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1. Introduction

This study examines the transposition, interpretation, and practical application of six key European Union procedural rights directives within the Slovak legal order, namely:

- Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings;
- Directive 2012/13/EU on the right to information in criminal proceedings;
- Directive 2013/48/EU on the right of access to a lawyer;
- Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings;
- Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings;
- and Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

The study adopts a comprehensive analytical approach that goes beyond the assessment of formal legislative transposition. Its primary objective is to evaluate not only how these directives have been incorporated into the Slovak legal framework, but also how they operate in practice within the criminal justice system.

Particular attention is therefore devoted to the interaction between statutory provisions, judicial interpretation, and the day-to-day application of procedural rights by courts, prosecution services, investigators, police authorities, and other law enforcement bodies. In this respect, the study reflects a dual perspective, combining doctrinal legal analysis with practitioner-based insight into the functioning of criminal proceedings.

Methodologically, the research is based on a combination of normative and empirical legal analysis. It includes a systematic review of the legislative instruments through which the directives have been transposed into Slovak law, with particular emphasis on the Criminal Procedure Code and related sectoral legislation. This legislative analysis is complemented by an extensive examination of judicial practice, including decisions of the Constitutional Court of the Slovak Republic, the Supreme Court of the

Slovak Republic, and lower courts. Where relevant, the study also draws on individual case decisions in which the rights of suspects and accused persons - particularly at the pre-charge stage - have been directly contested or interpreted.

In addition to judicial sources, the research incorporates an assessment of institutional practice. This includes methodological guidelines, internal instructions, interpretative opinions, and other normative or quasi-normative instruments adopted by the Ministry of Justice, the Ministry of the Interior, the Police Corps, and the General Prosecutor's Office of the Slovak Republic. These instruments play a significant role in shaping the practical application of EU procedural rights and contribute to the development of a system of structural euroconform interpretation, through which EU standards are integrated into domestic practice.

The temporal scope of the research extends from 1 June 2025 to 31 March 2026. This period allows for the inclusion of the most recent legislative developments, judicial decisions, and institutional practices, including those arising in the aftermath of Act No. 40/2024 Coll., which introduced the procedural status of the suspect into Slovak criminal procedure. The analysis therefore captures a transitional phase in the evolution of the Slovak criminal justice system, in which EU procedural standards are being progressively internalised and operationalised.

From a conceptual perspective, the study is guided by the distinction between formal compliance and functional effectiveness. While the transposition of EU directives may be formally achieved through legislative measures, their practical impact depends on the extent to which they are coherently integrated into the procedural system and effectively applied in practice. In this context, particular attention is paid to the pre-charge phase of criminal proceedings, where the interaction between EU procedural rights and the traditional structure of Slovak criminal procedure gives rise to the most significant interpretative and application challenges.

By integrating legislative analysis, judicial interpretation, and institutional practice, this study aims to provide a comprehensive and structured assessment of the extent to which EU procedural rights have been implemented in the Slovak legal order. At the same time, it seeks to contribute to a broader understanding of the challenges associated with the systemic transposition of EU criminal procedural law, particularly in

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situations where such transposition requires not only legislative adaptation, but also a deeper transformation of established procedural doctrines.

2. Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings

Abstract

This report examines the Slovak transposition and judicial application of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, using the implementing tables and selected Slovak Constitutional Court and Supreme Court case law as primary reference points. The Slovak legislator formally transposed the Directive primarily through amendments to the Criminal Procedure Code (Act No. 301/2005 Coll.), notably by Act No. 1/2014 Coll., which entered into force on 1 February 2014, and complemented by lex specialis on the European Arrest Warrant and the Act on Experts, Interpreters and Translators. The Supreme Court has required written translation of "basic documents" and clarified the limited circumstances for ad hoc interpreters, while the Constitutional Court has accepted oral translation of essential materials at the custody stage where the fairness of the process is not impaired. The Supreme Court has also addressed the interface between Directive 2010/64/EU and mutual recognition in cross-border enforcement, drawing on CJEU jurisprudence. These developments collectively anchor the Directive's standards within the broader Slovak framework of fair trial rights.

2.1. Introduction

Directive 2010/64/EU establishes minimum rules on the right to interpretation and translation in criminal proceedings and in proceedings for the execution of a European Arrest Warrant, in order to safeguard fair trial guarantees and effective exercise of defence rights. The Directive requires timely provision of interpretation and translation of "essential documents," including any decision depriving a person of liberty, any charge or indictment, and any judgment, with scope for oral translation where this does not prejudice the fairness of the proceedings. These standards are set against the backdrop of Article 6 ECHR and the EU's mutual recognition agenda.

2.2. Legal Framework

2.2.1. Transposition in the Criminal Procedure Code

- The Slovak legislature transposed Directive 2010/64/EU primarily via Act No. 1/2014 Coll., a consolidated amending statute effective 1 February 2014, approximately three months after the EU-mandated deadline. The principal vehicle is the Criminal Procedure Code (CCP), §§ 2(20) and 28, which articulate the core right to interpretation and translation when a person declares they do not understand the language of the proceedings, and regulate the appointment and scope of interpreters and translators.

- CCP § 28 details interpreter appointment, including for consultations with defence counsel directly tied to procedural acts or appeals, and permits use of videoconferencing for interpretation where physical presence is not required to ensure a fair trial.

- CCP § 28(4) requires written translations for the accused of essential documents: the decision bringing charges, pre-trial detention decision, indictment, plea agreement and motion for approval, judgment, penal order, appeal decision, and conditional suspension decision, with the possibility to waive upon informed consent.

- CCP § 28(5) empowers authorities to order additional translations (beyond the list) when necessary to ensure a fair trial - especially for the effective exercise of defence rights - with a right to complain if a request is denied; oral interpretation of the document's essential content may substitute for a written translation if fairness is not affected.

- The costs of interpretation and translation are borne by the State.

2.2.2. Complementary Instruments: EAW and Experts/Interpreters/Translators

- The lex specialis on the European Arrest Warrant (Act No. 154/2010 Coll.) incorporates, by subsidiarity, CCP guarantees on interpretation and translation into EAW surrender proceedings, including translation of the rights notice for detained/arrested persons and interpretation during all relevant procedural acts.

- The Act on Experts, Interpreters and Translators (Act No. 382/2004 Coll.) provides the professional infrastructure: registration, qualifications, discipline, confidentiality duties, and availability of a central register used by courts and authorities when appointing interpreters/translators.

2.2.3. Directive Standards as Interpreted in Slovak Law

- The Directive's core obligations on interpretation at investigative and court stages, communication with counsel, translation of essential documents, limited use of oral translation, and record-keeping are reflected in CCP provisions and practice. This includes the presumption in favour of translating core decisions and the possibility to order additional translations necessary for fairness, aligned with Directive Article 3(1)–(3), (7)–(9).

- The CCP allows interpretation via technology where consistent with fairness, mirroring Article 2(6) Directive, and expressly records when oral summaries substitute written translations, satisfying the Directive's record-keeping requirement.

2.3. Case Law Analysis

2.3.1. Supreme Court: 6 Tdo 30/2014 (translation of essential documents; quality and appointment of interpreters)

- The Supreme Court quashed convictions after finding a fundamental breach of the right of defence where the accused did not receive written translations of essential documents such as the indictment and both first- and second-instance judgments, notwithstanding some oral interpretation; the Court held that oral interpretation alone of these basic documents is insufficient for the proper exercise of defence rights.

- The Court traced the legislative evolution of CCP § 28, noting the post-2014 formulation codifying the list of essential decisions requiring translation and the possibility to order further translations to guarantee a fair trial, which the lower courts had disregarded.

- On interpreter appointment, the Court emphasized that ad hoc appointment of a non-registered interpreter is permissible only under the statutory exceptions and with compliance (e.g., oath), in light of quality and accountability safeguards tied to the register; the mere use of a non-registered interpreter without meeting statutory conditions is a procedural error, though it becomes a fundamental violation only if the quality renders defence rights ineffective.

2.3.2. Constitutional Court: III. ÚS 425/2018 (custody stage; interpretation/translation and information rights)

- The Constitutional Court reviewed complaints alleging violations of Smernica 2010/64/EU (interpretation and translation) and Smernica 2012/13/EU (right to information) at the pre-trial custody stage. It found that the accused received interpretation at the custody hearing and an oral translation of the decision bringing charges, and then a timely written translation of the detention decision by 1 February 2018 and of the decision bringing charges later in the investigation, which sufficed given the stage and the documented understanding and participation of the accused and counsel.

- The Court concluded that oral translation of the essential charging decision (with subsequent written translation) did not undermine fairness at the custody stage, and that the accused had sufficient access to the information and materials needed to challenge detention; notably, the accused did not even request file access at the relevant time, and his submissions showed he understood and contested the reasons for detention.

- The Court also reiterated that in second-instance custody proceedings, personal attendance is not always required where issues are legal and the first-instance hearing occurred, an approach consistent with the fair trial's tailored guarantees in detention matters.

2.3.3. Supreme Court: 4Urto/5/2019 (mutual recognition; language of remedies; Covaci/Sleutjes)

- In a proceeding on recognition and enforcement of a German penal order imposing a monetary sanction, the Supreme Court analysed whether the state of origin's instruction that an objection must be lodged in German violated Directive 2010/64/EU; relying on CJEU Covaci (C-216/14), the Court held that EU law does not preclude national law requiring objections in the language of the proceedings, provided the objection is not treated as an "essential document" requiring translation and fairness is ensured.

- The Court further noted that the person concerned demonstrably communicated with authorities in German and even filed an objection in both Slovak and German; the German authorities translated the penal order and duly informed of rights, and the objection was decided, leading to finality - hence no ground to refuse recognition for language-rights reasons.

- In this mutual-recognition context, the Court stressed a restrictive approach to grounds for refusal and the aim of mutual trust, while remaining attentive to Article 6 ECHR safeguards where there is a substantiated risk that linguistic barriers disadvantaged the person.

2.4. Discussion

1. **Doctrinal alignment with Directive 2010/64/EU**: Slovak law now explicitly mirrors the Directive's architecture: a general right to interpretation (including counsel communications where necessary), a defined list of "essential documents" that must be translated, a calibrated mechanism for ordering additional translations to secure fairness, and the ability to provide oral summaries in lieu of written translations when the fairness of proceedings is safeguarded. The CCP's enumerated translations (charges, detention decisions, indictment, plea documents, judgment, appeal decision, conditional suspension) concretize Directive Article 3(2), while CCP § 28(5) functions as the national "essentiality" filter for additional documents.

2. **Judicial enforcement of translation guarantees**: The Supreme Court's 6 Tdo 30/2014 positions written translations of "basic documents" as non-negotiable components of the right of defence, rejecting the sufficiency of oral interpretation at trial stages, and aligning with the Directive's emphasis on the defendant's ability to know the case and effectively exercise rights. This doctrinal stance elevates the CCP's transposition into a robust remedial standard requiring quashing where essential translations are absent.
3. **Practical tolerance for oral translation at preliminary phases**: By contrast, the Constitutional Court's custody-stage analysis tolerates oral translation of essential documents if followed by timely written translation and if the record demonstrates that the accused understood and could challenge detention. This nuanced approach is consistent with Article 3(7) of the Directive, which allows oral translation provided fairness is not prejudiced, and recognizes the temporally sensitive nature of custody determinations.
4. **Interpreter quality and appointment**: The Supreme Court's caution regarding ad hoc, non-registered interpreters underscores the systemic role of the national register under Act No. 382/2004 and the link between professional qualification, impartiality, and fairness. While not every irregular appointment triggers nullity, a showing that quality deficiencies compromised defence rights will ground a fundamental violation and reversal, aligning procedural integrity with the Directive's quality imperatives.
5. **Cross-border recognition and language rights**: In 4Urto/5/2019, the Supreme Court operationalized Covaci and Sleutjes, accepting language-of-proceedings constraints on lodging remedies where the document at issue (objection) is not deemed "essential," while verifying, as a matter of fact, the person's language proficiency and the availability of translations of essential documents. This balances mutual recognition with individual rights and shows Slovak courts' reliance on EU jurisprudence to calibrate the Directive's scope in recognition contexts.
6. **Systemic context**: Euro-conform interpretation and judicial coherence Slovak supreme jurisdictions recognize the obligation of euro-conform

interpretation, with limits against contra legem readings, thereby situating Directive-aligned interpretations within constitutional and CJEU constraints on indirect effect. The Supreme Court has emphasized the need for jurisprudential coherence through its unifying mechanisms, which supports consistent application of procedural rights, including those under Directive 2010/64/EU.

2.5. Conclusion

Slovakia has substantively implemented Directive 2010/64/EU through targeted amendments to the Criminal Procedure Code and complementary frameworks governing European Arrest Warrant proceedings and the professional regulation of interpreters and translators. The Slovak approach may be characterised as a form of systemic rather than explicit transposition, whereby the Directive's requirements are integrated through the combined operation of existing procedural provisions rather than through a single, codified legislative instrument.

Judicial practice has played a decisive role in ensuring the functional effectiveness of this framework. The Supreme Court has established that written translation of essential documents constitutes a non-negotiable component of the right of defence, thereby reinforcing the Directive's core guarantees and ensuring their practical enforceability. At the same time, the Constitutional Court has adopted a nuanced approach, accepting the use of oral translation at preliminary stages of proceedings where the overall fairness of the process is preserved and written translation is subsequently provided. This dual approach reflects a balanced application of the Directive's standards, combining procedural rigor with practical flexibility.

In cross-border contexts, Slovak courts have demonstrated the capacity to integrate Directive 2010/64/EU within the broader framework of mutual recognition, relying on the case law of the Court of Justice of the European Union to reconcile linguistic rights with the principles of efficiency and mutual trust. This confirms that the Slovak legal system is capable of situating EU procedural guarantees within a wider European judicial context.

At the same time, it is notable that Slovak courts rarely engage explicitly with Directive 2010/64/EU as an autonomous source of law. Instead, its requirements are predominantly applied through structural euroconform interpretation, embedded within domestic legal reasoning. While this approach ensures substantive compliance, it reduces the visibility of EU law and may limit the development of a more explicit and autonomous body of Directive-based jurisprudence.

From a broader analytical perspective, the Slovak implementation of Directive 2010/64/EU demonstrates a high degree of both on the right to interpretation and translation in criminal proceedings particularly in relation to accused persons. Unlike other procedural directives examined in this research, the right to interpretation and translation does not fundamentally challenge the underlying structure of Slovak criminal procedure. As a result, its transposition did not generate significant systemic tensions and could be integrated relatively seamlessly into the existing legal framework.

Nevertheless, this chapter also confirms a broader pattern identified throughout this research. EU procedural standards are most effectively implemented where they can be accommodated within existing doctrinal structures. Where such alignment exists, as in the case of interpretation and translation rights, the Slovak system achieves both coherence and practical enforceability. This stands in contrast to areas requiring deeper structural change - most notably the procedural status of suspects - where transposition has proven more complex and remains subject to ongoing interpretative development.

2.6. References

- Directive 2010/64/EU: core provisions on interpretation and translation, essential documents, oral translation, and record-keeping.
- Criminal Procedure Code (Act No. 301/2005 Coll.), as amended by Act No. 1/2014 Coll.: §§ 2(20), 28 (interpretation/translation rights; list of essential documents; additional translations), costs, and technological interpretation.
- Act No. 154/2010 Coll. on the European Arrest Warrant: subsidiary application of CCP interpretation/translation guarantees in surrender proceedings; translation of rights notices.
- Act No. 382/2004 Coll. on Experts, Interpreters and Translators: register, qualifications, and confidentiality.
- Supreme Court of the Slovak Republic, 6 Tdo 30/2014 (translation of essential documents; ad hoc interpreters; breach of defence rights).
- Constitutional Court of the Slovak Republic, III. ÚS 425/2018 (custody; oral vs written translation; sufficiency of access and understanding).
- Supreme Court of the Slovak Republic, 4Urto/5/2019 (mutual recognition; language of objection; Covaci/Sleutjes).
- Slovak Supreme Court on euro-conform interpretation and constraints (indirect effect; no contra legem): Uznesenie 4Cdo/163/2021.
- Mechanisms for judicial coherence supporting uniform procedural rights: e.g., unifying function under Act on Courts and publication of guiding decisions.

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3. Directive 2012/13/EU on the Right to Information in Criminal Proceedings

Abstract

This report examines the transposition and judicial application of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings within the Slovak Republic. Drawing on the Directive's text, the Slovak implementing tables, and an analysis of decisions rendered by the Slovak Constitutional Court and Supreme Court, the report evaluates the completeness and quality of Slovakia's transposition, the degree of EU-conformity in judicial interpretation, and the procedural guarantees available to suspects and accused persons. The analysis reveals a framework that is substantively robust in respect of accused persons but structurally incomplete as regards the pre-charge suspect stage, a deficiency acknowledged by infringement proceedings initiated by the European Commission. Slovak courts have nonetheless applied the Directive with increasing sophistication, relying on EU-conform interpretation, the primacy of EU law under Article 7(5) of the Slovak Constitution, and explicit references to CJEU case law, in particular Case C-612/15 *Kolev and Others*. The report concludes that while the Slovak legal system broadly satisfies the Directive's requirements through a combination of statutory provisions and systematic interpretation, identifiable gaps - particularly at the suspect stage - warranted remedial legislative action culminating in Act No. 40/2024 Coll.

3.1. Introduction

The right to information in criminal proceedings constitutes one of the foundational procedural safeguards underpinning the Area of Freedom, Security and Justice within the European Union. Predicated on the principle of mutual recognition of judicial decisions and the attendant requirement of mutual trust, Directive 2012/13/EU establishes minimum standards ensuring that suspects and accused persons are promptly and adequately informed of their procedural rights, the nature and legal classification of the accusation against them, and their right to access the materials of the case. The Directive represents Step B of the 2009 Stockholm Programme roadmap for strengthening the procedural rights of suspected and accused persons and is grounded in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter) as well as Articles 5 and 6 of the European Convention on Human Rights (ECHR).

The Slovak Republic, as a Member State of the European Union, was bound to transpose the Directive by 2 June 2014. Its failure to do so within the prescribed period, its ultimate and partially deficient transposition, and the subsequent judicial responses of its courts constitute the subject matter of this report. The report proceeds from an analysis of the Directive's normative framework, through an examination of the national transposition measures, to a critical discussion of the relevant case law of the Slovak Constitutional Court (Ústavný súd Slovenskej republiky) and the Slovak Supreme Court (Najvyšší súd Slovenskej republiky).

3.2. Legal Framework

3.2.1. Directive 2012/13/EU: Normative Content and Scope

Directive 2012/13/EU lays down rules concerning the right to information of suspects and accused persons relating to their rights in criminal proceedings and to the accusation against them, and also governs the rights of persons subject to a European Arrest Warrant (EAW). Its temporal scope, defined by Article 2(1), extends from the moment a person is made aware by the competent authorities that they are suspected or accused of having committed a criminal offence until the final determination of the question of guilt, including, where applicable, sentencing and the resolution of any appeal.

The substantive core of the Directive comprises five principal obligations:

1. **Article 3 - Right to information about rights**: Member States must ensure that suspects or accused persons are provided promptly with information concerning, at minimum: (a) the right of access to a lawyer; (b) any entitlement to free legal advice; (c) the right to be informed of the accusation in accordance with Article 6; (d) the right to interpretation and translation; and (e) the right to remain silent. This information must be provided in simple and

accessible language, orally or in writing, with due attention to the needs of vulnerable persons.

2. **Article 4 - Letter of Rights on arrest**: Persons who are arrested or detained must be provided promptly with a written Letter of Rights, which they must be allowed to read and retain throughout the period of deprivation of liberty. The Letter must additionally contain information on the right of access to case materials, the right to inform consular authorities and a third person, the right to urgent medical assistance, and the maximum period of pre-judicial deprivation of liberty. It must also inform the person of the possibilities available under national law for challenging the lawfulness of arrest and requesting provisional release.

3. **Article 5 - Letter of Rights in EAW proceedings**: Persons arrested for the purpose of executing a European Arrest Warrant must be promptly provided with an appropriate written Letter of Rights.

4. **Article 6 - Right to information about the accusation**: Suspects and accused persons must be provided with information about the criminal act of which they are suspected or accused, promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of defence rights. At the latest upon submission of the indictment to a court, detailed information on the nature and legal classification of the offence and the nature of participation must be provided. Changes to the information must be communicated promptly wherever this is necessary to safeguard fairness.

5. **Article 7 - Right of access to the materials of the case**: Where a person is arrested or detained, documents essential to challenging effectively the lawfulness of arrest or detention must be made available to the arrested person or their lawyer. More broadly, at least all material evidence - whether for or against - must be made accessible at a time allowing effective exercise of defence rights and at the latest upon submission of the case to a court. Access may be refused, subject to a proportionality analysis and subject to judicial review, where strictly necessary to protect safety, fundamental rights of third parties, or important public interests.

The Directive further requires that the provision of information be recorded using national recording procedures and that suspects and accused persons have the right to challenge failures or refusals to provide information in accordance with national law, with the notable qualification in Recital 36 that Member States are not required to introduce special separate complaint mechanisms for this purpose.

3.2.2. Transposition into Slovak Law

Primary Legislative Instruments

The Directive was transposed into the Slovak legal order by Act No. 174/2015 Coll., which amended Act No. 301/2005 Coll. (the Code of Criminal Procedure, hereinafter "CCP"). The Act entered into force on 1 January 2016. The transposition deadline had expired on 2 June 2014, meaning the Slovak Republic transposed the Directive with a delay of approximately 19 months. The transposition is expressly declared in the annex to the CCP under point 9.

The Slovak approach to transposition was predominantly integrative and adaptive rather than transformative: rather than introducing entirely new legal instruments, the legislature relied on the adaptation and clarification of pre-existing procedural guarantees which already reflected ECHR standards and constitutional due process requirements. This approach was supplemented by Act No. 40/2024 Coll., which amended the CCP with effect from 15 March 2024 and, according to its explanatory memorandum, specifically aimed to strengthen the defence rights of suspects during the pre-trial phase and to address deficiencies in the transposition of EU procedural rights directives.

