court judgment and will generally be final and conclusive. The case may extraordinarily be brought before the Supreme Court with permission from the Board of Appeal Permission. Such permission is normally granted only if the case is a matter of principle and therefore a test case, or for other special reasons. The Board only grants permission for a few criminal cases to be brought before the Supreme Court. Your lawyer can advise you on your chances of obtaining such permission.

If you are acquitted and if intrusive measures such as arrest, detention or search were used in the investigation, you can claim damages. Your claim must be made in writing to the regional public prosecutor no later than two months after the court's ruling. Your lawyer will normally take care of the practicalities in connection with raising the claim. Don't forget to let your lawyer know where you can be contacted in your own country.

I am from another Member State. Can I be sent back there after the trial?

You can normally be sent to another Member State to serve your sentence. Usually, this will only happen if you ask to be sent back to your own country to serve your sentence. You must send your application for serving your sentence in your own country to the Danish Ministry of Justice.

If I am convicted, can I be tried again for the same crime?

In Denmark, you cannot be sentenced twice for the same crime. The same principle applies in other European countries. Since the penalty provisions can be different from country to country, you have to ask about this in the country that might pursue the crime as well.

Information about the charges/conviction

As soon as a case has been decided, the decision will be reported to the Central Crime Register. Decisions concerning violations of the Danish Criminal Code will be entered in the decision part of the register. Decisions concerning violations of other legislation will be registered if you are given a prison sentence or a disqualification sentence (sentence depriving you of a right). The decision will be registered with specification of the name of the court that issued the judgment, the date of the judgment, the statutory provisions that were violated, and the sentence.

There are restrictions as to which decisions will be included in the criminal record that can be issued for your personal use. The data are stored electronically, and deletion of the data depends on the seriousness of the sanction. You can make a complaint about registration or deletion errors, but not about the actual registration of a decision. Complaints about registration must be submitted to the Office of the National Commissioner of the Danish Police, which is the data authority in relation to criminal records.

Related links

- ▷ [The Danish Administration of Justice Act](#)
- ▷ [Executive order on the processing of personal data in the Central Crime Register](#)

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5 - Minor offences

How are minor road traffic offences dealt with?

If you are stopped by the traffic police, who are concerned with enforcement of road traffic laws, you can either admit or deny your guilt. The police must charge you with the offence they believe you committed. You have the rights of a defendant and do not have to make a statement to the police.

The penalty for a road traffic offence is normally a fine. Road traffic offences are dealt with in the same way as other offences for which the penalty claimed is a fine. The police will send you a bill for the fine. If you pay the bill, it means that you admit the charges. If you do not pay the bill, the case will be sent to court. You will be summoned to appear at a hearing where evidence concerning the offence can be produced.

The Director of Public Prosecutions has issued a [penalty catalogue for traffic offences](#) where you can check that your fine matches the fines usually given for the type of traffic offence you have committed.

The [Road Traffic Act](#) allows the police to impound your vehicle if you are resident outside Denmark and your car is registered in a country other than Denmark. The vehicle may be impounded until the fine is paid or until security is provided for payment of the fine. If you don't agree that you committed a road traffic offence, you will therefore in certain cases have to provide security for payment of the fine and ask for the case to be heard in court. The police frequently use the right to impound vehicles.

There are special rules for vehicles and drivers from other Scandinavian countries.

How are parking offences dealt with? Parking restrictions are normally enforced by traffic wardens working for a local authority or a private enterprise, and not by the police. If you park illegally, you will receive a parking fine. The parking fine will be put on your car.

If you meet the traffic warden before he or she records the parking offence, you can raise your objection directly to the traffic warden. The traffic warden may decide not to record the offence or make a note about your objection. If you receive a parking fine, the fine must be accompanied by guidelines on how you can complain about the fine. There is no central complaints body.

Parking fines are collected in the same way as other civil claims. This means that the claim will be sent to a collection agency in your country of residence if you do not pay the fine.

Will this type of offence appear from my criminal record?

Your criminal record will normally not include fines. However, fines for criminal offences will be included in your criminal record. Parking fines are not regarded to be a criminal sanction and are therefore not included in your criminal record.

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