

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

CHAPTER 2

PRESUMPTION OF INNOCENCE

Article 3

Presumption of innocence

Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.

Article 4

Public references to guilt

1 Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.

2 Member States shall ensure that appropriate measures are available in the event of a breach of the obligation laid down in paragraph 1 of this Article not to refer to suspects or accused persons as being guilty, in accordance with this Directive and, in particular, with Article 10.

3 The obligation laid down in paragraph 1 not to refer to suspects or accused persons as being guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest.

Article 5

Presentation of suspects and accused persons

1 Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.

2 Paragraph 1 shall not prevent Member States from applying measures of physical restraint that are required for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

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Article 6

Burden of proof

1 Member States shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. This shall be without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.

2 Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including where the court assesses whether the person concerned should be acquitted.

Article 7

Right to remain silent and right not to incriminate oneself

1 Member States shall ensure that suspects and accused persons have the right to remain silent in relation to the criminal offence that they are suspected or accused of having committed.

2 Member States shall ensure that suspects and accused persons have the right not to incriminate themselves.

3 The exercise of the right not to incriminate oneself shall not prevent the competent authorities from gathering evidence which may be lawfully obtained through the use of legal powers of compulsion and which has an existence independent of the will of the suspects or accused persons.

4 Member States may allow their judicial authorities to take into account, when sentencing, cooperative behaviour of suspects and accused persons.

5 The exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.

6 This Article shall not preclude Member States from deciding that, with regard to minor offences, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities in relation to the offence concerned, provided that this complies with the right to a fair trial.