



# *Breaking* THE BARRIERS

TRANSNATIONAL PARTICIPATORY  
JUDICIAL TRAINING ON PROCEDURAL RIGHTS

854046 — Breaking the Barrier — JUST-AG-2018/JUST-JTRA-EJTR-AG-2018

## Training Needs Assessment Report

Project Deliverable 2.2



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## EXECUTIVE SUMMARY

### The project

The present Report was drafted for the purposes of implementing the EU-funded project titled 'Breaking the barriers: transnational participatory judicial training on procedural rights' (Breaking the Barrier). The project is funded by the European Union's Justice Programme (2014-2020). The project started on 1/10/2019 and is expected to end on 31/3/2021 (total duration 18 months).

The project responded to the need to increase the number of justice professionals, specifically judges and prosecutors, trained in EU criminal procedural law in Greece, Austria and Spain, three Member States with noted low participation in judicial training<sup>1</sup>. In doing so, it will complement the work of national and European judicial training academies – in particular the work of the EJTN. More specifically, the project was designed to address the following concerns:

- the need to reduce language barriers, which prevent a large number of judges and prosecutors from participating in trainings on EU criminal procedural law;
- the need to provide judges and prosecutors with high-quality training through tailored training curricula and materials available in multiple national languages;
- the need to promote a common judicial culture through cross-border activities which enhance judicial cooperation and facilitate the uniform application of EU law.

The area of EU criminal procedural law has been developing progressively since the adoption of the 2009 Stockholm Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings<sup>2</sup> and has had a considerable impact on domestic criminal law frameworks. In this project we opted to focus mainly on the latest 'set' of procedural rights Directives adopted in this context, with the addition of the Access to a Lawyer Directive, which should be read in conjunction with many of the other Roadmap instruments. Specifically, the project partners will organise trainings on the following Directives: (a) the Directive on Access to a Lawyer (Directive 2013/48/EU); (b) the Directive on the Presumption of Innocence (Directive (EU) 2016/343); (c) the Directive on Legal Aid (Directive (EU) 2016/1919); (d) the Directive on Procedural Safeguards for Children who are suspects or accused persons in criminal proceedings (Directive (EU) 2016/800).

Six training workshops will be delivered as follows:

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<sup>1</sup> In accordance with the 2017 EC Report on European Judicial Training, which provided the most recent data at the time of submission of the project proposal (available at [http://www.ejtn.eu/PageFiles/17300/2017%20Training%20report\\_EU\\_en.pdf](http://www.ejtn.eu/PageFiles/17300/2017%20Training%20report_EU_en.pdf)).

<sup>2</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2009:295:TOC&uri=uriserv:OJ.C\\_.2009.295.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2009:295:TOC&uri=uriserv:OJ.C_.2009.295.01.0001.01.ENG)

- One three-day cross-border transnational “train the trainers” workshop will be organised in Vienna, Austria;
- One one-day pilot training will be organised in each participating country (three in total);
- One two-day cross-border initial training workshop for trainee judges and prosecutors, using simultaneous interpretation and material translated in the trainees’ national languages, will be organised in Thessaloniki, Greece;
- One two-day cross-border continuous training workshop for acting judges and prosecutors, using simultaneous interpretation and material translated in the trainees’ national languages, will be organised in Thessaloniki, Greece.

A total of 120 judges and prosecutors – 70 acting and 50 trainee judges and prosecutors – and 12 judicial trainers are expected to be trained in the course of the project.

### The TNA Report

The purpose of the present Training Needs Assessment Report (TNA Report) is to evaluate the above target groups’ training needs by critically analysing the findings of research conducted in Greece, Austria and Spain between 01/10/2019 and 19/03/2020. Specifically, in this report we aim to identify the training needs of judges and prosecutors in various stages of their careers, as well as, ancillarilly, the needs of judicial trainers, offer examples of best practices in training methodology, and propose indicative training material to be used in the project’s training activities.

The TNA Report offers a summary of research findings and concludes on concrete recommendations on how to address the training needs observed through the trainings organised in the context of the present project.

