

The right to have access to a lawyer within the criminal proceedings in the European Union

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Abstract

In the present study we have examined the provisions of the European legal instrument governing the right of access to a lawyer within the criminal proceedings in a Member State of the European Union, especially in situations where against the person concerned it was imposed a measure of deprivation of liberty and the right to have access to consular authorities, the right to inform a third person and the right of access to a lawyer in execution proceedings of a European Arrest Warrant. With the actual examination of these provisions, we referred also to the provisions of law, emphasizing the differences of the existing regulation and the need to transpose the European legal instrument into the national law by a separate legislative act and not by completing the special law, as it is intended at the moment. The innovations consist of examining the European legal instrument focusing on the right to have access to all the criminal proceedings, with reference to relevant national legislation, including the procedure of executing a European arrest warrant. The paper can be useful to academics, practitioners in the field and to the Romanian legislator from the perspective of transposing this European legal instrument into the national law.

Keywords: *suspected or accused person, the right to defense, the right to communicate with consular authorities, lawyer.*

JEL Classification: K14, K33

1. Introduction

In Europe, the right to a fair trial and implicitly the right to defense is unanimously recognized by all states, it is expressly provided for in article 6 of the European Convention on Human Rights and Fundamental Freedoms, art. 47 of the Charter of Fundamental Rights of the European Union and art. 14 of the International pact on Civil and Political Rights.²

In Romania, the right to a fair trial is expressly provided for in art. 21, par. (3) of the Constitution which states that “the parties have the right to a fair trial and to solve the cases within a reasonable time”.

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² The pact was adopted and opened for signature by the United Nations General Assembly on 16 December 1966 and entered into force 10 years later, i.e. on 23 March 1976. Romania has ratified the pact on October 31, 1974 by Decree no. 212, published in the Official Monitor of Romania, Part I, no. 146 of November 20, 1974.

Also, in the national law, the right to defense is expressly provided for in art. 24 of the Constitution, and art. 10 of the Criminal Procedure Code.

Also we mention that one of the fundamental objectives set by the European Union is to maintain and develop an area of freedom, security and justice.

As an expression of its importance in art. 82, par. (1) of the Treaty on the Functioning of the European Union (TFEU) it states that the judicial cooperation in criminal matters within the Union is founded on the principle of mutual recognition of judgments and judicial decisions.

The effective implementation of this principle requires for each Member State to have confidence in the criminal justice systems of other Member States. At the same time, the level of mutual trust is conditioned by a number of indicators, including special mechanisms to protect and respect the rights of suspects and accused persons.

Based on these facts, we can say that mutual recognition of decisions in criminal matters can operate effectively, only in a trusting environment, whereby not only the judicial authorities, but all the participants in the criminal process consider the judicial decisions adopted in other Member States as being equivalent to the decisions of their judicial authorities.

Against this background it was adopted the Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access a lawyer within criminal proceedings and the procedures on the European arrest warrant and the right as a third person to be informed by the deprivation of liberty and the right to communicate with consular authorities and third parties during the custody.³

Pending the adoption of European legal instrument, in conformity with the timetable there were adopted two European legal instruments regulating the respect of rights within criminal proceedings, respectively, Directive 2010/64 / EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings⁴ and Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information within criminal proceedings.⁵

The European legal instrument sets out a number of minimum rules concerning the right of access to a lawyer and to the proceedings for the execution of a European Arrest Warrant under the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.⁶

Also we point out that in the intention of the European legislator, the term lawyer “*refers to any person who, under the national law, is qualified and entitled,*

³ Published in the Official Journal of the European Union, series L no. 294 of 06/11/2013.

⁴ Published in the OJ L 280 of 26.10.2010.

⁵ Published in the OJ L 142 of 01.06.2012.

⁶ Published in the Official Journal of the European Union, series L no. 190 of 18.7.2002.

including accreditation by an approved body to provide advice and legal assistance to suspects or accused persons.”

Given its importance in terms of the principle of mutual recognition and trust in judicial decisions adopted by another Member State, and the incidence in terms of respect for the rights of defense, in this paper we propose the examination of the provisions of the European legal instrument, with some references to the national law and the need to transpose it into the national law.

