

Presumption of innocence and pre-trial detentions

Advance Module 1: Recorded Discussion

Presumption of innocence

→ Directive 2016/343

What is pre-trial detention?

Deprivation of a defendant's liberty before the conclusion of criminal proceedings, and it is ordered by a judicial authority.

What is a detention by the police?

Police detention occurs before the initiation of judicial criminal proceedings & is typically used during the initial investigation phase by law enforcement.

- The Directive lays down common minimum rules concerning aspects of the presumption of innocence and right to be present at the trial.
- The right to be presumed innocent until proved guilty protects the defendant against the misuse of coercive powers, such as the power to deprive their liberty, is recognised by Article 48(1) of the Charter. It is also recognised by Article 6(2) ECHR.
- However, this right is not absolute. It can be limited if, based on suspicion or elements of incriminating evidence, the judicial authority decides on pre-trial detention.

Case law on pre-trial detention

Milev Case and RH Case

The CJEU has emphasised:

- The minimum level of harmonisation set by the Directive.
- The circumstances in which the decision on pre-trial detention may be adopted, the degree of certainty of the suspect's criminal liability and the rules governing the evidence should be regulated by national law.

DK Case

The CJEU analysed the application of Article 6 of the Directive, which establishes that the prosecution must prove the guilt of suspects and accused persons.

Bulgarian criminal law determines that persons subject to pre-trial detention must prove the existence of new circumstances justifying their release. Consequently, the allocation of burden of proof is shifted.

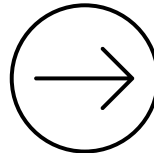
The Court clarified that preventive measures do not fall within the scope of Article 6 of the Directive.

Article 6 (1) Directive 2016/343 *Member States shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. (...)*

Case law on pre-trial detention



The Directive 2016/343 does not cover the burden of proof in relation to the pre-trial detention

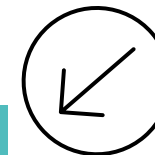


Does the Charter apply?

DK Case

The CJEU held that Member States have discretion to regulate the allocation of burden of proof in preliminary decisions because it is not governed by EU law.

Since the regulation on this matter does not fall under EU law, the Charter does not apply to national rules regulating pre-trial detention.



Negative impact on the principle of mutual trust and mutual recognition, leading to a higher probability of rejection of decisions from other Member States.

Different approaches

The ECtHR and the Commission

European Court of Human Rights

European Court of Human Rights' case law provides a higher level of protection to the persons subject to pre-trial detention.

The case law of the ECtHR determines that:

- It is a measure of last resort.
- It shall be based the on “sufficient and relevant” grounds.
- The requirement of reasonable length.

European Commission

Issuance of a recommendation with the ambitious objective of providing guidance on the application of the pre-trial detention in accordance with procedural rights in 2022.

L 86/44

EN

Official Journal of the European Union

24.3.2023

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2023/681

of 8 December 2022

on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions

