

Handout

European Criminal Perspectives on the Right to a Fair Trial Samantha Joy Cheesman

1. European Convention on Human Rights and Fundamental Freedoms (1950):

'3. Everyone charged with a criminal offence has the following minimum rights: (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require'

2. Article 47 Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

3. Council Resolution 15434/09, *Roadmap for Stengthening Procedural Rights of Suspects and Accused Persons in Criminal Proceedings.*

4. Proposal COM(2011) 326/3 for a Directive of the European Parliament and of the Council on the *Right of Access to a Lawyer in Criminal Proceedings and on the Right to Communicate Upon Arrest.* Articles 3-7

5. Article 82 (2) The Treaty on the Functioning of the European Union:

To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

6. The Fundamental Law of Hungary Article XXVIII

(3) Every person subject to prosecution shall have the right to legal defence at every stage of the trial. No counsel shall be made liable for his or her opinion expressed while providing legal defence

7. *Salduz v Turkey Application No. 36391/02, Judgment of 27 November 2008*