2. The object and scope

The object of the European legal instrument under review is to establish the minimum legal rules applicable in Member States governing the rights of suspects and accused persons within criminal proceedings and procedures for recognition and enforcement of a European arrest warrant, to have access to a lawyer and to inform a third party in cases where this person is deprived of liberty throughout this period.⁷

No doubt that the provisions of the European legal instrument are considering the case of the persons against whom there are imposed measures of deprivation of liberty in another Member State, other than their state of origin, or in the case where the citizen in question has not the nationality of a Member State.

In terms of scope, we specify that the provisions of the European legal instrument will apply to the following categories:

- the suspected or accused persons in criminal proceedings from the time they were informed by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of a crime, regardless whether or not they are deprived of their liberty; these provisions are applicable throughout the criminal proceedings, pending a final settlement, and
- persons subject to proceedings concerning the recognition and enforcement of a European arrest warrant.

Under art. 2, par. (3) the European legal instrument under review, its provisions apply also to “*persons other than those suspected or accused persons, who during the interrogation by the police or other law enforcement authority, become suspects or accused persons*”.⁸

Although the above provisions seem to present some difficulties of interpretation, we consider that from their interpretation through the Romanian law, it results that they are applied on the occasion of identifying and hearing people, even before they have the status of a suspect; in other words, these persons will be able to benefit from the rights established in European legal instrument, even from the moment of their identification, before deciding the criminal charge (*in personam*).

⁷ Directive 2013/48 / EU of the European Parliament and of the Council of 22 October 2013 art. 1.

⁸ *Ibidem*, art. 2 of the examined European legal instrument.

Finally, we mention that the provisions of the European legal instrument that applies only to the proceedings pending before a competent court in criminal matters; also it will be considered especially the application of its provisions, in the situation where against the suspected or accused person it was ordered a deprivation of liberty measure, regardless of the stage of the criminal proceedings (prosecution, judgment in the first instance call or one of extraordinary appeals).

3. The right of access to a lawyer in criminal proceedings

All Member States shall take measures to ensure that suspects and accused persons have the right to access to a lawyer, so as to allow these people to effectively exercise their *right of defense in practical and effective manner*.

At the same time, the Member States will ensure the suspected or accused persons the right to have access to a lawyer, without undue delay, from any of the following points, taking into account whichever comes first:

- before being interrogated by the police or other law enforcement authority or judicial authority;
- to conduct an investigative or evidence-gathering action by investigating authorities or by other competent authorities in accordance with par. (3), letter c) of art. 3 (those actions that aim at: identifying suspects, making confrontations or reconstructions);
- without undue delay after confinement;
- in the case where there were cited to appear before a competent court in criminal matters, in a timely manner before they appear before that court.⁹

From the interpretation of the above mentioned provisions in the light of the Romanian law, it results that the Romanian judicial authorities will be obliged upon request, to provide a lawyer from the forthcoming investigative procedure or for evidence-gathering:

a) at the time of identification and the existence of a suspicion of an offense, before being heard by the police or other authority (prosecutor or judge); therefore contrary to the judicial practice, according to which the Romanian judicial authorities allow the hearing in the presence of a lawyer only if he has the status of a suspect or defendant, the European legal instrument obliges the judicial authorities to ensure this right since the identification of the person in pursuit of a possible criminal activity;

b) in the conduct of investigative activity or gathering of evidence, such as: *identifying suspects, confrontation or reconstructions*. We consider that the phrase to "*identify suspects*" according to the Romanian law, one can understand the procedure established in art. 133 and 134 of the Criminal Procedure Code, respectively, prior hearing of the person making the identification and their identification of persons; *in this context, we mention that the Romanian law*

⁹ *Ibidem*, art. 3, par. (1) and (2) of the examined European legal instrument.

provisions do not require the presence of the lawyer in these proceedings, only upon request, this right can be granted by the prosecutor supervising or conducting the criminal investigation.

We appreciate that from the interpretation of the Romanian and European legislation it results that the right to a lawyer of the suspect or defendant to participate in the activities of identifying suspects (recognition of the group), the confrontations or reconstructions cannot be restricted under any circumstances.

We should specifically mention that, in accordance with the Romanian law, given that the suspect or accused person has chosen a lawyer or it was appointed ex officio, and the lawyer requests under art. 92, par. (1) Criminal Procedure Code, to attend the performance of any act of criminal prosecution, the competent judicial body (the prosecutor conducting or supervising the prosecution in that case), it will ensure the exercise of this right.

We note that the legal body is not obliged to ensure the presence of the suspect's lawyer under the conditions of carrying out an identification, if the lawyer is not required to grant this right.