In brief, we have made the following observations – further analysed in the section titled *Summary of findings*: (a) there is an overwhelming focus of nationally organised trainings on the domestic legal framework encompassing the Directives’ standards, rather than on the Directives themselves; (b) nationally organised trainings dedicated exclusively to one or more of the Directives addressed in this project are scarce; (c) nationally organised trainings, especially continuous training seminars, are focused mainly in theory and do not offer adequate practical guidance on the application of the Directives; (d) judges, prosecutors and judicial trainers in the three participating Member States have minimal participation in cross-border trainings, including trainings organised abroad their respective jurisdictions and trainings organised by the European Judicial Training Network (EJTN); (e) a number of factors, including language barriers, heavy workloads, and administrative obstacles, impede their participation in these trainings.

In light of the above, the TNA Report concludes on concrete recommendations on the content and methods which should be employed in the planned training activities, in order to effectively respond to the training needs observed.

## The partnership

The [Themistocles and Dimitris Tsatsos Foundation – Centre for European Constitutional Law \(CECL\)](#) is the project coordinator. CECL is a leading research institute founded by the late Professor Dr. Dr. h.c. mult. Dimitris Th. Tsatsos in 1995, and located in Athens, Greece. It hosts the National Contact Point of the Fundamental Rights Network (FRANET) coordinated by the European Union Agency on Fundamental Rights (FRA) (since 2007) and conducts extensive research and data collection on fundamental rights. CECL also coordinates the Research Group “Constitution-Making and Constitutional Change” of the International Association of Constitutional Law and is a member of the Greek Section of the European Network on the European Social Charter and Social Rights (ANESC).

CECL aims to promote the development of democratic institutions, fundamental rights and the welfare state, to deepen European integration, and to strengthen international cooperation under the principle of respect to the cultural identity of each state. CECL provides institutional know-how and capacity-building to public bodies in Greece, Member States of the European Union, and third countries, undertakes theoretical and applied research in the fields of Greek, European and comparative public law and public policies, and promotes public awareness on developments in the European area. CECL has participated as a coordinator or partner in numerous European, national, and international projects, and is an experienced judicial training provider, with a focus on EU law.

Under the umbrella of the Ludwig Boltzmann Gesellschaft (LBG), the [Ludwig Boltzmann Institute of Human Rights \(BIM\)](#), founded in 1992, is an independent and the leading human rights research institution in Austria. The primary focus of BIM is on research activities in the field of human rights at national, European and international levels. BIM’s main objective is to offer a link between academic research and legal practice. As human rights are relevant for all areas of life, the BIM is pursuing a ‘human rights-based approach’, which needs to be multidimensional and interdisciplinary.

The [Spanish Judicial School – Escuela Judicial Del Consejo General Del Poder Judicial De España \(CGPJ\)](#) operates under the General Council of the Judiciary. As a constitutional body, the General Council is competent by law to select and train judges. CGPJ has two locations, one in Barcelona for initial training, international programmers and direction, and one in Madrid for continuous training. Specifically, CGPJ’s competences include the initial and continuous training of Judges, the operation of a permanent training research centre and the authority exchange programme. The Director is senior judge Jorge Jiménez.

CGPJ has a team of highly specialized full-time trainers (judges, jurists and university professors) as well as a network of affiliated external experts, such as judges, lawyers and experts, who participate as guests in its training activities. Its curriculum includes courses provided in accordance with the State Plan, decentralised programmes, and on-line training.

Furthermore, the school has an international vocation programme followed by more than two thousand jurists and judges from Iberoamerica.

### Supporting institutions

In addition to the project partners, the project is supported by the [National School of the Judiciary](#) in Greece. The School was founded in 1995 and is a public body, supervised by the Ministry of Justice. Its mission is to administer admission exams and provide initial training of the successful candidates, in order to form a corps of competent multi-skilled judges and public prosecutors. Furthermore, the School provides specialized, high-quality continuous training, promotes co-operation with national and international institutions of higher education of the public and private sector, organizes seminars, congresses and themed conferences, participates in European programmes and training networks of the Judiciary in the European Union and the Council of Europe, supports research and carries out publications.

In Austria, the project is supported by the [Federal Ministry of Justice](#). The Ministry's department for initial and further education is the focal point for the organisation and monitoring of educational activities for Austrian judges, state attorneys and court staff.

### Authors

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## RESEARCH METHODOLOGY

The present report is based on research conducted in Greece, Austria and Spain between 01/10/2019 and 19/03/2020. The research aimed at providing insight on the target groups' training needs in these three Member States, as well as identifying best practices, replicable training methodologies and training material used by other training providers. The research conducted in the context of this project complements quantitative data which may be found in the relevant EC Reports on European Judicial Training<sup>3</sup>.

