



## Research Article

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### The Role of Trust in the Criminal Procedure

**M.Sc. Albi Gjoka**

*Faculty of Law, University of Tirana*

**Ph.D. Evangjeli Xhuvani**

*Faculty of Law, University of Tirana*

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#### Abstract

Trust and the feeling of being protected is the core value of the legal process. Trust should not be confused with the idea of goodwill. Goodwill is not normative of the criminal law, but it is a concept of the private law. A similar principle of trust in criminal law is the intent, which terminologically has a better connotation with criminal law than goodwill. Nevertheless, there is still a part that this definition does not include and leaves gaps in which the word trust is better used as a definition. The principles of legality and *lex stricta* are values in criminal law and also have their interpretations widely used. Main topic of this paper is the usage of the word trust and the need to trust the criminal law and have faith in it. A faith which is built in centuries and cases after cases which have led to a general conclusion. The conclusion is not to question the criminal process, the lawyers or judges and its paragraphs but to accept it as it is and follow its directions. Examples, case studies and other central topics can lead to a better understanding of the good faith in criminal law.

**Keywords:** Criminal law, trust, criminal process, cases, *lex stricta*.

#### 1. Introduction

Trust is a word which is widely spread in different areas of life. The patient-doctor trust is one of them, which helps the collaboration and makes it easy for the entire process to work. Trusting in criminal law is a good start, which serves an important meaning in the entire process. Both parties trusting each other helps render their professional ethic and avoids any prejudices when showing pieces of evidence. Trusting is also creating cooperation, encouraging witnesses to have a fair and safe confession and assuring them that everything will be in their best interest. The need of trust is necessary for ongoing processes and for overall safety and helps to encourage

transparency and fairness. The legal institution of the public defender's office in itself has its connections with trust, which may be obscure at first glance. Different themes will be discussed in this Publication.

## **2. The Concept of Trust in Law**

The willpower and the freedom to decide reflect based on the actions that are made and not only. This freewill should have a standard that must be imposed and confined by the rule of law. For this reason, criminal law is a tool that protects trust. Trust is a unique value and is not categorised as an object or proof, but it is still an essential factor in choosing between right and wrong.

As stated above, the subject is highly theoretical and is something that is reflected in general life, but it is also reflected in law and its process. It is something that starts from the moment the process opens. It is a thing which can lead to speed up the process or drag it and prolong it. Social trust is something used a lot, and it is broadband, and this word is also reflected in law. A strive to connect a moral idea and law and to present that the social relationships, the good and bad ones are also wired in the law process. "A romp through the Clouds" is tentative and speculative to connect legal theory with social relationships (Graglia, 1985).

The relationship between an offender and his victim and the multitude of the damage is very connected with the complexity of the act. To the victim's eye, the aggression is real and exists everywhere (das Tatortprinzip und die Ubiquitätsprinzip) based on German Criminal Law (Schönke and Schröder, 2019). Conversely, it can be speculated that certain acts are not aggressive, and he (the aggressor) is only defending his interest. This is something that, of course, needs to be proven with evidence and also if it was real aggression or just self-defence. Sometimes, the act itself leaves little for speculation.

## **3. A More Victim-Oriented Process**

To make a victim of a crime trust in the criminal process, we should understand how they feel and how we can make them trust the process. That is why there is a need to make a better victim-oriented process. Advertising this way will help gain the trust of the victim side and also create and cement the idea of understanding and comprehending the victim in the process.

The examination of the victim's side and his path in the criminal process is something that needs to be studied more in order to gain and guarantee top-notch participation and not be afraid to face the aggressor in the courtroom. We must be honest with the victims because sometimes the criminal justice is not always a helping hand for the victims, but it is just a mere process, and generally, it gets worse because a considerable number of crime victims never see a courtroom because the aggressor was never caught. That is why we should not always focus on the process in the courtroom but also on all the crime victims who are not involved in criminal justice. If

the process had been more victim-oriented, we would have been focused on helping and rebuilding the life of the victim and not only focusing on a mere procedure. Many criminal cases leave victims in isolation and fear that the act will happen again. This vicious circle leads to self-destructing behaviours and intrusive thoughts such as suicidal and other derogative thinking. It should start from the basics, the first contact with the authorities. This is where the first step starts. In the beginning, police should support, record and also identify who is a victim of a repetitive crime. Generally, domestic abuse victims are the ones who can be identified the fastest, but there is also a need for improvement. Victims need to receive a constant, effective response, and the most vulnerable victims should receive empathy and support. The main point needs to be the risk assessment, which needs to be extended and appropriate.<sup>1</sup>

#### **4. Trust in a Criminal Process in Germany**

Defending someone in a criminal process is not only done through assembling, documenting and preparing a case but also with trust. In the standard procedure, the main point of the criminal law is to end the procedure and to sentence the offender. Based on the Constitution of the German Federal Republic Article 1 GG, the offender should not be seen as only a mere object of the process. The person should have at least the right to defend himself, know his rights and understand the process. This is called a material defence (Böhm, 2020).

