

FRA Report on Information about Defence Rights and Rights to Access to a Lawyer

News

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Full access to justice is not guaranteed, at least not in an equal way, because defendants are often poorly informed or access to legal assistance is inadequate. This is one of the main results of a report issued by the European Union Agency for Fundamental Rights (FRA) on 27 September 2019.

The report entitled “Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings” summarises the views of over 250 interviewed professionals and defendants in eight Member States: Austria, Bulgaria, Denmark, France, Greece, the Netherlands, Poland, and Romania. FRA investigated how the following defence rights of suspected or accused persons (set out in primary and secondary Union law) are implemented in said Member States in practice:

- Information about defence rights;
- Right to be advised and represented by a lawyer;
- Rights of persons arrested on the basis of an EAW.

Key findings of the report include:

- Information provided to defendants differs in both scope and content and in how it is conveyed;
- Treatment of defendants other than a suspect at the initial stage of the criminal proceedings, lack of practice on the part of police officers, lack of practice in verifying defendants’ understanding of the situation or identifying his/her vulnerabilities, and other factors lead to defendants not being fully aware of their procedural rights;
- Defendants very often receive minimal or unclear information about the charges against them;
- Sometimes individuals are questioned as witnesses or are “informally” asked questions instead of being treated suspected persons; in this way, persons are deprived of their right to remain silent and not to incriminate themselves;
- Police officers sometimes discourage defendants from exercising their right to a lawyer;
- Particularly people who are deprived of their liberty often do not receive legal assistance promptly and directly;
- Defendants deprived of liberty are not always allowed to talk to their lawyers in private before their first questioning; instead, conversations with lawyers are short or take place in public corridors in the presence of police officers;

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As regards the specific case of upholding defence rights in EAW proceedings, the report mainly discovered the following:

- Many respondents said that they did not understand their rights as regards warrants and the meaning of their consent to surrender;
- Language barriers often impede the effective enjoyment of rights in EAW cases;
- Defendants regularly face significant difficulties in establishing a double defence, i.e., not only access to a lawyer in the executing, but also in the issuing State. The reasons for this are manifold, including linguistic difficulties, police officers' lack of knowledge, and unwillingness to interfere in another country's jurisdiction. The report revealed systemic deficiencies in the context of the executing authorities' obligations to inform on and assist in appointing a lawyer in the issuing state.

The FRA report includes several recommendations to the Member States on how to improve the effective exercise of said defence rights and to remedy the detected flaws. The FRA report is a preparatory work which the Commission asked for. It complements the Commission report on [how EU Member States have implemented the EU's Access to a Lawyer Directive](#). This report was issued on the same day as the FRA report. Furthermore, the FRA reported on earlier FRA activity on procedural rights, such as the 2016 report on Member States' legal frameworks, policies, and practices regarding the right to information, translation, and interpretation in criminal proceedings (see [eucrim 4/2016](#), p. 163).

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