The partners followed a common research methodology, established in the initial stages of the project's design, to ensure uniformity of results and comparability of conclusions. Nevertheless, the unique features of each judicial system were taken into account to ensure that all participants' training needs will be met and that exchange of knowledge and skills is achieved during the training. The research findings are processed analytically and the conclusions reached in each jurisdiction are synthesised to produce a common training approach.

The research was conducted by each partner separately and coordinated by the project's Scientific Committee, consisting of distinguished experts and academics from the three participating countries. The members of the Scientific Committee are Dr. Maria Mousmouti, Executive Director of CECL and Lecturer in Law at the University of London; Senior Judge Clara Carulla Terricabras, Head of Studies at the CGPJ; Judge Roberto Alonso Buzo, Internship Coordinator at the CGPJ; Katrin Wladasch, Senior Researcher at BIM in the areas of Asylum, Anti-Discrimination and Diversity; Dr. Babek Peter Oshidari, Supreme Court Justice, Federal Ministry of Justice, Austria; Prosecutor Apostolos Tzamalīs, Head of Prosecutor's Office Larissa Court House; Senior Judge Theokti Nikolaidou, Court of Appeal of Thrace. The scientific committee has reviewed and approved the present report.

The partners performed desk and primary research as described below.

The **desk research** was conducted between 01/10/2019 and 03/03/2020. It focused on three main areas: (a) judicial training provided at the European level, including the identification of training providers, recommended training methodologies and materials, and similar EU-funded projects; (b) national legal frameworks, state of transposition, application of the Directives in practice; (c) participation of justice professionals from each participating country in cross-border judicial training; (d) judicial training provided at the national level, including the frequency of trainings in EU law, the number of participants per target group, and the themes addressed. The research method used was literature review, drawing on the

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<sup>3</sup> This project was designed on the basis of data provided in the 2017 EC Report on European Judicial Training, available at [http://www.ejtn.eu/PageFiles/17300/2017%20Training%20report\\_EU\\_en.pdf](http://www.ejtn.eu/PageFiles/17300/2017%20Training%20report_EU_en.pdf). More recent data are available in the 2019 EC Report, which may be accessed at [https://ec.europa.eu/info/sites/info/files/2019\\_judicial\\_training\\_report.final\\_web\\_.pdf](https://ec.europa.eu/info/sites/info/files/2019_judicial_training_report.final_web_.pdf).

following sources: EU reports and policy papers; reports, guidelines and other documents produced at the European level; national reports and policy papers; data on trainings available through training providers and the target groups' professional associations; data provided on request by stakeholders; research papers; findings of other similar EU-funded projects.

The [primary research](#) was conducted between 18/02/2020 and 19/03/2020. The research method opted for was focus groups, organized in each participating country with the participation of judges, prosecutors and training providers. We selected focus groups as a method of qualitative research in order to build on the findings of the desk research performed and gain more in-depth information on the training needs of the target groups. Furthermore, the group discussion was deemed as likely to facilitate the exchange of experiences and give participants the opportunity to draw on their colleagues' perspectives. The qualitative focus complements the numerical data available in relevant EC Reports and allows us to draw conclusions on the causes behind the deficiencies observed in the European Judicial training Strategy (discrepancies among Member States and justice professions, double-counting of professionals trained, limited participation in cross-border trainings).

The project coordinator, in collaboration with the Scientific Committee, developed tools for the administration of the focus groups. These included a guidance document with practical information on how to plan and conduct a focus group, and a focus group guide providing a common set of points to be addressed during the discussion (ANNEX I). The guide consisted of seven questions, divided between introductory, key and concluding questions. The questions inquired on the participants' experiences as trainees or trainers in judicial trainings on the EU legal framework on the procedural rights of suspects and accused persons in criminal proceedings, their participation in national or cross-border trainings, their level of satisfaction regarding their knowledge and skills in terms of applying the Directives addressed in this project in their daily practice, their perceived training needs, and their take on the training methods most frequently employed in the trainings they have taken part in. The guide was adapted by each partner to the particularities of their respective jurisdiction. We opted for a semi-structured format to the discussion, encouraging facilitators to pose follow-up questions which allowed for a more detailed, individualised approach to the training needs in each participating country.