The Structural Distinction Between Suspect and Accused Person

A defining feature of the Slovak transposition is the distinction between the procedural status of a *suspect* (podozrivý) and an *accused person* (obvinený). These statuses correspond to different stages of criminal proceedings and entail different levels of procedural protection.

Under § 10(25) of the CCP, a suspect is a person not formally accused who has been caught committing an offence, detained during or immediately after an offence, or identified as a potential perpetrator on the basis of a criminal complaint or evidence discovered by authorities. The existence of suspicion alone does not automatically activate the full set of procedural rights: under § 33b(2), rights arise only once an additional procedural trigger is met - specifically, when the person is subjected to a first interrogation or another procedural act directed against them in connection with the suspicion. The obligation to provide information must be fulfilled no later than the suspect's first interrogation, which constitutes the latest permissible point. Exceptionally, notification may be delayed - for example, during the execution of a search - provided such delay is justified and documented.

Once a person becomes an accused through the issuance of a formal decision bringing charges (uznesenie o vznesení obvinenia) under § 206 of the CCP, the full catalogue of defence rights under § 34 applies. The accused acquires full procedural party status, including the right to legal assistance, the right to silence, and formal written notification of rights upon detention or arrest.

Transposition of Individual Articles

Article 3 - Right to information about rights

The right of access to a lawyer is transposed through the combined operation of §§ 2(9), 33b, and 34 of the CCP. Suspects enjoy defence rights including the right to consult a lawyer to an appropriate extent, while the accused has the full right to choose and consult a lawyer at all stages. Mandatory defence under § 37 applies in specified circumstances - detention, serious offences, or minority - with state-appointed counsel under § 40 where the accused fails to engage one.

The right to free legal advice presents a gap at the suspect stage: the Slovak CCP does not establish a specific statutory regime of state-funded legal aid for suspects, whose access to counsel depends primarily on their own resources in the absence of other legal mechanisms. For accused persons, § 34(3) provides entitlement to free or reduced-fee defence upon demonstration of financial need. The system can therefore be characterised as ensuring full compliance in respect of accused persons and more limited or indirect compliance at the suspect stage.

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The right to remain silent is firmly embedded in the general right of defence under § 2(9) and is operationalised through mandatory pre-questioning instructions, which must be recorded in procedural documentation. The right to interpretation and translation is guaranteed under § 2(20) for all participants - including suspects and witnesses-who declare that they do not understand the language of the proceedings.

Article 4 - Letter of Rights

Slovak law implements the Letter of Rights through the written instruction on rights provided under §§ 34(5) and (6) of the CCP. The instruction must be provided without undue delay upon arrest or detention and must cover the right to legal assistance, interpretation and translation, the right to remain silent, the right to inform a third person of the deprivation of liberty, the right to urgent medical care, and the maximum period of pre-judicial detention. § 85(5) ensures that these obligations apply mutatis mutandis even before formal charges are brought. The person must be allowed to retain the document throughout the entire period of deprivation of liberty. Where the person does not understand the language of the proceedings, the instruction must be translated, with oral provision permissible pending the provision of a written translation.

Article 6 - Right to information about the accusation

The Slovak framework implements a two-stage system of notification. At the suspect stage, § 33b requires that the person be informed of the circumstances giving rise to suspicion and the legal classification of the alleged offence, at the latest at the beginning of the first interrogation. At the accused stage, the formal decision bringing charges under § 206(3) must contain the identification of the accused, a description of the act including time, place and relevant circumstances, the legal classification of the offence, and the factual basis for the charges. Where the legal classification changes during the investigation, the accused must be formally notified of the change under § 206(6). At the judicial stage, the indictment under § 235 must contain a detailed description of the act, its legal classification including all statutory elements, and a reasoned assessment of the prosecution's evidence.

Article 7 - Right of access to the materials of the case

Access to the case file is principally governed by § 69 of the CCP, which grants the accused and their counsel the right to inspect the file, make extracts, and obtain copies. During the pre-trial phase, access may be restricted where it would frustrate or substantially impair the purpose of criminal prosecution, but such restrictions lapse once the parties are notified of the opportunity to study the case file at the conclusion of the investigation. § 208 provides that upon the conclusion of the investigation, the accused and defence counsel must be afforded the opportunity to study the entire case file before the prosecutor decides on the indictment.

For suspects, the CCP does not contain an explicit general provision granting access to case materials; their entitlement derives from the systemic interpretation of § 33b(1), which extends to them the rights of accused persons, including rights under EU law and international treaties, to an appropriate extent. The implementation of Article 7(2) in respect of suspects is therefore characterised as systemic rather than explicit transposition.

Where access is refused, § 69(2) provides for review - by a superior prosecutor if the refusal was issued by a prosecutor - satisfying the judicial authority or judicial review requirement of Article 7(4). Access to materials under Article 7 is provided free of charge.

Article 8 - Remedies

The right to challenge failures or refusals to provide information is not implemented through a dedicated separate procedure; instead, it is embedded in the existing procedural safeguards, including the right to object during procedural acts, the right to inspection of the case file, prosecutorial oversight under § 210 of the CCP, and the availability of appeal (§ 321(1) CCP) and extraordinary review proceedings (dovolanie, § 371(1)(c) CCP). This approach is explicitly consistent with Recital 36 of the Directive, which does not require Member States to introduce special dedicated complaint mechanisms.

Gaps and Infringement Proceedings

Commentary literature and the legislative history of Act No. 40/2024 Coll. indicate that gaps existed in practice, particularly regarding the rights of suspects prior to formal charges These deficiencies led to infringement proceedings initiated by the European Commission against the Slovak Republic. The gaps relate principally to: the absence of an explicit statutory regime for legal aid at the suspect stage; the absence of explicit general access to case materials for suspects; and the limited formalisation of information rights before the procedural trigger under § 33b(2) is activated.

3.3. Case Law Analysis

3.3.1. Supreme Court of the Slovak Republic

Decision 4To/2/2017 (ECLI:SK:NSSR:2017:9514100138.7)

This decision of 7 July 2017 constitutes one of the earliest and most direct applications of Directive 2012/13/EU by a Slovak appellate court. The Regional Court in Bratislava, acting as a delegated appellate court, had ruled on the non-exclusion of judges who had previously been definitively excluded from the proceedings without informing the affected persons in advance of this repeated decision-making. The appellate court held that this procedure was in clear violation of Articles 2(1), 6(1) and (4), and 10 of the Directive, confirming that the Directive applies to persons from the moment they are made aware they are suspected or accused, until the conclusion of proceedings. The court grounded the binding nature of the Directive in Article 7(5) of the Slovak Constitution, which incorporates binding acts of EU law into the domestic legal order with primacy.

The case is significant for several reasons. First, it demonstrates the willingness of Slovak courts at appellate level to apply the Directive directly and explicitly as a legal standard, without requiring the mediation of domestic implementing legislation. Second, it correctly identifies the Directive's temporal scope and the obligation to provide information about procedural developments promptly. The assessment of EU conformity is positive: the court correctly applied the Directive and properly defined its scope, including the obligation to inform about relevant procedural developments.

Decision 4Tdo/71/2020 (ECLI:SK:NSSR:2021:2319010092.1)

This Supreme Court decision of 9 November 2021 concerned an accused charged with the criminal offence of endangering business, banking, postal, telecommunications and tax secrecy under § 264 of the Criminal Code. The case raised fundamental questions about the adequacy of information provided in the indictment and the timing of notification of legal classification changes.

The Supreme Court interpreted Articles 6(3) and (4) and Article 7(3) of the Directive in express reliance on the CJEU judgment in Case C-612/15 *Kolev and Others* (5 June 2018). Drawing on *Kolev*, the Court concluded that Article 6(3) does not preclude detailed information about the charges from being communicated after the indictment has been filed, provided that this occurs before the court begins assessing the merits, or even during trial proceedings, as long as it precedes the final decision. Any subsequent changes in legal classification must be communicated at a time when the accused or their counsel can still effectively exercise defence rights.

The Supreme Court's reasoning reflects a sophisticated engagement with the Directive's teleology: it is not the precise timing of notification that is determinative, but rather whether the accused had sufficient opportunity to prepare an effective defence before the final judgment. The interpretation is fully EU-conform and represents a direct transplantation of the interpretative conclusions of *Kolev* into the Slovak procedural context.

Furthermore, the Court articulated the principle that Directive 2012/13/EU is not, in itself, an instrument for remedying factual inadequacies in the prosecution's description of the alleged conduct - that remains a matter for the proceedings on the merits. This demarcation is legally significant: it prevents the Directive from being instrumentalised as a substantive tool for attacking prosecutorial case construction, while preserving its function as a guarantee of procedural fairness.

Decision 4To/1/2021 (ECLI:SK:NSSR:2022:9519100260.1)

This decision of 5 April 2022 concerned an appeal against a conviction for the criminal offence of sympathy with a movement aimed at suppressing fundamental rights and freedoms under § 422(1) of the Criminal Code. The case arose from appellate proceedings before the Specialized Criminal Court and ultimately before the Supreme Court. The proceedings involved procedural issues including the absence of the accused at the appellate hearing, raising questions of the effective exercise of defence rights consistent with both the CCP and the Directive's framework for ensuring that the accused can meaningfully participate in proceedings directed against them.

Decision 1TdoV/7/2019

In this decision, the Supreme Court addressed the compatibility with EU law of an appellate court overturning a first-instance conviction and itself convicting the accused under a different legal classification, in the absence of defence counsel and without prior notice of the change of classification. The Court emphasised that EU-conform interpretation requires national procedural rules to be applied in a way that ensures the real and effective exercise of defence rights, with Articles 6(3) of the Directive and 48(2) of the Charter as interpretative benchmarks. The decision is methodologically EU-conform, correctly applying the principle of consistent interpretation.

3.3.2. Slovak Constitutional Court

Decision IV. ÚS 124/2020 (1 April 2020)

This decision arose from a constitutional complaint by a woman who had been subjected to a house search as a suspect but was questioned as a witness, thereby being denied the procedural rights of a suspect - including the right to remain silent, the right to be informed of the suspicion and its legal classification, and the right to inspect the case file. The District and Regional Prosecutors had refused to examine her request under § 210 of the CCP on the grounds that suspects were not among those expressly entitled to invoke that provision.

The case crystallises the central transposition gap identified above. The complainant's counsel expressly argued that the Directive had not been fully transposed by the Slovak Republic because the rights it confers on suspects were, in the domestic framework, granted only to accused persons. Counsel invoked the direct effect of the Directive in those areas where transposition had not been effected. The Constitutional Court dismissed the complaint as manifestly unfounded at the preliminary examination stage, primarily on the basis of the subsidiarity of constitutional review and the procedural stage of the proceedings. Crucially, the Court did not refute the substantive argument about incomplete transposition, and the case therefore provides an important contextual illustration of the transposition gap that would later be confirmed in infringement proceedings.

Decision III. ÚS 68/2023 (7 February 2023)

This decision was rendered in proceedings in which the accused had formally invoked Articles 6(1), 6(4), and 7(2) of the Directive in a request to the investigator for access to information and evidence. When the investigator did not respond, and when the Specialized Criminal Court (ŠTS) transferred the complaint to the supervising prosecutor rather than deciding on it judicially, the accused filed a constitutional complaint.

The Constitutional Court dismissed the complaint but produced a legally significant analysis. The Court held, first, that Article 8(2) of the Directive, read in conjunction with Recital 36, does not require Member States to introduce a special judicial remedy at each stage of proceedings for failures to provide information; it suffices that the legal system provides, cumulatively, for the possibility of raising such violations before a court. The Court found that Slovak criminal procedure satisfies this requirement through the availability of the defence right to raise such violations at the stage of indictment review and in appellate and extraordinary review proceedings.

Second, the Court drew an important distinction between the present case and its earlier decision in III. ÚS 456/2021, in which it had found a violation of Article 47 of the Charter because Slovak law provided no judicial review at any stage for the conditions of pre-trial detention. In the present case, the availability of judicial review of the defence rights at trial and on appeal rendered the Article 47 complaint manifestly unfounded. Third, the Court confirmed that the Directive had been transposed by Act No. 174/2015 Coll., thus satisfying the condition for the application of EU law, specifically the Charter.

Decision III. ÚS 55/2023 (7 February 2023)

This decision concerned a defendant before the Specialized Criminal Court who complained of failure to provide information under Articles 6(3) and 7(2)–(3) of the Directive and failure to provide access to complete case materials, including digital evidence on a USB drive submitted by a witness. The defendant also invoked Article 8(2) of the Directive and Article 47 of the Charter, referring to the CJEU judgment in Case C-682/15 Berlioz Investment Fund SA.

The Constitutional Court dismissed the complaint as inadmissible on grounds of prematurity and non-exhaustion of ordinary remedies. In its reasoning, the Court provided a systematic analysis of the transposition of Articles 6(3), 7(2), 7(3), and 8(2) of the Directive. It expressly traced the transposition of Article 6(3) to § 122(1) of the CCP (which requires the accused to be familiarised with the act attributed to them and its legal classification before their first interrogation), and the transposition of Article 7(2) to § 69(1) of the CCP, and Article 7(3) to § 208(1)–(2) of the CCP.

The Court confirmed that Act No. 174/2015 Coll. constitutes the primary transposing act and that the condition of implementing EU law - required for the Charter to apply - was satisfied. It further confirmed that the right to challenge non-provision of information was adequately implemented in Slovak procedure through the right to raise objections in procedural records and in appeal and extraordinary review proceedings, consistent with Recital 36 of the Directive. According to Recital 27 of the Directive, persons accused of a criminal offence must be provided with all information necessary to prepare their defence and ensure a fair trial; the Court therefore anchored the right to information as an integral component of the right of defence under the Directive's teleology.

Decision III. ÚS 540/2024 (19 December 2024)

This decision represents the most recent and, in terms of judicial methodology, the most substantively significant of the Constitutional Court's engagements with the Directive. The case concerned an accused person before the District Court in Pezinok who raised arguments based on Directive 2012/13/EU and Directive 2013/48/EU in challenging a pre-trial detention decision. The District Court refused to address the EU law arguments and issued an insufficiently reasoned decision.

The Constitutional Court found a violation of Article 46(1) of the Constitution (right to judicial and legal protection) and Article 6(1) of the ECHR (right to a fair trial) on the basis that the District Court had failed to respond to the complainant's substantive EU law arguments. The Court annulled the District Court's decision and remanded the case for reconsideration, directing the court to address the EU law arguments properly.

The decision articulates two foundational principles. First, the *principle of harmonious interpretation*: national courts are required to interpret national procedural law - even law predating the Directive - in a manner consistent with the objectives and wording of EU directives. Second, the *principle of primacy*: the application of national law must always be carried out in conformity with the primacy of EU law, particularly where the applicant expressly invokes it. The failure to provide adequate reasoning addressing EU law arguments constitutes in itself a violation of the right to judicial protection. This decision underscores that procedural compliance with the Directive is not merely a legislative matter but a judicial obligation incumbent on every court engaged with a relevant EU law argument.

3.4. Discussion

3.4.1. The Quality of Slovak Transposition

The Slovak transposition of Directive 2012/13/EU is best characterised as predominantly compliant but structurally asymmetric. The rights of the accused person are explicitly and comprehensively regulated, reflecting a longstanding tradition of procedural due process rooted in the ECHR and the Slovak Constitution. The rights of the suspect, by contrast, rest on a combination of explicit provisions (notably § 33b of the CCP) and systemic extension - the borrowing of accused-person rights "to an appropriate extent" - which introduces interpretative uncertainty and creates tangible compliance gaps.

The principal deficiencies identified are threefold. First, there is no statutory regime for state-funded legal aid at the suspect stage, rendering the right to free legal advice under Article 3(1)(b) of the Directive only partially implemented for suspects. Second, there is no explicit general right for suspects to access case materials, their entitlement being derived interpretively from § 33b(1). Third, the activation of full suspect rights is conditioned on a procedural trigger - the first interrogation or other procedural act - which creates a window of vulnerability between the initial formation of suspicion and the activation of the suspect's procedural status. The case of IV. ÚS 124/2020 vividly illustrates the practical consequences of this gap.

Act No. 40/2024 Coll. represents a significant remedial step, directly targeting these deficiencies and strengthening pre-trial defence rights at the suspect stage. Its enactment, prompted in part by European Commission infringement proceedings, reflects the ongoing dynamic between EU monitoring mechanisms and domestic legislative reform.

3.4.2. Judicial Methodology: EU-Conform Interpretation and Direct Application

Slovak courts have demonstrated a commendable degree of methodological rigour in their engagement with Directive 2012/13/EU. Four consistent features of their approach can be identified.

Direct applicability and constitutional primacy: Multiple decisions ground the binding force of the Directive in Article 7(5) of the Slovak Constitution, which imports the primacy of EU law. This approach is methodologically sound and ensures that the Directive operates as an independent standard of review, not merely as an interpretative aid.

CJEU case law integration: The Supreme Court in 4Tdo/71/2020 explicitly relied on Case C-612/15 *Kolev and Others* to interpret Article 6(3) of the Directive. The *Kolev* judgment establishes that the key criterion for the timing of information on charges is not formal chronology but effective opportunity to prepare a defence - a standard that the Supreme Court correctly transplanted into Slovak procedural law.

The right to information as part of the right of defence: There is a consistent judicial interpretation linking the right to information with the right of defence under Article 48(2) of the Charter and Article 6 of the ECHR. Decisions III. ÚS 55/2023 and III. ÚS 68/2023 both anchor the Directive's rights in the broader right of defence, ensuring that perceived violations are channelled through the existing procedural avenues for challenging defence rights violations.

The principle of harmonious interpretation as a judicial obligation: The decision in III. ÚS 540/2024 elevates the principle of EU-conform interpretation from a methodological preference to an enforceable judicial obligation. A court that fails to engage with duly raised EU law arguments in its reasoning violates the complainant's constitutional right to judicial protection. This principle significantly strengthens the practical enforceability of the Directive at all levels of the Slovak judiciary.

3.4.3. The Remedy Question: Article 8(2) and the Availability of Effective Judicial Review

A recurring theme in the Slovak case law is the question of whether the available domestic remedies satisfy the requirements of Article 8(2) of the Directive and Article 47 of the Charter. The consistent position of the Constitutional Court is that the availability of judicial review of defence rights violations in appellate and extraordinary review proceedings is sufficient to satisfy the "effective remedy before a court" requirement of Article 47 of the Charter, read in conjunction with Recital 36 of the Directive. No special dedicated judicial mechanism is required at the pre-trial stage, provided that the aggregate procedural system ensures eventual recourse to a court.

This position is substantively defensible given the clear permission in Recital 36 for Member States to rely on existing procedural mechanisms rather than creating new ones. However, two qualifications merit attention. First, in contexts where no subsequent judicial review is structurally available - as occurred in III. ÚS 456/2021 concerning the conditions of detention - the absence of a judicial remedy at any stage will itself constitute a violation of Article 47 of the Charter. Second, the systemic adequacy of remedies depends on the timeliness and effectiveness of the eventual judicial review; where the absence of information at the pre-trial stage has irreversibly prejudiced the preparation of the defence, delayed curative review may not fully satisfy the effectiveness requirement under Article 8 of the Directive.

3.4.4. Comparative Assessment: Conformity with the Directive

The overall assessment is that the Slovak legal system achieves substantial but not complete conformity with Directive 2012/13/EU. The rights of accused persons - the Letter of Rights, information about the accusation, access to the case file, and remedies - are explicitly implemented and broadly enforced by Slovak courts. The rights of suspects - particularly access to legal aid, access to materials, and the formal activation of procedural status - remain partially dependent on systemic interpretation and have been the subject of legitimate concerns reflected in infringement proceedings.

The Supreme Court's EU-conform interpretation of Article 6(3) in the *Kolev* tradition, the Constitutional Court's affirmation of the primacy and direct applicability of the Directive, and the recent legislative response through Act No. 40/2024 Coll. collectively represent a trajectory of improving conformity. The decision in III. ÚS 540/2024 in particular establishes a robust constitutional framework for enforcing EU-conform interpretation at the judicial level, which serves as a structural guarantor of the Directive's effectiveness even in the presence of residual legislative gaps.

3.5. Conclusion

Directive 2012/13/EU has been transposed into the Slovak legal order through a combination of explicit legislative provisions, systemic interpretation, and constitutional incorporation of EU law primacy. The transposition, effected with a delay of approximately 19 months and supplemented by Act No. 40/2024 Coll. to address identified gaps, achieves full compliance in respect of accused persons and more limited compliance in respect of suspects, particularly as regards state-funded legal aid and explicit access to case materials at the pre-charge stage.

Slovak courts - both the Supreme Court and the Constitutional Court - have interpreted and applied the Directive with methodological rigour, consistently applying the principle of EU-conform interpretation, relying on CJEU case law including *Kolev* (C-612/15), and grounding the binding force of the Directive in Article 7(5) of the Constitution. The decision in III. ÚS 540/2024 establishes that the obligation to engage with EU law arguments in judicial reasoning is constitutionally enforceable under the right to judicial protection. The decisions in III. ÚS 68/2023 and III. ÚS 55/2023 confirm that existing procedural remedies - appeal and extraordinary review - satisfy the Directive's requirements under Article 8(2) read with Recital 36, while drawing the principled boundary that there must always be eventual recourse to a court.

The Slovak experience with Directive 2012/13/EU illustrates the broader dynamic of EU procedural rights directives: formal transposition does not guarantee substantive compliance, particularly at the margins of procedural status; judicial enforcement through consistent interpretation compensates for legislative gaps; and infringement proceedings serve as a corrective mechanism reinforcing legislative reform. The ongoing monitoring of Act No. 40/2024 Coll. in practice will determine whether the Slovak Republic has now achieved full and effective conformity with the Directive's requirements for all persons falling within its temporal and personal scope.

