

Effective Protection of the Rights of the Accused in the EU Directives

Effective Protection of the Rights of the Accused in the EU Directives

A Computable Approach to Criminal Procedure Law

Edited by

Giuseppe Contissa, Giulia Lasagni, Michele
Caianiello and Giovanni Sartor



BRILL
NIJHOFF

LEIDEN | BOSTON

The Project from which this volume originates - CrossJustice project (Grant Agreement number: 847346 – JUST-AG-2018/JUST-JACC-AG-2018 JUST/REC MGA) - was funded by the European Union's Justice Programme (2014–2020).



**Funded by
the European Union**

The content of this publication represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

The Library of Congress Cataloging-in-Publication Data is available online at <https://catalog.loc.gov>
LC record available at <https://lcn.loc.gov/2022002409>

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISBN 978-90-04-51338-9 (hardback)

ISBN 978-90-04-51339-6 (e-book)

Copyright 2022 by Giuseppe Contissa, Giulia Lasagni, Michele Caianiello and Giovanni Sartor. Published by Koninklijke Brill NV, Leiden, The Netherlands.

Koninklijke Brill NV incorporates the imprints Brill, Brill Nijhoff, Brill Hotei, Brill Schöningh, Brill Fink, Brill mentis, Vandenhoeck & Ruprecht, Böhlau and V&R unipress.

Koninklijke Brill NV reserves the right to protect this publication against unauthorized use. Requests for re-use and/or translations must be addressed to Koninklijke Brill NV via brill.com or copyright.com.

This book is printed on acid-free paper and produced in a sustainable manner.

Contents

Contributors IX

Introduction 1

Giuseppe Contissa, Giulia Lasagni, Michele Caianiello, and Giovanni Sartor

PART 1

Criminal Procedure Law and Technological Development: Toward an Integrated Approach

- 1 The Algorithmic (Companion to) Counsel
*A Computational Approach to Strengthen the Effectiveness of Defence
Rights in Criminal Proceedings* 9
Michele Caianiello
- 2 How the Law Has Become Computable 27
Giuseppe Contissa and Giovanni Sartor
- 3 Making Criminal Procedure Rights Computable 42
Giulia Lasagni and Giuseppe Contissa

PART 2

The Implementation of EU Procedural Directives: National Systems Analysis

- 4 Bulgaria
*“Public References to Guilt” and “Right to be Present at Trial” in Directives
2016/343 and 2016/800 and Bulgarian Law. A Study of the Challenges of the
Transposition* 57
Miroslava Manolova
- 5 Croatia
*Implementation of Directives on Procedural Rights for Suspects and
Accused Persons: State of Play and Critical Profiles* 74
*Zlata Đurđević, Elizabeta Ivičević Karas, Marin Bonačić, and Zoran
Burić*

- 6 France
Legal Aid, Juvenile Defendants and Presumption of Innocence – Main Critical Profiles in the Implementation of the Defence Rights Directives 94
Eleonora Cervellera and Raphaële Parizot
- 7 Germany
Between Laissez-Faire and Literal Regulation – The German Approach to the Implementation of the Directives on Defence Rights 114
Anna H. Albrecht and Anne Schneider
- 8 Italy
Minimalistic Transposition and Substantial Protection in the Implementation of the EU Defence Rights Directives 133
Marianna Biral, Isadora Neroni Rezende, and Alessandra Santangelo
- 9 Poland
There and Back Again. A Struggle with Transposition of EU Directives 154
Karolina Kremens, Wojciech Jasiński, Dorota Czerwińska, and Dominika Czerniak
- 10 Portugal
The Implementation of the Directives on Procedural Rights in Law and Practice 170
Miguel João Costa and Pedro Caeiro
- 11 Spain
The Transposition of Directives on Criminal Procedural Rights into National Law 192
Ana-María Neira-Pena
- 12 The Netherlands
Reluctance and Formalism in the Implementation of EU Defence Rights 207
Adriano Martufi, Kelly Pitcher, and Jannemieke Ouwerkerk

PART 3***Comparative and Transnational Analysis***

- 13 Comparative Remarks 229
Michele Caianiello and Giulia Lasagni
- 14 Procedural Rights through the Lenses of Data Protection
The Case of Data Subjects' Rights 259
Mariavittoria Catanzariti