When designing the research methodology, we foresaw the participation in the focus group discussion of eight (8) senior judges, prosecutors and trainers, in order to acquire a full perspective on the needs of all target groups (the trainers were expected to provide insight on the training needs of trainee judges and prosecutors, as well as their own). The focus group conducted in [Greece](#) followed this format and was conducted with the attendance of eight senior judges and prosecutors with a minimum of 15 years of professional experience, as well as instructors in the National School of the judiciary.

**Austria** organized a focus group attended by nine (9) participants, including representatives of the judiciary in charge of trainings for trainee judges and prosecutors and/or further training for judges and state attorneys. In addition, the invitation was extended to representatives of the department of further education of the Federal Ministry of Justice, representatives of the focus groups on fundamental rights and on criminal law by the Association of Austrian judges and interpreters with experience at court as well as in research on translation in criminal proceedings. In addition, two more invitees, who had not been able to attend were given access to the focus group minutes and provided additional feedback on the topics discussed. This composition of the focus group was deemed as optimal in light of the Austrian framework, which does not provide for a central body competent to administer judicial training.

In **Spain**, ten (10) judges and judicial trainers, including the CGPJ Director and the CGPJ Head of Studies, participated in the focus group. In addition to the senior judges, two junior judges participated, providing insight on their more recent experience from initial training. The Covid-19 pandemic impacted on the organisation of the focus group in Spain, as social distancing measures in place during that time did not allow for an in-person meeting to take place. To avoid a postponement which would have had an adverse impact on the timeline of the research and the drafting of the TNA Report, the discussion was instead conducted virtually, using an online telecommunications platform.

## FINDINGS RELEVANT TO THE CONTENT OF THE TRAINING (LEGAL FRAMEWORK)

### The Directives

The establishment of rigorous procedural safeguards for suspects and accused persons in criminal proceedings is a primary guarantee of their fair trial rights and a major component of the EU criminal law agenda. Recognising the need to reinforce these procedural rights, the EU legislator has endorsed the priorities set out in the 2009 Stockholm Roadmap<sup>4</sup>, and committed to consider any additional necessary measures to strengthen their protection, with due regard to the provisions of the Charter of Fundamental Rights of the EU and the ECHR, as interpreted in the case law of the CJEU and the ECtHR.

To this effect, and towards the goal of establishing common minimum standards enhancing mutual trust among the MS' criminal law judicial systems, two sets of procedural rights Directives have been adopted on the basis of a step-by-step approach – the first between the years 2010 and 2013, and the second in 2016. These address issues related to translation and interpretation, provision of information, and access to a lawyer (1<sup>st</sup> set); the presumption of innocence, legal aid, and procedural safeguards for children who are suspects or accused persons in criminal proceedings (2<sup>nd</sup> set). The Directives complement each other and focus on different aspects of the same procedure.

In the present project, we will address the Directives on Access to a Lawyer (Directive 2013/48/EU), the Presumption of Innocence (Directive (EU) 2016/343), Legal Aid (Directive (EU) 2016/1919), and Procedural Safeguards for Children who are suspects or accused persons in criminal proceedings (Directive (EU) 2016/800) – hereinafter collectively referred to as the Directives. We opted to focus on the newest set of directives due to the relatively limited number of trainings implemented on them, including trainings provided at the European level, as well as on the access to a lawyer directive, due to its central role which complements the provisions of the other instruments.

The [access to a lawyer directive](#) aims to ensure that suspects and accused persons in criminal proceedings and requested persons in European arrest warrant proceedings have access to a lawyer and have the right to communicate while deprived of their liberty. Its key feature is the establishment of the right of access to a lawyer without undue delay prior to any questioning, investigative or other evidence-gathering act, from the moment of deprivation of liberty and in due time before appearance before a criminal court. It covers the right to meet in private and to communicate with a lawyer; the right for the lawyer to participate effectively when the person is questioned, and to attend the investigative and evidence-gathering acts; the confidentiality of all forms of communication. As regards

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<sup>4</sup> *Supra* 2.

persons subject to a European arrest warrant, the directive lays down the right of access to a lawyer in the executing EU country and to appoint a lawyer in the issuing country. Furthermore, it establishes the right to have a third person informed in the event of deprivation of liberty, as well as to communicate with consular authorities.