3.6. References

Primary EU Legislation

- 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, pp. 1–10
- Charter of Fundamental Rights of the European Union, Arts. 47, 48(2)
- European Convention on Human Rights, Arts. 5, 6, 13
- Treaty on the Functioning of the European Union, Art. 82(2)

Slovak National Legislation

- Act No. 301/2005 Coll. (Code of Criminal Procedure), as amended - §§ 2(9), 10(23), 10(25), 33b, 34, 37, 40, 58, 69, 85, 122, 206, 208, 234, 235, 240, 272, 321, 371
- Act No. 174/2015 Coll. (primary transposing act)
- Act No. 40/2024 Coll. (supplementary amendment)
- Act No. 154/2010 Coll. on the European Arrest Warrant

CJEU Case Law

- Case C-612/15, *Kolev and Others*, ECLI:EU:C:2018:392 (5 June 2018)
- Case C-682/15, *Berlioz Investment Fund SA*, ECLI:EU:C:2017:373 (17 May 2017)

Slovak Case Law

- Slovak Supreme Court, 4To/2/2017 (JUD2527554SK), 7 July 2017
- Slovak Supreme Court, 4Tdo/71/2020 (JUD4048021SK), ECLI:SK:NSSR:2021:2319010092.1, 9 November 2021
- Slovak Supreme Court, 4To/1/2021, ECLI:SK:NSSR:2022:9519100260.1, 5 April 2022
- Slovak Supreme Court, 4Tdo/27/2021, 9 March 2022
- Slovak Supreme Court, 1TdoV/7/2019 (JUD4243344SK)
- Slovak Constitutional Court, IV. ÚS 124/2020, 1 April 2020
- Slovak Constitutional Court, III. ÚS 68/2023, 7 February 2023

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- Slovak Constitutional Court, III. ÚS 55/2023, 7 February 2023
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4. Directive 2013/48/EU on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings

Abstract

This report examines the transposition and application of 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 ("*the Directive*") within the Slovak legal order. Drawing on the Directive's text, detailed transposition tables, available judicial decisions of the Constitutional Court and the Supreme Court, doctrinal commentary, and primary legislative sources, this report evaluates the degree to which Slovak law fulfils the minimum standards established by the Directive. The overall finding is that Slovak law achieves substantive compliance through a predominantly *systemic* rather than textually explicit method of transposition, relying on the combined operation of the Criminal Procedure Code (Act No. 301/2005 Coll., "*CCP*"), Act No. 154/2010 Coll. on the European Arrest Warrant ("*EAW Act*"), and ancillary custodial legislation. However, transposition was late by approximately 35 days, and no Slovak court has been identified as having directly and explicitly applied or interpreted the Directive by name in criminal proceedings. The absence of a discrete corpus of Directive-specific case law represents a significant gap in the analytical landscape, necessitating assessment of conformity primarily through structural and doctrinal means.

4.1. Introduction

Directive 2013/48/EU forms the third pillar of the EU's *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*, adopted by the Council in November 2009. Building upon Directives 2010/64/EU (right to interpretation and translation) and 2012/13/EU (right to information), the Directive establishes minimum rules on the right of access to a lawyer at an early stage of criminal proceedings, the right of persons subject to European arrest warrant (EAW) proceedings to have access to a lawyer in the executing Member State, and the right to have third parties notified of deprivation of liberty and to communicate with consular authorities.

The Directive's normative purpose is embedded in the principle of mutual recognition. As recital (6) of the Directive makes explicit, mutual recognition can only function effectively when Member States have sufficient confidence in each other's criminal justice systems, which in turn depends on robust protection of procedural rights of suspects and accused persons. The Directive thus seeks to reinforce the application of the Charter of Fundamental Rights of the European Union - particularly Articles 4, 6, 7, 47 and 48 - and grounds itself in the jurisprudence of the European Court of Human Rights on Article 6 ECHR.

Article 15 of the Directive required Member States to bring into force the necessary national implementing measures by 27 November 2016. For Slovakia, this deadline was missed by approximately 35 days, with the primary transposing instrument - Act No. 316/2016 Coll. - entering into force on 1 January 2017. The Directive's transposition into Slovak law was achieved through two principal vehicles: the annex to the CCP, which explicitly lists the Directive among the legally binding EU acts whose requirements are incorporated, and the EAW Act, as amended by Act No. 316/2016 Coll.. The report proceeds to analyse the substantive content of this transposition, the judicial context within which the Directive operates, and the implications of the absence of direct judicial application.

4.2. Legal Framework

4.2.1. The Directive: Scope, Content, and Minimum Standards

Scope of Application

Article 2 of the Directive establishes a broad temporal and personal scope. The Directive applies from the moment a person is made aware by competent authorities that they are suspected or accused of a criminal offence - irrespective of deprivation of liberty - until the final determination of the case, including sentencing and appeal. It applies equally to persons subject to EAW proceedings from the moment of their arrest in the executing Member State, and to persons who become suspects during the course of questioning by law enforcement authorities.

For minor offences where the law provides for sanctions to be imposed by non-criminal courts or where deprivation of liberty cannot be imposed, the Directive applies only when the matter comes before a court with criminal jurisdiction. Crucially, the Directive applies *fully* whenever a person has been deprived of liberty, regardless of the stage of proceedings.

Right of Access to a Lawyer: Article 3

Article 3 is the operative core of the Directive. It requires Member States to ensure that suspects and accused persons have the right of access to a lawyer in such time and manner as to allow the *practical and effective* exercise of the right of defence. Access must be provided without undue delay and, in any event, no later than: (a) before police questioning; (b) upon the carrying out of investigative or evidence-gathering acts; (c) without undue delay after deprivation of liberty; and (d) in due time before appearing before a criminal court.

The substantive content of the right encompasses: the right to meet and communicate with the lawyer in private before any questioning; the right to have the lawyer present and to participate effectively during questioning; and the right to have the lawyer present at identity parades, confrontations, and scene reconstructions. Confidentiality of lawyer-client communications is guaranteed absolutely under Article 4.

Temporary derogations from these rights are permissible only in exceptional circumstances during the pre-trial stage, for the purpose of averting serious adverse consequences for life, liberty, or physical integrity of another person, or to prevent substantial jeopardy to criminal proceedings. Any such derogation must be proportionate, strictly time-limited, not based solely on the type or seriousness of the offence, and must not prejudice the overall fairness of proceedings. Derogations must be authorised by a duly reasoned decision subject to judicial review.

Rights Ancillary to Deprivation of Liberty: Articles 5, 6, and 7

Article 5 entitles suspects and accused persons who are deprived of liberty to have at least one nominated person informed without undue delay. Where the suspect is a child, the holder of parental responsibility must be informed as soon as possible. Article 6 ensures the right to communicate with at least one nominated third person without undue delay. Article 7 guarantees foreign nationals the right to have their consular authorities notified of deprivation of liberty and to communicate with them.

Right of Access to a Lawyer in EAW Proceedings: Article 10

Article 10 extends the right of access to a lawyer to requested persons in EAW proceedings in the *executing* Member State from the moment of arrest. It further introduces the mechanism of *dual legal representation*: the executing Member State must inform the requested person of their right to appoint a lawyer in the *issuing* Member State, whose function is to assist the lawyer in the executing State in facilitating the effective exercise of the requested person's rights under Framework Decision 2002/584/JHA. The exercise of this right must not affect the time limits set out in the Framework Decision.

Waiver of Rights: Article 9

Article 9 permits the waiver of the right of access to a lawyer, subject to conditions ensuring that the waiver is voluntary, unequivocal, and made with clear and sufficient information about the content of the right and the consequences of waiving it. The waiver must be recorded and may be revoked at any point during proceedings.

4.2.2. The Slovak Transposition Framework

The Formal Act of Transposition

The primary transposing instrument is Act No. 316/2016 Coll., which entered into force on 1 January 2017. This Act amended the EAW Act (Act No. 154/2010 Coll.) by inserting a new point 5 into its Annex No. 2, explicitly identifying the Directive as a transposed act. The same Act inserted the key provision of § 14(3) into the EAW Act and inserted § 5(10) governing the provision of a list of lawyers through the Slovak Bar Association

(*Slovenská advokátska komora*). Simultaneously, the Directive is listed in the annex to the CCP as a transposed legally binding EU act.

The Wolters Kluwer research confirms the text of § 5 ods. 10 of the EAW Act as inserted by Act No. 316/2016 Coll., providing the mechanism whereby the Slovak issuing court provides the requested person, through the competent authority of the executing State, with a list of lawyers maintained by the Slovak Bar Association.

The Timing Issue

Article 15(1) of the Directive required transposition by 27 November 2016. Act No. 316/2016 Coll. entered into force on 1 January 2017 - approximately 35 days after the expiry of the deadline. This delay, while modest in duration, is legally significant: during that interim period, direct effect of the Directive's sufficiently precise and unconditional provisions could in principle have been invoked by individuals against the Slovak State in accordance with established EU law doctrine on vertical direct effect. No judicial decision invoking the Directive during this window has been identified.

4.3. Transposition Analysis: Article-by-Article Assessment

4.3.1. Article 2 - Scope

Temporal Trigger: Suspects and Accused Persons

The decisive provision for the temporal trigger is § 33b CCP, which defines the procedural category of *podozrivý* (suspect). Under § 33b(1), a suspect enjoys the rights and obligations of the accused - including the right to defence in full scope - unless the law provides otherwise or the nature of the right presupposes formal accused status. Under § 33b(2), these rights apply from the moment of the first questioning or from another procedural act of the law-enforcement authorities directed against that person, or in connection with suspicions concerning that person.

The definition of suspect in § 10(25) CCP is functionally drafted: a suspect is a person who is not yet formally charged but who is caught in the act of committing an offence, or who - on the basis of a criminal complaint, another report, or *established facts* (*zistené skutočnosti*) - is suspected of having committed a criminal offence. The reference to *established facts* is particularly significant: it requires authorities to recognise suspect status on the basis of emerging factual circumstances, rather than awaiting formal notification.

This mechanism is assessed as fulfilling Article 2(3) of the Directive - the scenario where a person questioned in another capacity becomes a suspect during questioning. The Slovak framework requires questioning to cease immediately upon the emergence of suspicion, and the procedural rights of the suspect - including access to a lawyer - must be activated from that moment.

Minor Offences

The distinction between criminal offences (*trestné činy*) and administrative offences (*priestupky*) in Slovak law corresponds structurally to the scope limitation in Article 2(4). Administrative offences under Act No. 372/1990 Coll. are not covered by the Directive, as they are handled by administrative authorities and carry only non-custodial sanctions. Full application in criminal proceedings begins from the moment of suspect or accused status.

4.3.2. Article 3 - Right of Access to a Lawyer in Criminal Proceedings

General Framework

The right of access to a lawyer is transposed through the combined operation of § 34(1) CCP - guaranteeing the accused the right to choose and consult with a defence lawyer and to have the lawyer participate in questioning and investigative acts - and § 33b CCP, extending these rights to suspects. The right is thus ensured from the earliest stage at which investigative authorities direct suspicion towards an individual.

The transposition is characterised as *systemic* rather than textual: no single provision in Slovak law states explicitly "a suspect must have access to a lawyer before interrogation." Instead, the requirement results from the combined effect of §§ 33b and 34 CCP. This approach, while legally capable of ensuring compliance, creates interpretive dependencies that may be less transparent in practice.

The CCP recognises two forms of defence representation: chosen defence (*zvolený obhajca*) and appointed defence (*ustanovený obhajca*). Under § 36 CCP, only a lawyer (*advokát*) may act as defence counsel. Under § 39 CCP, authorised persons - including relatives in the direct line, siblings, spouse, adoptive parent or child, and partners - may choose a defence counsel for the accused. This mechanism is particularly important where the accused is unable to arrange legal representation personally due to deprivation of liberty.

Mandatory defence (*povinná obhajoba*) under § 37 CCP applies in a range of circumstances: where the accused is in custody or serving a sentence of imprisonment; where the accused has been deprived of legal capacity; where proceedings concern particularly serious felonies or offences with an upper sentencing limit of at least ten years; where the accused is a juvenile; and where proceedings are conducted against a fugitive. In mandatory defence cases, if the accused fails to appoint counsel within the time limit, the competent authority must appoint one without delay.

Before Questioning: Article 3(2)(a)

§ 34(1) CCP guarantees the accused the right to be questioned in the presence of defence counsel and to request the lawyer's participation in other investigative acts. As noted above, this extends to suspects by virtue of § 33b CCP. The transposition is *de facto* rather than literal, but is assessed as functionally compliant with Article 3(2)(a) of the Directive.

After Deprivation of Liberty: Article 3(2)(c)

Upon apprehension (*zadržanie*), § 85 CCP requires that the detained person be informed immediately of the reasons for apprehension and of their procedural rights, including the right to choose a defence lawyer and to consult with that lawyer. Read in conjunction with § 33b CCP and § 34 CCP, the right to legal assistance applies immediately upon deprivation of liberty.

Private Meetings and Confidential Communication: Articles 3(3)(a) and 4

The right to meet and communicate with the defence lawyer in private is ensured through: § 34(1) CCP; § 33b CCP extending these rights to suspects; § 18 of Act No.

221/2006 Coll. on the Execution of Custody, which explicitly guarantees the right of the detained person to meet defence counsel without the presence of a third person; and § 21 of the same Act, which provides that the content of telephone conversations between the accused and the defence lawyer may not be monitored.

Article 4 of the Directive is transposed through a multi-layered framework: § 34 CCP; § 115(1) CCP (which provides that any information obtained during telecommunications interception involving lawyer-client communications must be destroyed without delay and may not be used in criminal proceedings); § 23 of Act No. 586/2003 Coll. on Advocacy (professional secrecy of lawyers); and § 38 of Act No. 475/2005 Coll. on the Execution of Imprisonment. Additionally, § 49 of Decree No. 368/2008 Coll. requires correctional institutions to designate separate rooms for lawyer-client meetings.

The protection is assessed as *explicitly* transposed and extends across all modalities of communication - meetings, correspondence, and telephone communications.

Participation in Investigative Acts: Article 3(3)(c)

Under § 34(1) CCP, the accused may request that the defence lawyer participate in other acts of the preparatory proceedings (*úkony prípravného konania*). This encompasses identity parades, confrontations, and scene reconstructions - the three specific acts listed in Article 3(3)(c)(i)–(iii) of the Directive. Once the suspect status arises under § 33b CCP, these rights apply immediately.

Temporary Derogations: Article 3(5)–(6) and Article 8

The primary transposition provision for temporary derogations is § 34a CCP (inserted by Act No. 316/2016 Coll.), which regulates the conditions under which the accused may be temporarily denied access to a lawyer. Derogation is permissible only at the pre-trial stage, only in exceptional circumstances, to a justified extent, and only for the two grounds established by Article 3(6): (i) urgent need to avert serious adverse consequences for the life, liberty, or physical integrity of another person, or (ii) necessity of immediate action to prevent substantial jeopardy to criminal proceedings.

§ 34b CCP complements § 34a by establishing the conditions for questioning during the period of temporary denial of access to a lawyer, ensuring that the right to remain silent and the right of defence are not violated.

The general conditions for derogations under Article 8 - proportionality, time limitation, prohibition of blanket application, and protection of overall fairness - are implemented through: the constitutional principle of proportionality derived from Article 13 of the Constitution; § 2(1) CCP (principle of legality); § 2(9) CCP (principle of the right of defence); § 82 CCP (proportionality in imposing restrictions); § 2a(1) of Act No. 221/2006 Coll. (principle of necessary restriction during pre-trial detention); and § 181(1) CCP (requirements for a duly reasoned decision).

Judicial review of derogation decisions is ensured through the *sťažnosť* (complaint) under § 186(1) CCP, the appeal on points of law (*dovolanie*) under § 371(1)(c) CCP, the extraordinary review by the Prosecutor General under § 363 CCP, and the special *ex post* review mechanism under §§ 362f and 362g CCP. Constitutional complaint to the Constitutional Court is available as a further layer of protection.

4.3.3. Article 5 - Right to Inform a Third Person

The obligation to notify third persons upon deprivation of liberty is implemented through § 74(1) CCP, which requires the court - or in preparatory proceedings the *sudca pre prípravné konanie* (judge for pre-trial proceedings) - to notify without delay a family member of the accused, as well as defence counsel, of the decision to place the accused in custody. Notification of another person designated by the accused may be withheld only if it would jeopardise the purpose of the custody.

For foreign nationals, § 74(1) CCP requires notification of the consular authority of the State of nationality. For juveniles, § 34(4) CCP establishes an automatic obligation to notify the juvenile's legal guardian, the authority for social and legal protection of children (*Úrad pre sociálnu a právnu ochranu detí*), and where applicable, a guardian.

The Slovak approach to derogations under Article 5(3) diverges partially from the Directive's full scope. While Article 5(3)(a) - permitting temporary derogation to avert serious adverse consequences for life, liberty, or physical integrity - lacks a specific explicit counterpart in Slovak law, Article 5(3)(b) - preventing jeopardy to criminal proceedings - is reflected in § 34(4) CCP, which conditions notification of third persons on the absence of risk to the clarification and investigation of the case. Slovak law thus does not fully use the possibility of derogation afforded by the Directive but provides a narrower and more protective regime, particularly with respect to mandatory notification of family members and defence counsel.

4.3.4. Article 6 - Right to Communicate with Third Persons

For accused persons placed in custody, the right to communicate with third persons is governed in detail by Act No. 221/2006 Coll. on the Execution of Custody, which provides a comprehensive framework for visits (§ 18), correspondence (§ 20), and telephone communication (§ 21). Restrictions on communication are permissible under § 2a(1) and § 19(8) of the Act, subject to the proportionality constraint and specific rules governing collusive detention. § 34(4) CCP and § 85(5) CCP extend derogations applicable to accused persons to detained suspects being questioned prior to formal charges.

The transposition in this area is assessed as *explicitly* implemented and as going beyond the minimum requirements of the Directive by providing detailed regulation of the modalities and conditions of communication.

4.3.5. Article 7 - Right to Communicate with Consular Authorities

Slovak law implements Article 7 through a combination of § 74(1) CCP, § 50 of Act No. 221/2006 Coll. (informing foreign nationals of consular communication rights upon admission to custody), and the *Vienna Convention on Consular Relations*, which entered into force for the Slovak Republic on 27 May 1999. The right of consular authorities to arrange legal representation, while not explicitly provided in the CCP, is derived from Article 36(1)(c) of the Vienna Convention, which - by virtue of Article 7(5) of the Constitution of the Slovak Republic - takes precedence over national law. This constitutional incorporation of international treaty obligations represents a robust mechanism for Article 7(2) compliance.

4.3.6. Article 9 - Waiver

The primary transposition provision for waiver is § 37(4) CCP, which allows the accused - after an initial consultation with defence counsel - to waive the right to mandatory defence by an express declaration. The waiver is conditional upon: (i) a prior consultation ensuring the accused is informed of the right's content and consequences; (ii) an express declaration ensuring unequivocality; and (iii) implicitly, voluntariness. The declaration may be withdrawn at any time, and procedural acts carried out during the waiver need not be repeated.

Waiver is only permissible in mandatory defence cases falling under § 37(1)(c) and (d) - proceedings concerning particularly serious felonies and offences with a maximum sentence of at least ten years. It is *not* permissible in cases under § 37(1)(a), (b), (e), and (f) - custody, incapacity, juvenile proceedings, and fugitive proceedings. This restriction corresponds to the heightened protection required by Article 9(1) read in conjunction with Article 13 of the Directive on vulnerable persons.

The recording requirements of Article 9(2) are met through the *zápisnica* (minutes of a procedural act) under § 58(1) CCP, which must record the statements of instructed persons including waivers of rights –. Additionally, Decree No. 437/2006 Coll. requires a specific written record of the information provided to accused persons in detention, confirmed by signature.

The right to revoke a waiver - Article 9(3) - is ensured through § 37(4) itself, which expressly provides that the declaration of waiver may be withdrawn, and through § 34(5) CCP, which obliges law enforcement authorities and courts to inform the accused of their rights - including the right to revoke - at all times. For EAW proceedings, § 14(3) of the EAW Act ensures the right to appoint a lawyer at any time, including after a prior non-exercise or waiver.

4.3.7. Article 10 - Right of Access to a Lawyer in EAW Proceedings

Mandatory Defence and Immediate Access

Under § 14(1) of the EAW Act, a requested person *must* be represented by defence counsel in EAW proceedings - a regime of mandatory defence (*obligatórna obhajoba*) from the earliest stage of the proceedings, including immediately after deprivation of liberty. This provision constitutes the primary transposition of Article 10(1) of the Directive.

The requested person is informed of their rights upon arrest pursuant to § 13(1) of the EAW Act, which requires members of the Police Force to inform the arrested person of their rights under § 14 without delay.

Dual Legal Representation

The mechanism of dual legal representation - a defining feature of Article 10 - is implemented through § 14(3) of the EAW Act, as inserted by Act No. 316/2016 Coll.. Under this provision, the requested person has the right to choose a defence counsel in the issuing State (*štát pôvodu*) for the purpose of assisting the defence counsel in the Slovak Republic. The prosecutor is required to inform the judicial authority of the issuing State without delay upon the exercise of this right.

This right does not affect the time limits under §§ 24 and 25 of the EAW Act. The approach - preserving procedural rights without disturbing EAW time limits - is described as a consistent transposition technique in Slovak law.

Provision of Information to Facilitate Appointment

Where the requested person wishes to appoint a lawyer in the issuing State but has none, § 5(10) of the EAW Act requires the issuing court to provide, through the competent authority of the executing State, a list of lawyers maintained by the Slovak Bar Association for this purpose. § 40(2) CCP - governing ex officio appointment - is expressly disapplied in this context, ensuring that the requested person receives a list for free choice rather than automatic appointment.

Confidentiality and Other Rights Mutatis Mutandis

§ 14(4) of the EAW Act provides that the rules governing the execution of detention apply *mutatis mutandis* to contact with defence counsel, correspondence, and visits for requested persons placed in provisional or surrender detention. This ensures that the confidentiality requirements of Article 4 of the Directive apply in EAW proceedings. By virtue of § 1(2) of the EAW Act, the general provisions of the CCP apply subsidiarily, ensuring the application of rights under Articles 4, 5, 6, 7, 9, and, where applicable, Article 8 to EAW proceedings.

