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**PROCEDURAL RIGHTS OF SUSPECTS AND ACCUSED PERSONS IN CROATIAN CRIMINAL PROCEEDINGS IN THE LIGHT OF THE EPPO REGULATION[[1]](#footnote-1)**

*This paper provides an analysis of procedural rights of suspects and accused persons in the EPPO proceedings in Republic of Croatia. Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office does not elaborate defence rights in details, instead it leaves this matter to the national law which has to comply with EU Charter of Fundamental Rights and with adopted directives on procedural rights of suspects and accused persons. Following the wording of Article 41 and 42 of Regulation which address procedural safeguards in the EPPO proceedings, author will give an overview on the procedural rights guaranteed in directives on procedural rights, on their transposition into Croatian criminal procedure law with indications of shortcomings and potential obstacles which could arise in the EPPO proceedings. After the introductory remarks on tendencies in Croatian criminal procedure law, right to interpretation and translation, right to information, right of access to a lawyer and to legal aid, right to remain silent and to be presumed innocent as well as the right to gather evidence will be analysed. Finally, the judicial review of procedural acts of the EPPO under the Croatian criminal procedure law will be examined.*

1. **INTRODUCTION**

Integration of European Public Prosecutor’s Office (hereinafter: EPPO) as a new EU body of prosecution of criminal offences affecting the financial interests of the European Union in national legal systems of EU member states raises number of important questions regarding the efficient exercise and protection of procedural rights of the defendant in the criminal proceedings conducted by the EPPO. Yet, Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (hereinafter: Regulation)[[2]](#footnote-2) does not provide adequate and thorough answers to all potential problems which may arise for defence. Procedural safeguards for suspect and accused persons are regulated in Chapter VI of Regulation which consists of only two articles. Article 41 lays down scope of the rights of suspect and accused persons and Article 42 regulates judicial review of the EPPO’s acts. Rights of suspects and accused persons in the Regulation are set up on three levels: first level is the EU primary law, i.e., rights guaranteed by Charter of Fundamental Rights of the European Union[[3]](#footnote-3); on the second level Regulation evokes rights guaranteed by directives on procedural rights of suspect and accused persons in criminal proceedings and finally, the third level is national level, that is, rights guaranteed under applicable national law.[[4]](#footnote-4)

Hence, the Regulation does not provide for specific procedural guarantees that would correspond to the particularities of the criminal proceedings conducted by the EPPO, i.e. which would adequately oppose the powers of the EPPO and the specific features of such criminal proceedings*.* Such a way of prescribing the rights of defence is in disparity (not only in the scope, quantitatively, but also in its content, qualitatively) with the way of regulating the EPPO powers. Although EU minimum standards on procedural rights of suspects and accused persons apply and though these standards undoubtedly strengthen the position of suspects and defendants in criminal proceedings and consequently in EPPO’s proceedings[[5]](#footnote-5) (in relation to right to interpretation and translation, right to information and access to the case files, right of access to a lawyer and to legal aid, right to be presumed innocent), these legal instruments are not created for the purpose of the EPPO proceedings and consequently do not foresee specific situations that may arise in proceedings conducted by the EPPO, the complexity of such proceedings, in particular with regard to cross-border investigations, admissibility of the evidence.

Furthermore, complex organizational decentralised structure of the EPPO which consists of the European Chief Prosecutor, College, European Prosecutor, Permanent Chamber and European Delegated Prosecutors poses a challenge for procedural rights of suspected and accused persons in EPPO proceedings.[[6]](#footnote-6) Differences which exist between criminal procedures of EU member states regardless of the process of harmonisation can encourage phenomena of forum shopping considering that Regulation allows Permanent Chamber to reallocate the case in another member state, even more than once.

Integration of the EPPO in national law poses number of challenges: institutional, procedural, cooperative,[[7]](#footnote-7) and therefore it is important to analyse national framework in which the EPPO will act and the relation between the Regulation and the national criminal procedure law. This paper aims to analyse one aspect of these challenges, that is, integration of the European Public Prosecutor’s Office in Croatian national criminal justice system from the aspect of the defence rights. Hence, an overview of the procedural rights of defence specified in Regulation and guaranteed in Croatian criminal procedure law will be given with the indications of the potential problems for the defence in the EPPO proceedings.

1. **PROCEDURAL RIGHTS OF SUSPECTS AND ACCUSED PERSONS IN CROATIAN CRIMINAL PROCEDURE LAW IN THE CONTEXT OF THE EPPO REGULATION**
	1. **Introductory remarks**

In recent years procedural rights of suspects and accused persons in Croatian criminal proceedings have been in a large extent affected by the process of harmonisation with EU law. However, even before the EU legislator intensified its activity in the field of criminal procedure,[[8]](#footnote-8) and at the same time with that process, Croatian criminal procedure began to undergo significant changes which have started with the epochal reform of criminal procedure and adoption of new Criminal Procedure Act in 2008 which abandoned traditional model of criminal proceedings with judicial investigation and accepted a new model of public prosecutor investigation.[[9]](#footnote-9) Shortcomings and deficiencies of this reform soon came to light and led to the abrogation of number of provision of CPA by the Constitutional Court of Republic of Croatia which required comprehensive reconstruction of structure, form and principles of newly established procedure.[[10]](#footnote-10) In addition, further amendments were necessitated by the jurisprudence of the ECtHR and already mentioned obligation of harmonisation with EU law.

Croatian legislator has, up till now transposed into national law three directives from the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings and transposition of Directive on legal aid impends since the deadline for transposition has already expired in May this year (2019). Though the last amendments of the CPA from 2017 were primarily motivated by the need for transposition of Directive on access to a lawyer, legislator went beyond the requirements of the directive and made some changes which, although not required by EU law, were necessary precondition for the strengthening procedural rights of suspects from the earliest stages of the proceedings.[[11]](#footnote-11)

Hence, processes of constitutionalisation and europeisation of criminal procedure have contributed greatly to strengthening the position of the suspect and accused persons in Croatian criminal proceedings,[[12]](#footnote-12) but adoption of Regulation brings now new challenges for both the legislator and the criminal justice authorities and one of the most important aspects in the implementation of Regulation, is requirement for the protection of defendants rights opposed to the strong role of the EPPO. Considering the fact that Regulation leaves this issue to the applicable national law, it is important to analyse whether the Croatian criminal justice system provides for the adequate framework and what are the potential obstacles for the defence in the EPPO’s proceedings.

Following the wording of the provisions of the Regulation on the procedural safeguards (Art 41), rights of suspects and accused persons in Republic of Croatia will be analysed in the following chapters.

* 1. **Right to interpretation and translation**

The first procedural right guaranteed in the Article 41 of Regulation is the right to interpretation and translation. This right was the subject of the first adopted measure under the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, 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 proceedings.[[13]](#footnote-13)

Directive 2010/64/EU was implemented in Croatian criminal procedure law with the Act on Amendments to the Criminal Procedure Act in 2013.[[14]](#footnote-14) Directive requires a written translation of all documents which are essential to ensure that defendants are able to exercise their right of defence and to safeguard the fairness of the proceedings and according to CPA these documents include letter of rights, decision on deprivation of liberty, ruling on investigation, order for evidentiary actions, indictment, private charge, summon, court decisions after the indictment until the final termination of the proceedings and in proceedings upon extraordinary legal remedies.The authority conducting the proceedings may *ex offo* or upon reasoned written request of the defendant, order written translation of the evidence or part of it, if it is necessary to exercise the right of defence, and as an exception, an oral translation or oral summary of evidence may be provided instead.[[15]](#footnote-15) As regards the latter possibility, our legislator went beyond the requirements of Directive by prescribing mandatory defence in the case of oral translation of evidence.[[16]](#footnote-16) Furthermore, defendant has, upon his request, right to interpretation of communication between him/her and his/hers legal counsel necessary for the preparation of defence, for lodging of an appeal or for undertaking other procedural actions if it is necessary for the exercising the right of defence. By providing linguistic assistance to the meetings between the accused and his defence, Directive strengthened standards established in ECtHR case law.[[17]](#footnote-17)

New Act on Amendments to the Criminal Procedure Act[[18]](#footnote-18) transposed entirely Directive 2010/64/EU by introducing in Article 8, paragraph 6 of CPA a new legal remedy in order toensure the protection of the defendant's right to translation throughout the proceedings. Hence, defendant got the right to appeal against the decision rejecting the defendant's request for written translation of evidence or its part.[[19]](#footnote-19) Furthermore, in line with Directive 2012/29/EU[[20]](#footnote-20) legislator introduced possibility of translation and interpretation through a telephone connection or audio - video device.[[21]](#footnote-21)

In accordance with the Directive and in order to fully protect defence rights, the costs of oral and written translation to defendant, irrespective of the outcome of the proceedings shall not be charged to persons who are obliged to reimburse the costs of the criminal proceedings according to the provisions of the CPA, i.e., these costs are born by a state (Article 145(6) CPA).