On the other hand, if we refer strictly to the provisions mentioned above, we see that Romanian law specifies "*the suspect's lawyer or defendant*" can participate in "*any act of prosecution*".

So, according to the Romanian law, for the lawyer to participate in the identification of persons it is required to fulfill cumulatively the following conditions:

- against the person concerned it has been started a criminal investigation, he has the quality of suspect;
- the lawyer requires it through a written request the need to be approved by ordinance by the prosecutor.

According to the comparative exposure it is easy to notice the differences between Romanian and European legal regulations.

c) immediately after deprivation of liberty, without undue delay.

This provision obliges the Romanian judicial bodies, immediately after the deprivation of liberty, to the person concerned to be given the right to have a lawyer.

According to the Romanian law we will be put in such a situation, in the case where it is ordered against a person a detention; it does not impose the issue of preventive detention as in this situation the presence of a lawyer is mandatory, even at the moment of trial for the remand demand.

d) in case where there are to appear before a court in criminal matters; this provision is in correspondence with the Romanian law, so between Romanian and European regulations we consider that there are no differences.

Under the European legal instrument provisions, the right of access to a lawyer involves the following:

- the right of persons concerned to hold meetings and communicate confidentially with the lawyer that represents them, including before the interrogation conducted by the police or other law enforcement or judicial authority;
- the effective participation of the lawyer to query of the individual concerned; the participation must be in accordance with the procedures of national law, provided that they do not affect the exercise or the substance of the right concerned; in the case where the lawyer participates in a query, such participation shall be registered in compliance with the law of that Member State;
- the participation of a lawyer to a series of investigative or evidence-gathering activities such as identifying suspects, confrontation or reconstructions of a crime.¹⁰

If we refer to the Romanian law, on the way in which these provisions are reflected into the national law, we find the existence of similar provisions, in the sense that the European legal instrument provides the right of access to a lawyer in the exercise of certain investigation activities and management of evidence in criminal proceedings and the Romanian law provides for the possibility to assure this right, but only at the request of the suspect or defendant or his lawyer.

According to the examined provisions, the Member States, *in exceptional circumstances and not only during prosecution, it can derogate temporarily from the application of the rights referred to in par. (2), letter c) where the isolated geographical position of a suspected or accused is impossible to ensure the right of the person to have access to a lawyer without undue delay after confinement* (it is considered the right to have access to a lawyer without undue delay after arrangement measure of deprivation of liberty).¹¹

Also, *in exceptional circumstances and only during prosecution, the Member States may derogate temporarily from the application of the rights referred to in par. (3) when and to what extent this is justified, taking into account the specific circumstances of the case, based on one or more of the following compelling reasons:*

- (a) there is an urgent need to avert serious adverse consequences for life, liberty or physical integrity of a person;
- (b) immediate action is essential to the investigating authorities to prevent substantial endangerment to criminal proceedings.¹²

¹⁰ *Ibidem*, art. 3, par. (3) of the examined European legal instrument.

¹¹ *Ibidem*, art. 3, par. (5) of the examined European legal instrument.

¹² *Ibidem*, art. 3, par. (6) of the examined European legal instrument.

4. The right to inform a third person when being deprived of liberty and to communicate with them

The suspected or accused persons against whom it was ordered a term of imprisonment have the right to inform at least one person (relative or employer) about the deprivation of their liberty if they wish to.

Assuming that the suspected or accused person “*is a child, the Member States shall ensure that the holder of parental responsibility of the child is informed immediately on the deprivation of liberty and the reasons therefore, unless this would be contrary to the interests of the child, in which case another appropriate adult shall be informed.*”¹³

We note that the notion of child is a person under the age of 18.

In accordance with the European legal instrument, the *Member States may derogate temporarily from the application of the rights mentioned above, when this is justified given the circumstances of the case, based on one of the following compelling reasons:*

- (a) *where there is an urgent need to avert serious adverse consequences for life, liberty or physical integrity of a person;*
- (b) *where there is an urgent need to prevent a situation that might occur the considerable endangerment of the criminal proceedings.*¹⁴

In the event that Member States derogate temporarily from the application of the right that regards a child, they shall ensure that it is informed without undue delay on the confinement of the child, an authority responsible for the protection and welfare of the children.

Also, the suspects or accused persons against whom it was decided to take custodial measures have the right to communicate without undue delay to at least a third party, such as a relative. The exercise of this right may be limited or delayed if there are some operative requirements or proportionate operative.