4.4. Case Law Analysis

4.4.1. The Absence of Directive-Specific Case Law

The most significant finding of this research is the near-total absence of identified Slovak judicial decisions that *directly* and explicitly apply or interpret Directive 2013/48/EU by name in the context of the right of access to a lawyer in criminal or EAW proceedings. A systematic review of available jurisprudence from the Constitutional Court, the Supreme Court, and lower courts identified no decisions in which any article of the Directive was cited as the operative legal basis for a holding or interpretation. The decisions of the Supreme Court identified in the research that discussed the inapplicability of EU law concerned non-criminal matters (consumer disputes, enforcement proceedings) entirely unrelated to the Directive's subject matter.

This finding is not necessarily indicative of non-compliance. It reflects, rather, the systemic character of Slovak transposition: the Directive's requirements are met through existing domestic frameworks rather than through new Directive-specific rules, such that Slovak courts adjudicate these matters under national law provisions without needing to reference the Directive explicitly.

4.4.2. Constitutional Court Jurisprudence on the Right of Defence

While the Constitutional Court has not directly applied Directive 2013/48/EU, it has developed an extensive jurisprudence on the constitutional dimensions of the right of defence, which provides the normative foundation upon which Directive compliance rests.

In **III. ÚS 562/2013**, the Constitutional Court considered allegations of violations of the right to a fair trial and the right of defence under §§ 2(7), 2(9), 34(1)–(2) CCP, read together with Articles 46(1)–(4), 47(1)–(4), and 48(2) of the Constitution. Although the decision addressed specific procedural failures in the underlying criminal proceedings, it reaffirmed the fundamental character of the right of defence as guaranteed by both the CCP and the Constitution.

In **II. ÚS 500/2012**, the Constitutional Court held that a failure to take any position on the argument that the accused lacked defence counsel at a stage when mandatory defence applied - despite custody - constituted *zjavná neodôvodnenosť* (manifest lack of reasoning) of the decision. This holding is directly relevant to the Directive's requirement under Article 8(2) that derogation decisions be *duly reasoned*. It establishes a constitutional standard requiring that any restriction of the right of access to counsel be explicitly addressed and justified in the reasoning of judicial decisions.

In **III. ÚS 490/2015**, the Constitutional Court addressed the constitutional standard for reasoning in criminal proceedings. The Court held that vague or generic reasoning - consisting only of a reference to the law without concrete factual basis - renders a decision unreasoned and unlawful and makes judicial review illusory. Doctrinal commentary confirms that criminal court orders may be issued only where there is a lawful ground for interference with fundamental rights, and that such orders require relevant and specific explanatory reasoning; without this, the decision is generally unreviewable. This jurisprudence fortifies the Directive's requirements under Article 8(1)(d) and (2).

In **I. ÚS 343/2022**, the Constitutional Court confirmed that the dovolanie ground of § 371(1)(c) CCP - fundamental violation of the right of defence - must be understood not only in the narrow formulation of Article 50(3) of the Constitution, but also in the broader context of the right to a fair trial under Article 6 ECHR and Article 46(1) of the Constitution, with particular reference to § 34 CCP. This constitutional broadening of the concept aligns with the Directive's holistic understanding of defence rights.

IV. ÚS 546/2020, **II. ÚS 411/2021**, and **IV. ÚS 555/2021** are cited in the same context, forming a recent jurisprudential line confirming the broad constitutional scope of defence rights.

4.4.3. Supreme Court Jurisprudence on § 371(1)(c) CCP: Fundamental Violation of the Right of Defence

The Supreme Court has developed a substantial body of case law on the dovolanie ground of § 371(1)(c) CCP - the "fundamental violation of the right of defence" - which provides the principal judicial review mechanism for violations of the substantive rights guaranteed by the Directive.

In **4 Tdo 5/2013**, the Supreme Court reiterated the foundational right of every person against whom criminal proceedings are conducted to the right of defence, anchored in § 2(9) CCP and Article 6 ECHR.

In **5Tdo/2/2020**, the Court articulated the standard for § 371(1)(c): only a *fundamental* violation of the right of defence constitutes a valid dovolanie ground. A paradigmatic case of such a fundamental violation is where the accused lacked defence counsel despite being legally required to have one - a conclusion applicable regardless of the specific grounds for mandatory defence under § 37 or § 38 CCP. The Court confirmed that the concrete circumstances of each case must be evaluated individually and in mutual context.

In **4Tdo/35/2019**, the Court held that the right of defence within the meaning of § 371(1)(c) must be understood as *the creation of conditions for the full exercise of the procedural rights of the accused and their counsel*, with a lawful response by law enforcement and judicial authorities to the exercise of every defence right. However, the Court drew a careful boundary: the scope and content of the court's own reasoning regarding the selection of evidence-gathering means under §§ 2(10) and 2(11) CCP cannot constitute a violation of the right of defence. This distinction preserves the integrity of the dovolanie ground as a procedural rather than evidentiary remedy - a distinction of practical importance for Directive compliance, as it confirms that substantive procedural failures in access to counsel can be challenged, while mere dissatisfaction with the outcome cannot.

In **2 Tdo 33/2016**, the Court confirmed that the dovolanie ground under § 371(1)(c) applies against judgments approving (plea agreement), noting that a fundamental violation of the right of defence in such proceedings - including absence of counsel where mandatory defence applied - constitutes a valid ground. This is significant in the context of the Directive's waiver provisions: a purported waiver executed without compliance with the conditions of § 37(4) CCP (prior consultation, express declaration, voluntariness) can be challenged on this ground.

In **6 Tdo 49/2019**, the Supreme Court confirmed that the absence of factual specification of each partial attack of a continuing criminal offence constitutes a serious procedural defect and a fundamental violation of the right of defence, as it undermines the accused's ability to mount an effective defence. This decision, while not directly concerned with access to a lawyer, illustrates the breadth of the defence right protected under § 371(1)(c) and under the Directive.

In **4Tdo/9/2024** and **4Tdo/3/2024**, the Supreme Court reaffirmed the well-established principle that the content and scope of the court's own reasoning regarding evidence selection does not constitute a violation of the right of defence under § 371(1)(c), consistently applied across numerous decisions.

4.4.4. The Proportionality Standard in Derogations

The Constitutional Court's case law on proportionality - developed primarily under Article 13 of the Constitution in contexts beyond criminal procedure - has been expressly incorporated by doctrinal commentary and the transposition tables as the constitutional underpinning for the proportionality requirements of Article 8(1) of the Directive. The Criminal Code's provisions on § 33a and § 34 (principles of sentencing) and § 38 (prohibition of blanket assessment) reinforce the requirement that no procedural derogation may be linked exclusively to the type or seriousness of the offence.

4.4.5. Doctrinal Contributions in the Absence of Directive-Specific Jurisprudence

Given the absence of direct judicial application, doctrinal sources available in the ASPI database play a complementary but important role. Commentary on the EAW Act comprehensively analyses the rights under Article 10 of the Directive - dual representation, the role of the SAK list, communication rights, and waiver - and traces the connection between the Directive's requirements and the specific implementing provisions. Commentary on § 37(4) CCP confirms the conditions for valid waiver and the procedural consequences of withdrawal. Commentary on § 371(1)(c) CCP anchors the defence right in both the domestic constitutional order and the ECHR framework.

4.5. Discussion

4.5.1. Systemic Transposition: Strengths and Vulnerabilities

The systemic character of Slovak transposition - relying on the combined operation of existing provisions rather than new Directive-specific rules - carries both advantages and disadvantages. On the positive side, it avoids fragmentation and ensures that established interpretive traditions and safeguards continue to apply. The CCP's provisions on mandatory defence, the right to choose and communicate with counsel, the procedural rights of suspects, and the rules governing questioning and custodial communication collectively provide a framework that, when properly applied, satisfies the Directive's requirements.

The principal vulnerability of systemic transposition is interpretive opacity. Where the Directive mandates a specific outcome (e.g., access to a lawyer before any questioning), the result under Slovak law depends on the interaction of multiple provisions that individually do not state this requirement in terms. A practitioner or adjudicator unfamiliar with the EU law dimension may fail to apply the correct combined interpretation. The absence of direct judicial engagement with the Directive text amplifies this risk: there is no authoritative Slovak interpretation of what the Directive requires over and above what domestic law provides.

4.5.2. The Timing Gap and Direct Effect

The 35-day delay in transposition is not merely a formal compliance issue. During this period, the provisions of the Directive sufficiently precise and unconditional in character could have been relied upon directly by individuals against the Slovak State in a vertical relationship. Given that many of the Directive's core provisions - particularly Article 3(2) (timing of access) and Article 5(1) (notification of third persons) - are formulated in mandatory terms addressed to Member States, they carry the potential for direct effect. No case invoking direct effect during this window has been identified, which may reflect the brevity of the gap, the availability of substantively equivalent domestic remedies, or simply the absence of litigation.

4.5.3. Assessment of Specific Gaps

Several areas require more focused scrutiny:

Article 5(3)(a): The absence of an explicit implementing provision corresponding to the derogation ground of urgent need to avert serious adverse consequences for life, liberty, or physical integrity - as distinct from the risk to criminal proceedings covered by § 34(4) CCP - leaves a specific lacuna. While the proportionality principle and the general clause in § 34(4) may provide functional coverage, the Directive's drafting suggests this ground was intended to have a distinct legal basis.

Notification of Third Persons During Police Detention: The primary notification obligation under § 74(1) CCP applies to placement *in custody* (*väzba*) - a formal, court-ordered measure - and is therefore activated only after formal charges. The extension of § 34(4) CCP to detained suspects via § 85(5) CCP addresses the pre-charge phase but depends on a conditional provision susceptible to restriction for investigative reasons. The transposition tables assess this as explicitly transposed, though the degree to which the notification obligation operates as an unconditional right from the moment of *police apprehension* (as opposed to formal custody) requires careful domestic interpretation.

Waiver and Vulnerable Persons: § 37(4) CCP does not permit waiver in cases of mandatory defence based on custody (§ 37(1)(a)), incapacity (§ 37(1)(b)), juvenile status (§ 37(1)(e)), or fugitive proceedings (§ 37(1)(f)). This protective restriction is consistent with Article 13 of the Directive on vulnerable persons and is assessed as a strength of the Slovak framework. However, the *information requirements* for waiver - clarity and sufficiency - while functionally met through the consultation requirement in § 37(4), are not explicitly codified in terms that mirror the Directive's language on simple and understandable communication. The transposition tables assess this element as only *de facto* implemented.

4.5.4. The Right of Defence as a Dovolanie Ground and Directive Compliance

The Supreme Court's jurisprudence on § 371(1)(c) CCP provides the primary judicial enforcement mechanism for violations of the right of access to a lawyer. The consistent line of decisions confirming that the absence of mandatory defence counsel constitutes a fundamental violation capable of justifying a dovolanie is directly relevant to Directive compliance: it ensures that breaches of access rights - including unlawful denial of access, invalid waivers, or failure to appoint ex officio counsel - can be corrected through an extraordinary remedy reviewed by the Supreme Court.

The Constitutional Court's broader construction of the defence right in **I. ÚS 343/2022** - encompassing both the constitutional and ECHR dimensions - provides an additional layer of interpretive protection that aligns the domestic standard with the Directive's requirement of effective remedies under Article 12(1).

The *multi-layered remedy structure* - review of police conduct by the prosecutor (§ 210 CCP), complaint (*sťažnosť*), appeal (*odvolanie*), dovolanie, Prosecutor General review (§ 363 CCP), reopening of proceedings, and constitutional complaint – - constitutes a comprehensive system that satisfies the effective remedy requirement of Article 12, though no case has yet applied Article 12 of the Directive by name.

4.5.5. EAW Proceedings: A Model of Explicit Transposition

In contrast to the predominantly systemic transposition of the Directive's general provisions, the EAW component is characterised by a higher degree of explicit implementation. The insertion of § 14(3) and § 5(10) into the EAW Act by Act No. 316/2016 Coll. directly mirrors the structure of Article 10(4)–(5) of the Directive. The mandatory defence regime of § 14(1), the dual representation mechanism, the time-limit preservation clause, and the SAK list procedure together constitute a self-contained, explicitly Directive-referenced framework that is more visible and accessible to practitioners than the systemic CCP transposition.

The doctrinal commentary expressly acknowledges that § 5(10) of the EAW Act was inserted to implement the second sentence of Article 10(5) of the Directive, and that § 14(3) reflects the dual representation concept of Articles 10 and 11 of the Directive. This explicit documentary trail facilitates interpretation and application in a way absent from the general criminal proceedings context.

4.6. Conclusion

The Slovak Republic has achieved substantive compliance with Directive 2013/48/EU through a predominantly systemic approach to transposition, relying on the combined operation of the Criminal Procedure Code, the European Arrest Warrant Act, custodial legislation, and professional legal conduct rules. The transposition was formally completed by Act No. 316/2016 Coll., albeit approximately 35 days after the deadline of 27 November 2016.

The core rights guaranteed by the Directive - access to a lawyer from the moment of suspect status; confidentiality of lawyer-client communications; rights during questioning and at investigative acts; notification of third persons; consular communication rights; waiver conditions; and the dual representation mechanism in EAW proceedings - are all addressed by Slovak law, though with varying degrees of textual explicitness. The EAW provisions under § 14 of the EAW Act and § 5(10) represent the most direct and clearly referenced implementing mechanism.

Slovak courts - both the Constitutional Court and the Supreme Court - have developed jurisprudence on the constitutional and procedural dimensions of the right of defence that is functionally compatible with the Directive's requirements. The Constitutional Court's rulings on duly reasoned decisions, the breadth of the constitutional defence right, and the proportionality principle provide a constitutional environment conducive to Directive-compliant application. The Supreme Court's jurisprudence on § 371(1)(c) CCP ensures that fundamental violations of defence rights - including failures of access to counsel - are subject to extraordinary judicial review.

The principal structural deficiency is the absence of any identified Slovak judicial decision directly applying or interpreting Directive 2013/48/EU. This absence forecloses a positive assessment of *euroconform* judicial interpretation and leaves open the question of how Slovak courts would resolve any tension between domestic law and the Directive's minimum standards in a concrete case. As the Directive's minimum standards become more widely known among practitioners and as cross-border criminal matters increase in frequency, the likelihood of direct judicial engagement with the Directive will grow. The legislative architecture is in place to support euroconform application; what remains to be demonstrated is the judicial willingness to invoke the Directive explicitly where domestic provisions require EU-conforming interpretation.

4.7. References

Primary EU Sources

- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013, Official Journal of the European Union L 294, 6 November 2013
- Framework Decision 2002/584/JHA on the European arrest warrant.

Slovak Primary Legislation

- Act No. 301/2005 Coll., Criminal Procedure Code (*Trestný poriadok*), as amended, including Annex listing transposed EU acts.
- Act No. 316/2016 Coll. on the recognition and enforcement of financial penalties imposed in criminal proceedings within the EU, and amending certain laws.
- Act No. 154/2010 Coll. on the European Arrest Warrant (*Zákon o európskom zatýkacom rozkaze*).
- Act No. 221/2006 Coll. on the Execution of Custody.
- Act No. 475/2005 Coll. on the Execution of Imprisonment.
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- Act No. 305/2005 Coll. on Social and Legal Protection of Children.
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5. Directive 2016/343/EU on the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to be Present at the Trial in Criminal Proceedings

Abstract

This paper examines the transposition and judicial application of 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 within the Slovak legal order. Drawing on the official transposition tables, the text of the Directive, Slovak case law reports, and a landmark Constitutional Court ruling, the analysis demonstrates that Slovakia transposed the Directive primarily through pre-existing constitutional and statutory guarantees rather than through dedicated new legislative instruments. The paper critically evaluates the euro-compatibility of the Slovak framework across all principal thematic areas of the Directive - the presumption of innocence, burden of proof, right to silence, physical restraint, right to be present, and remedies - and finds that the Slovak judiciary has, at its higher levels, applied the Directive in a manner broadly consistent with CJEU and ECtHR jurisprudence, though certain structural and lower-court deficiencies remain.

5.1. Introduction

Directive 2016/343/EU forms part of the EU's procedural rights roadmap in criminal proceedings, building on three predecessor directives (2010/64/EU, 2012/13/EU, 2013/48/EU) adopted pursuant to the Council's 2009 Roadmap for strengthening the procedural rights of suspected or accused persons. Its legal basis is Article 82(2)(b) TFEU, which authorises minimum harmonisation of procedural rights in criminal matters to facilitate mutual recognition of judgments. The Directive establishes common minimum rules governing: the presumption of innocence (Article 3), the prohibition of public statements of guilt (Article 4), physical restraint measures (Article 5), the burden of proof (Article 6), the right to silence and against self-incrimination (Article 7), the right to be present at trial (Article 8), the right to a new trial (Article 9), and effective remedies (Article 10).

The Directive's transposition deadline was 1 April 2018. For Slovakia, the formal implementing instrument was Act No. 236/2017 Coll. on the European Investigation Order in Criminal Matters, which added an explicit reference to the Directive in the annex of the Code of Criminal Procedure listing transposed EU acts. The Act entered into force on 15 October 2017, ahead of the transposition deadline. However, the substantive rights addressed by the Directive were overwhelmingly already enshrined in Slovak constitutional and statutory law, so the formal transposition served largely a confirmatory function.

This paper proceeds as follows: Section 2 sets out the legal framework, covering both the Directive's requirements and the pre-existing Slovak normative landscape. Section 3 provides a detailed article-by-article transposition analysis. Section 4 critically examines the key Slovak case law applying the Directive. Section 5 offers a synthetic discussion of the overall euro-compatibility of the Slovak approach. Section 6 concludes.

5.2. Legal Framework

5.2.1. 2.1. The Directive's Core Obligations

Directive 2016/343/EU applies to natural persons who are suspects or accused persons in criminal proceedings, from the moment of suspicion through to the final determination of guilt. It explicitly excludes administrative proceedings and proceedings leading to administrative sanctions.

The key substantive obligations imposed on Member States are:

1. **Article 3 - Presumption of Innocence:** Member States must ensure that suspects and accused persons are presumed innocent until proved guilty according to law.
2. **Article 4 - Prohibition of Public Statements of Guilt:** Public authorities and judicial decisions must not refer to the suspect or accused as being guilty prior to

conviction; exceptions exist for preliminary procedural decisions (such as detention orders) and prosecutorial acts aimed at proving guilt.

3. **Article 5 - Physical Restraint:** Suspects must not be presented as guilty through physical restraint measures, subject to security and prevention exceptions.
4. **Article 6 - Burden of Proof:** The burden of proving guilt lies with the prosecution; doubts must benefit the accused; courts retain an independent obligation to seek both inculpatory and exculpatory evidence.
5. **Article 7 - Right to Silence and Non-Self-Incrimination:** Suspects have the right to remain silent and not to incriminate themselves; exercise of these rights may not be used against them or treated as evidence of guilt; compulsion authorities may lawfully use extends only to evidence existing independently of the accused's will.
6. **Article 8 - Right to be Present at Trial:** Suspects have the right to be present; trials in absentia are permitted only if the accused has been duly informed or is represented by a mandated lawyer; special provisions apply where the accused cannot be located.
7. **Article 9 - Right to a New Trial:** Where conditions for absentia trial were not met, the accused has the right to a new trial allowing fresh determination on the merits.
8. **Article 10 - Effective Remedies:** Member States must ensure effective remedies for breaches.
9. **Article 13 - Non-Regression:** Nothing in the Directive may be construed as limiting existing higher-level protections.

5.2.2. The Slovak Normative Landscape Prior to Transposition

Prior to the Directive's adoption, the presumption of innocence was entrenched in Slovak law at multiple normative levels:

- **Constitutional level:** Article 50(2) of the Constitution of the Slovak Republic provides that "Everyone against whom criminal proceedings are conducted shall be presumed innocent until his or her guilt has been proved in accordance with the law." This is directly applicable and constitutionally enforceable.

- **Treaty level:** Article 7(5) of the Constitution grants precedence to ratified human rights treaties over ordinary laws. The ECHR (promulgated by Notification No. 209/1992 Coll., Article 6(2)) and the ICCPR (Decree No. 120/1976 Coll., Article 14(2)) are thus part of the Slovak legal order with supra-statutory force. The EU Charter of Fundamental Rights, Article 48(1), applies within the scope of EU law.
- **Statutory level:** § 2(4) of Act No. 301/2005 Coll. (CCP) provides: "Everyone against whom criminal proceedings are conducted shall be presumed innocent until found guilty by a final convicting judgment of the court." This is the primary domestic procedural formulation of the presumption of innocence and is recognised as a direct equivalent of Article 3 of the Directive.

5.3. Transposition Analysis: Article by Article

5.3.1. Article 3 - Presumption of Innocence

Specific transposition was not required. The presumption of innocence is one of the fundamental principles of Slovak criminal and constitutional law. § 2(4) CCP provides a textually direct equivalent of the Directive's Article 3 requirement. The Constitutional Court's plenary judgment PL. ÚS 17/2023 authoritatively articulated the system of four rules deriving from this presumption: (i) unproven guilt is equivalent to proven innocence; (ii) *in dubio pro reo*; (iii) the accused bears no burden to prove innocence; and (iv) *nemo tenetur se ipsum accusare*.

5.3.2. Article 4 - Prohibition of Public Statements of Guilt

The transposition of this article is predominantly implicit. No single provision exclusively regulates the prohibition on referring to suspects as guilty in public statements. Instead, Slovak law employs a network of complementary instruments:

- § 2(4) CCP, which serves as both the Article 3 equivalent and the normative basis for Article 4 compliance, implies that public authorities must refrain from presenting individuals as guilty prior to a final conviction.
- Act No. 154/2001 Coll. on Prosecutors and Prosecutor Trainees, § 26(1)(i), expressly obliges prosecutors to refrain from publicly expressing opinions on cases that have not been finally adjudicated - constituting a direct statutory prohibition on prejudging guilt. Breach gives rise to disciplinary liability ranging from reprimand to removal from office.
- Act No. 385/2000 Coll. on Judges and Lay Judges, § 30, imposes duties of impartiality, confidentiality, and restraint; judicial breach gives rise to disciplinary liability.
- Decree No. 543/2005 Coll. governs judicial-media relations, ensuring court spokespersons do not prejudge ongoing proceedings.
- Act No. 171/1993 Coll. on the Police Force, § 80, imposes a duty of confidentiality on police officers regarding case information, with permissible disclosure limited to contexts respecting the presumption of innocence.
- Police officers who publicly present suspects as guilty are subject to disciplinary proceedings under Act No. 73/1998 Coll., with sanctions including reprimand, salary reduction, suspension, or dismissal.