The empirical study on the procedural rights of the defence in different stages of the Croatian criminal procedure, conducted in 2016, indicated that the right to interpretation and translation is exercised in practice in a relatively satisfactory way.[[22]](#footnote-22) The perceived shortcomings referred mostly to the right to interpretation of communication between the defendants and the defendant attorneys, that is, the need for wider regulation of that right. Also, difficulties sometimes arise regarding the search for interpreters for some exotic languages. ​​ The good practice of the state attorney's offices and courts to translate all the documents requested by the defendant, and sometimes the entire case file should be emphasized, whereas it goes beyond minimum guaranteed by Directive.[[23]](#footnote-23) That is the reason why there was no situation in practice of refusal of the requests for translation.[[24]](#footnote-24)

Right to interpretation and translation is of particular importance in the context of EPPO proceedings, especially those with transnational elements (in cross-border investigations) where the linguistic assistance is one of the essential elements for the efficient exercise of defence rights. Results of the study on existing practice in Republic of Croatia regarding the procedural rights of defendant as well as the amendment which fully implemented Directive in national law give good basis for the belief that these rights will be respected and that there shouldn’t be obstacles in exercising these rights in EPPO proceedings. Anyway, further attention should be given to the manner and extent in which these rights are provided during the meetings between defendant and the lawyer. Besides, the problem may arise in situations of allocation of the case in EU member states which did not implement fully Directive and that have lower level of protection of this right which for the defendant means lowering standards established in national law.

* 1. **Right to information**

According to Article 41 Regulation defendants have the right to information and access to the case materials, as provided for in Directive 2012/13/EU. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings[[25]](#footnote-25) as the second measure under the Roadmap on procedural rights ensures that suspect and accused persons are informed about their rights in criminal proceedings, which right is not explicitly stated but can be inferred from the ECtHR case law.[[26]](#footnote-26) However Directive goes beyond the ECtHR case law by introducing a provision on the written letter of rights upon arrest.[[27]](#footnote-27) Directive furthermore addresses the right to information about the accusation and the right of access to the materials of the case.

Timely and accurate information about the defendant’s rights and about charges is precondition for the efficient preparation of the defence and for the exercising of all the other rights in proceedings.[[28]](#footnote-28) Giving the complexity of the criminal offences which fall under the competence of the EPPO, its investigative powers and very often transnational elements of investigation, providing proper information on the charges and on the defence rights will be of special importance in the EPPO proceedings.

However, Regulation lacks provision which would define the moment when the suspect should be notified that he/she is under investigation by the EPPO and this moment is important as it challenges number of procedural rights of the defence.[[29]](#footnote-29) Hence, the duty of the EPPO to deliver such notice, as well as the deadline and the form of the notice depends entirely on applicable national law. Besides that Regulation does not refer to the moment when the person assumes the status of suspect and consequently all the procedural rights which pertain to him/her with that moment.[[30]](#footnote-30)

Directive 2012/13/EU was transposed in Croatian national law in 2013.[[31]](#footnote-31) These amendments introduced written letter of rights in Article 108a. for the arrested persons which consists of notice of the reasons for the arrest, right to remain silent, right of access to a lawyer, access to a case materials, right to have third person and consular authorities informed of the arrest, right of access to urgent medical assistance, the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority. This provision was amended in 2017 in accordance with Article 6, paragraph 2 of Directive on right to information,[[32]](#footnote-32) and now it is explicitly stated that letter of rights for the arrestee contains both information on the reasons for the arrest and information on the grounds for suspicion of having committed criminal offence. In addition, legislator amended provision on the information for the suspects forcefully brought in and for the suspects who appear voluntarily. Beforehand, police could gather information from latter category of suspects without any procedural guarantees and in relation to former category of suspects amendments from 2013 prescribed duty to inform on the procedural rights but not in the written form.[[33]](#footnote-33)

Considering the fact that Regulation does not regulate this issue in the adequate way, it is of utmost importance that national law provides for the guarantees of the right to information in accordance with Directive. In that sense, the good starting point for the EPPO’s proceedings is the fact that there were no perceived obstacles in practice in relation to the exercise of the right to information in the proceedings before the state attorney.[[34]](#footnote-34) As regards the moment when the suspect should be notified that is under investigation by the EPPO, in accordance with CPA, ruling on conducting investigation has to be delivered to suspect within eight days from the date of issue, and for the criminal offences for which preliminary inquiries are conducted, EDP will be obliged to inform suspect about the evidentiary actions within three days from taking the first evidentiary action.[[35]](#footnote-35) Furthermore, defendant receives letter of rights which contains information on the charges and reasons for reasonable suspicion as well as the information on his/her rights together with summon for the first interrogation and with the order for undertaking certain evidentiary actions (Article 239 CPA).

The effectiveness of the proclaimed right to information can be questioned in the EPPO’s proceedings in relation to the possibility of redistribution of the case. Considering that case can be allocated and consequently applicable law can be changed in the course of investigation one or even more than one time, information on the charges and on the defence rights given in the proceedings in one member state can become insufficient and irrelevant. Such legal uncertainty poses a problem from a human rights perspective and disables effective defence in pre-trial investigations.[[36]](#footnote-36) The problem may arise when defendant acquires some procedural rights in accordance with the law of one member state, and the law of the other member state where the case is allocated does not guarantee that right in the same extent and from the same moment as the former. In order to ease negative consequences of this situation it is necessary that defendant is informed timely and adequately about the allocation and about new applicable law. As the minimum, national law should provide that letter of rights for the suspect and accused person in EPPO’s proceedings contains also information that the case can be reallocated to an EDP in another member state in accordance with Article 26, and also that the once investigation is closed, case can be brought to prosecution in another member in accordance with Article 36.

According to Regulation (Art 45(2)) access to the case file by suspects and accused persons as well as other persons involved in the proceedings shall be granted by the handling European Delegated Prosecutor in accordance with the national law of that Prosecutor’s Member State.

Considering that the Directive did not explicitly state that right of access to the case file should be granted during the pre-trial stage of criminal proceedings,[[37]](#footnote-37) there could be discrepancies among EU MS in relation to the moment from which suspects and accused in EPPO proceedings acquire the right to access the EPPO case file.

The potential problems with wording of the Article 45(2) were recognized by the *The Meijers Committee* which emphasised that effective exercise of this right may not be possible in some situations in EPPO’s cross-border investigations when defendant is detained for it is much more difficult for the defendant to submit a request to access the case file to the handling European Delegated Prosecutor than to the authorities of the Member State where he is detained.[[38]](#footnote-38)

Provisions of CPA on right of access to a case file right were amended in Croatian law due to the need to transpose Directive 2012/13/EU as well as to implement Decision of the Constitutional Court of Republic of Croatia which derogated provisions of the CPA/2008. CPA allows for defendant to access the case files from the moment of the interrogation, and furthermore from the moment of official notification about the preliminary inquires or investigation (depending on the criminal offence). Amendment also introduced possibility to postpone the right to access to a case files for the maximum 30 days from the notification on the charge, and also to refuse access to certain case materials for the particularly serious forms of criminal offences.[[39]](#footnote-39) However, empirical study indicates that provisions on the restrictions do not apply in practice. Yet, some practical obstacles related to the arranging the time for the access to a case file and costs of copying the file can occur.[[40]](#footnote-40) As regards costs of the copying the file, although the amendment of 2013 clarified that these costs are not charged to the defence counsel appointed *ex officio,* it left opened possibility of charging these costs to defendant which can be questioned from the aspect of the Article 7(5) of Directive which states that access to case file should be provided free of charge.

These perceived practical obstacles could be more pronounced in the EPPO’s proceedings and it should be taken into consideration.

* 1. **Right of access to a lawyer**

Right of access to a lawyer is considered to be at the heart of the right to defence as a fundamental right,[[41]](#footnote-41) whereas it facilitates exercise of other defence rights, ensures fair trial and it strengthens the protection of defendant from torture, inhuman and degrading treatment and punishment.[[42]](#footnote-42) Consequently, the right of access to a lawyer should be the backbone of the effective exercise of defence rights in EPPO proceedings. However, Regulation does not regulate this right in more detail but only refers to Directive 2013/48/EU[[43]](#footnote-43) as implemented by national law.

Directive 2013/48/EU on the right of access to a lawyer addresses the right to legal advice as a part of the measure C which is the core measure of the Roadmap for strengthening the procedural rights.[[44]](#footnote-44)It also includes measure D which concerns right to communicate with and have third person informed in the event of detention.Though this Directive 2013/48/EU, founded on the *Salduz* case law, is considered to be a milestone and a big step forward in strengthening procedural rights in EU member states, its efficiency in the EPPO's proceedings can be questioned, i.e., whether the Directive is adequate and sufficient mechanism for practical and effective exercise of the rights of defence in relation to the EPPO's powers. The major drawback of Directive in relation to the EPPO’s proceedings is the fact that Directive does not refer to the right of access to a lawyer in transnational proceeding and the EPPO’s investigations will very often have cross-border character. Hence, when the handling EDP assigns an investigation measure to the EDP from another Member state, right to access to a lawyer will depend on the national law.[[45]](#footnote-45)As *Bachmaier Winters* concludes defendant may exercise his right of access to a lawyer in the executing State under this Directive only in relation to identity parades, confrontations, and reconstructions of the scene of a crime when these measures are foreseen both in the issuing and executing State and in both States the accused is allowed or required to be present.[[46]](#footnote-46)