In the Romanian law, the detained person has the right to warn a family member or another person designated by him on the detention measure and on the place where he is detained. This right cannot be refused, only in exceptional cases, for good reasons, which will be recorded in the minutes, and only for a maximum period of 4 hours. The same provisions are incidents also in the case where against the person it was ordered the preventive custody measure.

5. The right to communicate with consular authorities

The suspects or accused persons who are foreign nationals, and against them it was ordered a measure of deprivation of liberty, *they are entitled for the consular authorities of the State to which they belong to be informed of the deprivation of their liberty without undue delay and to communicate with those authorities, if they wish so.*

¹³ *Ibidem*, art. 5, par. (1) and (2) of the examined European legal instrument.

¹⁴ *Ibidem*, art. 5, par. (3) of the examined European legal instrument.

Assuming that suspects and accused persons have two or more citizenships, they can choose if they want the consular authorities to be informed on the deprivation of liberty, who wish to communicate.

However, these persons have the right *to be visited by the consular authorities of their country, the right to converse and correspond with them and the right to benefit of the legal representation through the steps of consular authorities, subject to approval by the mentioned authorities and the wishes of the concerned suspected or accused persons.*

Exercising the rights mentioned above, *it can be regulated in law or in internal procedures, provided the respective national laws and procedures which would allow granting full effect to the purposes for which these rights are concerned.*¹⁵

In the Romanian law in art. 210, par. (2) of the Criminal Procedure Code it is provided only the right for a detained person to warn or to require the acknowledgment of the diplomatic mission or consular office of the State of whose citizen is or not, where appropriate, of an international humanitarian organization, unless he wishes to benefit from the assistance of the authorities in his country, or representatives of international competent organizations if refugee or not, for any other reason, is under the protection of such an organization.

Thus, we see that in the national law there is no provision to ensure respect for the rights of persons detained or arrested to be visited by the consular authorities of their State, to converse and correspond with them and the right to benefit of legal representation by consular authorities' demarche, of course, subject to approval by the said authorities and the wishes of suspected or accused persons concerned.

6. General conditions for applying personal exemptions

In connection with the temporary exemptions mentioned above (we consider exemptions by which the examined rights can be recognized with some restrictions), in accordance with the European legal instrument, they must meet the following conditions:

- to be proportionate and not to exceed what it is necessary;
- to be strictly limited in time;
- not to rely solely on the seriousness of the alleged offense; and
- not to affect the general fairness of the proceedings.

Temporary derogations under art. 3, paragraphs (5) or (6) *may only be authorized by a duly reasoned decision made on the basis of an assessment from case to case, either by a judicial authority, or by another competent authority, on the condition that its decision may be subject to the control of the courts. The reasoned decision shall be recorded according to the registration procedure in accordance with the law of that Member State.*

¹⁵ *Ibidem*, art. 7 of the examined European legal instrument.

Regarding the temporary exemptions, *they may be authorized depending on the case, or by a judicial authority or by another competent authority, provided that the decision may be subject to the control of the courts.*¹⁶

On the waiver of rights under art. 3 or 10 of the European legal instrument (the right of access to a lawyer in criminal proceedings and the right to have access to a lawyer in the European arrest warrant procedures), the European legal instrument stipulates that it can operate when:

- the suspected or accused person has *received written or verbal clear and sufficient information in a simple and comprehensible language about the content of the concerned right and the possible consequences of abandoning it; and*

- *the waiver is given voluntarily and unequivocally.*

Also, a waiver can be made in writing or verbally, and the circumstances thereof shall be recorded using the recording procedure in accordance with the law of the Member State concerned.

The suspect or accused person may revoke *the waiver at any time of the criminal proceedings*, and they (suspects or accused persons) will be informed by the judicial authorities of the State concerned about this possibility.¹⁷

7. The right of having access to a lawyer in the procedures on the European Arrest Warrant

After about half a century of application, the European Convention on Extradition, although amended and supplemented by two Additional Protocols, it turned out not to meet the new aspirations of the European countries, especially in terms of preventing and combating more effectively the crime of all kinds, and the operability of the execution of the extradition request.