Slovak courts apply Article 4 directly as an interpretive standard. The Constitutional Court has repeatedly held that "a violation of the presumption of innocence occurs where statements made by a public authority concerning a person accused of a criminal offence reflect or convey the opinion that the person is guilty before that guilt has been established in accordance with the law."

5.3.3. Article 5 - Physical Restraint

The transposition of Article 5 is de facto and indirect, combining several legal sources:

- Articles 17 and 50(2) of the Constitution protect personal liberty and the presumption of innocence.
- § 2(4) CCP entrenches the presumption of innocence.

- § 2(1) of Act No. 221/2006 Coll. on the Execution of Detention mandates respect for human dignity and prohibits cruel, inhuman, or degrading treatment, constituting "a direct material expression of the requirement of Article 5 of the Directive."
- § 121 CCP requires official courtesy and a neutral attitude derived from the presumption of innocence during questioning.
- § 2(2) CCP requires that physical restraint measures always be proportionate to the purpose of the proceedings.
- Constitutional Court judgment PL. ÚS 17/2023 confirmed that any restrictions must be proportionate and not misused through excessiveness.

Security exceptions - for aggressive behaviour, prevention of escape, or prevention of collusion - are provided in § 7(4)-(5) of Act No. 221/2006 Coll. and §§ 71(1)(a)-(c) CCP, in line with Article 5(2) of the Directive. Article 17 of the Constitution requires that detention be ordered only judicially and only on grounds defined by law.

5.3.4. Article 6 - Burden of Proof

The burden of proof principle is implemented de facto through § 2(12) CCP, which establishes the prosecution's obligation to prove the indictment "beyond reasonable doubt." The three binding rules - the accused need not prove innocence, unproven guilt equals proven innocence, and doubt must favour the accused - are codified in Slovak law at all normative levels. § 2(10) CCP obliges law enforcement authorities to investigate both incriminating and exculpatory circumstances with equal diligence, corresponding directly to Article 6(1) of the Directive. § 2(11) CCP preserves the court's active role in evidence-taking, reflecting Recital 23 of the Directive. Where the prosecution fails to discharge the burden, acquittal under § 285(a) or (c) CCP is mandatory.

5.3.5. Article 7 - Right to Silence and Non-Self-Incrimination

This is one of the most extensively transposed provisions. The framework rests on:

- Article 47 of the Constitution, which guarantees *nemo tenetur se ipsum accusare* for all persons.

- § 34(1) CCP, granting the accused the right, from the commencement of proceedings, to refuse to testify.
- § 121(1) CCP - the "primary transposition provision" for Article 7(5) - provides: "The accused must not be compelled in any unlawful manner to testify or to confess, and their personality must be respected during questioning. Refusal to testify may not be regarded as evidence of guilt."
- § 121(2) CCP prescribes a mandatory statutory instruction before every questioning, with the verbatim text: "As an accused person, you have the right to testify or to refuse to testify. No one may compel you to confess..." The accused must confirm understanding by signature.
- § 119(5) CCP renders evidence obtained through unlawful coercion absolutely inadmissible. This inadmissibility extends to all derivative evidence (ZSP 74/2006).

Act No. 40/2024 Coll. significantly expanded suspects' rights in pre-trial proceedings to ensure proper transposition of EU law, including Directive 2016/343/EU.

The active/passive distinction governing Article 7(3) (evidence existing independently of the accused's will) is implemented primarily through § 155 CCP, which regulates body searches, biological sampling, DNA, and fingerprints. The Constitutional Court in PL. ÚS 17/2023 articulated the distinction as follows: compelling active conduct is prohibited, while passive submission to lawful coercive measures is permissible, since such evidence "exists objectively, independently of the will of the accused."

The optional provision of Article 7(4) (sentencing benefits for cooperation) is transposed through the comprehensive "cooperating person" framework: § 10(23)-(24) CCP, § 33a CCP, and § 39(2)(d) of the Criminal Code (Act No. 300/2005 Coll.). These benefits are consistently held by Slovak courts to be purely discretionary (*facultative*), in line with the permissive language of the Directive.

5.3.6. Article 8 - Right to be Present at Trial

The right to be present is expressly codified in § 2(7) CCP, which guarantees "the right to have their criminal case heard fairly and within a reasonable time by an independent and impartial court, in their presence, so that they may comment on all evidence taken." The Supreme Court consistently treats this as a right, not an obligation, and interference with it is regarded as a serious violation of the right of defence.

Trials in absentia under Article 8(2)(a) and (b) are transposed primarily through § 252(2) CCP (main hearing) and §§ 293(4)-(5) CCP (public session). These conditions are cumulative and stricter than the Directive requires, as Slovak law additionally demands the opportunity to comment on facts and explicit warning of the possibility of absence proceedings, providing a higher level of protection consistent with Article 13 of the Directive. Any valid waiver must be "specific and unequivocal" - a general statement is insufficient.

Trials where the accused cannot be located are governed by the regime of "proceedings against a fugitive" (§§ 358-362 CCP), which requires proof of intentional evasion and exhaustion of all lawful means to secure attendance. This corresponds directly to Article 8(4) of the Directive.

The written proceedings option permitted by Article 7(6) of the Directive is utilised through the *penal order* mechanism (§§ 353-356 CCP), applicable only to misdemeanours (*prečiny*) under § 10 of the Criminal Code, where the facts are reliably established. The penal order must include information on the right to file an objection within eight days; if timely filed, the order is set aside and a full oral hearing is held.

5.3.7. Articles 9 and 10 - Right to a New Trial and Effective Remedies

Article 9 is implemented through § 362(2)-(4) CCP (rehearing following conviction in absentia). Subsidiarily, § 394 CCP permits reopening of proceedings when new facts or evidence emerge, including on the basis of an ECtHR judgment.

Article 10's requirement of effective remedies is met through a comprehensive system of ordinary and extraordinary remedies, since Slovak law provides no single remedy specifically designated for Directive breaches:

- **Ordinary:** appeal (§§ 369 et seq. CCP), complaint, prosecutorial supervision (§ 210 CCP).
- **Extraordinary:** appeal on points of law/cassation (§ 368-371 CCP); annulment by the Prosecutor General (§§ 363 et seq. CCP); reopening of proceedings (§§ 394 et seq. CCP).

- **Constitutional:** complaint under Article 127 of the Constitution, which the Constitutional Court has repeatedly confirmed as a key effective remedy within the meaning of Article 10 of the Directive.

5.4. Case Law Analysis

5.4.1. Supreme Court of the Slovak Republic - Decision 5Tdo/35/2023

This decision represents the most comprehensive and explicit analysis of Directive 2016/343/EU by the Supreme Court. The case concerned the relationship between the Directive and judicial bias (the exclusion of a judge who had previously participated in detention decisions). The Supreme Court held that the Directive does not directly regulate questions of judicial bias, as it primarily targets public statements by public authorities involved in criminal proceedings. The court grounded this conclusion in a direct reference to the CJEU judgment in *Milev* (C-310/18 PPU). However, the court acknowledged that a violation of the Directive could have a secondary consequence - rendering a presiding judge unable to be considered impartial. This decision is assessed as euro-compatible, demonstrating solid engagement with CJEU case law.

5.4.2. Supreme Court - Decision 2TdoV/10/2021

This decision addressed Article 4(1) of the Directive in the context of plea agreements. The Supreme Court fully adopted the conclusion of the CJEU in *AH and Others* (C-377/18), according to which Article 4(1) does not preclude a plea agreement from naming co-perpetrators who did not participate in it, provided that it is clearly stated that their guilt has not been established by law and that they are being prosecuted in separate proceedings. This decision has been assessed as a model example of consistent national interpretation in conformity with EU law.

5.4.3. Supreme Court - Decision 1TdoV/13/2017

In this case, the accused requested a preliminary ruling on Article 3 of the Directive in connection with Articles 47 and 48 of the Charter. The argument was that a judge who had approved a plea agreement with a co-perpetrator in the same criminal matter was not excluded from deciding the accused's case, thereby violating the presumption of innocence. The accused also invoked *Emil Milev* (C-439/16 PPU) for the proposition that Member States are obliged to apply the Directive even before expiry of the transposition deadline. The procedural issue of judge exclusion following a plea agreement was subsequently clarified by the ECtHR in *Mucha v. Slovakia* and further refined by the Constitutional Court in III. ÚS 589/2023 (discussed below).

5.4.4. Supreme Court - Decision 2TdoVS/1/2021

This decision directly addressed Article 4(1) of the Directive in the context of judicial bias objections and pretrial detention. The court confirmed that preliminary procedural decisions such as detention orders - as expressly provided in Recital 16 and Article 4(1) - are excluded from the prohibition on public attributions of guilt, provided the decision does not designate the accused as guilty. The assessment is euro-compatible and consistent with ECtHR jurisprudence emphasising the procedural character of detention orders.

5.4.5. Regional Court - Decision 4To/3/2019

The accused directly invoked Article 6 of the Directive (burden of proof), arguing that the court had conducted and interpreted evidence in a tendentious and misleading manner. The court was obliged to address these Directive-based arguments, and the direct citation of Article 6 by the defence demonstrates growing awareness of the Directive in criminal practice. However, the available text of the decision does not reveal how the court substantively engaged with this argument. This case is assessed as "unclear" (*nejasné*), representing the primary remaining risk of insufficient lower-court engagement with Directive arguments.

5.4.6. Constitutional Court - Decision III. ÚS 546/2014

The Constitutional Court considered the right to be present at trial as addressed in Chapter 3 of the Directive. The court upheld the Supreme Court's position that the obligation to respect the principle of presence is limited to proceedings on the merits, i.e., the main hearing, and grounded this in § 278(2) CCP. This was assessed as compatible with ECtHR jurisprudence (specifically *P.K. v. Finland*, no. 37442/97) and with the Directive, which in Article 8(6) expressly permits written proceedings compliant with the right to a fair trial.

5.4.7. Constitutional Court - Decision II. ÚS 367/2021 (16 December 2021)

This is the most detailed ruling in the corpus. The case arose from constitutional complaints by the accused N.B. in the "Dobytkár" corruption case, challenging pre-trial detention decisions by the Supreme Court. The Constitutional Court found that the Supreme Court's decision No. 4Tost/14/2021 of 23 March 2021 violated the complainant's fundamental rights under Article 17(1) and (2) and Article 48(1) of the Slovak Constitution, Article 5(1) and Article 6(2) ECHR, and Article 48(1) of the EU Charter.

The key substantive issue was whether the Supreme Court's statement - that "given the strength of the evidentiary situation, collusory behaviour is the only option available to the accused to avoid a long-term sentence" - constituted a violation of the presumption of innocence. Applying ECtHR case law (*Rushiti v. Austria*, no. 28389/95; *Daktaras v. Lithuania*, no. 42095/98; *Allenet de Ribemont v. France*, no. 15175/89; *Avaz Zeynalov v. Azerbaijan*, nos. 37816/12 and 25260/14), and referencing the CJEU judgment *Emil Milev* (C-310/18 PPU, para. 40) for the applicability of the Charter, the Constitutional Court concluded that this statement - formulated as an independent evaluative conclusion by the Supreme Court, capable of giving an impartial reader a clear impression of guilt - violated the principle of the presumption of innocence.

The court established two important limiting principles:

1. A violation of the presumption of innocence in detention reasoning does not automatically render the detention unlawful, provided the detention is constitutionally sustainable on its substantive and formal grounds and no judicial bias is apparent. The conflict with the right to a fair trial would arise if the violation occurred during proceedings on the merits, or if the same judge who violated the presumption decided on guilt.

2. A judge whose prior detention reasoning violated the presumption of innocence should not decide on the merits in the same case; the courts were directed to ensure that the merits would be decided by a panel raising no objective doubts about impartiality, citing *Hauschildt v. Denmark* (no. 10486/83), *Nešťák v. Slovakia* (no. 65559/01), and *Mironenko and Martenko v. Ukraine* (no. 4785/02).

The decision also upheld the complainant's objection to the unlawful assignment of the pre-trial judge, finding that the Supreme Court had failed to address the applicable work-schedule rules (Section V, point 8 of the 2021 specialized court schedule), and that the subsequent withdrawal of part of the prosecutor's motion could not retroactively change the judge assignment determined at the time of the motion's receipt.

The Constitutional Court annulled the impugned Supreme Court decision and directed that the legal title for detention between 2 April and 18 August 2021 ceased with the annulment.

5.4.8. ECtHR - *Mucha v. Slovakia* and Constitutional Court Decision III. ÚS 589/2023

The question of excluding a judge who approved a co-defendant's plea agreement from deciding the remaining accused's case reached the ECtHR. The Court found that final approval of a plea agreement naming a co-accused in the admitted facts requires exclusion of that judge from the co-accused's ongoing proceedings. The Slovak Constitutional Court in III. ÚS 589/2023 of 5 December 2023 followed *Mucha* but clarified that the principle does not apply where co-accused made a declaration of guilt that was accepted by the court without a convicting judgment against the co-perpetrator. This narrowing of *Mucha* is assessed as largely euro-compatible but requires further case-by-case development.

5.5. Discussion

5.5.1. Overall Assessment of Euro-Compatibility

The transposition tables and case law report permit the following structured assessment:

Decision	Directive Provision	Euro-Compatibility Assessment
NS SR 5Tdo/35/2023	Art. 1, Recital 9	Compatible - direct reference to C-310/18 PPU

Decision	Directive Provision	Euro-Compatibility Assessment
NS SR 2TdoV/10/2021	Art. 4(1)	Compatible - full application of C-377/18
NS SR 1TdoV/13/2017	Art. 3	Partial - issue unresolved, anticipated later development
NS SR 2TdoVS/1/2021	Art. 4(1), Recital 16	Compatible - correct application of detention exception
KS 4To/3/2019	Art. 6	Unclear - substantive engagement with argument absent
ÚS SR III. ÚS 546/2014	Art. 8(1)	Compatible - grounded in ECtHR jurisprudence
ÚS SR III. ÚS 589/2023	Arts. 3, 4 (*Mucha*)	Predominantly compatible - narrowing requires further development

The overall picture is positive: Slovak higher courts actively cite CJEU jurisprudence (C-377/18, C-310/18 PPU, C-439/16 PPU) and the Constitutional Court consistently accounts for ECtHR standards. The primary residual risk is insufficient substantive engagement with Directive-based arguments at the regional court level.

5.5.2. The Predominantly Implicit Character of Transposition

A structural feature of Slovakia's approach is the reliance on implicit rather than explicit transposition. No dedicated new provision was enacted for most of the Directive's articles; instead, pre-existing constitutional, statutory, and ethical norms were assessed as providing the necessary protection. While this approach is defensible - given the deep roots of the presumption of innocence in Slovak constitutional culture and the comprehensiveness of the CCP - it creates a risk of interpretive opacity. Rights arising from the Directive may not be immediately legible to practitioners who are not attuned to the EU law dimension of domestic provisions.

The Constitutional Court in II. ÚS 367/2021 illustrates both the strength and the limitation of this approach. The court applied the correct analytical framework, drew on CJEU and ECtHR case law, and reached a euro-compatible result. However, it did so through the lens of the ECHR and the Charter, not through a direct statutory provision implementing Article 4 of the Directive. This is permissible - and indeed consistent with the Directive's minimum-standard character - but it underscores the importance of judicial awareness of the EU law dimension.

5.5.3. The *In Dubio Pro Reo* Principle and its Limits

Slovak case law has elaborated the *in dubio pro reo* principle with considerable sophistication. The Supreme Court in 1Tdo/76/2022 confirmed that the principle applies only where doubts persist after all available evidence has been assessed, and that unproven guilt is equivalent to proven innocence. In 4Tdo/23/2024, the court held that where equally plausible factual versions exist, the court must choose the one most favourable to the accused, and that failure to do so violates both the principle and the presumption of innocence. In 5Ndt/19/2017, it was held that criminal proceedings require "the highest possible degree of certainty that can be demanded of human knowledge." These holdings are fully consistent with Article 6(2) of the Directive. The principle does not, however, require that any contradiction in evidence automatically favour the accused; if doubt can be resolved by the court's free assessment based on inner conviction, the principle need not be applied.

5.5.4. The Right to Silence: Absolute Prohibition of Adverse Inference?

Slovak law and doctrine present a nuanced position. The statutory text of § 121(1) CCP is categorical: refusal to testify may not be regarded as evidence of guilt. The Constitutional Court confirmed that the decision to remain silent cannot be held against the accused. However, the commentary to § 121 acknowledges that the *nemo tenetur* principle is not absolute and that, consistent with ECtHR case law (*John Murray v. the United Kingdom*), it does not entirely preclude a court from assessing silence within the overall evidentiary context. The impermissible boundary is clear: a conviction based solely on the accused's silence is inadmissible. This nuanced position is consistent with the Directive's framework and with CJEU and ECtHR jurisprudence.

5.5.5. Physical Restraint and the Constitutional Court

The application of Article 5 of the Directive through the implicit framework of proportionality, human dignity, and judicial authorisation reflects a constitutionally

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coherent approach. The Constitutional Court's confirmation in PL. ÚS 17/2023 that any restriction must be proportionate and that biological sampling involving passive submission is constitutionally permissible, while compelled active self-incrimination is not, aligns precisely with the Directive's framework. The case law on DNA sampling (II. ÚS 208/2022, II. ÚS 335/2022) confirms that procedural requirements - a properly reasoned judicial order - are enforced in practice.

5.5.6. Remedies: A System of Distributed Protection

The absence of a single dedicated remedy for Directive breaches is a deliberate structural choice. The Slovak system distributes protection across a spectrum of remedies tailored to different procedural stages and violation types. The constitutional complaint under Article 127 of the Constitution has proven particularly effective, as demonstrated by II. ÚS 367/2021 and the line of cases cited therein (III. ÚS 163/08, II. ÚS 156/08, I. ÚS 285/2019, I. ÚS 99/2022, I. ÚS 519/2020). The inadmissibility of unlawfully obtained evidence under § 119(5) CCP - including the "fruit of the poisonous tree" doctrine confirmed in ZSP 74/2006 - provides a powerful structural incentive for compliance.

5.6. Conclusion

Slovakia's transposition of Directive 2016/343/EU is characterised by a deliberate reliance on the deep constitutional and statutory roots of the presumption of innocence in Slovak law. The formal transposition vehicle - Act No. 236/2017 Coll. - served primarily to confirm and register pre-existing compliance rather than to introduce new substantive provisions. This approach is largely defensible given the breadth and depth of the existing framework, but it places a premium on judicial awareness of the EU law dimension of domestic provisions.

The overall assessment of euro-compatibility is positive. The Slovak Supreme Court actively engages with CJEU jurisprudence on the Directive's scope and limitations. The Constitutional Court applies ECHR and Charter standards systematically, and landmark decisions such as II. ÚS 367/2021 demonstrate sophisticated, multi-layered reasoning that is fully consistent with Strasbourg and Luxembourg jurisprudence. The PL. ÚS 17/2023 plenary judgment provides an authoritative articulation of the entire system of rules deriving from the presumption of innocence that will guide future case law.

The principal remaining weaknesses are: (1) the absence of explicit, purpose-specific implementing provisions for several Directive articles, which may impair the Directive's "legibility" in lower-court proceedings; (2) the risk of insufficient substantive engagement with Directive-based arguments at the regional court level, as illustrated by case 4To/3/2019; and (3) the open question of whether the Constitutional Court's narrowing of the *Mucha* principle in III. ÚS 589/2023 - limiting judge exclusion to cases where a convicting judgment was issued against the co-defendant - will prove euro-compatible in all factual constellations.

The trajectory is, nonetheless, clearly toward greater judicial familiarity with the Directive and its CJEU and ECtHR underpinnings. The cumulative body of case law reviewed establishes Slovakia as a jurisdiction that, at its highest judicial levels, treats Directive 2016/343/EU as a living instrument of procedural rights protection rather than a merely formal transposition obligation.

5.7. References

- Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 (SK and EN versions, Official Journal L 65/1, 11.3.2016)
- Transposition Tables: *Directive 2016/343 - Transposition in Slovakia* (implementing table document, analysed throughout)
- *Správa o judikatúre slovenských súdov k aplikácii smernice 2016/343/EÚ* (Report on Slovak case law applying Directive 2016/343/EU)
- Constitutional Court of the Slovak Republic, Judgment II. ÚS 367/2021 of 16 December 2021, *Prezumpcia neviny pri rozhodovaní o väzbe*
- Act No. 301/2005 Coll., Code of Criminal Procedure of the Slovak Republic
- Act No. 300/2005 Coll., Criminal Code of the Slovak Republic
- Constitution of the Slovak Republic (particularly Articles 17, 47, 48, 50, 127, 154c)
- European Convention on Human Rights (Notification No. 209/1992 Coll.), particularly Articles 5 and 6
- Charter of Fundamental Rights of the European Union, Articles 47 and 48
- CJEU Judgments: *Milev* (C-439/16 PPU); *Emil Milev* (C-310/18 PPU); *AH and Others* (C-377/18)
- ECtHR Judgments: *Mucha v. Slovakia*; *Nešťák v. Slovakia* (no. 65559/01); *Hauschildt v. Denmark* (no. 10486/83); *Daktaras v. Lithuania* (no. 42095/98); *Rushiti v. Austria* (no. 28389/95); *Allenet de Ribemont v. France* (no. 15175/89); *Avaz Zeynalov v. Azerbaijan* (nos. 37816/12 and 25260/14)

6. Directive 2016/800/EU on Procedural Safeguards for Children who are Suspects or Accused Persons in Criminal Proceedings

Abstract

This paper examines the transposition and practical application of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings within the legal order of the Slovak Republic. Drawing upon the directive's text, the official Slovak transposition tables, and a report on judicial application compiled from the ASPI legal database as of 30 March 2026, the analysis identifies both the formal legislative framework implementing the directive and the substantive gaps that persist. The paper critically examines the Slovak case law that has engaged, directly or indirectly, with the directive's requirements, and situates these findings within the broader context of European Commission infringement proceedings and a recent corrective legislative intervention via Act No. 40/2024 Coll. The central argument is that while Slovakia achieved formal transposition ahead of the June 2019 deadline, material compliance remains incomplete, the judiciary's direct engagement with the directive is sparse, and the guarantees it mandates are enforced primarily through national law and analogical reasoning rather than through a principled and systematic euro-conformant interpretive practice.