Directive on the right of access to a lawyerwas transposed in the Croatian criminal procedure law with the last Amendments of the CPA in 2017. Transposition of the provisions on the right to access to a lawyer in national law was not an easy task whereas it required amendments which, though not large in its extent, presupposed the change of the perception of the traditional concept of the pre-trial proceedings in Republic of Croatia.[[47]](#footnote-47) The amendments aimed to strengthening procedural rights of the suspect from the earliest phase of the preliminary procedure, that is, from the first interrogation before police which required changes of the notion of suspect and defining it in substantive terms.[[48]](#footnote-48) In that sense, Croatian legislator prescribed detailed procedural safeguards for the suspects from the first contact with the police.[[49]](#footnote-49)

In order to transpose Article 4 of Directive on the confidentiality of communication between suspects or accused and their lawyer, legislator intervened in a several provisions of CPA. It explicitly prescribed right to free and confidential communication as one of the fundamental procedural rights guaranteed in Article 64 CPA and in addition specifically guaranteed this right to the arrestee and detainee (Articles 114 and 139 of CPA). Consequently, deriving from the absolute character of this right, provisions of Article 75 and 76 CPA which allowed certain limitations of this right were deleted. It should be noted, though, that member states could not agree in full on absolute character of this right which is why the Recitals 33 and 34 of Directive left some margin for exception in relation to the situation of colluding lawyer and lawful surveillance operation by competent authorities by national intelligence services to safeguard national security.[[50]](#footnote-50) However, our legislator did not foresee any exceptions on this right.[[51]](#footnote-51)

Furthermore, in accordance with Directive (Art. 3(3) c.), the Amendment of CPA introduced the right for the lawyer to attend certain evidence-gathering acts: identity parades, confrontations and reconstructions of the scene of a crime, when defendant participates in those acts (Art 67(2)). *Pavlović* states that this provision of Directive is not transposed fully whereas Directive allows for lawyer to attend these acts regardless of the presence of the defendant.[[52]](#footnote-52) However, Directive guarantees this right in situations when the suspect or accused person is required or permitted to attend the act concerned and from the recital 26 of Directive follows that lawyer can exercise this right when defendant is present during these acts. Yet, it is truth that Directive sets up minimum standards and that legislator could and should give higher guarantees regarding participatory rights.

The Amendment also regulated right for the lawyer to be present and participate effectively in the evidence gathering act of questioning of suspects and accused (Article 276 (4) CPA). Directive left certain margin of appreciation to MS to define the concrete scope of participation of the lawyer during questioning,[[53]](#footnote-53) and detailed regulation of this right in Croatian law was required and necessary considering the perceived discrepancies in the practice.[[54]](#footnote-54) According to CPA lawyer is allowed to pose the questions to defendant after the competent authority finishes with questioning.[[55]](#footnote-55) Before that, during the questioning of the authority, lawyer may only suggest to defendant not to answer particular question.

* 1. **Right to legal aid**

Regulation guarantees in Article 41 the right to legal aid as provided for in Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.[[56]](#footnote-56) This Directive was last legislative measure adopted under the Roadmap on procedural rights. Even though right to legal aid was together with right to legal advice object of the measure C under the Roadmap, due to the specificity of this subject and difficulties in establishing the scope of this right (as it has significant financial implication for the member states), these two issues were dealt separately.[[57]](#footnote-57) As a result of compromises during the negotiations Directive has a somewhat limited scope of application as it does not apply in the same extent as the right to access to a lawyer, that is, to all suspects and accused persons whether deprived of liberty or not. Compromise on the scope of the application has been found so that in addition to the situations of deprivation of liberty this right should also been guaranteed as a minimum when mandatory assistance is required by law, and when suspect and accused persons are required or permitted to attend certain investigative or evidence gathering acts (identity parades, confrontations and reconstruction of the scene of crime).[[58]](#footnote-58) In these situations, the right to legal aid should be ensured if the suspects and accused lack sufficient resources to pay for the assistance of a lawyer when interests of justice so require. In determination whether legal aid is to be granted Member States may apply a means test, a merits test, or both. Criteria set for the determination whether these conditions are fulfilled (means and merits test) derive from the ECtHR case law.[[59]](#footnote-59) Even though Directive leaves large margin of discretion to the member states regarding these tests, in any event the merits test shall be deemed to have been met where a suspect or an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive and during detention.[[60]](#footnote-60)Furthermore, the Directive leaves the Member States free to decide whether their authorities may request compensation of the costs of legal aid provided in proceedings which result with conviction.[[61]](#footnote-61)

As regards EPPO’s proceedings, taking into account large margin of discretion left to the member states and somewhat lean text of the Directive,[[62]](#footnote-62) *Mitsilegas and Giuffrida* question whether the regime provided for by the Directive is effective enough to protect the rights of the suspects or accused persons in these proceedings.[[63]](#footnote-63) This especially concerns question of costs of defence in transnational investigations when person is requested to exercise its right of defence with regard to investigation carried out in various countries.[[64]](#footnote-64) In that direction, *Bachmaier Winter* emphasises that this directive does not address the right to a lawyer in the procedure of evidence gathering nor in the assessment of the necessity and proportionality of the measure assigned to an EDP, and the validity of the evidence obtained by an EDP in another Member State.[[65]](#footnote-65) Although Directive on right of access to a lawyer and Directive on right to legal aid undoubtedly improved standards of protection of procedural rights,[[66]](#footnote-66) it is regrettable that EU legislator, being aware that directives do not ensure full protection in specific situations of transnational proceedings and subsequently of EPPO's proceedings, didn't elaborate furthermore right to access to a lawyer and right to a legal aid in Regulation.

Although deadline for its transposition in national law expired on 5 May 2019, Directive on the right to legal aid still hasn’t been transposed in Croatian law. Implementation of this Directive presupposes significant interventions in the existing provisions of CPA on the right of access to a lawyer at the expense of budget funds.[[67]](#footnote-67) Namely, the current legislation shows inconsistencies regarding the manner in which right to a lawyer at the expense of budget funds is regulated in relation to the right of access to a lawyer. The right of access to a lawyer is now guaranteed from the earliest stages of the proceedings in accordance with the Directive on the right of access to a lawyer, but at the same time the right to a lawyer at the expense of budget funds is guaranteed only at later stages of proceedings, from the moment of the receipt of the ruling on the conduct of the investigation, and for criminal offences for which the investigation is not conducted only after the indictment was filed.[[68]](#footnote-68) Hence, defendants who lack sources cannot effectively exercise their right of access to a lawyer from the earliest stages of proceedings which brings them to unequal position in relation to defendants with sufficient sources. Consequently, the question of the effective and real, not just illusory, opportunities of exercising the right of access to a lawyer can be posed, especially in the context of the EPPO proceedings which will by default be more complex and should imply legal assistance.

However, Directive requires legal aid to be granted before questioning by the police but it implies only situations when Directive applies, in other words, when suspect is deprived of liberty. In that sense, it can be concluded that CPA foresees in one aspect wider scope of this right than the Directive whereas it provides for the right to a lawyer at the expense of budget funds to all accused persons whether deprived of liberty or not if they fulfil eligibility criteria set up in Article 72 CPA. But now, legislator should extend that right to the previous phase that is from the first interrogation.

Besides, our law foresees mandatory legal assistance in relatively broad manner which partially overlap with the scope of the right on legal aid guaranteed under the Directive*.* Hence, suspected and accused persons will benefit from the mandatory assistance from the earliest stages i.e. from the first interrogation for criminal offences for which county courts have trial jurisdiction, and also, regardless of the severity of the criminal offence, when detention or pre-trial detention are ordered, from the moment these measures have been ordered.[[69]](#footnote-69)As regards EPPO's proceedings, in accordance with the current legislation, that means that for certain criminal offences which fall under material competence of the EPPO, such as subvention fraud[[70]](#footnote-70) mandatory legal assistance will be required from the first questioning. Yet, it remains to see how legislator will regulate question of the material judicial competence for the EPPO.[[71]](#footnote-71)

Having in mind that the EPPO is being introduced in national system as a new supranational body of prosecution with the significant investigative powers, and furthermore considering its complex organizational structure and all the difficulties that arise for defence from these features especially in trans-border investigations, the EPPO proceedings should be defined by law as situations which fulfil merits test, meaning that interest of justice in these cases justify right to legal aid, if the defendant lacks sufficient resources.[[72]](#footnote-72)

Furthermore, provisions of CPA on authority competent for deciding on granting legal aid should be harmonised with Directive. According to CPA the competent authority for deciding on request for legal aid is state attorney or judge depending of the stage of proceedings. However, in Recital 24 of Directive is clarified that competent authority should be an independent authority that is competent to take decisions, or a court, including a judge sitting alone, and that the police and the prosecution can take this decision only in urgent situation, when it is necessary for granting legal aid in tamely manner.

 Also, importance of granting emergency or provisional legal aid when the competent authorities are not able to grant legal aid without undue delay and at the latest before questioning of the person concerned, or before the specific investigative or evidence-gathering acts referred to in this Directive are carried out, is emphasised. [[73]](#footnote-73) This possibility of granting emergency legal aid before first questioning should be foreseen in CPA, especially in the light of the amendments from 2017 which allowed for the statement of the suspect given before police to be used as the evidence at the trial.

