

[Home](#) > ... > [Your Rights](#) > [Defendants \(criminal Proceedings\)](#) > My rights during trial

## My rights during trial

### A. Where will the trial take place?

If the criminal case pertains to an offence or offences punishable by imprisonment of up to 5 years, the trial shall take place in a District Court (*Eparchiako Dikastirio*) (single-member). Please note that with the written consent of the Attorney General (*Genikos Eisaggeleas*), the District Court may try a criminal offence punishable by imprisonment exceeding 5 years.

Where the criminal offence is punishable by imprisonment of more than 5 years, the trial shall be heard in the Assize Court (three-member).

### B. Can the charges be modified? If so, what is my right to information in this regard?

The charges may be modified at the beginning of or during the trial. Articles 83, 84 and 85 of the Criminal Procedure Act, Chap. 155, provide for the procedure for modifying the charges and for the rights of the accused.

83.-(1) Where, at any stage of the trial, the court decides on the basis of evidence that the indictment or the indictment filed with the Assize Court is somehow defective, either in substance or in form, the court may issue an order to modify the indictment or the indictment filed with the Assize Court, either by modifying it or by replacing it or by adding new charges thereto, as the court deems necessary for the charges to reflect the facts of the case.

(2) Where an indictment or an indictment filed with an Assize Court is modified in such a manner, the order for modification shall be recorded on the indictment or the indictment filed with the Assize Court, and such documents shall be used for the purposes of any related proceedings as if they had been filed in the modified form.

84.-(1) Where an indictment or an indictment filed with an Assize Court is modified as provided for in Article 83, the court shall immediately call on the accused to present a defence before the court and to state whether he/she is ready to be tried on the basis of the indictment or the indictment filed with an Assize Court as modified.

(2) If the accused declares that he/she is not ready, the court shall examine the grounds put forward and, should it deem that the immediate continuation of the proceedings is not likely to affect in an adverse manner the accused's defence or the public prosecutor's handling of the case, the court may proceed with the trial as if the modified indictment or indictment filed with an Assize Court were the initial one.

(3) If the modified indictment or indictment filed with the Assize Court is such that the immediate continuation of the trial may, in the opinion of the court, affect in an adverse manner the accused or the public prosecutor, the court may either order a new trial or postpone the trial for such a period as it deems necessary.

(4) Where an indictment or an indictment filed with an Assize Court is modified by the court after the trial has begun, the testimony already given during the trial may be used without the need for a new hearing, but the parties shall be allowed to call again to the stand or send another summons to any witnesses who may have testified already and to examine or cross-examine them in relation to the modification at hand.

85.-(1) Where only part of the indictment or the indictment filed with an Assize Court may be proved and the part established constitutes a criminal offence, the accused may, without any modification of the indictment or indictment filed with the Assize Court, be sentenced for the criminal offence which he/she has committed as evidenced.

(2) Where a person is charged with a criminal offence, he/she may be convicted of having attempted to commit said criminal offence, without the need for modification of the indictment or indictment filed with the Assize Court.

(3) Where it is established that a person has committed any act with a view to committing the criminal offence for which he/she is accused, and where the commission of the act with such intent constitutes a criminal offence, said person may, if he/she has not been charged yet with the aforementioned criminal offence, be convicted of said offence, without the need for modification of the indictment or indictment filed with the Assize Court.

(4) Where, at the end of the trial, the Court deems that it has been established by testimony that the accused committed a criminal offence or criminal offences which are not included in the indictment or the indictment filed with an Assize Court and of which the accused may not be convicted without prior modification of the indictment or the indictment filed with an Assize Court and that, if convicted of such criminal offences, the accused would not be subject to a stricter sentence than the one that would apply had he/she been convicted on the basis of the indictment or the indictment filed with an Assize Court and that, therefore, the defence of the accused would not be affected in an adverse manner, the court may order that a charge or charges be added to the indictment or the indictment filed with the Assize Court with regard to such criminal offence(s), and the court shall decide thereon as if such charge(s) were part of the initial indictment or the indictment filed with an Assize Court.