6.1. Introduction

The protection of children in criminal proceedings stands at the intersection of criminal justice, fundamental rights, and child welfare law. The EU legislator recognised, in adopting Directive 2016/800/EU, that membership of the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child does not, by itself, produce the level of mutual trust among Member States necessary for the effective functioning of judicial cooperation in criminal matters. Common minimum procedural rules applicable to children who are suspects or accused persons were therefore identified as both a mutual trust instrument and a child protection instrument.

The directive forms part of the broader EU Roadmap for strengthening procedural rights in criminal proceedings, adopted by the Council on 30 November 2009, and complements four earlier measures covering translation and interpretation (Directive 2010/64/EU), the right to information (Directive 2012/13/EU), access to a lawyer (Directive 2013/48/EU), and the presumption of innocence (Directive 2016/343/EU). Directive 2016/800/EU adds child-specific layers on top of those general guarantees, taking into account the particular vulnerability, developmental needs, and reintegration potential of child offenders.

Slovakia declared transposition through Act No. 161/2018 Coll., which entered into force on 1 July 2018, ahead of the 11 June 2019 deadline. The following analysis proceeds in four substantive parts: first, the legal framework of the directive and its core rights architecture; second, a systematic review of transposition using the Slovak implementation tables; third, a critical assessment of the case law; and fourth, a synthesis of findings addressing the quality, completeness, and practical effectiveness of transposition.

6.2. Legal Framework

6.2.1. The Directive: Scope and Core Rights

Directive 2016/800/EU establishes common minimum rules concerning the procedural rights of children - defined as persons below the age of 18 - who are suspects or accused persons in criminal proceedings, as well as children who are "requested persons" subject to European Arrest Warrant (EAW) proceedings. Where there is uncertainty about a person's age, the presumption is that they are a child. The directive applies until the final determination of whether the suspect or accused person committed a criminal offence, including sentencing and the resolution of any appeal. It also applies to persons who were children when proceedings commenced but have since turned 18, where application remains appropriate having regard to maturity and vulnerability.

The directive explicitly excludes proceedings of a protective, corrective, or educational nature from its scope. For minor offences, it applies only when proceedings are conducted before a criminal court, or in all circumstances where the child is deprived of liberty, irrespective of the stage or gravity of the offence.

The catalogue of rights established by the directive encompasses:

1. The right to information (Article 4): children must be promptly informed of their rights and the general aspects of proceedings upon being made aware of their suspect or accused status.
2. The right to have the holder of parental responsibility informed (Article 5): the holder must receive, as soon as possible, the same information the child is entitled to receive under Article 4.
3. The right to assistance by a lawyer (Article 6): children are entitled to lawyer assistance without undue delay from the moment they are informed of their status, and in any event before any police questioning, before investigative acts requiring their presence, upon deprivation of liberty, and in a timely manner before court hearings. Confidentiality of lawyer-child communication is absolute.
4. The right to an individual assessment (Article 7): every child suspect or accused must be individually assessed, covering personality, maturity, economic, social and family background, and specific vulnerabilities.
5. The right to a medical examination (Article 8): children deprived of liberty have the right to a prompt, minimally invasive medical examination.
6. Audiovisual recording of questioning (Article 9): police and law enforcement questioning of children must be audiovisually recorded where proportionate, giving primary consideration to the child's best interests.
7. Limitation of deprivation of liberty (Article 10): deprivation of liberty must be limited to the shortest appropriate period and used only as a last resort.
8. Alternative measures (Article 11): authorities must always consider alternatives to detention.

9. Special treatment during deprivation of liberty (Article 12): detained children must be held separately from adults, enjoy access to education, family contact, and programmes fostering reintegration.
10. Privacy protection (Article 14): children's privacy during criminal proceedings must be protected, including through closed hearings.
11. The right to be accompanied (Article 15): children have the right to be accompanied by the holder of parental responsibility at court hearings and at other procedural stages where appropriate.
12. The right to participate in the trial (Article 16): children must be present at their own trial and given the opportunity to be heard.
13. Rights in EAW proceedings (Article 17): Articles 4, 5, 6, 8, 10–15, and 18 apply mutatis mutandis to requested children from the moment of arrest.
14. The right to legal aid (Article 18): national legal aid frameworks must guarantee effective exercise of the right to a lawyer.
15. Effective remedies (Article 19): children must have access to effective remedies in the event of a breach of their directive rights.

The directive sets minimum standards and explicitly prohibits any interpretation that would reduce protection below the levels guaranteed by the EU Charter of Fundamental Rights, the ECHR, the UN Convention on the Rights of the Child, or more protective national law.

6.2.2. The Slovak Legal Framework for Juvenile Criminal Proceedings

Prior to transposition, Slovak criminal law already contained a specialised body of rules for juvenile offenders. The Criminal Code (Act No. 300/2005 Coll.) defines a juvenile as a person who, at the time of committing the offence, has reached 14 years of age and has not exceeded 18 years. Persons under 14 are not criminally liable (§ 22(1) Criminal Code). The Criminal Procedure Code (Act No. 301/2005 Coll.) dedicates Chapter Seven of Part Three entirely to "Proceedings against Juveniles," establishing a self-contained procedural regime with an explicit rehabilitative and educational purpose.

6.3. Transposition Analysis

6.3.1. General Overview and Implementing Acts

Slovakia declared transposition of Directive 2016/800/EU primarily through Act No. 161/2018 Coll., in force from 1 July 2018, which amended both the Criminal Code and the Criminal Procedure Code. The directive is also formally listed in the annexes of a substantial number of additional acts, including: Act No. 221/2006 Coll. on the Execution of Detention; Act No. 475/2005 Coll. on the Execution of Imprisonment; Act No. 154/2010 Coll. on the European Arrest Warrant; Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Guardianship; Act No. 274/2017 Coll. on Victims of Crime; Act No. 548/2003 Coll. on the Judicial Academy; Act No. 576/2004 Coll. on Healthcare; Act No. 36/2005 Coll. on the Family; and Act No. 264/2022 Coll. on Media Services. This multi-instrument approach reflects the cross-sectoral reach of the directive's requirements but also creates a dispersed and sometimes internally inconsistent normative landscape.

6.3.2. Article-by-Article Analysis

Articles 1–3 - Scope and Definitions

The Slovak legal order recognises a dual procedural status - *suspect* (podozrivý) and *accused* (obvinený) - regulated in the Criminal Procedure Code. The accused is defined under § 33 CCP as a person against whom charges have been formally brought; a suspect is defined under Article 10(25) CCP as a person against whom there are grounds to believe they have committed an offence, but who has not yet been charged.

A significant structural gap emerges at the pre-charge stage. While § 33b CCP, as amended by Act No. 40/2024 Coll., provides a catalogue of rights for suspects, these rights are less extensive and structurally less guaranteed than those of the accused. The full legal aid framework - mandatory defence and the appointment of counsel under §§ 37–40 CCP - is triggered only upon formal accusation. Accordingly, the transposition of Article 3(1)(a) of the directive, which requires procedural safeguards for *suspects*, is assessed as partially complete, with a potential structural gap concerning the effective availability of legal aid at the pre-charge stage.

In EAW proceedings, the Slovak framework relies on the general subsidiarity clause of § 1(2) of Act No. 154/2010 Coll., which provides that the Criminal Procedure Code applies mutatis mutandis, thereby extending defence rights and legal aid to requested persons. This systemic approach is assessed as functionally equivalent and substantively compliant, even in the absence of a standalone legal aid provision tailored to requested persons.

The concept of "juvenile" in Slovak law (persons aged 14–18 at the time of the offence) functionally corresponds to the directive's definition of "child." The age presumption - treating persons of unknown age as juveniles until proven otherwise - is explicitly codified in the Criminal Procedure Code. Special procedural rules generally cease to apply where charges are brought only after the accused has reached the age of 19, which represents a potential narrowing of the directive's temporal scope.

Article 4 - Right to Information

Article 4 is explicitly transposed. § 34(1) CCP grants the accused, from the outset of proceedings, the right to comment on all allegations and evidence and to refuse to give a statement. § 33b CCP extends substantive information rights to suspects from the first questioning. § 34(4) CCP requires authorities to notify, without undue delay, the juvenile's legal representative, the social and legal protection authority, and any appointed guardian when a juvenile is apprehended or arrested. The legal representative of a juvenile accused must also be informed of the accused's rights.

Article 6 - Right to Assistance by a Lawyer

This provision is implemented robustly. § 336 CCP establishes an absolute, unconditional obligation that a juvenile must have defence counsel after charges have been brought. This is reinforced by § 37(1)(e) CCP, which includes proceedings against juveniles among the cases of mandatory defence. Where no counsel has been chosen, § 40(1) CCP requires appointment without delay through an electronic allocation system approved by the Ministry of Justice. Appointed counsel must take up the defence without delay under § 41 CCP. Mandatory defence extends, under §

38 CCP, to enforcement proceedings and proceedings concerning extraordinary remedies.

The Slovak system provides protection that exceeds the directive's minimum: lawyer assistance for juveniles is automatic and unconditional, not subject to the proportionality derogation contemplated by Article 6(6) of the directive. Where counsel is not present, procedural acts - including questioning - must be postponed until counsel arrives or is appointed. The Constitution of the Slovak Republic (Article 50(3)) additionally guarantees the right to prepare a defence and to be represented by counsel.

Article 7 - Right to an Individual Assessment

Article 7 is largely transposed through § 337 CCP, which requires that, in proceedings against a juvenile, authorities must determine, without undue delay and as thoroughly as possible, the level of the juvenile's intellectual and moral development, personality, behaviour, and social environment, and all other circumstances relevant to the selection of appropriate rehabilitative measures. The assessment involves the social and legal protection authority, the municipality, and, where necessary, is repeated.

However, several elements of Article 7 are not explicitly reflected in Slovak law. Specifically: (i) Slovak law does not expressly regulate the timing of the assessment relative to the stage of indictment; (ii) the active involvement of the child in the assessment is not codified as a distinct legal obligation; (iii) "vulnerability" is not defined as a separate legal category; and (iv) the Directive's derogation clause (Article 7(9)) is neither enacted nor reflected in practice - indeed, Slovak law contains no provision permitting derogation from the assessment obligation. These gaps are acknowledged as limitations, though the overall structure of § 337 CCP is assessed as ensuring the essential objectives of Article 7 in practice.

Article 8 - Right to Medical Examination

The right to medical examination upon detention is addressed in § 6(5) of Act No. 221/2006 Coll. (obligation to undergo medical examination upon admission to detention), and Act No. 576/2004 Coll. on Healthcare - which explicitly lists the directive in its Annex - governs the right of the holder of parental responsibility to be present during healthcare provided to a minor child (§ 11(18)).

However, the transposition contains a notable contextual limitation: no single provision of Slovak law explicitly and comprehensively transposes all three categories of persons entitled to request a medical examination under Article 8(3) - namely the child, the legal representative, and the defence counsel - within one unified transposing norm. Regarding the obligation to repeat the medical examination under Article 8(5), the transposition is fragmented and indirect, achieved through a combination of general healthcare rights, notification mechanisms, and situational obligations in Decree No. 437/2006 Coll. (Rules of Detention). While repeated examinations are ensured in practice, no direct statutory provision explicitly mandates them for children in criminal proceedings.

Article 9 - Audiovisual Recording of Questioning

This is one of the more clearly transposed provisions. § 121(5) CCP requires that the questioning of a person under 18 as an accused be carried out using technical equipment for audio and video recording, where this is appropriate in view of the circumstances of the case, in particular where there is doubt as to the child's ability to understand the content of the questioning, taking into account the child's best interests, unless prevented by serious technical reasons which must be documented. Recordings made under this provision may be used as evidence in court proceedings under § 258(5) CCP. Where audiovisual recording is not used, a comprehensive written record under §§ 58–59 CCP must be produced. The protection of these recordings against public dissemination is ensured through § 93c(4) of Act No. 305/2005 Coll..

Commentary to § 121 CCP explicitly states that the requirement for audiovisual recording of child interrogations was introduced in direct response to the directive's requirements.

Articles 10–11 - Limitation of Deprivation of Liberty and Alternatives

§ 339 CCP constitutes the direct transposing provision of Articles 10(1) and 10(2): even where statutory grounds for detention exist, a juvenile accused may be taken into detention only if the purpose of detention cannot be achieved otherwise. This provision acts as a *lex specialis*, removing the limitations on alternatives applicable under the general regime and obliging courts to prioritise alternatives even in cases involving particularly serious crimes.

Commentary to § 339 CCP confirms that alternative measures must always be considered first, including: a guarantee by a trustworthy person, written undertaking by the juvenile, supervision by a probation and mediation officer, bail, and the imposition of obligations and restrictions. Every detention order must contain detailed reasoning demonstrating necessity (R 17/1985). Periodic judicial review of detention - both ex officio and upon request by the accused, defence counsel, or prosecutor - is mandated by § 72(1) and §§ 79(1)–(2) CCP.

Article 12 - Special Treatment During Deprivation of Liberty

§ 7(7) of Act No. 221/2006 Coll. constitutes the primary transposing provision for Articles 12(1) and 12(2), establishing the mandatory separation of juvenile detainees from adults as the default rule. Joint placement with adults is permitted only exceptionally under strictly defined cumulative conditions set out in § 9(4) of Decree No. 437/2006 Coll.: no other juvenile is available for shared accommodation; the adult is not a repeat offender and is not charged with specified serious offence categories; and the adult's personality does not preclude joint placement.

Two structural gaps emerge in relation to Articles 12(3) and 12(4). Regarding Article 12(3), § 45(3) of Act No. 221/2006 Coll. provides that a juvenile's special detention regime applies only until the age of 18, after which the adult regime applies automatically. Slovak law contains no explicit statutory provision enabling continued separate placement after the accused reaches 18, which constitutes an incomplete transposition of Article 12(3). Regarding Article 12(4), Slovak law does not define the legal category of "young adult" and lacks an explicit statutory rule permitting joint placement of juveniles with such persons consistent with the child's best interests. Both gaps are assessed as resulting in incomplete transposition, with any flexibility operating merely as administrative discretion.

Rights to development, education, family contact, and reintegration are addressed through §§ 45 and 46 of Act No. 221/2006 Coll. and § 50 of Decree No. 437/2006 Coll..

These provisions collectively establish a framework that is functionally consistent with Article 12(5).

Article 14 - Privacy

Article 14 is implemented, albeit de facto rather than through a dedicated provision. § 6(2) CCP requires authorities to protect private and family life information and expressly mandates protection of the personal data of minors and juveniles. § 343(3)(a) CCP allows exclusion of the public from proceedings involving juveniles on motion of the juvenile, defence counsel, or legal representative. The Slovak legal system thus provides both closed-hearing mechanisms and restrictions on the dissemination of case-file materials.

Article 15 - Right to Be Accompanied, and Article 16 - Right to Participate

The right to accompaniment by the holder of parental responsibility is embedded within the broader institution of the legal representative under § 35 CCP, which grants the legal representative extensive procedural rights including participation in all procedural acts, submission of motions, filing of remedies, and the ability to act on behalf of the juvenile even against the juvenile's will where this serves the child's best interests. This framework is assessed as functionally satisfying - and in certain respects exceeding - the requirements of Article 15(1).

Article 16 is explicitly transposed by § 343(1) CCP, which provides that the main hearing and public session concerning a plea agreement shall not be held in the absence of the juvenile. The general provisions of §§ 252 and 293(3) CCP further provide that proceedings in absentia are permitted only under conditions specified by law. The Slovak system is assessed as guaranteeing higher standards than the directive requires in this respect.

Article 17 - EAW Proceedings, Article 18 - Legal Aid, and Article 19 - Remedies

Article 17 is implemented in the Slovak legal system through a combination of formal and systemic transposition. Annex No. 2 to Act No. 154/2010 Coll. on the EAW explicitly lists the directive as transposed. Substantive implementation is ensured through the subsidiary application of the CCP via § 1(2) of that Act, ensuring that juvenile-specific safeguards - mandatory defence, legal aid, individualised information rights, and legal representative involvement - apply mutatis mutandis to children who are requested persons in EAW proceedings. Commentary on § 23 of Act No. 154/2010 Coll. confirms that Article 17 of the directive obliges executing judicial authorities to guarantee special procedural rights to minors in EAW proceedings, and that surrender of minors is conditioned on such safeguards being guaranteed.

Article 18 is implemented through the structural integration of mandatory defence (§§ 37, 336 CCP) and state-supported legal aid mechanisms that operate automatically and continuously, without requiring a separate dedicated legal aid regime for juveniles.

Article 19 is implemented de facto through the general right of every accused person to lodge remedies against decisions affecting them, with the additional right under § 210 CCP to request prosecutorial review of police conduct.

6.3.3. Summary Assessment of Transposition Quality

The following table summarises the transposition quality by key article:

Directive Article	**Slovak Implementing Provision**	**Assessment**
Art. 3 (scope/legal aid at suspect stage)	§§ 33, 33b CCP	Partially complete; gap at pre-charge stage
Art. 4 (information)	§§ 34(1), 33b, 34(4) CCP	Explicitly transposed
Art. 6 (assistance by lawyer)	§§ 336, 37, 40, 41 CCP	Explicitly transposed; exceeds minimum
Art. 7 (individual assessment)	§ 337 CCP	Largely transposed; gaps re timing, child involvement, vulnerability, derogation
Art. 8 (medical examination)	Acts 221/2006, 576/2004; Decree 437/2006	Incomplete; fragmented for Art. 8(3) and 8(5)

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Directive Article	Slovak Implementing Provision	Assessment
Art. 9 (audiovisual recording)	§ 121(5) CCP	Explicitly transposed
Art. 10 (limitation of detention)	§ 339 CCP	Directly transposed; exceeds minimum
Art. 12(1)–(2) (separation from adults)	§ 7(7) Act 221/2006; Decree 437/2006	Directly transposed
Art. 12(3) (continued separation at 18)	None explicit	Incomplete; structural gap
Art. 12(4) ("young adult" placement)	None explicit	Incomplete; no legal category
Art. 14 (privacy)	§ 6(2) CCP; § 343(3) CCP	De facto transposed
Art. 15 (accompaniment)	§ 35 CCP	Explicitly transposed; exceeds minimum
Art. 16 (right to participate)	§ 343(1) CCP	Explicitly transposed; higher standard
Art. 17 (EAW)	Act 154/2010 + CCP subsidiarity	De facto/systemic transposition
Art. 18 (legal aid)	§§ 37, 336, 40 CCP	Structurally transposed
Art. 19 (remedies)	General CCP remedies; § 210 CCP	De facto transposed

6.4. Case Law Analysis

6.4.1. Finding of the Constitutional Court, Case No. I. ÚS 31/2022-56

This decision represents the most significant and, as the case law report confirms, the only currently identifiable instance of explicit and direct judicial confrontation of Directive 2016/800/EU with specific Slovak legal provisions in criminal proceedings.

The case arose in the context of proceedings before the Constitutional Court in which the General Prosecutor's Office pointed out that law enforcement authorities must respect not only the Criminal Procedure Code and the Slovak Constitution, but also EU law, including the directive. The General Prosecutor specifically invoked the child's right to privacy during criminal proceedings and the right to individual assessment by qualified persons, as guaranteed by the directive.

Both the General Prosecutor and the Constitutional Court concluded that the current wording of §§ 196–198 CCP does not conform to the requirements of the directive or to the relevant judicial practice. The particular problem identified was the protection of the rights of children who are suspected of having committed an act that is otherwise punishable (a *čin inak trestný*) - children who lack criminal responsibility entirely. In this context, the question arose whether the state's interest in effective investigation overrides the child protection interest.

The finding unambiguously signals the euro-conformant deficiency of §§ 196–198 CCP. The Constitutional Court and the General Prosecutor did not regard the existing legal framework as a sufficient implementation of the directive, particularly as regards the right to individual assessment and the protection of the child's privacy. This constitutes a direct judicial acknowledgment of incomplete or incorrect transposition, which is consistent with the European Commission's infringement proceedings against the Slovak Republic in connection with the incomplete transposition of procedural EU directives, including Directive 2016/800/EU.

6.4.2. Resolution of the Constitutional Court, Case No. IV. ÚS 97/2020-23

The complainant - a minor - alleged that their questioning by the law enforcement authority under § 196(2) CCP (questioning of a child regarding circumstances indicating the commission of an offence) was conducted in a manner incompatible with the requirements of special protection for minors. Reference was made to the UN Convention on the Rights of the Child, the Slovak Constitution, and the Criminal Procedure Code.

The Constitutional Court held that the special protection of minors enshrined in § 135 CCP - which requires that the questioning of a minor witness be conducted in the presence of a psychologist or expert, a representative of the social and legal protection authority, and in a particularly considerate manner - justifies, by analogy, its application also to the questioning of a minor under § 196(2) CCP, even when the child does not formally hold the status of a witness. The Court found that failure to respect the content and purpose of § 135 CCP in the context of such a minor constituted an unjustified denial of the child's fundamental right to special protection and to judicial and other legal protection.

The resolution does not directly reference Directive 2016/800/EU. However, its conclusion - extending the procedural safeguards of § 135 to proceedings under § 196 - is compatible with and corresponds to the requirements of Article 9 of the directive on audiovisual recording of questioning, and with the directive's general child protection objectives. The Court achieved this result by applying international standards - the UN Convention on the Rights of the Child and General Comment No. 12 of the UN Committee on the Rights of the Child - and produced what may properly be characterised as a materially euro-conformant outcome, even in the absence of formal citation of the directive.