Furthermore, provisions on the procedure of determining whether the defendant lack sufficient resources need to be re-examined whereas it have been shown in practice as too complicated and bureaucratic,[[74]](#footnote-74) and Directive on the other hand requires decision to be taken without undue delay. Undertaking this complex procedure would be particularly problematic in cases of questioning of suspects before the police when arrested. In these cases, provisional legal aid should be always provided, and later on, if the means test shows that defendant does not meet conditions for granting legal aid, costs could be charged afterwards by the defendant.[[75]](#footnote-75)

* 1. **Right to remain silent and the right to be presumed innocent**

Regulation also guarantees to the suspects and accused persons in the EPPO proceedings right to remain silent and right to be presumed innocent in accordance with Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.[[76]](#footnote-76) It should be mentioned that Regulation does not specifically mention right not to incriminate oneself though this right is guaranteed in Article 7 Directive 2016/343 together with right to remain silent as the specific aspects of the presumption of innocence. Though closely related[[77]](#footnote-77) these two guarantees can be seen as two partly overlapping circles.[[78]](#footnote-78) However, whereas Regulation guarantees right to be presumed innocence and this privilege is seen as one aspect of this presumption, it can be concluded that suspects and accused persons should have this right guaranteed in the EPPO proceedings.

Directive 2016/343 as the fourth adopted measure under the Roadmap is setting up higher standards of the protection of procedural rights of suspects and accused persons. Unlike the other directives, this one applies even before the moment the person has been aware that is suspected or accused of having committed a criminal offence.[[79]](#footnote-79) Furthermore, though Directive presents codification of the ECtHR standards, in some aspects it goes beyond these standards,[[80]](#footnote-80) whereas it guarantees right to remain silent and right not to incriminate oneself as absolute rights.[[81]](#footnote-81)

As a constitutional principle, presumption of innocence is proclaimed in Croatian law in Article 28 of Constitution of Republic of Croatia and Article 3 of CPA.[[82]](#footnote-82) Furthermore, right to remain silent is guaranteed in Article 64 paragraph 1, subparagraph 7.[[83]](#footnote-83) Defendant has to be informed on the right to remain silent from the first moment of the arrest and this information is part of the Letter of Rights which has to be delivered to suspects and accused persons before taking certain evidentiary actions, or upon delivering certain decisions which affect procedural position of the defendant. The burden of proof for establishing the guilt of suspects and accused persons is on the prosecution (Art. 38(2), Art 47(1), Art 217, 342 -343 CPA). CPA contains provisions which preclude prosecutor from lowering this burden by using defendant as a source of evidence in situations where prosecution lacks other strong evidence of guilt (Art. 417a(5), 418 (2) and (5) CPA).[[84]](#footnote-84) However Criminal Code foresees two exceptions from this rule, that is, situations in which law places the burden of proof on the defendant, the first is related to institute of extended confiscation of the pecuniary gain (Article 78(2) CC) and the other concerns criminal offence of serious defamation. Application of extended confiscation is possible for criminal offences which fall under the competence of the State Prosecutor's Office for the Suppression of Organized Crime and Corruption (USKOK), and some of these offences fall under competence of EPPO in accordance with PIF Directive. However, these exceptions do not violate principle of the presumption of innocence whereas they fall under the admissible use of presumptions of fact and law, which is recognized also in the ECtHR case law[[85]](#footnote-85) and Recital 22 of Directive 2016/343 also supports this stance.[[86]](#footnote-86) The other consequence which derives from presumption of innocence is rule by which court has to render a judgement of acquittal when it has not been proven that the accused committed the offence he is charged with (Art. 453 para 3, Art 6(2) Directive).

Directive 2016/343 in Article 5 addresses so called “reputation related” aspects of the presumption of innocence.[[87]](#footnote-87) These aspects include public references (statements) to guilt during proceedings as well as the presentation of suspects and accused persons in court or in public. As to the former aspect, in ECtHR leading case *Peša v. Croatia*, Court found a breach of the applicant's right to be presumed innocent due to the the statements by four high-ranking public officials (State Attorney, the Head of the Police, the Prime Minister and the State President) given to the media in the days immediately following the arrest of the applicant amounted to a declaration of the applicant's guilt and prejudged the assessment of the facts by the competent judicial authority.[[88]](#footnote-88)

According to Article 5 Member States have to take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint. As regards this aspect, Directive goes further than the ECtHR which has found in its case law that such measures violate the right of the defendant to be free from degrading treatment under Article 3 ECHR, rather than the presumption of innocence under Article 6(2) ECHR.[[89]](#footnote-89) Even though our national law lays down principles of proportionality and legality when applying measures of coercion in criminal proceedings, in some situations the question of the appropriateness of using such coercive measure that is question of proportionality between the method of use of force and the gravity of the criminal offence and the circumstances of criminal proceedings can be posed.[[90]](#footnote-90)

Provisions of the Directive 2016/343 differ from the other directives whereas they set out general principles of law, instead of procedural framework for the protection of the rights of the suspect or accused person which opens the question of the adequate way of transposition and implementation of the Directive in national law.[[91]](#footnote-91) Hence, Croatian legislator did not make specific amendments to the law which aimed principally to the transposition of the provisions of Directive but it informed Commission on the package of legislative measures in force which altogether comply with Directive. Nevertheless, this approach should be re-examined and amendments in direction of enhancing presumption of innocence should be considered. Namely, the terminology in certain provisions of the CPA is not in the line with the presumption, whereas the term of perpetrator is used instead of the terms suspect and accused persons (Art. 43a, 206.i, 245(3), 332(7 of CPA)) prejudicing in that way the guilt of the person against whom certain procedural actions are undertaken.

* 1. **Right of defence to gather evidence**

The important element of the principle of equality of arms from the aspect of defence is their right to gather and present evidence. However, effective realisation of this right in pre-trial phase especially in prosecutorial investigations is questionable. Even when efforts to strengthen participatory rights of defence exist, the involvement of defence, as *Ruggeri* points, will inevitably be secondary.[[92]](#footnote-92)

The right of defence lawyers to gather evidence is not commonly accepted in national laws of EU member states. Considering that there is no compliant stance on this question, this aspect of defence rights has not been harmonised at EU level through directives nor the Regulation brings harmonisation in that direction.[[93]](#footnote-93) Namely, Regulation in Article 41(3) states that suspects and accused persons should have all the procedural rights available to them under the applicable national law, including the possibility to present evidence and to request certain evidentiary actions (the appointment of experts or expert examination and hearing of witnesses and to request the EPPO to obtain such measures on behalf of the defence). Some authors state that this part of provision constitutes the specific right for the defence which should be guaranteed even if these measures are not available under national law.[[94]](#footnote-94) However, from the wording of recital 85 it is evident that suspect and accused person should benefit from this right only when provided for in national law. This means that individuals will enjoy a different degree of protection according to the applicable national law.[[95]](#footnote-95)

While some authors welcomed anyway this provision of Regulation as it at least envisages proactive role of the defence,[[96]](#footnote-96) the other emphasise limitations which make this right hypothetical[[97]](#footnote-97) and not providing for any specific investigative powers for defence lawyers.[[98]](#footnote-98) Namely, this provision only provides for a right to request certain evidentiary actions, which implies discretion of the EPPO not to grant it.[[99]](#footnote-99)

Hence, Regulation itself does not provide for any higher guarantees for defendants in EPPO proceedings which could counterbalance the existing inequality of arms nor brings added value or harmonisation of this aspect of procedural rights. The inherent imbalance between prosecution and defence is even more accentuated in EPPO proceedings whereas specific investigative measures are available to EDPs under the Regulation, while at the same time defence can only request them to the extent allowed by domestic law.[[100]](#footnote-100) This imbalance, i.e. inequality of arms will particularly be pronounced in trans-border cases.[[101]](#footnote-101) Considering all the said, calls for the establishment of a Eurodefensor[[102]](#footnote-102) or some kind of network of defence lawyers at EU level[[103]](#footnote-103) are quite justified and welcomed.

Since the right to gather evidence in EPPO proceedings is dependent on the applicable national law, it remains to see the defendant’s role in evidence gathering in EPPO proceedings according to Croatian criminal procedure law. Though our law does not foresee the right of defence to gather evidence during pre-trial proceedings, it provides for certain participatory rights in evidence-gathering which are in line with Art 41(31) Regulation, that is right to propose to state attorney to conduct evidence collecting actions, right to attend certain evidentiary actions and rather limited right to participate actively.

Although CPA/2008 provided for the defence attorney right to take certain investigative actions in direction of collecting necessary information for defence which could at first appear to be contributing to strengthening of principle of equality of arms,[[104]](#footnote-104) these activities do not present adequate counterpart to the investigative powers of state attorney which became “master” of the pre-trial proceedings and is authorized for conducting investigation and for collecting evidence, and more ever to the investigative powers of the EPPO. According to Article 67 CPA the defence counsel may, for the purposes of the preparation of a defence, request a statement from citizens other than the victim or the injured person of the criminal offence.[[105]](#footnote-105)Amendment of CPA from 2013[[106]](#footnote-106) resolved doubts that have arisen as regards legal effect of the defence notes by prescribing explicitly that these notes cannot serve as evidence at trial. Defence notes drawn up during the examination of citizens serve for the explanation of the defence proposals of evidence and are attached to a case file.[[107]](#footnote-107) *Pavlović* points out that this right, i.e. these information from citizens have so far failed to serve their purpose, firstly because citizens are not willing to answer the summons or to give a statement to defence attorneys and secondly, because these notes cannot serve as evidence in proceeding but only as a information upon which defendant can propose to state attorney to conduct evidence collecting actions or for the explanation of the defence proposals of evidence during the proceedings.[[108]](#footnote-108)

Defendant may, in accordance with Art 234 CPA, after the receipt of the ruling on conducting the investigation propose to the State Attorney and by analogy to the EDP, to conduct evidentiary actions. For criminal offences for which preliminary inquiries are conducted, defendant has right to propose evidentiary actions after he receives notification on first evidentiary action undertaken by state attorney.[[109]](#footnote-109) Hence, if the EDP accepts the proposal of the defendant, he shall conduct the relevant evidence collecting action which includes examination of witnesses and expert witness testimony but defendant can propose also any other evidence action. If the EDP does not agree with the proposal of the defendant, he should within eight days deliver the proposal to the investigating judge and notify the defendant thereof in writing. The investigating judge shall decide on the proposal of the defendant.