The offender should be able to protect himself against all the accusations that are thrown at him and also be able to have someone qualified by his side in the entire process. This is called a formal defence. The process should be a follow-up of both the material and the formal defence, which will lead to a better and more helpful defence (Beulke, 1980). The follow-up of the process is really also a trust relationship between the defender and the offender. The material defence will be very effective if there is trust between them.

In the criminal process, this is seen as a mere affirmation, and there is no mere meaning. It also does not leave traces for arguments. There are some points in which, in the process, this trust is seen as materialised.

For the most part, where we can see the problem of trust and fear of the process not folding well is when we have an assigned public defender.

In the cases that a defender is needed in which the offender has not found a defender or could not afford one, and the process is already open. A public defender should be assigned to resolve the situation. This is described in §141 of the German Code of Procedure. In some cases, the acceptance of the offender is needed, while in some other cases, the need for a public defender is a must. It is apparent in the pre-trial

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<sup>1</sup> Criminal Justice Joint Inspections, (2015). Meeting the needs of victims in the criminal justice system: A consolidated report by the criminal justice inspectorates. (Online) Available: <https://www.justiceinspectorates.gov.uk/cjji/inspections/meeting-the-needs-of-victims-in-the-criminal-justice-system/> (September 9, 2023).

process that the accused is unable to defend himself, in particular in the process of questioning. He has been requested to make a statement on the indictment by § 201 of the German Code of Procedure; if it only emerges later that the need for a public defender is necessary, he shall be appointed one immediately.

A Part of this Paragraph which gives trust a more practical meaning and also makes it an understandable point is Section 143a Sentence 2 Point 3 of the German Code of Procedure. Based on trust, the offender can remove and request another public defender.

#### a) Changing the Public Defender

In this Paragraph, one of the points in which the accuser has the right to change the defender is also Section 143a, German Code of Criminal Procedure, which states:

*The assignation of a public defender is to be cancelled when a new public defender is requested from the accuser for the reason that the relationship of trust between the public defender and the accuser is permanently destroyed or for any other reason an adequate defence from the public defender is not ensured.<sup>2</sup>*

In this point, trust is a crucial key factor. This should be very specified because it is not the mere idea that the person does generally trust in the process or the public defender, but it should be an actual active abuse of the trust and also the persona.

This was appointed from the Higher Regional Court in Dresden (Oberlandesgericht Dresden) (3. Strafsenat).<sup>3</sup>

In the case of a suspected murderer, a public defender was assigned to the offender. The offender was not happy about the decision, and later on in the process, he still did not want to accept the public defender. When asked about the reason first, answered that he did not trust the abilities of the lawyer. Later on in the process, he said that it was not about the ability of the person but actually about the fact that he had not built enough trust with him. He knew another lawyer who could help him, whom he trusted a lot and has been his family lawyer for a long time.

The Complaint made by the offender was turned down because none of the requirements of trust were broken. Second, when asked about a lawyer in the first place, the offender could not provide the name of a lawyer, meaning the time window in which he could have found a lawyer by himself was already closed, and the decision to give him a public defender was already made. This, of course, can be changed if one of the points of §143 of German Code of Criminal Procedure is encountered in which the breach of trust is a part too. The court also explains that the offender did not interpret how or where a breach of trust was, but he was only questioning the ability of the lawyer. That is why the offender's desire to have another lawyer was dismissed.

As mentioned above, the breach of trust should be direct and definitive to the point of no return or for the fact that the public defender is not able to defend his client

<sup>2</sup> See Section 143a, German Code of Criminal Procedure: "3. *If the relationship of trust between defence counsel and the accused has been permanently destroyed or the accused's reasonable defence cannot be guaranteed for another reason.*"

<sup>3</sup> Beschluss vom 1. 6. 2005 - 3 Ws 30/05.

and for the fact that the public defender's abilities breach this trust in which then the request to find another public defender can become real. It cannot be accepted as a request when the offender thinks or presumes he will not trust the public defender. Both sides should have the same right to express their reason for this break-up. The public defender should be careful, though, when giving his reasons not to breach any confidential agreements that were made with the offender. A reason widely not accepted, as mentioned above, is the fact, if the offender refuses to talk to the public defender. This point will not be accepted as a reason to revoke the public defender. A case that led the German Federal Court of Justice, to come to a conclusion sparked a lot of debate.<sup>4</sup> A lawyer deployed a power of attorney request in the court for a client and also to become his public defender. The reason was that the person could not afford a lawyer. On the same day, two other lawyers sent requests for the same offender (Beck, 2004).

All three defenders were invited to take part in the process, but it turns out that that day, none of them took part personally. The first attorney sent his assistant to take part in the process.