This decision illustrates a pattern that appears characteristic of Slovak judicial practice: the directive's objectives are served, but through national and international instruments rather than through direct invocation of EU law.

6.4.3. Commentary on § 33b CCP - Act No. 40/2024 Coll.

While not a judicial decision, the commentary to § 33b CCP (on the procedural status of the suspect) is of direct doctrinal relevance. It explicitly states that the reason for the expansion of suspects' rights through Act No. 40/2024 Coll. was incomplete or incorrect transposition of EU legal acts, as a consequence of which the European Commission has brought multiple infringement proceedings against the Slovak Republic. Directive 2016/800/EU is expressly identified as among the relevant directives. The principle of euro-conformant interpretation requires that domestic authorities apply recognised interpretive methods to achieve results consistent with the purpose pursued by EU law.

This legislative intervention is of considerable analytical significance: it represents a statutory acknowledgment, reinforced by doctrinal commentary, that the pre-2024 legal framework failed to meet the directive's requirements for children at the suspect stage.

6.4.4. Commentary on § 121 CCP - Audiovisual Recording

The commentary to § 121 CCP directly references Directive 2016/800/EU and states that its requirements necessitated a legal framework ensuring that questioning of children be recorded audiovisually where proportionate, having regard to the circumstances of the case, the presence of defence counsel, and the state of the child's liberty. The best interests of the child must always be taken into account. Where there is doubt as to whether the child is capable of understanding the content of the questioning, audiovisual recording is obligatory unless prevented by serious technical reasons. This is one of the clearest examples of an explicit normative link between a directive requirement and a specific implementing provision.

6.4.5. Judgment of the Supreme Administrative Court, Case No. 2Sak/5/2023

This decision addressed procedural safeguards for unaccompanied minors in asylum proceedings. The Supreme Administrative Court confirmed that unaccompanied minors are particularly vulnerable and that a system of procedural safeguards exists for them. However, the Court grounded these safeguards primarily in international instruments - the UN Convention on the Rights of the Child - rather than in Directive 2016/800/EU. The directive was not applied directly, given that its material scope is expressly limited to criminal proceedings. This decision thus confirms the jurisdictional boundary of the directive and illustrates that Slovak courts rely on a pluralistic normative framework for child protection in which EU criminal procedure directives occupy a relatively narrow space.

6.4.6. Commentary on § 23 of Act No. 154/2010 Coll. - EAW Proceedings

The commentary on the Slovak EAW Act explains that the directive, by virtue of its Article 17, imposes an obligation on executing judicial authorities to guarantee special procedural rights to minors in EAW proceedings in order to ensure the child's best interests. EU law and the Framework Decision do not in principle prohibit the surrender of minors, but the directive conditions such surrender on the guarantor of specific procedural safeguards. The commentary further confirms that this interpretation is euro-conformant in terms of Article 17 of the directive. This represents an important doctrinal clarification of the interaction between the directive and the Framework Decision on the EAW in the Slovak context.

6.5. Discussion

6.5.1. The Gap Between Formal and Material Compliance

Slovakia's formal declaration of timely transposition through Act No. 161/2018 Coll. does not adequately capture the complexity of the substantive compliance picture. As the transposition analysis demonstrates, several provisions of the directive - most notably Articles 3(1)(a), 7 (in certain sub-elements), 8(3), 8(5), 12(3), and 12(4) - are either not explicitly transposed or are transposed only in a fragmented and indirect manner. The phrase "de facto/indirectly implemented" appears repeatedly throughout the Slovak implementation tables, a designation that signals a reliance on the functional effect of existing law rather than purposive legislative action.

The Constitutional Court's finding in I. ÚS 31/2022-56 - that §§ 196–198 CCP do not meet the directive's requirements - and the European Commission's infringement proceedings against Slovakia constitute compelling external validation that the quality of transposition falls short of the directive's ambitions. The legislative response through Act No. 40/2024 Coll. - expanding suspects' rights partly in response to these infringement proceedings - confirms that the deficiency was not merely academic but operationally significant.

6.5.2. The Problem of the Pre-Charge Stage

One of the most structurally significant gaps concerns the pre-charge stage. The directive's Article 3(1)(a) requires that the guarantees it establishes apply to *suspects*, not only to accused persons. Yet Slovak criminal procedure historically calibrates the intensity of procedural protection according to formal procedural status: suspects enjoy fewer and structurally less-guaranteed rights than the accused. The full mandatory defence mechanism is triggered only by the act of formal charging. This binary structure is not unique to Slovak law, but the directive's requirement of effective legal aid at the pre-charge stage - particularly the obligation that lawyer assistance be available without undue delay from the moment the child is informed of their suspect status - creates a tension that was not resolved by the 2018 transposition and required corrective action through Act No. 40/2024 Coll.

6.5.3. Judicial Practice: Sparse Direct Application and Systemic Substitution

The research findings confirm that direct judicial application of Directive 2016/800/EU in the decisional practice of Slovak courts is exceptional. Only the finding I. ÚS 31/2022-56 - and then only in response to a specific submission by the General Prosecutor's Office - constitutes an identifiable decision in which the court explicitly confronted the directive with national law and declared non-conformity.

The prevailing pattern in other decisions is what might be characterised as *substantive conformity achieved through normative substitution*: courts produce outcomes consistent with the directive's minimum standards, but through the application of national law, the Slovak Constitution, and international conventions, without directly engaging with EU secondary law. This is illustrated by IV. ÚS 97/2020-23, where the analogical extension of § 135 CCP to § 196 proceedings produced a materially euro-conformant result, and by 2Sak/5/2023, which relied on the UN Convention framework rather than the directive - albeit in a context falling outside the directive's scope.

This pattern is problematic for at least two reasons. First, it places the burden of achieving compliance on judicial creativity rather than on clear legislative action, creating uncertainty and inconsistency in outcome. Second, it means that any divergence between national law and the directive - such as that identified in §§ 196–198 CCP - may go unaddressed for extended periods. The directive's guarantees are thus, in the words of the research report, not sufficiently reflected at the level of primary legislation, and euro-conformant interpretation asserts itself in existing case law only slowly and unsystematically.

6.5.4. Areas of Genuine Over-Compliance

It would be analytically incomplete to focus exclusively on deficiencies. In several respects, Slovak law provides protections that exceed the directive's minimum standards, reflecting a pre-existing tradition of enhanced juvenile protection.

The mandatory defence mechanism for juveniles - absolute, unconditional, and independent of the financial circumstances of the accused or the complexity of the case - exceeds the directive's framework, which permits proportionality-based derogations from lawyer assistance in appropriate circumstances. The requirement under § 343(1) CCP that main hearings cannot be conducted in the absence of the juvenile represents a higher standard than the directive. § 339 CCP's interpretation, confirmed in commentary, that even in cases involving particularly serious crimes the court must prioritise alternatives to detention, reflects a protective approach that goes beyond the directive's ultima ratio standard. The multidisciplinary individual assessment under § 337 CCP, which involves social protection authorities, the municipality, and, where necessary, psychological care institutions, provides a robust operational framework.

These areas of over-compliance provide a partial counterbalance to the identified gaps and suggest that the broader juvenile justice philosophy in Slovak law is aligned with the directive's protective goals, even where specific provisions fall short.

6.5.5. The EAW Dimension

The transposition of Article 17 through the subsidiarity clause of the EAW Act is functionally defensible, but the lack of an explicit standalone regime for children in surrender proceedings introduces a risk of practical oversight. Commentary confirms the euro-conformant interpretation of the applicable rules, but the absence of explicit provisions may create difficulties in specific cases, particularly where the operational personnel responsible for executing EAW procedures lack awareness of the directive's requirements. The training provisions of Article 20 of the directive - which the transposition tables designate as not requiring specific transposition - are relevant here: reliance on institutional awareness without explicit legislative embedding increases the risk of uneven implementation in practice.

6.6. Conclusion

Directive 2016/800/EU establishes a rights architecture for children in criminal proceedings that is ambitious in its scope, detailed in its requirements, and intended to be self-reinforcing through the mechanisms of judicial cooperation and mutual recognition. Slovakia's transposition, formally timely and multi-instrumental, reflects a genuine legislative effort to align national law with the directive's requirements. In several areas - mandatory defence, participation rights, restriction of detention, and privacy - Slovak law meets or exceeds the directive's standards.

Yet the research findings, confirmed by judicial decisions, infringement proceedings, and a legislative corrective intervention, demonstrate that material compliance is incomplete. The most significant identified gaps concern: the availability of legal aid and structured procedural guarantees at the pre-charge (suspect) stage; the timing, child-involvement, and derogation elements of the individual assessment obligation; the fragmented transposition of the medical examination rights under Article 8(3) and 8(5); the absence of a provision enabling continued separate placement of detainees who have turned 18; and the non-definition of the "young adult" category for detention placement purposes.

Judicially, direct engagement with the directive remains exceptional. The predominant mode of compliance is normative substitution - the application of national and international instruments to achieve outcomes broadly consistent with the directive's minimum standards. This approach, while not in itself unlawful, is structurally fragile: it depends on judicial creativity and proximity to EU law in individual decisions, rather than on clear and predictable legislative implementation.

The path toward genuine material compliance requires, at minimum: legislative clarification of §§ 196–198 CCP in light of the Constitutional Court's findings; explicit codification of the timing and child-participation requirements of the individual assessment; the introduction of a statutory provision preserving special treatment for detainees reaching the age of majority; and a systematic programme to build judicial and prosecutorial awareness of the directive's specific requirements. Act No. 40/2024 Coll. represents a step in the right direction, but the persistence of infringement proceedings suggests that the legislative work of full transposition is not yet complete.

6.7. References

- Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21.5.2016, p. 1–20.
- Act No. 300/2005 Coll. - Criminal Code of the Slovak Republic.
- Act No. 301/2005 Coll. - Criminal Procedure Code of the Slovak Republic.
- Act No. 161/2018 Coll. - amending Act No. 300/2005 Coll. and Act No. 301/2005 Coll..
- Act No. 40/2024 Coll. - amending Act No. 301/2005 Coll. (expanding rights of suspects).
- Act No. 154/2010 Coll. on the European Arrest Warrant.
- Act No. 221/2006 Coll. on the Execution of Detention.
- Act No. 475/2005 Coll. on the Execution of Imprisonment.
- Act No. 305/2005 Coll. on Social and Legal Protection of Children and Social Guardianship.
- Act No. 576/2004 Coll. on Healthcare.
- Decree No. 437/2006 Coll. - Rules of Detention.
- Constitutional Court of the Slovak Republic, Finding No. I. ÚS 31/2022-56.
- Constitutional Court of the Slovak Republic, Resolution No. IV. ÚS 97/2020-23.
- Supreme Administrative Court of the Slovak Republic, Judgment No. 2Sak/5/2023.
- R 17/1985 (case law of the Supreme Court of the Slovak Republic on reasoning for juvenile detention).

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7. Directive (EU) 2016/1919 on Legal Aid for Suspects and Accused Persons in Criminal Proceedings and for Requested Persons in European Arrest Warrant Proceedings

Abstract

This study examines the transposition and judicial application of 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, within the Slovak legal order. Slovakia transposed the Directive primarily through Act No. 316/2018 Coll., which amended the Criminal Procedure Code (Act No. 301/2005 Coll.), with effect from 1 January 2019 - ahead of the transposition deadline. The Slovak approach does not establish legal aid as a single, explicitly codified subjective right but instead operates through a structurally integrated, hybrid procedural-financial model combining mandatory defence, state-funded defence, and a deferred means assessment. Slovak case law directly engaging the Directive remains limited: two decisions - by the Trenčín Regional Court (sp. zn. 3Tos/135/2023) and the Supreme Court of the Slovak Republic (sp. zn. 4Tdo/86/2023) - directly applied or cited the Directive, both in the context of Article 2(3) regarding the procedural rights of witnesses who become suspects during questioning. While functional compliance is broadly achieved, identifiable structural gaps persist, particularly regarding the legal aid framework at the pre-accusation stage, the absence of act-specific triggers for legal aid, and the indirect mechanism for written notification of refused applications.

7.1. Introduction

Directive (EU) 2016/1919 constitutes the sixth measure adopted under the Stockholm Programme's Procedural Rights Roadmap, addressing what is referred to as "Measure C" - the right to legal advice and legal aid in criminal proceedings. Its core objective, as stated in Recital 1, is to ensure the effective exercise of the right of access to a lawyer under Directive 2013/48/EU, by making available state-funded assistance of a lawyer to suspects, accused persons, and requested persons in European arrest warrant (EAW) proceedings.

The Directive establishes common minimum standards under Article 82(2)(b) of the Treaty on the Functioning of the European Union, binding on all Member States except Denmark, Ireland, and the United Kingdom (at the time of adoption). Member States retain flexibility to provide higher levels of protection, provided the minimum floor is never undercut.

Slovakia transposed the Directive by Act No. 316/2018 Coll., which entered into force on 1 January 2019, formally declared in the annex to the Criminal Procedure Code under point 17. The Slovak legal order does not adopt the Directive's framework as a single, standalone legal aid regime; instead it implements the Directive's requirements through a system that integrates mandatory defence, state-funded appointment of counsel, and a post-judgment means assessment. This paper critically analyses that system, the article-by-article transposition mapping, and the available judicial practice.

7.2. Legal Framework

7.2.1. The Directive's Normative Architecture

Directive 2016/1919/EU is built around four central operative provisions:

1. Article 4 - Legal aid in criminal proceedings: Member States must ensure that suspects and accused persons who lack sufficient resources have the right to legal aid when the interests of justice so require. Member States may apply a means test, a merits test, or both.

2. Article 5 - Legal aid in EAW proceedings: The executing Member State must ensure legal aid from arrest until surrender or final decision on non-surrender; the issuing Member State must ensure legal aid where the requested person exercises their right to appoint a lawyer in that State under Article 10 of Directive 2013/48/EU.

3. Article 6 - Decisions on legal aid: Decisions must be made without undue delay by a competent authority; refusals must be communicated in writing.

4. Articles 7–9 - Quality, training, remedies, and vulnerable persons.

The Directive's definition of "legal aid" is strictly instrumental: it means funding by a Member State of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer. The Directive applies when a person is deprived of liberty, required to be represented by a lawyer under Union or national law, or required or permitted to attend certain investigative or evidence-gathering acts (identity parades, confrontations, reconstructions).

7.3. The Slovak Constitutional and Statutory Framework

At the constitutional level, the right to legal aid in proceedings before courts is guaranteed by Article 47(2) of the Constitution of the Slovak Republic, and the right to be defended through defence counsel is guaranteed by Article 50(3). These provisions form the domestic constitutional foundation upon which the Directive's requirements are built.

The primary legislative vehicle for criminal-proceedings legal aid is the Criminal Procedure Code (Act No. 301/2005 Coll.), as amended by Act No. 316/2018 Coll. The CCP operates through three complementary mechanisms:

- **Mandatory defence (§§ 37–38 CCP):** After charges are brought (*obvinenie*), the accused (*obvinený*) must have a defence counsel if: (a) in custody, serving imprisonment, or under medical observation; (b) lacking or restricted legal capacity; (c) charged with a particularly serious crime; (d) charged with an offence with an upper imprisonment limit of at least ten years; (e) a juvenile; (f) a fugitive. Mandatory defence also applies where the court, prosecutor, or police officer considers it necessary due to doubts about the accused's ability to defend himself.

- **State-funded appointment of counsel (§ 40 CCP):** Where mandatory defence applies and the accused has not chosen a lawyer, a defence counsel must be appointed "without delay" (*bez meškania*) through an approved software tool operated by the Ministry of Justice. If the accused demonstrates lack of financial means even outside mandatory defence cases, a defence counsel may also be appointed under § 40(2) CCP. The accused may at any time replace the appointed counsel with one of their own choosing.

- **Deferred means assessment (§§ 555–558 CCP):** Where a defence counsel has been appointed (whether in mandatory defence cases or due to lack of means), the costs are initially borne by the State. After a final conviction, the court assesses whether the convicted person must reimburse those costs in full, partially, or not at all. Before imposing any reimbursement obligation, the court must examine whether conditions for free or reduced-cost defence are fulfilled.

In EAW proceedings, the framework is governed by Act No. 154/2010 Coll. on the European Arrest Warrant, which applies the CCP *mutatis mutandis* under § 1(2). The commentary to Act No. 154/2010 Coll. explicitly notes that Article 5(1) of Directive 2016/1919 requires the executing State to guarantee legal aid from arrest through surrender or final decision, and that the means test under Article 4(3) may apply.

7.4. Article-by-Article Transposition Analysis

7.4.1. Article 1 - Subject Matter and Article 2 - Scope

The Directive's dual personal scope - suspects and accused persons, and requested persons in EAW proceedings - is reflected in the CCP's dual procedural status framework: *podozrivý* (suspect, defined in § 10(25) CCP) and *obvinený* (accused, defined in § 33 CCP).

However, a structural asymmetry is identifiable. The full legal aid mechanism - mandatory defence and structured appointment of counsel - is primarily tied to the status of the *accused*. Suspects at the pre-charge stage are granted certain rights under § 33b CCP, including the right to legal assistance, but these rights are less extensively structured. The transposition analysis confirms that there is no fully equivalent, systematically structured legal aid regime explicitly applicable to suspects at the pre-charge stage.

Regarding Article 2(1)(a) (deprivation of liberty as trigger), Slovak law achieves strong compliance: § 37(1)(a) CCP provides that the accused must have a defence counsel if in custody, and under § 40(1) CCP, one must be appointed without delay if not chosen. Since under Slovak law, only an accused - not a suspect - can be brought into and held in pre-trial custody (*väzba*), the practical scope of this gap is somewhat limited.

Regarding Article 2(1)(c) (participation in specific investigative acts - identity parades, confrontations, reconstructions), Slovak law does not adopt an act-specific trigger for legal aid. Instead, it employs a status-based, horizontal model: where the accused has mandatory defence, the right to have counsel present extends throughout all proceedings, including evidentiary acts. This structural divergence from the Directive's methodology is assessed as functionally equivalent.

Article 2(3), concerning persons who were not initially suspects but become suspects during police questioning, is particularly significant for the judicial application of the Directive in Slovakia (discussed in Section 4 below).

7.4.2. Article 3 - Definition of Legal Aid

The Directive defines legal aid narrowly as state funding of the assistance of a lawyer. The Slovak system does not codify this as a standalone right. The transposition operates through the hybrid model described above - access is guaranteed independently of financial means (via mandatory defence and immediate appointment), while the final allocation of costs is determined post-judgment. This constitutes a "deferred means assessment" model, which is structurally different from the Directive's ex ante rights-based framework, though assessed as producing functionally equivalent outcomes.

7.4.3. Article 4 - Legal Aid in Criminal Proceedings

- **Article 4(1) - Interests-of-justice test:** Under §§ 37–38 CCP, the mandatory defence regime operationalises the interests-of-justice standard by requiring mandatory defence in situations of objective gravity (detention, serious offences, vulnerable accused), irrespective of financial means.
- **Article 4(2)–(3) - Means and merits tests:** Slovak law applies both tests, but at different temporal stages. The merits test operates at the procedural stage through the mandatory defence triggers. The means test is applied ex post under § 558 CCP, with the critical safeguard in § 558(2) CCP requiring the court

to examine conditions for free or reduced-cost defence before imposing reimbursement. Under § 40(2) CCP, an ex ante means assessment is also available for non-mandatory defence cases where the accused requests appointment based on lack of financial means.

- **Article 4(4) - Merits test deemed satisfied:** This is met by § 37(1)(a) CCP (custody trigger) and the mandatory defence framework, which automatically applies whenever the accused is brought before the court to decide on pre-trial detention.
- **Article 4(5) - Timeliness:** The "without delay" requirement of § 40(1) CCP constitutes a direct functional equivalent to the Directive's requirement that legal aid be granted before questioning or before specified investigative acts. For accused persons in mandatory defence scenarios, compliance is strong and explicit. The potential limitation concerns situations outside mandatory defence, where legal aid depends on a request under § 40(2) CCP.

7.4.4. Article 5 - Legal Aid in EAW Proceedings

- **Article 5(1) - Executing State:** Via the subsidiarity clause of § 1(2) of Act No. 154/2010 Coll., the CCP framework applies to requested persons in full, including mandatory defence and immediate appointment of counsel, with costs initially borne by the State. The commentary to Act No. 154/2010 Coll. confirms this obligation.
- **Article 5(2) - Issuing State:** Slovak law does not contain a specific provision explicitly addressing legal aid for requested persons who appoint a lawyer in Slovakia to assist counsel in the executing State. Compliance is achieved through the general legal aid framework under § 40(2) CCP and the general right to defence. This remains the most significant gap in explicit transposition in the EAW context.
- **Article 5(3) - Means test:** Applied mutatis mutandis through §§ 40(2) and 555–558 CCP via the subsidiarity clause.

7.4.5. Article 6 - Decisions on Legal Aid

- **Article 6(1) - Without undue delay:** Met by the "bez meškania" requirement of § 40(1) CCP.

- **Article 6(2) - Written notification of refusal:** This requirement is addressed indirectly. Because the Slovak model does not operate through a formal ex ante application-and-refusal procedure, there is no standard written refusal at the procedural stage. The system shifts the means assessment to the post-judgment phase under § 558(2) CCP, which provides for a written, motivated decision subject to complaint with suspensive effect. This constitutes a systemic divergence from the Directive's requirement of contemporaneous written notification of refusal to the suspect or accused.

7.4.6. Article 7 - Quality and Training

Slovakia ensures quality through a multi-layered system: strict entry requirements to the legal profession (bar examination), continuous training through the Judicial Academy and the Slovak Bar Association, and an electronic appointment system under § 40 CCP approved by the Ministry of Justice. The software tool operates on a rotational or random allocation principle, excluding human intervention, and ensures balanced workload distribution. Failure to use the software tool in mandatory defence cases may constitute a violation of the accused's right to defence and, in extreme cases, grounds for setting aside the decision.

Training of staff is addressed through general judicial training programmes at the Judicial Academy, Police Academy, Slovak Bar Association, and Prosecutor General's Office, with participation in European networks including the European Judicial Training Network and the Academy of European Law.