The directive allows for the possibility to derogate temporarily from certain rights in exceptional circumstances and under strictly defined conditions (for example, where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person).

The access to a lawyer directive applies since 26 November 2013 and had to become law in the EU countries by 27 November 2016<sup>5</sup>.

The [presumption of innocence directive](#) aims to guarantee the presumption of innocence of anyone accused or suspected of a crime by the police or justice authorities as well as the right of an accused person to be present at their criminal trial. It applies to any individual (natural person) suspected or accused in criminal proceedings and at all stages of the criminal proceedings, from the moment a person is suspected or accused of having committed a criminal offence to the final verdict.

The directive sets out fundamental rights of an accused or suspected person in a criminal proceeding as follows: (a) innocent until proven guilty; (b) burden of proof on the prosecution; (c) right to remain silent and not to incriminate oneself; (d) right to be present at one's own trial. EU countries must ensure that effective remedies are in place for breaches of these rights.

The presumption of innocence directive applies from 31 March 2016. EU countries have had to incorporate it into national law by 1 April 2018<sup>6</sup>.

The [legal aid directive](#) establishes common minimum rules concerning the right to legal aid in criminal proceedings across the EU. It sets clear criteria for granting legal aid, quality standards and remedies in case of breach. The directive is meant to complement EU rules on access to a lawyer and on procedural safeguards for children who are suspected or accused of crimes and does not affect the rights they define.

In accordance with the legal aid directive, EU countries must ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require.

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<sup>5</sup> Source: EC Summary of Directive 2013/48/EU <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32013L0048>.

<sup>6</sup> Source: EC Summary of Directive (EU) 2016/343 <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L0343>.

The legal aid directive has applied since 24 November 2016 and has had to become law in the EU countries by 5 May 2019<sup>7</sup>.

The [directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#) establishes procedural safeguards for children who are suspected or accused of a criminal offence. The safeguards are in addition to those which apply to suspected or accused adults.

The key elements of the directive are that children have the right of access to a lawyer and the right to be assisted by a lawyer. The assistance by a lawyer is mandatory when they are brought before a court to decide on pre-trial detention and when they are in detention. A child who has not been assisted by a lawyer during the court hearings cannot be sentenced to prison. The directive also includes other safeguards, such as the right to be promptly informed about their rights and about general aspects of the conduct of the proceedings; have information provided to a parent or another appropriate adult; be accompanied by that person during court hearings and at other stages of the proceedings; an individual assessment by qualified personnel; a medical examination if the child is deprived of liberty; protection of privacy during criminal proceedings; appear in person at trial; effective remedies.

Judges, prosecutors and other professionals who deal with criminal proceedings involving children should have a specific competence or access to specific training.

The directive has applied since 10 June 2016. EU countries have had to incorporate it into national legislation by 11 June 2019<sup>8</sup>.

## National frameworks

### Greece

[Directive 2013/48](#) on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty was transposed in the Greek legal order with Law no 4478/2017<sup>9</sup> which modified the Greek Code of Criminal Procedure (currently included in no 4620/2019<sup>10</sup>) and Law no 3251/2004<sup>11</sup>. Directive 2013/48 stipulates that Member States were obliged to bring it into force by 27 November 2016. Greece only completed the transposition in 26.2.2019.

<sup>7</sup> Source: EC Summary of Directive (EU) 2016/1919 [https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L1919#keyterm\\_E0001](https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L1919#keyterm_E0001).

<sup>8</sup> Source: EC Summary of Directive (EU) 2016/800 <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L0800>.

<sup>9</sup> Available in Greek at [https://www.kodiko.gr/nomologia/document\\_navigation/260208/nomos-4478-2017](https://www.kodiko.gr/nomologia/document_navigation/260208/nomos-4478-2017).

<sup>10</sup> Available in Greek at [https://www.kodiko.gr/nomologia/document\\_navigation/530491/nomos-4620-2019](https://www.kodiko.gr/nomologia/document_navigation/530491/nomos-4620-2019).

<sup>11</sup> Available in Greek at [https://www.kodiko.gr/nomologia/document\\_navigation/168097/nomos-3251-2004](https://www.kodiko.gr/nomologia/document_navigation/168097/nomos-3251-2004).