Begun in mid-century and conceived as a community of European states which intend to develop economically under common measures, through intensified cooperation in the economic field, the European Union witnessed an unprecedented development in human history, at present, this community has 28 states.¹⁸

As for crime, in the Romanian doctrine it was held that the establishment of the European Union and subsequently the establishment of the Schengen area has created new possibilities for action and thus increase crime, possibilities increased by widening the action territory by the accession of new states.¹⁹

In this new framework, political, economic, geographic, created at the beginning of the third millennium, the movements of criminals from one corner to

¹⁶ *Ibidem*, art. 8 of the examined European legal instrument.

¹⁷ *Ibidem*, art. 9 of the examined European legal instrument.

¹⁸ Ion Rusu, Minodora-Ioana Balan-Rusu, *The European Arrest Warrant, Romanian and European Legislation, Doctrine, and Jurisprudence*, LAP LAMBET Academic Publishing, Saarbrücken, Deutschland/Germany, Danubius University, 2013, p. 144.

¹⁹ Ion Rusu, *Mandatul european de arestare, în urma modificărilor aduse de Legea nr. 222/2008/ The European arrest warrant, after the amendments of the Law no. 222/2008*, „Caiete de Drept Penal” (Notes of Criminal law), no. 1/2009, Ed. C.H. Beck, Bucharest, 2009, p. 19.

another in Europe is achieved with no risk on their part, especially when they are citizens of Member States.²⁰

Thus, the free movement of people and goods in an extended space gave rise to significant changes in terms of crime, in the sense that it has led to easy movement, and generally without major risks of offenders in any member country of the European Union or of the Schengen area.²¹

Amid the intensification of relations of judicial cooperation in criminal matters between the Member States appeared also the necessity to improve the mechanism for delivering the wanted persons.

The Institution of European arrest warrant brought into the European Union a distinct extradition procedure, a procedure designed to ensure increased efficiency for surrendering the convicted or wanted persons to participate in a series of criminal proceedings in Member States where they committed various offenses.

Therefore the European arrest warrant is an institution which applies only in the relations between Member the States of the European Union, which practically replaced the European Convention on Extradition, the international instrument which remains in force, and it is applicable in the relations between a Member State of the European Union and other state in Europe or in the world, or between two countries that are not EU members²².

In the context of recognition and enforcement of a European arrest warrant, it is necessary for the Member States to ensure that a person subject to a European Arrest Warrant has the right of access to a lawyer in the Member State asked to recognize and enforce a European arrest warrant issued by a competent judicial authority of another Member State.

The right of access to a lawyer in the executing Member State, means ensuring for the requested person the following rights:

- *the right of access to a lawyer in due time so as to allow the person sought to exercise his rights effectively and in any case without undue delay from the moment of deprivation of liberty;*

- *the right to hold meetings and communicate with the lawyer representing him;*

- *the right for his lawyer to be present and in accordance with procedures in national law, to attend a hearing of the person sought by the executing judicial authority. In the situation where the lawyer attends the hearing, this shall be recorded using the recording procedure in accordance with the law of that Member State.*²³

²⁰ Ion Rusu, Minodora-Ioana Balan-Rusu, *op. cit.*, p. 144.

²¹ Minodora-Ioana Balan-Rusu, Ion Rusu, *Particularitățile executării mandatului european de arestare în cazul infracțiunilor transfrontaliere (The peculiarities of the execution of the European arrest warrant in case of cross-border crime)*, „Dreptul” (The law) no. 9/2011, Editura Universul Juridic, Bucharest, 2011, p. 192.

²² I. Rusu, *op. cit.*, p. 20.

²³ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013, art. 10, par. (1) and (2) of the examined European legal instrument.

Also, all rights of the defense referred to and examined above, set out in the European legal instrument shall apply *mutatis mutandis* also in the case of proceedings on the recognition and enforcement of a European arrest warrant in the executing State.

Under the depositions of the European legal instrument in the process of recognition and enforcement of a European arrest warrant, *the competent judicial authority of the executing Member State shall inform, without undue delay at the moment of deprivation of liberty, the wanted persons that they have the right to hire a lawyer in the issuing Member State. The lawyer's role of the issuing Member State is to assist in the executing Member State, by providing information and advice to enable the wanted person to exercise his rights effectively under the Council Framework Decision 2002/584/JHA.*²⁴

In the event that the person subject to the European arrest warrant wishes to exercise his right to appoint a lawyer in the issuing Member State and he does not yet have such a lawyer, *the competent authority of the executing Member State shall promptly inform the competent authority of the issuing State. Without undue delay, the competent authority of the Member State concerned shall provide information of the wanted person to assist them to hire a lawyer in that place.*²⁵