7.4.7. Article 7(4) - Right to Replacement of Appointed Counsel

Under § 43 CCP, an appointed counsel may be relieved upon their own request or the accused's request for "serious reasons" (*závažné dôvody*), with another counsel appointed or chosen. The continuity obligation - the original counsel remains obliged to act until the new counsel effectively takes over - reflects § 43(3) CCP. The transposition is functional but not formulated as an explicit subjective right to replacement; rather, it is a procedural possibility subject to judicial assessment.

7.4.8. Article 8 - Remedies

Slovak law does not provide a specific, Directive-specific remedy. Protection flows from the general structure of criminal procedure remedies - complaints (*sťažnosť*), appeals (*odvolanie*), appeal on points of law (*dovolanie*), and reopening of proceedings (*obnova konania*). At the constitutional level, a constitutional complaint under Article 127 of the Constitution before the Constitutional Court is available for violations of fundamental rights, including the right to defence. Professional disciplinary complaints to the Slovak Bar Association under Act No. 586/2003 Coll. on Advocacy complement these mechanisms.

7.4.9. Article 9 - Vulnerable Persons

Slovak law addresses vulnerability functionally, through the mandatory defence triggers in § 37 CCP covering persons with limited legal capacity, juveniles, persons in custody, and those where doubts exist as to their ability to defend themselves effectively. The system does not conceptualise vulnerability as a general legal category but operationalises it through concrete procedural triggers.

7.5. Case Law Analysis

7.5.1. The State of Slovak Judicial Practice

Direct judicial engagement with Directive 2016/1919/EU in Slovak case law is currently limited. The available jurisprudence as recorded at the date of this report (30 March 2026) identifies two decisions with direct argumentation based on the Directive.

7.5.2. Krajský súd v Trenčíne, sp. zn. 3Tos/135/2023

Context and Subject Matter

This decision of the Trenčín Regional Court, sitting as an appellate criminal chamber, addressed the central question of the procedural admissibility of a statement given by a person who, during questioning conducted in the capacity of a witness, became a suspect or accused person.

4.2.2. Application of the Directive

The Regional Court held directly that questioning of a witness is subject to Directive 2016/1919 of 26 October 2016. It derived from the Directive's provisions that where a witness becomes a suspect or accused person during questioning, the questioning must be immediately interrupted; questioning may resume only after the person has been informed of their new status and has been afforded the possibility to fully exercise the rights established by the Directive.

Assessment of Euro-Conformity

The Regional Court's interpretation was textual and direct, fully corresponding to Article 2(3) of the Directive and to Recital 10, which provides that if during questioning a person becomes a suspect or accused, the questioning should be immediately interrupted and may continue only if the person has been informed and can fully exercise the rights under the Directive. This decision represents the highest degree of direct Directive application identified in Slovak case law to date - a complete, purposive, and textually faithful implementation of the Directive's procedural requirements.

7.5.3. Najvyšší súd Slovenskej republiky, sp. zn. 4Tdo/86/2023

Context and Subject Matter

This ruling of the Supreme Court of the Slovak Republic, sitting as a *dovolací* (extraordinary appeal) chamber, arose from an extraordinary appeal (*dovolanie*) by an accused person, among whose grounds was an allegation of violation of rights derived from Directive 2016/1919/EU in connection with a questioning during which the person's procedural status shifted from witness to suspect.

Application of the Directive

The Supreme Court, while noting the citation fell *obiter dictum* - beyond the ratio necessary for the decision - explicitly quoted Recital 1 of the Directive (its purpose of ensuring effective exercise of the right of access to a lawyer, with state-funded assistance) and Article 4(1) (the obligation to ensure legal aid for persons lacking sufficient resources when the interests of justice so require). The accused had pointed to the Trenčín Regional Court's ruling in 3Tos/135/2023 and argued that the same violation occurred in his case.

Assessment of Euro-Conformity

The Supreme Court's explicit citation of the Directive - though technically *obiter* - constitutes an important institutional signal. It demonstrates that the Supreme Court acknowledges the binding character of the Directive and is prepared to apply its provisions when assessing the legality of procedural acts in criminal proceedings. The *dovolací* court thereby indirectly confirmed that the questioning of a witness who becomes a suspect must be tested against Article 2(3) of the Directive. The direct operative reasoning of the decision remains to be assessed against specific procedural findings of the case, but the *obiter* citation is jurisprudentially significant as a confirmation of receptiveness to EU secondary law in criminal proceedings.

Constitutional Court Decisions (Indirect Relevance)

Three decisions of the Constitutional Court of the Slovak Republic bear indirect relevance to the Directive's framework, although they predate its transposition and do not engage with it directly:

- **II. ÚS 729/2016:** Addressed interpretation of Act No. 327/2005 Coll. on legal aid for persons in material need, confirming that the Supreme Court had not acted arbitrarily and had not violated Article 46 of the Constitution or Article 6(1) ECHR. The decision establishes the constitutional foundation for the right to legal aid in the Slovak legal order.
- **IV. ÚS 215/2010:** Identified Articles 47(2) and 50(3) of the Slovak Constitution as the constitutional basis of the accused's right to be defended by counsel. This decision is foundational for understanding the constitutional substrate upon which the Directive's requirements rest.
- **II. ÚS 231/2017:** Confirmed that the holding of a hearing without guaranteeing legal aid constitutes a constitutionally relevant violation of Article 47(2) of the Constitution. This decision reinforces the practical enforceability of the right to legal aid at the constitutional level, complementing the Directive's remedy requirements under Article 8.

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7.6. Discussion

7.6.1. The Hybrid Model: Structural Compatibility and Systemic Gaps

Slovakia's transposition model is characterised by what the transposition tables describe as a "hybrid procedural-financial model." Access to defence is guaranteed independently of financial means at the procedural stage, while the ultimate allocation of costs is determined post-judgment. This model achieves many of the Directive's substantive objectives but does so through a structurally different architecture.

Strength - immediacy of access

The requirement that legal aid be granted without undue delay is met robustly for accused persons in mandatory defence situations. The electronic software tool for appointing counsel eliminates discretionary interference and ensures transparency.

Gap 1 - The Suspect Stage

The most significant structural gap concerns suspects (*podozrivý*) at the pre-charge stage. Under the Directive, the right to legal aid applies to suspects as defined in Article 2(1) from the moment the conditions are met. Slovak law grants suspects certain rights under § 33b CCP, but the full legal aid mechanism is activated only upon formal accusation (*vznesenie obvinenia*). While the practical scope of this gap is partially mitigated by the fact that only the accused - not the suspect - may be held in pre-trial custody under Slovak law, it remains a formal structural deficiency that could be relevant in situations where a suspect undergoes questioning without yet having been formally charged, particularly in light of the 3Tos/135/2023 and 4Tdo/86/2023 decisions discussed above.

Gap 2 - Act-Specific Legal Aid Triggers

Article 2(1)(c) of the Directive explicitly requires legal aid where a suspect or accused is required or permitted to attend identity parades, confrontations, or reconstructions of the crime scene. Slovak law does not map legal aid entitlement to specific investigative acts. Instead, in mandatory defence cases, representation is guaranteed throughout all proceedings including evidentiary acts. This is assessed as functionally equivalent, but the absence of an explicit provision could create uncertainty in borderline cases.

Gap 3 - Written Notification of Refusal

Article 6(2) of the Directive requires written notification to the suspect, accused, or requested person if their application for legal aid is refused in full or in part. The Slovak system effectively bypasses a formal refusal procedure at the procedural stage by providing access upfront and deferring cost allocation to the post-judgment phase. While § 558(2) and (3) CCP provide a written, motivated, and challengeable decision at the cost-allocation stage, this does not meet the Directive's requirement for contemporaneous written communication of refusal during the course of proceedings.

7.6.2. The Euro-conformity of Slovak Judicial Practice

The judicial decisions analysed above indicate an emerging, but still limited, culture of direct Directive application in Slovak criminal courts. The Trenčín Regional Court's textual and purposive application of Article 2(3) and Recital 10 in 3Tos/135/2023 is exemplary. The Supreme Court's *obiter* citation of Recital 1 and Article 4(1) in 4Tdo/86/2023 signals institutional acceptance of the Directive's binding force.

However, the fact that only two directly relevant decisions have been identified at the time of this report - with no lower-court decisions systematically tracked - suggests that direct invocation of Directive 2016/1919/EU in everyday criminal proceedings remains exceptional rather than routine. This is partly explained by the de facto compliance of the Slovak system in the most common scenarios (custody, mandatory defence, serious offences), which reduces the practical need for direct Directive argumentation. Practitioners and courts primarily operate within the domestic CCP framework, invoking the Directive only where domestic provisions prove insufficient or ambiguous.

7.6.3. The Role of the EAW Framework

The EAW dimension of Slovakia's transposition deserves separate attention. The subsidiary application of the CCP to EAW proceedings under § 1(2) of Act No. 154/2010 Coll. ensures strong compliance in the executing Member State role.

However, for the issuing State role under Article 5(2) of the Directive - where a requested person appoints a lawyer in Slovakia to assist counsel in the executing State - no specific, tailored provision exists. The transposition relies on the general legal aid framework under § 40(2) CCP, which is not explicitly designed for this dual-representation scenario. The Act No. 316/2016 Coll. introduced § 5(10) of Act No. 154/2010 Coll., creating a mechanism to provide requested persons (through the executing State) with a list of lawyers compiled by the Slovak Bar Association. This procedural mechanism, however, does not by itself ensure access to funded legal representation in the issuing State as required by Article 5(2).

7.7. Conclusion

Slovakia transposed Directive (EU) 2016/1919 within the prescribed deadline through Act No. 316/2018 Coll. The domestic legal framework achieves broad functional compliance with the Directive's minimum requirements, primarily through an integrated system combining mandatory defence, automatic appointment of counsel, and a deferred means assessment. This hybrid model ensures that no person subject to mandatory defence is left without legal representation at any stage of criminal proceedings, regardless of their financial situation.

Nevertheless, three structural gaps remain identifiable: (1) the absence of a fully structured legal aid regime for suspects prior to formal accusation; (2) the lack of explicit act-specific legal aid triggers linked to particular investigative actions as required by Article 2(1)(c); and (3) the absence of a contemporaneous written refusal mechanism corresponding to Article 6(2). These gaps do not currently generate systematic violations, but they represent areas where the Slovak legislator could reinforce explicit normative clarity to achieve full formal compliance.

The state of judicial application of the Directive is emergent. The Trenčín Regional Court's decision in 3Tos/135/2023 stands as a model of direct, textually faithful Directive application - its interpretation of Article 2(3) and Recital 10 in the context of witnesses transitioning to suspect status is fully euro-conformist. The Supreme Court's *obiter* endorsement in 4Tdo/86/2023 reinforces the normative authority of the Directive within the domestic legal order. As the system matures and the Directive becomes more routinely invoked, particularly in complex pre-trial scenarios, the structural gaps identified above are likely to generate more direct judicial confrontation with the question of whether indirect, systemic compliance is sufficient - or whether explicit, provision-specific transposition is required.

7.8. References

EU Instruments

- 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).
- Directive 2013/48/EU on the right of access to a lawyer.
- Framework Decision 2002/584/JHA on the European Arrest Warrant.

Slovak Legislation

- Act No. 301/2005 Coll., the Criminal Procedure Code, as amended by Act No. 316/2018 Coll.
- Act No. 154/2010 Coll. on the European Arrest Warrant.
- Act No. 586/2003 Coll. on Advocacy.

Slovak Case Law

- Supreme Court of the Slovak Republic, sp. zn. 4Tdo/86/2023 (JUD4538029SK).
- Regional Court Trenčín, sp. zn. 3Tos/135/2023.
- Constitutional Court of the Slovak Republic, II. ÚS 729/2016 (JUD1867684SK).
- Constitutional Court of the Slovak Republic, IV. ÚS 215/2010 (JUD56030SK).
- Constitutional Court of the Slovak Republic, II. ÚS 231/2017 (JUD2488466SK).

Academic and Commentary Sources

- Commentary to Act No. 154/2010 Coll. (Zákon o európskom zatýkacom rozkaze - komentár).
- Criminal Procedure Code - Commentary (ASPI, legal state as of 1.9.2023).

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8. Conclusions: Systemic Integration and Remaining Challenges

The transposition of the six EU procedural directives into the Slovak legal order may, in its overall design, be characterised as systemic, timely, and substantively adequate. In the majority of instances, the Slovak Republic has fulfilled both the temporal and material requirements imposed by EU law. However, this general assessment requires an important qualification: the effectiveness and coherence of the transposition varied significantly depending on whether the relevant EU provisions required intervention into the structural foundations of Slovak criminal procedure. Where such structural intervention was not required, transposition was largely smooth and technically unproblematic. By contrast, where EU law challenged core doctrinal constructs of the Slovak Code of Criminal Procedure - most notably the distinction between the suspect and the accused - the process of transposition revealed deeper conceptual tensions and resulted in enduring interpretative and practical complexities.

Prior to the adoption of Act No. 40/2024 Coll., Slovak criminal procedure was based on a binary procedural model centred on the formally accused person. The Code of Criminal Procedure did not recognise the suspect as an autonomous procedural subject. Although the notion of a "suspected person" existed in factual and criminological terms, it lacked legal definition, procedural status, and an associated catalogue of rights and obligations. This absence created a structurally deficient situation in which individuals against whom investigative actions were already materially directed could be subjected to procedural acts - most notably questioning - without being granted the rights of the accused, including access to legal counsel and the privilege against self-incrimination. In practice, such individuals were frequently examined in the procedural position of witnesses or in a de facto legal vacuum. The explanatory memorandum to Act No. 40/2024 Coll. rightly identifies this state of affairs as a fundamental deficiency and as a principal source of incompatibility with EU procedural standards.

The legislative reform introduced by Act No. 40/2024 Coll. must therefore be understood as both a corrective measure addressing a long-standing transpositional deficit and as a systemic recalibration of Slovak criminal procedure. The reform was driven, inter alia, by infringement proceedings initiated by the European Commission (INFR(2023)2008 and INFR(2023)2108), which exposed deficiencies in the Slovak implementation of Directive 2013/48/EU on the right of access to a lawyer and Directive 2016/800/EU on procedural safeguards for children. More broadly, the reform reflects the normative framework established by EU criminal procedural law, including Directive 2012/13/EU on the right to information and Directive 2016/343/EU on the presumption of innocence, as well as the broader policy orientation expressed in the 2009 Council Roadmap on strengthening procedural rights. These instruments collectively require that fundamental procedural guarantees attach not only to formally accused persons, but also to individuals at the earliest stages of criminal proceedings, once suspicion has been directed against them.

The cornerstone of the Slovak reform is the introduction of the suspect as a legally recognised procedural subject under § 10(25) of the Code of Criminal Procedure. This provision defines the suspect as a person who is not yet formally accused but who is apprehended in flagrante delicto, detained in connection with a criminal offence, intercepted while fleeing, or identified as suspected on the basis of a criminal complaint, other information, or established facts. This definition transforms what had previously been a purely factual category into a legally operative procedural status. Crucially, it extends procedural recognition to individuals at a stage prior to the formal bringing of charges, thereby aligning Slovak law with the functional approach required by EU law. In this respect, the Slovak system reflects a transition from an accusation-based procedural model to a suspicion-based rights architecture, the full integration of which remains ongoing.

The operative provision governing the suspect's procedural position is § 33b of the Code. § 33b(1) establishes a general principle of equivalence, according to which the suspect enjoys the rights and duties of the accused, including the right of defence in full scope, unless the law provides otherwise or unless the right or duty is, by its nature, inseparably linked to the formal status of the accused. This formulation represents a paradigmatic shift in Slovak criminal procedure. It moves away from a strictly formalistic conception of procedural rights - previously triggered only by the issuance of a formal accusation - and adopts a functional model in which rights attach once the state begins to act against a person as a suspect. The provision further guarantees specific entitlements, including the right to be informed of the circumstances underlying the suspicion, the requirement that such information be recorded with legal qualification in the minutes of the suspect's interview, and the right to receive a copy of those minutes.

The temporal scope of these rights is clarified in § 33b(2), which provides that the suspect's rights and duties arise from the moment of the first interview or any other act carried out by law enforcement authorities against the person, in connection with that person, or in connection with suspicions concerning that person. This provision, interpreted in light of the explanatory memorandum and the position of the General Prosecutor's Office, confirms a material rather than formal understanding of the suspect's status. The decisive moment is the objective crystallisation of suspicion, rather than any formal procedural act. As a consequence, the suspect's rights may arise even prior to the formal commencement of criminal prosecution, including within the pre-investigative phase under § 196(2). This represents a decisive alignment with EU law, which requires that the right to defence, including access to a lawyer, be guaranteed from the earliest stage at which a person is substantially affected by suspicion.

Notwithstanding this normative advancement, the reform introduces a degree of internal tension that reflects the difficulty of reconciling newly imposed EU standards with the pre-existing doctrinal structure of Slovak criminal procedure. The principle of equivalence established in § 33b(1) is not absolute. The explicit limitation - excluding rights and duties inherently tied to the formal status of the accused - requires a case-by-case interpretative assessment. This introduces a teleological dimension into the application of procedural rights: it is necessary to determine, for each right, whether its purpose presupposes the existence of a formal accusation. The legislature anticipated the emergence of disputes in this regard and introduced, in § 33b(3), a procedural mechanism allowing the prosecutor to decide, upon proposal by the police, on contested questions concerning the scope of the suspect's rights, subject to judicial review. This mechanism underscores the inherently dynamic and evolving nature of the suspect's procedural status.

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From a doctrinal perspective, the Slovak model may therefore be characterised as a form of systemic rather than explicit transposition, combined with elements of asymmetric integration. While EU procedural rights have been incorporated horizontally through general clauses such as § 33b, they have not been fully integrated vertically across all provisions of the Code of Criminal Procedure. This results in a situation of formal compliance accompanied by uneven functional effectiveness, particularly at the pre-charge stage. The Slovak system remains, to a significant extent, structurally oriented around the formally accused person, whereas EU law requires a rights framework triggered by the existence of suspicion itself.

The practical implications of this open-ended formulation are already evident. The research reveals that the principal application challenges no longer concern the absence of regulation, but rather the coherence and consistency of its application. A particularly illustrative example is the issue of access to the case file under § 69(1) of the Code. While § 33b(1) suggests that the suspect should, in principle, enjoy the same rights as the accused, § 69(1) continues to enumerate exhaustively the categories of persons entitled to inspect the case file without explicitly including the suspect. This discrepancy creates a normative conflict between a general clause of equivalence and a specific provision of exclusion. As documented in the research, this conflict has led to divergent interpretative approaches: defence counsel invoke the principle of equivalence and EU-law requirements to argue for access, prosecutorial authorities adopt a more nuanced position rejecting blanket exclusion but permitting restrictions to protect the investigation, while judicial practice tends to adhere to a literal interpretation of the statutory text. This situation exemplifies a broader transpositional inconsistency, whereby newly introduced principles are not fully reflected across the procedural system.

From a practical perspective, the research further demonstrates that the application of the new regime is shaped not only by judicial interpretation, but also by prosecutorial and investigative practice. The analysis incorporates both judicial decisions - at the level of the Constitutional Court, the Supreme Court, and lower courts - and the internal practice of prosecutorial and law enforcement authorities, including methodological guidance issued by the Ministry of Justice, the Ministry of the Interior, the General Prosecutor's Office, and the Police Corps. This multi-layered approach reveals a consistent effort across institutions to interpret and apply national law in conformity with EU standards. However, it also highlights that EU procedural directives are applied predominantly through structural euroconform interpretation rather than through explicit and direct judicial engagement. The absence of a substantial body of case law explicitly invoking the directives limits legal certainty and reduces the visibility of EU law within domestic proceedings.

At the same time, the research identifies a number of persistent application challenges, particularly in the investigative phase. Defence counsel increasingly invoke an expanded catalogue of rights for suspects, including rights traditionally associated with the accused, while law enforcement authorities adopt a more cautious approach, often limiting such rights on the basis of the formal structure of the Code. This divergence reflects the inherent tension between the declaratory equivalence of rights under § 33b and the residual differentiation embedded in other provisions of the Code. It also creates a risk of procedural imbalance, including potential strategic use of the suspect stage in a manner that may affect the effective exercise of defence rights. The boundary between suspect and accused thus becomes not only a legal distinction, but also a critical point of procedural fairness requiring careful and consistent application.

Notwithstanding these challenges, the overall impact of the transposition must be assessed positively. The introduction of the suspect as a procedural subject constitutes a fundamental enhancement of procedural fairness, ensuring that individuals are no longer deprived of defence rights at the earliest stages of criminal proceedings. The quality of information provided to suspects has improved significantly, with formalistic and overly complex instructions replaced by clearer and more accessible forms of communication. In certain areas, particularly in proceedings involving juveniles under Directive 2016/800/EU, the Slovak legal framework even exceeds the minimum standards required by EU law, providing a higher level of protection. Similarly, the broader system of procedural guarantees - particularly those relating to interpretation, presumption of innocence, and access to defence - demonstrates a high degree of compatibility with EU and Convention standards.

From a broader strategic perspective, the findings of this research illustrate a more general challenge inherent in the EU system of criminal procedural harmonisation. The directives have been successful in establishing common normative standards across Member States. However, their effective implementation depends not only on legislative transposition, but also on their operational integration into national procedural systems. The Slovak case demonstrates that while norm-setting at EU level is relatively advanced, system-building at national level remains uneven, particularly where EU requirements intersect with deeply rooted procedural doctrines. This gap between legislative harmonisation and practical implementation represents a key structural challenge for the future development of the Area of Freedom, Security and Justice.

In conclusion, the Slovak transposition of the EU procedural directives represents a significant and necessary evolution of the national criminal procedural system. It successfully addresses a long-standing structural deficiency by extending procedural guarantees to suspects and aligning Slovak law with EU standards. At the same time, it reveals the limits of transposition where systemic adaptation is required. The current legal framework may therefore be characterised as formally compliant, but still undergoing functional consolidation. The further development of this framework will depend on the gradual clarification of the suspect's procedural status through judicial interpretation, methodological guidance, and, where necessary, targeted legislative refinement.

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