Seeing this and also not being able to recognise the attorney, the client requested to revoke the right of the first attorney as his public defender and asked if the third attorney could be his public attorney. He wanted this for two reasons. First, he trusts this attorney and wants him to be his public attorney because he cannot afford a lawyer. Another reason was that the first attorney sent his assistant (lawyer also), but this was not discussed before with the client, and therefore, there is a breach of trust. These are the reasons mentioned by the client. The request to change the public defender solely for those reasons was turned down. It was discussed that for the client to request to change his attorney should be a breach of trust, or his abilities may endanger the fairness of the process. In the first case, there was no breach of trust because the job was delegated to his assistant, who was also a lawyer, and the court did not see any problem that might come with the trust itself.

The second point, which might be debatable, was that the assistant lawyer might not be qualified, but this was turned down by the attorney, who said that the assistant lawyer had all the qualifications to go through the entire process.

## **5. Building Trust in European Criminal Law**

The European Union and its twenty-seven member states recognise the need for cross-border cooperation against crime to ensure the population's safety. Twenty-seven states and twenty-seven criminal law systems lead to an intense bureaucracy and a slow judgment process. The key to fighting crime in the EU is to increase cooperation and share information between the member states. There are many legislative measures, and there is also a tentative to harmonise criminal laws between member states.

One of the most important legislative measures was the implementation of EAW

<sup>4</sup> BGH, Beschluß vom 18. 11. 2003 - 1 StR 481/03 (LG München I).

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(European Arrest Warrant), established in 2002. This helped to replace many processes and facilitate the complex extradition procedures that were before.

The EAW is a cross-border request that facilitates traditional lengthy procedures based on the principle of mutual recognition. Member States respect each other Criminal Law System but agree to cooperate based on shared principles, values and trusts.

Mutual Recognition was introduced and agreed upon in 1999 based on a Conclusion of the European Council. Point 33 of this Conclusion expresses that an enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of the legislation would help to facilitate the cooperation between the member states. Mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters in the Union and its member states.<sup>5</sup> This Mutual Recognition is, per se, a follow-up of trust between states and their criminal jurisdiction. Member States respect each other criminal law system and agree to cooperate based on shared principles, values, and trust.

Even though it is a good idea, it leads to much speculation. There are problems which arise; for example, the differences in the different legal systems have led to disparities and misinterpretation among the Member States. Another point is the need for the harmonisation of a procedure. Different laws, procedures and standards hinder mutual recognition.

Concerns about Fundamental Rights have led to debate across the Union. Different member states have different human right standards, which jeopardise a fair trial process across the Union. The EAW Framework regulates the procedure between two Member States. Article 1 (3) EAW FD states that it should always respect the fundamental rights, and those will not be modified by anything contained in the Framework Decision.<sup>6</sup>

If there is suspicion that the individual's life after the surrender in the other Member state is in danger, then, of course, it must be stopped. The executing court should have evidence which needs to be objective and specific (Öberg, 2020). There are still ideas that mutual recognition should not be granted for free and still needs to be seen in every case differently. If a state cannot guarantee adequate legal action, it should be prevented from taking part in a Mutual Recognition. The fundamental rights per se will be endangered. On the other side, this means excluding a member state from the new Mutual Recognition path and taking the old path of legal assistance procedure. The old procedure even though not used led to the understanding that those States who did not follow mutual recognition laws will become indirectly responsible for breaking and disrespecting secondary laws of the Union, which will lead to other Member States not having the same trust and cooperation with this Member. For this reason, this way of trusting and mutual recognition is essential for

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<sup>5</sup> See Conclusion Tampere European Council (1999) Presidency conclusions Point 33, (Online) Available: Tampere European Council 15-16.10.1999: Conclusions of the Presidency - European Council Tampere 15-16.10.1999: Conclusions of the Presidency.

<sup>6</sup> See Article 1(3) European Arrest Warrant Framework Decision (EAW FD).



the European Criminal Law. It enhances the effectiveness of different member states by just comparing them with each other.

This Project needs to be accompanied by rigid rules to be as feedback of the theoretical idea of Mutual Trust that per se is very vague and leaves much space for argumentation.

This enables excellent and positive cooperation between member states facilitates and speeds up processes around the Union. The more the Member States regulate and improve their national law standards, the more this process will achieve its effectiveness, which then will lead to a faster track process and leave the idea of only trusting some States and not others in the past.

## 6. Conclusion

Trusting in criminal law and its entire process is something that should not be taken for granted. The lawyers should always strive to achieve more trust by the people. Trust is one of the main points to improve and assert fairness and effectiveness in the justice system. When there is trust, people are more willing to cooperate with law enforcement and its other sectors and to participate with faith and complete trust in the legal procedures. Building this trust can lead to a more productive Legal System and safer communities.

Additionally, enhancing trust in criminal procedure can help address systemic problems and reduce disparities. By working to build trust, law enforcement can demonstrate their commitment to the community, which will also help to alleviate concern about discrimination and wrongful convictions. This double-sided contribution will lead to a more harmonious and law-abiding society, promoting stability and social awareness.

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