As a rule, state attorney is undertaking evidentiary actions in noncontradictory manner whereas defendant and the defence lawyer are allowed to attend only those evidentiary actions which they have proposed (Art 234(3), 213(4) CPA). Besides, their confrontational right to question witnesses when investigation is not conducted is limited only to evidentiary hearing conducted by judge of investigation in situations prescribed by law.[[110]](#footnote-110)

An empirical study on preliminary inquires in Republic of Croatia pointed relatively low activity of defendants in evidence gathering, that is, very small number of filed proposals for conducting certain evidence actions. On the other hand almost all proposals of the defence were accepted which implies that defence’s proposals were procedurally justified.[[111]](#footnote-111) This can indicate that the assessment of the state attorney in the most of cases is good and that defence attorneys consider that there is no need for their further proposal.

Participatory rights of defence were in a certain extent enhanced with the transposition of Directive on access to a lawyer (Amendments of CPA from 2017) as regards the right to attend certain evidentiary actions and to actively participate in questioning of the defendant.[[112]](#footnote-112)

Considering already mentioned accentuated imbalance between EPPO’s investigative powers arising from the Regulation and defendant whose participatory rights are limited by national law, it is justifiable to question whether the existing participatory rights will suffice to alleviate this imbalance and ensure equality of arms in the EPPO proceedings.

1. **JUDICIAL REVIEW OF PROCEDURAL ACTS OF THE EPPO IN CROATIAN CRIMINAL PROCEDURE LAW**

Considering that complex organizational structure of the EPPO, supranational nature of this body and its broad investigative coercive powers can undoubtedly affect fundamental rights in criminal proceedings, the establishment of the effective mechanism of judicial control of the EPPO and its procedural acts appears to be the essential factor for ensuring effectiveprotection of the defence rights and generally to support rule of law in EPPO proceedings.[[113]](#footnote-113) In that sense, the question of the competent judicial authority for the judicial review of EPPO’s acts, more concretely, question of distribution of jurisdiction between national courts and European court of justice is one of the key issues of Regulation. Even though the EPPO is EU body of prosecution, Regulation did not provide for judicial review of all procedural acts of the EPPO at EU level.[[114]](#footnote-114) Deriving from the premise that EPPO’s procedural acts and investigative measures will mainly be based upon national law and exercised in the national criminal systems, and consequently that it can be considered as a national authority,[[115]](#footnote-115)Regulation entrusted the judicial review of procedural acts of investigation and prosecution to the national courts, in accordance with applicable national law.[[116]](#footnote-116) Nevertheless, EU Court of justice have jurisdiction in situations denominated in Art 42 paragraphs 2 – 8, that is, itremains competent for the review of the EPPO’s acts which derive directly from the Union law.

Given that the law of EU Member States differ considerably regardingthe judicial review of the pre-trial stage of criminal proceedings and that this aspect of criminal procedure is not harmonised at EU level by procedural rights directives,[[117]](#footnote-117) the control over the procedural actions of EPPO and consequently the level of the protection of the defence rights will depend almost entirely on the efficiency of the national system of judicial review. Consequently, differences in national law of EU member states can lead to the phenomenon of forum shopping. Permanent Chamber could decide to reallocate case in accordance with Article 26 of the Regulation, from the member state with the stringent system of judicial control to the EDP in another member state with more lenient system of judicial review of pre-trial procedure in order to ensure more efficient investigation. Furthermore, problem arise regarding the judicial control of decisions of Permanent Chamber on case allocation and on forum choice as these decisions are not subjected to judicial review at EU level and the judicial review of these decisions by national courts poses considerable doubts. These doubts concern question before what competent court should the defendant challenge the Permanent Chamber’s decisions on allocation, which are the criteria that should govern this judicial review and how can the Permanent Chamber’s decision be called into question by means of domestic law on the establishment of jurisdiction.[[118]](#footnote-118)

As previously stated, judicial control of EPPO depends mostly on the applicable national law and in that sense Croatian criminal procedure law provides relatively good basis for the judicial review of EPPO’s procedural acts on the national level whereas new mechanisms of judicial control of the state attorney’s actions during the pre-trial proceedings have been established in recent years. Namely, in 2013 legislator implemented, though not completely successful, decision of the Constitutional Court of Republic of Croatia which identified some considerable and serious shortcomings of the new Criminal procedure Act from 2008 and abrogated number of provisions of CPA as unconstitutional. Implementation of this decision necessitated changes in structure of pre-trial proceedings by introducing effective mechanism of judicial protection against unlawful criminal prosecution and investigation and, in order to comply with requirements of effective investigation, by introducing legal remedies against delay and other obstructions in criminal proceedings.[[119]](#footnote-119) Even though the decision of Constitutional Court was not implemented comprehensively,[[120]](#footnote-120)this legislative reform represents a significant step forward as it contributed to the balancing of the criminal procedureand undoubtedly strengthened the procedural rights of defence.

Judicial review of principle of legality of criminal prosecution was introduced into the stage of investigation as well as during preliminary inquires through the right of appeal against ruling on investigation and complaint for violation of the procedural defence rights. Upon the defendant’s appeal against the ruling on conducting investigation, the judge of the investigation reviews formal and substantive conditions required to conduct investigation.[[121]](#footnote-121) On the other hand, complaint for violation of the procedural defence rights under the Article 239a CPA servers as a mechanism of judicial control over deprivation and violation of defence rights and it cannot be filed for the same reasons for which the appeal can be filed. As regards judicial review of the preliminary inquiries, whereas there is no formal decision on the initiation of preliminary inquiries and therefore there is no right to appeal to that decision, legislator introduced only one unique legal remedy. Hence, the judge of the investigation can upon defendant's complaint decide on the violation of defence rights as well as on the existence of legal preconditions for conducting of the preliminary inquiries.[[122]](#footnote-122) Furthermore, legislator introduced judicial review over a delay in criminal prosecution and proceedings from the moment of a submission of crime report through the investigation (or preliminary inquiries).[[123]](#footnote-123)

 Besides, CPA prescribes time limits for the conducting and closing of the investigation and judicial control over the length of investigation. According to Article 229 (5) CPA, if the investigation is not concluded within the time limits prescribed by law[[124]](#footnote-124) the defendant has right to file a complaint to the judge of investigation for delay of the proceedings. If the judge of the investigation finds that the complaint is founded, it will determine the time limit for the closing of the investigation and state attorney has to inform the judge of the investigation on the closing of the investigation. If the judge of the investigation finds that the complaint is unfounded, he will notify the defendant.

However, in context of the EPPO’s proceedings provision on the possible prolongation of investigation by Attorney General (Art 229(3) CPA) as well as provision on theprolongation of the time limits for deciding on the outcome of the proceedings after the closing of the investigation (Art 230)) can raise some doubts. According to CPA these decisions are taken by state attorney of a higher instance. According to Article 12(4) Regulation where the national law of a Member State provides for the internal review of certain acts within the structure of a national prosecutor’s office, the review of such acts taken by the EDP shall fall under the supervisory powers of the supervising European Prosecutor in accordance with the internal rules of procedure of the EPPO without prejudice to the supervisory and monitoring powers of the Permanent Chamber. In addition, recital 30 states that in such cases, Member States should not be obliged to provide for review by national courts.

Furthermore, problem may arise regarding the time limits prescribed by the CPA for the preferring of the indictment.[[125]](#footnote-125) These time limits are preclusive and their breach lead to a presumption that state attorney desists from prosecution. However, according to Regulation the Permanent Chamber has to decide on the draft decision of EDP proposing to bring a case to judgement within 21 day.

Notwithstanding shortcomings in the current legislation regarding the established system of judicial control,[[126]](#footnote-126) the fact is that our law provides for a higher level of judicial protection of procedural rights of defence in pre-trial proceedings in relation to other EU Member States. In the context of the EPPO proceedings this can lead to a paradox situation of lowering existing standards established under national law in order to comply with Regulation. Taking into account the complex mechanism of judicial control of the investigative and prosecution acts of the EPPO established under the national law (CPA), the Permanent Chamber might be inclined to bypass national rules by reallocating the case to the EDP in another MS with more lenient system of judicial control.

1. **CONCLUSION**

Regulation envisages a strong role of the EPPO with the considerable powers in the investigation and prosecution of the criminal offences affecting the EU financial interests but at the same time it does not provide for special procedural mechanisms on the defence side which could counterbalance the EPPO’s powers.

Although strengthening of defence rights on national level reflects on the defendant position in the EPPO proceedings, some deficiencies of the Regulation cannot be compensated with national law. Besides that, leaving so many issues regarding procedural safeguards in the EPPO proceedings open, that is, entrusting their regulation to national law does not contribute to the establishment of uniform procedure and harmonisation of procedural rights in the EPPO’s proceedings and EU legislator is one who should provide for this. Defence will especially face the problems and obstacles in the transnational EPPO proceedings whereas protection of defence rights in these proceedings is not equivalent to the protection in non-transnational proceedings at the domestic level.[[127]](#footnote-127) Until EU legislator decides to make amendments in that direction, it is on national legislators to find the adequate solutions which would reconcile tendency of protection of EU financial interests by introducing the new supranational prosecutorial body and the tendency for protection of fundamental rights in criminal proceedings.

As it could be seen from this analysis, procedural rights of defence in Croatian criminal procedure law have been in recent years improving and strengthening. Croatian legislator follows requirements for the harmonisation with EU law but transposition of directives is not always comprehensive and timely which requirement is even more accentuated in the EPPO proceedings.

The conclusion that the imbalance between the defendant’s rights and the powers of a supranational EPPO is not counterbalanced by specific provisions regarding the right to lawyer and the right to free legal assistance,[[128]](#footnote-128) can be underlined in relation to Croatian criminal procedure law whereas it still hasn’t been harmonised with Directive on right to legal aid, and the legislator should in the forthcoming amendments take into account specificities of the EPPO proceedings. The EPPO proceedings should be considered as the situations which justify right to legal aid, if the defendant lacks sufficient resources. The right to a lawyer at the expense of budget funds should be guaranteed from the earliest stages of the proceedings in accordance with the Directive. Furthermore, provisions of CPA on authority competent for deciding on granting legal aid as well as provisions on the procedure of determining whether the defendant lack sufficient resources need to be harmonised with Directive.

As regards right to information, letter of rights for the suspect and accused person in EPPO’s proceedings should contain information that the case can be reallocated to an EDP in another member state during investigation and also that once investigation is closed it can be brought to prosecution in another member state. Furthermore, amendments in direction of enhancing presumption of innocence should be considered, primarily the wording in certain provisions of the CPA should be aligned with the right of defendant to be presumed innocent.

Regulation did not contribute with its provisions on procedural safeguards and judicial review to harmonisation of EPPO proceedings which will be conducted in different EU member states, on the contrary, the perceived differences in national law of EU member states can lead to the forum shopping and to the lowering of established standards of judicial review in national law.

It is evident that all the existing shortcomings of the national criminal procedure will be particularly accentuated in the EPPO proceedings. It remains to see how will all the actors of criminal procedure and our criminal justice system in the whole embrace this supranational body of prosecution, and moreover how will the relationship between the particular bodies within the EPPO function, whether there will be insecurities and lack of confidence, whereas it all can affect the position of defence in criminal proceedings.

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2. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office, Official Journal of the European Union L 283/1 [↑](#footnote-ref-2)
3. Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012 [↑](#footnote-ref-3)
4. Mitsilegas, V.; Giuffrida, F.: The European Public Prosecutor’s Office and Human Rights. in Geelhoed, W.; Erkelens, L.H.; Meij, A.W.H. (eds): Shifting Perspectives on the European Public Prosecutor’s Office, T.M.C. ASSER PRESS, The Hague, The Netherland, 2018., p. 66. [↑](#footnote-ref-4)
5. Mitsilegas/Giuffrida, *op. cit.,* p. 68 – 70. [↑](#footnote-ref-5)
6. See Illuminati, G.: Protection of Fundamental Rights of the Suspects or Accused in Transnational Proceedings Under the EPPO, in: Bachmaier Winter (ed): The European Public Prosecutor's Office, The Challenges Ahead, Springer Nature Switzerland, 2018, p.182. [↑](#footnote-ref-6)
7. These issues were addressed at the international scientific conference “Integration of the EPPO in the National Criminal Justice Systems: Institutional, Procedural and Cooperative challenges” which was held on 11 and 12 April 2019 in Zagreb. [↑](#footnote-ref-7)
8. With adoption of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings in 2009, and afterwards in 2010 with adoption of first legislative measure (Directive on right to interpretation and translation) under the Roadmap. Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, p. 1–3 [↑](#footnote-ref-8)
9. For details on new model of prosecutorial investigation see Novosel, D.; Pajčić, M.: Državni odvjetnik kao gospodar novog prethodnog kaznenog postupka Hrvatski ljetopis za kazneno pravo i praksu (Zagreb), vol. 16, broj 2/2009, p. 427 - 429 [↑](#footnote-ref-9)
10. Decison of Constitutional Court of Republic of Croatia, U-I-448/2009, 19 July 2012, NN 91/2012. For more details see Đurđević, Z.: Rekonstrukcija, juducijalizacija, konstitucionalizacija, europeizacija hrvatskog kaznenog postupka V. novelom ZKP/08: prvi dio?, HLJKPP, vol 20, 2/2013, p. 316 – 317. [↑](#footnote-ref-10)
11. Konačni prijedlog Zakona o izmjenama i dopunama Zakona o kaznenom postupku, Zagreb, 2017, p. 46 - 54 URL=[edoc.sabor.hr/DocumentView.aspx?entid=2004803](http://edoc.sabor.hr/DocumentView.aspx?entid=2004803) [↑](#footnote-ref-11)
12. *Ibidem*, p. 317 – 318. [↑](#footnote-ref-12)
13. 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 proceedings, OJ L 280, 26.10.2010, p. 1–7  [↑](#footnote-ref-13)
14. Narodne novine 56/2013 [↑](#footnote-ref-14)
15. On condition that such oral translation or oral summary does not prejudice the fairness of the proceedings and provided the defendant has a defence attorney. Article 8(6) CPA [↑](#footnote-ref-15)
16. Prijedlog Zakona o izmjeni i dopunama Zakona o kaznenom postupku s konačnim prijedlogom Zakona, Vlada RH, travanj 2013, p. 2. [↑](#footnote-ref-16)
17. Cf. Gialuz, M.: The Implementation of the Directive on Linguistic Assistance in Italy, Between
Changes to the Code of Criminal Procedure and Case-Law Resistance in: Rafaraci, T.; Belfiore, R.: EU Criminal Justice Fundamental Rights, Transnational Proceedings and the European Public Prosecutor’s Office, Springer Nature Switzerland AG 2019, p. 31. [↑](#footnote-ref-17)
18. Narodne novine 70/2017 [↑](#footnote-ref-18)
19. Beforehand, defendant could challenge the decision of the authority conducting the proceedings only in the appeal against the judgement, *on the ground* of the substantive violation of the criminal procedure provisions.

