



## EU-Criminal Law – further harmonisation required?

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In 2009 when the Swedish Council Presidency presented the five-year programme in the area of home affairs and security policy, this initially triggered a discussion on a new "European security architecture". There were even concerns about a European surveillance Union. The fact that the so-called "Stockholm Programme" – named after the place where it was adopted – also containing a strong freedom-protecting element was initially somewhat forgotten: Member States also agreed at that time to strengthen the rights of suspected and accused persons in criminal proceedings at EU level.

This initiative led to the adoption of a roadmap by Member States, which resulted in the adoption of a total of six Directives in various areas of criminal procedural rights: information and education, interpretation and translation, access to a lawyer, strengthening the presumption of innocence and procedural safeguards for children. This has undoubtedly led to a higher level of protection of defendants' rights throughout the EU. The last part of this procedural rights package, the Directive on Legal Aid in Criminal Proceedings, has triggered a new regulation of the necessary defence in Germany. The draft law encountered criticism from the legal profession, since in future a public defender for first intervention will no longer be automatically provided, but only upon request.

It has become apparent that the implementation in EU Member States may vary due to the leeway granted. The Commission has also already initiated infringement proceedings against some EU Member States for insufficient implementation of some of the Directives. In the new legislative period, the Commission will not only have to ensure that the rights granted by the Directives are respected in the Member States. At the same time, the rights of accused persons in other areas of criminal proceedings should also be further strengthened at EU level. The German Bar Association considers this a priority of the Commission in the area of justice. For example, the case-law of the European Court of Justice (case "Dorobantu", C-128/18) illustrates that minimum standards are needed at EU level with regard to the conditions of detention on remand. The law of evidence also offers potential for harmonisation: this concerns, for instance, rules on the right to request evidence and the exploitation of evidence. A comparative legal analysis, especially in Germany, also shows that minimum requirements for the documentation of the trial should be introduced. Furthermore, a uniform EU understanding of the "ne bis in idem principle" is also necessary.

Germany will hold the EU Council Presidency from 1 July 2020. This is the appropriate time for a new edition of the "Stockholm Programme" and a new roadmap for criminal procedural rights.