## C. What are my rights during the court appearances?

### i. Am I required to be present in the court? What are the conditions for me to be absent during the court case?

The right of the accused to be present at the trial is guaranteed under the provisions of Articles 12 and 30 of the Constitution and under the provisions of Article 6 of the European Convention on Human Rights. Moreover, the accused shall have the obligation to be present at the trial unless his/her absence falls within the exceptions provided for in Articles 45(1) and 63(3) of the Criminal Procedure Act, Chap. 155.

#### Article 45(1)

It is understood that a judge or, for such categories of criminal offences such as the President of the District Court (*Eparchiako Dikastirio*) may determine by means of a general order, the appointed Registrar (*Protokollitis*) may by special order in the summons release the accused from the obligation to appear in person; and

(a) allow the accused to appear and respond to the charges represented by a lawyer, in which case the accused may appear and respond in that manner.

It is understood that, where the accused person is charged solely in the capacity of director or secretary of the company and is not personally charged with any offence, he/she shall not have to appear at court in person either to respond to the charges or at any other stage, with the exception of the hearing stage of the case, but shall have the right to be represented by a lawyer;

(b) allow the accused, if he/she wishes to plead guilty, to send that reply to the court, duly certified and stamped by a registrar or sergeant (*lochias*) or a police officer or senior police officer pursuant to the Police Act or a certifying official under the Certifying Officials Act or by a lawyer under the Lawyers Act, who uses for that purpose his/her personal stamp clearly indicating his/her full name and address, or by a head of community (*koinotarchis*), along with the summons with regard to which the reply is provided, in which case the reply shall be considered an admission of guilt for the purposes of the procedure.

63.-(1) The accused shall have the right to be present at court throughout the trial, provided that he/she behaves properly.

(2) Where the defendant fails to behave properly, the court may, at its discretion, order that he/she be removed from the court room and remain in custody, and continue the trial in his/her absence by making

such arrangements which, in the court's opinion, seem sufficient for the accused to be informed about everything that happened during the trial and to prepare his defence.

(3) The court may, if it so deems appropriate, allow the accused to remain outside the court room during the whole trial or part thereof, on such terms as it may deem appropriate.

On the basis of Cypriot case-law, a trial may take place in the absence of the defendants where that is in the interest of justice.

## ii. What are my rights regarding access to interpreters and translated documents?

The right to an interpreter is guaranteed both under the Constitution and under the 2014 Right to Interpretation and Translation during the Criminal Procedure Act (18(I)/2014). Furthermore, the right to an interpreter is provided for under Article 65 of the Criminal Procedure Act, Chap. 155.

Article 12. 5(a) and (e) of the Constitution stipulates that:

Any person charged with an offence shall have, as a minimum, the following rights:

(a) to be informed immediately and in detail in a language he/she understands about the nature of the charges and the reasons therefor;

(e) to be assisted by an interpreter free of charge if he/she is unable to understand or does not speak the language used in court.

Article 30(3) of the Constitution stipulates that every accused person has the right to an interpreter free of charge if he/she cannot understand or speak the language used in court.

The 2014 Right to Interpretation and Translation during the Criminal Procedure Act (18(I)/2014) provides for the

### Right to an interpreter

4.-(1) The competent authority shall arrange for interpretation services without delay to a suspect or accused person who does not speak and/or understand the language in which the criminal proceedings are conducted, during the criminal proceedings before investigating and/or judicial authorities, including police questioning, all court hearings and any necessary intermediate hearings.

(2) The judicial authority responsible for executing the European arrest warrant, in accordance with Article 11 of the European arrest warrant and Procedures for Extradition of Requested Persons Between the Member States of the European Union Act, shall arrange for interpretation services to be provided without delay to any person requested who does not speak and/or understand the language in which the related proceedings are conducted.