Finally, the European legal instrument stipulates that *the right of the sought person to appoint a lawyer in the issuing Member State does not affect the time limits imposed by the Framework Decision 2002/584 / JHA or the obligation of the executing judicial authority to decide, in a timely manner and under the conditions defined under this framework decision, if the person is to be turned in.*²⁶

The provisions governing the right of the person subject to a European arrest warrant to hire a lawyer in the issuing Member State and the obligation of the judicial authorities of the two countries to help them in this endeavor represent a novelty in the European legislation, which is why we wish to make some clarifications which we consider being necessary.

From the interpretation of the provisions of the European legal instrument it results that in the judicial practice, any wanted person may ask the judicial authorities which are to execute the European arrest warrant, with his detention or arrest, to have insured the right to hire a lawyer in the executing Member State and another lawyer in the State of issuance of the warrant. The lawyer of the issuing State is to assist the lawyer in the executing Member State, an assistance which in reality will mean the transmission of information or evidence by which to prove the need for non-recognition and non-execution of a European Arrest Warrant.

No doubt the application of these provisions will directly contribute to ensuring the right to defense under better conditions to the person subject to such proceedings.

An important issue regards the time limits for surrendering the sought person (we consider the terms of the Framework Decision 2002/584/JHA), which

²⁴ *Ibidem*, art. 10, par. (4) of the examined European legal instrument.

²⁵ *Ibidem*, art. 10, par. (5) of the examined European legal instrument.

²⁶ *Ibidem*, art. 10, par. (6) of the examined European legal instrument.

are of 10 days in the case where the person consents to surrender, and 60 days after the arrest in the case for conducting normal procedure, if the wanted person opposes his surrender to the issuing State (which may be extended by another 30 days).

We appreciate that given the preparation and performance of defense, the cooperation between the two lawyers who, unlike the judicial bodies, do not have the means of faster communication (unless they have the Internet) the 60 days' period, even if it will be extended by 30 days, it will be extended a lot over time.

On the other hand, we consider the possibility for some Member States not to transpose into their internal law the provisions of this European legal instrument, and others to comply, in which case, between the two Member States concerned it will occur some failure in judicial cooperation in criminal matters.

8. Appeals

The Member States shall ensure by taking concrete legislative measures, that the suspects or accused persons in criminal proceedings, as well as the persons wanted in the proceedings on the European arrest warrant have one effective appeal.

Under art. 12, para. (2) of the European legal instrument, *without bringing prejudice to the national rules and systems on the admissibility of evidence, the Member States shall ensure, within the criminal proceedings, when assessing the statements made by the suspect or accused person or evidence obtained in violation of their rights, an attorney or in the case of a derogation to this right it was authorized in accordance with art. 3, par. (6), the right to defense and the procedural fairness are respected.*

Through the above provision, the European legislator insists on the right to a lawyer and the right to defense of the suspect or accused person, even in the incidence of derogations made in accordance with the European instrument.

Also in ensuring the right to a lawyer and the right to defense, it will be taken into account the special situation of vulnerable suspects and accused persons.

9. Conclusions

Promoting the European legal instrument was imposed by necessity especially amid frequent infringement of defense rights of suspects and accused persons by competent judicial authorities of the Member States, frequently sanctioned violations of European Court of Human Rights.

In this context, the European legal instrument brings some clarification extremely important that the Member States will have to transpose them into their national laws.

According to art. 15 of the European legal instrument, the Member States will transpose their provisions into their national legislation by November 27, 2016.

At the time of writing this study, the website of the Ministry of Justice has published a draft of transposition into national law of the European legal instrument, by amending and supplementing the Law no 302/2004, a project to which we will not refer since it is not the subject of our paper.

Given the importance of ensuring the right of access to a lawyer, while respecting the rights of suspected or accused persons in criminal proceedings, we consider that at this time, the transposition into the national law the provisions of the European legislative act must be achieved by adopting a distinct legislative act and not by making some changes and additions of the special law.

The overall conclusion that emerges is that the right of access to a lawyer in criminal proceedings and the right to communicate with the consular authorities, focusing on situations where against the person concerned it was ordered a deprivation of liberty of major importance, representing the fundamental rights which must be transposed into the national laws of the Member States and applied in cases expressly provided.

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Legislation

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