PART 4***Developing a Computable Approach to Defence Rights***

- 15 Logic Representation of Legal Norms 277
Marco Billi, Giuseppe Contissa, and Galileo Sartor
- 16 EU Directives Implementation
Automated Analysis of Complexity and Harmonization 309
Luigi Di Caro, Llio Humphreys, Emilio Sulis, and Rohan Nanda
- Conclusion
or rather ... Charting a Way Forward for New Forms of Integration 329
Giuseppe Contissa and Giulia Lasagni
- Index 331

Contributors

Anna H. Albrecht

Full Professor of Criminal Law, University of Potsdam, Germany

Marco Billi

PhD Candidate in Legal Informatics, Alma Mater Research Institute for Human-Centered Artificial Intelligence, University of Bologna, Italy

Marin Bonačić

Associate Professor in Criminal Procedure, Faculty of Law, University of Zagreb, Croatia

Marianna Biral

Research Fellow in Criminal Procedure, University of Bologna, Italy

Zoran Burić

Associate Professor in Criminal Procedure, Faculty of Law, University of Zagreb, Croatia

Pedro Caeiro

Associate professor and integrated researcher, Faculty of Law, Univ Coimbra, UCILeR, Portugal

Michele Caianiello

Full Professor in Criminal Procedure, University of Bologna, Italy

Mariavittoria Catanzariti

Research Associate, European University Institute, and Adjunct Professor, LUISS University, Italy

Eleonora Cervellera

PhD Candidate in Criminal Law, University of Paris Nanterre, France

Giuseppe Contissa

Senior Assistant Professor in Legal Informatics, University of Bologna, Italy

Miguel João Costa

Advisor at the Constitutional Court of Portugal; Guest Lecturer and integrated researcher, Faculty of Law, Univ Coimbra, UCILeR, Portugal

Dominika Czerniak

Assistant Professor, Department of Criminal Procedure, Faculty of Law, Administration and Economics, University of Wrocław, Poland

Dorota Czerwińska

Research Assistant & Lecturer, Department of Criminal Procedure, Faculty of Law, Administration and Economics, University of Wrocław, Poland

Luigi Di Caro

Assistant Professor in Computer Science, University of Torino, Italy

Zlata Đurđević

Tenured Professor in Criminal Procedure, Faculty of Law, University of Zagreb, Croatia

Llio Humphreys

Research Fellow in Computer Science, University of Torino, Italy

Elizabeta Ivičević Karas

Full Professor in Criminal Procedure, Faculty of Law, University of Zagreb, Croatia

Wojciech Jasiński

Assistant Professor, Digital Justice Center, Faculty of Law, Administration and Economics, University of Wrocław, Poland

Karolina Kremens

Assistant Professor, Head of Digital Justice Center, Faculty of Law, Administration and Economics, University of Wrocław, Poland

Giulia Lasagni

Junior Assistant Professor in Criminal Procedure, University of Bologna, Italy

Miroslava Manolova

Associate Professor in Criminal Law, Faculty of Law, Department of Criminal Law Studies, Sofia University "St. Kliment Ohridski", Bulgaria

Adriano Martufi

Assistant Professor of Criminal Law and Criminal Procedure, Leiden University, the Netherlands

Rohan Nanda

Assistant Professor in Data Science for Law, University of Maastricht, the Netherlands

Ana-María Neira-Pena

Phd, Contract Professor of Procedural Law, University of A Coruña, Spain

Isadora Neroni Rezende

PhD Candidate in Law, Science and Technology, University of Bologna, Italy

Jannemieke Ouwerkerk

Professor of European Criminal Law, Leiden University, the Netherlands

Raphaële Parizot

Full professor of Criminal Law, University of Paris Nanterre, France

Kelly Pitcher

Assistant Professor of Criminal Law and Criminal Procedure, Leiden University, the Netherlands

Alessandra Santangelo

Research Fellow in Criminal Law, University of Bologna, Italy

Galileo Sartor

Researcher in Legal Informatics, University of Torino, Italy

Giovanni Sartor

Full Professor in Legal Informatics, Alma Mater Research Institute for Human-Centered Artificial Intelligence, University of Bologna, and Part Time Professor in Legal Theory and Legal Informatics, European University, Italy

Anne Schneider

Full Professor of German, European and International Criminal Law, Heinrich-Heine University Düsseldorf, Germany

Emilio Sulis

Research Fellow in Computer Science, University of Torino, Italy