(3) Where this is necessary to ensure a fair trial, the competent authority shall arrange for interpretation services to ensure communication between the suspect, accused and/or requested person and the lawyer thereof, where such communication is directly related to questioning and/or hearings in the course of the criminal proceedings and/or the execution of a European arrest warrant and/or to the lodging of an appeal and/or other procedural claims, including a request for bail.

(4) Pursuant to this Article interpretation shall:

(a) be provided in the mother tongue of the suspect, accused person or requested person or in any other language that he/she speaks and/or understands; and

(b) include further assistance, as appropriate, such as the use of sign language, to meet the needs of suspects, accused or requested persons with hearing and/or speech problems.

(5) The competent authority shall verify by any means it deems appropriate whether the suspect, accused person or requested person speaks and understands the language used in the criminal proceedings or in the proceedings for the execution of the European arrest warrant and whether that person needs assistance from an interpreter.

(6) Interpretation services as provided for in this Article shall be of sufficient quality to ensure a fair trial, in

particular by ensuring that the suspect, accused person or requested person understands the case against him/her so as to be able to exercise his/her right of defence. To this end, the competent authority shall pay particular attention to the specificities of communication with the assistance of an interpreter.

(7) Where necessary, the competent authority may arrange for interpretation services to be provided with the use of communications technologies, for instance videoconferencing, a telephone and/or the Internet, unless the physical presence of the interpreter is required to ensure a fair trial.

(8) For the purposes of better implementation of the provisions of paragraph (5), the procedure or mechanism for verifying whether the suspect, accused person or requested person speaks and understands the language used in the criminal proceedings or in the proceedings for the execution of the European arrest warrant may be determined by regulations.

## Right to translation

5.-(1) In order to ensure that the suspect or accused person is able to exercise his/her right of defence and to ensure a fair trial, the competent authority shall, within a reasonable period of time, provide the suspect or accused person who does not understand the language used in the relevant criminal proceedings with a written translation of all essential documents.

(2) For the purposes of this Act, essential documents shall include:

(a) in all cases, the arrest and/or detention warrant, the bill of indictment and any judicial decision and order pertinent to the proceedings; and

(b) any other document deemed essential by the competent authority either ex officio or at the reasoned request of the suspect or accused person or the lawyer of the suspect or accused person.

(3) The competent authorities shall not have to provide a translation of excerpts of essential documents which do not contribute to the suspect's or accused person's understanding of the case against him/her.

(4) To ensure a fair trial, in proceedings for the execution of a European arrest warrant, the competent authority shall, within reasonable time, provide the requested person who does not understand the language in which the European arrest warrant was drawn up or into which it was translated by the issuing Member State, with a written translation of that document.

(5) Notwithstanding the provisions of paragraphs (1), (2) and (4), the competent authority may provide, instead of a written translation, an oral translation and/or an oral summary of essential documents, provided that such oral translation and/or oral summary does not affect the fairness of the proceedings.

(6) The suspect, accused person or requested person shall be entitled to waive the right to receive the written and/or oral translation and/or oral summary provided for in this Article, should the competent authority be provided with sufficient evidence that:

(a) the person concerned has previously consulted a lawyer and/or is otherwise fully aware of the consequences of such a waiver; and

(b) the waiver is legally valid and voluntary.

(7) The written and/or oral translation and/or oral summary provided for in this Article shall be provided in the mother tongue of the suspect, accused person or requested person or in any other language that he/she speaks and/or understands.

(8) The written and/or oral translation and/or oral summary provided for in this Article shall be of sufficient quality to ensure a fair trial, in particular by ensuring that the suspect, accused person or requested person is aware of the case against him/her and is able to exercise his/her right of defence.

Article 65- (1) of the Criminal Procedure Act, Chap. 155 stipulates that

where a testimony is given in a language which the accused does not understand and he/she present, an

interpreter shall interpret for the accused in an open court hearing in a language which the accused understands.