Konačni prijedlog Zakona o izmjenama i dopunama Zakona o kaznenom postupku, Zagreb, 2017, p. 55 [↑](#footnote-ref-19)
20. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57–73 [↑](#footnote-ref-20)
21. Article 8, paragraph 11 CPA [↑](#footnote-ref-21)
22. Ivičević Karas, E.; Burić, Z.; Bonačić, M.: Prava obrane u različitim stadijima hrvatskog kaznenog postupka: rezultati istraživanja i prakse, Hrvatski ljetopis za kaznene znanosti i praksu (Zagreb), vol. 23, broj 2/2016, str. 509-545. [↑](#footnote-ref-22)
23. The idea behind Article 3 of the Directive is that the accused must know what the charges against him are and it does not mean right to have all writings of accused translated. See Klip, A.: Fair Trial Rights int he Euoropean Union: Reconciling Accused and Victim's Rights, in: Rafaraci, T.; Belfiore, R.: EU Criminal Justice Fundamental Rights, Transnational Proceedings and the European Public Prosecutor’s Office, Springer Nature Switzerland AG 2019, p. 16. [↑](#footnote-ref-23)
24. Ivičević Karas/ Burić/ Bonačić, *op. cit*. (note 22), p. 509-545. [↑](#footnote-ref-24)
25. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1–10 [↑](#footnote-ref-25)
26. Cras, S.; De Matteis, L.: The Directive on the rights to information, Eucrim 1/2013, p. 24. [↑](#footnote-ref-26)
27. *Ibidem*, p. 27 [↑](#footnote-ref-27)
28. For details see Allegrezza, S.; Covolo, A., The Directive 2012/13/EU on the right to information in criminal proceedings: Status Quo Or Step Forward?, in Đurđević, Z., Ivičević Karas, E. (eds): European Criminal Procedure law in service of protection if the Union financial interests: State of Play and Challenges, Zagreb, 2016, p. 42 [↑](#footnote-ref-28)
29. See Novokmet, A.: The European public prosecutor's office and the judicial review of criminal prosecution, New Journal of European Criminal Law, 2017, Vol. 8(3), p. 398. [↑](#footnote-ref-29)
30. Illuminati, *op.cit.* (note 6), p. 191, also Ruggeri, S.: Criminal Investigations, Interferance with Fundamental Rights and Fair Trial Safeguards in the Proceedings of the European Public Prosecutor's Office. A Human Rights Law Perspective. in Bachmaier Winter (ed): The European Public Prosecutor's Office, The Challenges Ahead, Springer Nature Switzerland, 2018, p. 207 - 208. [↑](#footnote-ref-30)
31. Act on Amendments to the CPA, NN 145/2013. For details on transposition of this Directive see Ivičević Karas, E.; Burić, Z.; Bonačić, M.: Unapređenje procesnih prava osumnjičenika i okrivljenika u kaznenom postupku: pogled kroz prizmu europskih pravnih standarda, Hrvatski ljetopis za kaznene znanosti i praksu (Zagreb), vol. 23, broj 1/2016, p.36 – 39. [↑](#footnote-ref-31)
32. Konačni prijedlog Zakona o izmjenama i dopunama Zakona o kaznenom postupku, Zagreb, 2017, p. 71 [↑](#footnote-ref-32)
33. See Ivičević Karas/ Burić/ Bonačić, *op.cit*. (note 31), p. 39. [↑](#footnote-ref-33)
34. Ivičević Karas/ Burić/ Bonačić, *op.cit*. (note 22), p. 528 - 530. [↑](#footnote-ref-34)
35. Unlike Croatian CPA, German StPO does not provide for the obligation of public prosecutor to inform the suspect about the beginning of the investigation. Novokmet, *op.cit.* (note 29), p. 392. [↑](#footnote-ref-35)
36. See Mitsilegas/Giuffrida, *op. cit*. (note 4), p. 73. [↑](#footnote-ref-36)
37. Allegrezza/Covolo, *op. cit*. (note 28), p. 47 – 48. [↑](#footnote-ref-37)
38. Meijers Committee standing committee of experts on international immigration, refugee
and criminal law: Note on the Proposal for a Regulation on the establishment of the European Public Prosecutor’s Office – Judicial Review, Forum Choice, Access to the Case File and Data Protection, p. 2. <https://www.commissie-meijers.nl/sites/all/files/cm1612_note_on_the_proposal_for_a_regulation_on_the_establishment_of_the_european_public_prosecutors_office_3110.pdf> [↑](#footnote-ref-38)
39. Article 184.a. CPA [↑](#footnote-ref-39)
40. Ivičević Karas/ Burić/ Bonačić, *op. cit*. (note 22), p. 531. [↑](#footnote-ref-40)
41. Jimeno-Bulnes, M., The Right of Access to a Lawyer in the European Union: Directive 2013/48/ EU and Its Implementation in Spain in: T. Rafaraci, R. Belfiore (eds.), EU Criminal Justice, Springer Nature Switzerland AG 2019, p. 58. [↑](#footnote-ref-41)
42. see Đurđević, Z., The Directive on the Right of Access to a Lawyer in Criminal Proceedings filing a human rights gap in the European Union legal order, in Đurđević, Z., Ivičević Karas, E. (eds): European Criminal Procedure law in service of protection if the Union financial interests: State of Play and Challenges, Zagreb, 2016, p. 19 [↑](#footnote-ref-42)
43. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, p. 1–12 [↑](#footnote-ref-43)
44. Cras, S.: The Directive on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings, Eucrim 1/2014, p. 32. Directive does not deal with the other part of the measure C which relates to right to legal aid. This right is the subject of the Directive on right to legal aid. For details *infra* 2.5. [↑](#footnote-ref-44)
45. Bachmaier Winter, L.: Cross-Border Investigations Under the EPPO Proceedings and the Quest for Balance, in Bachmaier Winter (ed): The European Public Prosecutor's Office, The Challenges Ahead, Springer Nature Switzerland, 2018, p. 133 – 134. [↑](#footnote-ref-45)
46. *Ibidem*, p. 133 – 134. [↑](#footnote-ref-46)
47. For more details on implementation of the Directive 2013/48/EU see Novokmet, A.: The Europeization of the Criminal Proceedings in the Republic of Croatia through the Implementation of the Directive 2013/48/EU, European Journal of Crime, Criminal Law and Criminal Justice 27 (2019), p. 9 [↑](#footnote-ref-47)
48. A suspect is a person in relation to whom there are grounds for suspicion of having committed a criminal offence and against which the police or the public prosecutor acts to clarify this suspicion. Article 202(2)(1) CPA. For details see *ibidem*, p. 105 – 109. [↑](#footnote-ref-48)
49. The arrestee has to be provided with clear and sufficient information about his rights, about the right to a lawyer and the possible consequences of waiving it. He/She has right to communicate with at least one third person of its own choice, which may be restricted only if necessary to protect the interests of the proceedings or other important interest. Suspects or accused persons who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if they so wish. Furthermore, possibilities of the postponement of the duty to inform third person on deprivation of liberty of suspect are delimited. [↑](#footnote-ref-49)
50. Cras, *op.cit.* (note 44), p. 42. [↑](#footnote-ref-50)
51. For the critique of this legislative solution see Pavlović, Š.: Zakon o kaznenom postupku, Rijeka, 2017 p. 281 [↑](#footnote-ref-51)
52. Pavlović, *op.cit.* (note 51), p. 264 [↑](#footnote-ref-52)
53. See Bachmaier Winter, L.: The EU Directive on the Right to Access to a Lawyer: A Critical Assessment in Ruggeri, S. (ed): Human Rights in European Criminal Law, New Developments in European Legislationand Case Law after the Lisbon Treaty, Springer International Publishing Switzerland 2015, p. 121 [↑](#footnote-ref-53)
54. Ivičević Karas/ Burić/ Bonačić, *op.cit*. (note 22), p. 523 [↑](#footnote-ref-54)
55. When the defendant completes his testimony, the competent authority will pose to him/her questions if it is necessary to present some evidence, fill in the blanks or eliminate the contradictions and ambiguities in his presentation. During this part of the interrogation, the defendant cannot consult with his defence counsel how he will answer the particular question asked, but the defence attorney may suggest that the defendant not answer the particular question asked. Article 276 (4) CPA [↑](#footnote-ref-55)
56. Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016, p. 1–8  [↑](#footnote-ref-56)
57. For genesis of the Directive see Cras, S.: The Directive on the Right to Legal Aid in Criminal and EAW Proceedings, Genesis and Description of the Sixth Instrument of the 2009 Roadmap, Eucrim 1/2017, p. 34 – 38. [↑](#footnote-ref-57)
58. Cras, *op.cit.* (note 57), p. 40 [↑](#footnote-ref-58)
59. *Quaranta v. Switzerland*, appl. no. 12744/87,24 May 1991, § 32–34. [↑](#footnote-ref-59)
60. Article 4(4) Directive [↑](#footnote-ref-60)
61. Cras, *op.cit.* (note 57), p. 43. [↑](#footnote-ref-61)
62. *Ibidem*, p. 44. [↑](#footnote-ref-62)
63. Mitsilegas/Giuffrida, *op. cit*. (note 4), p. 71 [↑](#footnote-ref-63)
64. *Ibidem*, p. 71 [↑](#footnote-ref-64)
65. Bachmaier Winter, *op.cit.* (note 45), p. 134 – 135. [↑](#footnote-ref-65)
66. *Ibidem*, p. 135. [↑](#footnote-ref-66)
67. Ivičević Karas, E.; Valković, L.: Pravo na branitelja u policiji – pravna i stvarna ograničenja Hrvatski ljetopis za kaznene znanosti i praksu (Zagreb), vol. 24, broj 2/2017, p. 432. [↑](#footnote-ref-67)
68. Ivičević Karas/ Valković, *op.cit.* (note 67), p. 432. [↑](#footnote-ref-68)
69. For other situations of mandatory assistance see Article 66 CPA [↑](#footnote-ref-69)
70. According to Art 19 CPA, county courts have trial jurisdiction for subvention fraud [↑](#footnote-ref-70)
71. In accordance with legislation in force, for the most of criminal offences which fall under material competence of the EPPO, municipal courts are competent. [↑](#footnote-ref-71)
72. See Bachmaier Winter, *op.cit.* (note 45), p. 134. [↑](#footnote-ref-72)
73. Recital 19 of Directive [↑](#footnote-ref-73)
74. See Đurđević, *op.cit.* (note 10), p. 352. [↑](#footnote-ref-74)
75. Ivičević Karas/Valković, *op.cit*. (note 67), p. 434 [↑](#footnote-ref-75)
76. Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, p. 1–11 [↑](#footnote-ref-76)
77. Although this right is not explicitly guaranteed in ECHR, ECtHR recognized this right deriving from the right to fair trial. Funke v France, app.no. 10828/84, 25 February 1993, § 44. For more details see Trechsel, S.: Human Rights in Criminal Proceedings, 2005, p. 340 – 359. [↑](#footnote-ref-77)
78. *Ibidem*, p. 342 [↑](#footnote-ref-78)
79. For detailed genesis of this Directive see Cras, S.; Erbežnik, A.: The Directive on the Presumption of Innocence and the Right to Be Present at Trial, Eucrim 1/2016, p. 28 et al. [↑](#footnote-ref-79)
80. See John *Murray v UK*, app. no. 18731/91, 8 February 1996 [↑](#footnote-ref-80)
81. However, wording of the Recital 28 opens space for different interpretation also. See Cras/Erbežnik, *op.cit*. (note 80), p. 32. [↑](#footnote-ref-81)
82. Article 3 of CPA: A person is innocent and no one may hold him guilty of a criminal offence until the guilt is established by a final judgement. [↑](#footnote-ref-82)
83. Defendant has the right to present a defence or not to, to refuse to answer a posed question or remain silent. [↑](#footnote-ref-83)
84. Krapac, D.: Kazneno procesno pravo, Prva knjiga: Institucije, Zagreb, 2014, p. 422-423 [↑](#footnote-ref-84)
85. *Salabiaku v. France*, app. no. 10519/83, 7 October 1988. [↑](#footnote-ref-85)
86. A provision on reversal of burden of proof by use of these presumptions was the object of the negotiations and as a result of compromise, they were deleted from the operative part of the Directive but they are mentioned in the recitals. Cras/Erbežnik, *op.cit*. (note 79), p. 30 – 31. [↑](#footnote-ref-86)
87. Trechsel, *op.cit.* (note 77), p. 178 - 179 [↑](#footnote-ref-87)
88. *Peša v Croatia*, app. no. 40523/08, April 8 2010, § 150.As to the measures which Government has taken in order to comply with the judgement The Ministry of Interior has adopted "Guidelines in relations with the media" which contains instructions for all police employees authorized to give information to the public on how to provide relevant information without jeopardizing the rights of those involved in an incident or investigation (both the suspect and the victim). Additionally, the Guidelines predict coordination between police authorities and the prosecutors’ office and/or USKOK (Office for the Prevention of Corruption and Organized Crime) in informing the public of investigations of public interest. ACTION REPORT on individual and general measures undertaken in the execution of ECtHR judgment in the case of Peša v. Croatia, application No. 40523/08, judgment of April 8 2010, final on July 8 2010 [↑](#footnote-ref-88)
89. EU Directive on the Presumption of Innocence: Implementation Toolkit, Fair Trials, <https://www.fairtrials.org/wp-content/uploads/2017/06/Presumption-of-Innocence-Toolkit_2.pdf>, p. 19. [↑](#footnote-ref-89)
90. See Pleić, M.: Standardi izvršenja pritvora u kaznenom postupku, doktorska disertcija, Zagreb, 2014, p. 271. [↑](#footnote-ref-90)
91. EU Directive on the Presumption of Innocence: Implementation Toolkit, Fair Trials, <https://www.fairtrials.org/wp-content/uploads/2017/06/Presumption-of-Innocence-Toolkit_2.pdf> [↑](#footnote-ref-91)
92. Ruggeri, S.: Audi Alteram Partem in Criminal Proceedings , Towards a Participatory Understanding of Criminal Justice in Europe and Latin America, Springer International Publishing AG 2017, p . 82. [↑](#footnote-ref-92)
93. See Ruggeri, *op.cit.* (note 30), p. 218 – 219. [↑](#footnote-ref-93)
94. Csonka, P.; Juszczak, A.; Sason, E.; The Establishment of the European Public Prosecutor's Office, The Road from Vision to Reality, Eucrim, 3/2017, p. 131. [↑](#footnote-ref-94)
95. Mitsilegas/Giuffrida, *op. cit*. (note 4), p. 76. [↑](#footnote-ref-95)
96. Allegrezza, S.: Pubblico Ministero europeo e posizione della difesa: nuovi scenari per la tutela delle garanzie della persona sottoposta alle indagini. Le questioni in gioco. In: Grasso G, Illuminati G, Sicurella R, Allegrezza S (eds) Le sfide dell’attuazione di una Procura europea: definizione di regole comuni e loro impatto sugli ordinamenti interni. Giuffrè, Milan, 2013., p. 485, cit.: Mitsilegas/Giuffrida, *op. cit*. (note 4), p. 76. [↑](#footnote-ref-96)
97. Allegrezza, S.; Mosna, A.: Cross-Border Criminal Evidence and the Future European Public Prosecutor. One Step Back on Mutual Recognition?, in: Bachmaier Winter, L. (ed):The European Public Prosecutor's Office, The Challenges Ahead, Springer Nature Switzerland AG, 2018, p. 149 [↑](#footnote-ref-97)
98. Ruggeri, *op.cit.* (note 30), p. 218. [↑](#footnote-ref-98)
99. Mitsilegas/Giuffrida, *op.cit*. (note 4), p. 75 [↑](#footnote-ref-99)
100. See Ruggeri, *op.cit.* (note 30), p. 218. [↑](#footnote-ref-100)
101. Allegrezza/ Mosna, *op. cit*. (note 97), p. 158. [↑](#footnote-ref-101)
102. Ruggeri, *op.cit.* (note 30), p. 218. [↑](#footnote-ref-102)
103. Allegrezza/ Mosna, *op. cit*. (note 97), p. 158. [↑](#footnote-ref-103)
104. Valković, L.: Procesna prava obrane prema V. noveli Zakona o kaznenom postupku Hrvatski ljetopis za kazneno pravo i praksu (Zagreb), vol. 20, broj 2/2013, p. 544. [↑](#footnote-ref-104)
105. When summoning a citizen for the purpose of requesting a statement, the reason for summoning must be clearly stated. The defence counsel shall not threaten the citizen with consequences for failure to answer. A person who answers the summons but refuses to give a statement may not be summoned twice for the same reason. The form and the content of the summons shall be determined by the Croatian Bar Association with the prior approval of the minister responsible for justice. Article 67(4) CPA [↑](#footnote-ref-105)
106. Narodne novine 145/2013 [↑](#footnote-ref-106)
107. Article 67(6) CPA [↑](#footnote-ref-107)
108. Pavlović, *op.cit.* (note 51), p. 263 – 264. [↑](#footnote-ref-108)
109. Article 213(4) CPA [↑](#footnote-ref-109)
110. For details see Ivičević Karas, E.: Dokazna snaga rezultata istrage prema Prijedlogu novele Zakona o kaznenom postupku, HLJKPP, vol. 2, 2/2013, p.704 – 708. [↑](#footnote-ref-110)
111. Hence, in only in 4% cases of preliminary inquiries, defendant filed proposal for the conduct of evidence collecting action. Reaserch is conducted in the Municipal State Attorney's Office in Split. For details see Carić, M.: Istraživanje – zakonodavni okvir i praktična primjena, HLJKZP, vol. 25, 2/2018. p. 527 – 528. [↑](#footnote-ref-111)
112. For details *supra* 2.4. [↑](#footnote-ref-112)
113. On function and scope of judicial control Böse, M.: Judicial Control of the European Public
Prosecutor’s Office, in; Rafaraci, T.; Belfiore, R.: EU Criminal Justice Fundamental Rights, Transnational Proceedings and the European Public Prosecutor’s Office, Springer Nature Switzerland AG 2019, p. 192. For details on judicial control see Đurđević, Z.: Judicial Control in Pre- Trial Criminal Procedure Conducted by the European Public Prosecutor’s Office in Ligeti, K. (ed): Toward a Prosecutor for the European Union, Volume 1, A Comparative Analysis, Hart Publishing, Oxford and Portland, Oregon, 2013., ps. 986 – 1010. [↑](#footnote-ref-113)
114. Mitsilegas/Giuffrida, *op.cit*. (note 4), p. 78. [↑](#footnote-ref-114)
115. See Böse, *op.cit.* (note 113), p. 194 [↑](#footnote-ref-115)
116. *Ibidem*, p. 194 [↑](#footnote-ref-116)
117. For comparative overview of judicial review of criminal prosecution see Novokmet, *op.cit.* (note 29), p. 381. [↑](#footnote-ref-117)
118. Ruggeri, *op.cit.* (note 30), p. 214. [↑](#footnote-ref-118)
119. Decison of Constitutional Court of Republic of Croatia U-I-448/2009 from 19 July 2012, paragraph 246. NN 91/2012 [↑](#footnote-ref-119)
120. See Đurđević, *op.cit.* (note 10), p. 315 – 362. [↑](#footnote-ref-120)
121. Munivrana Vajda, M.; Ivičević Karas, E., *Croatia*, in: *International Encyclopedia of Laws: Criminal Law*, eds: Verbruggen, F.; Franssen, V., Alphen aan den Rijn, NL: Kluwer Law International, 2016, p. 187. [↑](#footnote-ref-121)
122. For details on the inconsistency of this legislative solution see Đurđević, *op.cit.* (note 10), p. 330 – 331. [↑](#footnote-ref-122)
123. According to Article 213b CPA if, within six months from the moment the crime report was logged in the crime report register or from the arrest, State Attorney does not decide on crime report, the defendant has the right to file a complaint to a judge of investigation for delay of the proceedings. If the investigating judge finds that the complaint is grounded, it shall determine the deadline for the state attorney to decide on the criminal report. The state attorney shall inform the judge of the investigation of his decision. If the judge finds that the complaint is unfounded, he/she will notify the defendant. [↑](#footnote-ref-123)
124. Regular time limit for investigation is 6 months, but for justified reasons state attorney can prolonged it for a further 6 months and exceptionally, it can be prolonged for further 6 months by Attorney General (Art 229 (2) and (3) CPA). [↑](#footnote-ref-124)
125. One month from the day that the closing of the investigation had been logged in the criminal report register but for justified reasons state attorney of a higher instance can prolong that term for two more months. [↑](#footnote-ref-125)
126. See Đurđević, *op.cit.* (note 10), p. 359 – 361. [↑](#footnote-ref-126)
127. Bachmaier Winter, *op.cit.* (note 45), p.134 – 135. [↑](#footnote-ref-127)
128. *Ibidem* [↑](#footnote-ref-128)