It is understood that where there is a defence attorney, interpretation may be omitted with the consent thereof.

(2) Where documents are submitted as formal evidence, it shall be in the discretion of the court to interpret as much as their content as deemed necessary.

### iii. Do I have the right to a lawyer?

According to Article 12 of the Constitution,

Any person charged with an offence shall have, as a minimum, the following rights:

(c) to defend himself/herself in person or by means of a lawyer of his/her choice or, if he/she cannot afford an attorney, to be provided with legal aid free of charge where it is so required for justice to be served;

Article 30 (3) of the Constitution also stipulates that:

Everyone has the right to:

(d) have a defence attorney of their choice and to be provided with legal aid free of charge where it is so required for justice to be served and in accordance with the law.

Also, in accordance with the Legal Aid Act, i.e. Act 165(I)/2002, provided that the conditions set out therein are met, during the hearing the accused shall have the right to a lawyer of his/her choice and to legal aid free of charge.

### iv. Which other procedural rights should I be aware of? (e.g. appearance of suspects before the court)

#### Appearance of an accused person before a court

If, in summary proceedings, an accused person fails to appear at the specified time, and after proof that he/she was served with a writ of summons is produced, the court may proceed to the hearing of the case and reach a decision in his/her absence or, if it so deems appropriate, postpone the hearing and issue a warrant for his/her arrest.

It is understood that a judge or, for such categories of criminal offences such as the President of the District Court (*Eparchiako Dikastirio*) may determine by means of a general order, the appointed Registrar (*Protokollitis*) may by special order in the summons release the accused from the obligation to appear in person; and

(a) allow the accused to appear and respond to the charges represented by a lawyer, in which case the accused may appear and respond in that manner;

(b) allow the accused, if he/she wishes to plead guilty, to send that reply to the court, duly certified and stamped by a registrar or sergeant (*lochias*) or a police officer or senior police officer pursuant to the Police Act or a certifying official under the Certifying Officials Act or by a lawyer under the Lawyers Act, who uses for that purpose his/her personal stamp clearly indicating his/her full name and address, or by a head of community (*koinotarchis*), along with the summons with regard to which the reply is provided, in which case the reply shall be considered an admission of guilt for the purposes of the procedure.

It is understood that, where the accused person is charged solely in the capacity of director or secretary of the company and is not personally charged with any offence, he/she shall not have to appear at court in person either to respond to the charges or at any other stage, with the exception of the hearing stage of the case, but shall have the right to be represented by a lawyer.

## Answering the charges

When the accused is called upon to answer, he/she may or may not plead guilty or make a specific statement of defence and his/her answer shall be recorded by the court.

The specific statement of defence shall include the following statements:

(a) The Court before which the accused is called to answer to the charges has no jurisdiction and that another court has jurisdiction with regard to the accused or the criminal offence with which he/she is charged. Should this allegation be accepted, the court shall refer the case to the court of the Republic of Cyprus which has jurisdiction over the perpetrator or the relevant criminal offence.

(b) He/she has been previously convicted or acquitted, as the case may be, on the basis of the same facts for the same criminal offence.

(c) He/she has been granted pardon for this criminal offence.

If the court decides that the facts alleged by the accused do not prove the allegation, or that the allegation is indeed false, the accused shall have to answer the charges.

If the accused pleads guilty and the court has sufficient evidence that he/she has understood the nature of his/her reply, it may proceed as if the accused were convicted by court decision.

If the accused makes no admission of guilt, the court shall proceed to the hearing of the case. If the accused refuses to respond or does not respond immediately or is unable to respond because of physical disability, the court shall proceed as if the accused had made no admission of guilt.

## D. Possible sentences

The District Court shall hear summarily offences punishable by law with a term of imprisonment not exceeding 5 years or a fine not exceeding EUR 85,000 or both.

The Assize Court (*Kakourgiodikeio*) hears criminal offences punishable by imprisonment of more than 5 years.

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