Greek law does not comprise of a provision explicitly guaranteeing the right of suspects or accused persons to “meet in private” with their lawyer, as required by Article 3(a) of Directive 2013/48<sup>12</sup>. That omission constitutes a flaw in the transposition of the Directive. Article 12 of Directive 2013/48 concerning remedies was not transposed since the already existent remedies in the Greek legal order were deemed sufficient by the Greek legislator. Article 13 of Directive 2013/48 regarding vulnerable persons was not transposed either. However, the Greek Code of Criminal Procedure (Article 95) states that the particular needs of vulnerable persons must be taken into account when they are being informed of their rights in criminal proceedings. The remaining provisions of Directive 2013/48 (right to access to a lawyer, confidentiality, rights to have a third person informed of the deprivation of liberty, rights to communicate with third persons and consular authorities, waiver, rights in European arrest warrant proceedings) have been adequately transposed with Law no 4478/2017 (Articles to 48-52) and they are currently included in the Greek Code of Criminal Procedure (Articles 89-100) and Law no 3251/2004 (Article 15). The Greek legislator has chosen not to allow public authorities to derogate from the application of the right to access to a lawyer in exceptional circumstances, notwithstanding that Article 3(6) of the Directive 2013/48 provided for such possibility. On the other hand, under the Greek Code of Criminal Procedure, the right to have a third person informed of the deprivation of liberty and the right to communicate with third persons may be limited or suspended due to exceptional circumstances, in accordance with Articles 5(3) and 6(2) of Directive 2013/48.

**Directive 2016/343** on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings was transposed in the Greek legal order with Law no 4596/2019<sup>13</sup> which modified the Greek Code of Criminal Procedure. Directive 2016/343 stipulates that Member States were obliged to bring it into force by 1 April 2018. Greece completed the transposition in 23.2.2019. Article 9 of Directive 2016/343 was not transposed with Law no 4596/2019. The Greek Code of Criminal Procedure (Articles 340(4), 430 and 473(1)) nonetheless gives accused persons the right to ask for the annulment of their conviction or to submit an appeal against it if they were not present at their trial, provided that they had not been lawfully informed of that trial or of the consequences from their absence in that trial. Regarding Article 5 of Directive 2016/43, the Greek Code of Criminal Procedure (Article 339(2)) prohibits the use of handcuffs to accused persons during their appearance in court. Nevertheless, the fact that the visible use of measures of physical restraint outside the courtroom is not excluded, could cause suspects or accused persons to appear as guilty in public and therefore compromise the useful effect of Article 5 of the Directive. In compliance with Articles 4(2) and 10(1) of Directive 2016/43,

<sup>12</sup> See “The rights of access to a lawyer and to legal assistance in the EU”(in Greek), D. Arvanitis, 2019, available on <https://theartofcrime.gr/may-2019/>.

<sup>13</sup> Available in Greek at [https://www.kodiko.gr/nomologia/document\\_navigation/499589/nomos-4596-2019](https://www.kodiko.gr/nomologia/document_navigation/499589/nomos-4596-2019).



accused persons in Greece have been granted the right to rely on the provisions for the non-contractual liability of the State so as to ask for damages in cases in which their presumption of innocence was violated by statements made by the public authorities. Although according to Article 8(2) of Directive 2016/343 suspects and accused persons have the *right* to be present at their trial, its effectiveness is not jeopardized by the fact that the Greek Code of Criminal Procedure (Article 340(1)) states that accused persons *must* be present at their trial. The remaining provisions of Directive 2016/343 (presumption of innocence, burden proof, right to remain silent and not to incriminate oneself, trial in absence) have been adequately transposed in the Greek legal order with Law no 4596/2019 (Articles 5 to 10) and they are currently included in the Greek Code of Criminal Procedure (Articles 71, 104, 155 and 178(2)).

[Directive 2016/800](#) on procedural safeguards for children who are suspects or accused persons in criminal proceedings has not yet been transposed in the Greek legal order as of the time of writing. Member States were obliged to comply with the Directive by 11 June 2019. On March 4 2020, the Greek Ministry of Justice posted on the internet for public deliberation a draft bill concerning the transposition of Directive 2016/800.

It should be noted that, although the Directive has not been transposed into Greek law yet, a number of procedural safeguards for children suspects and accused already exists within the Greek Code of Criminal Procedure<sup>14</sup> and special criminal laws, aimed at ensuring that children thus involved in criminal proceedings receive adequate support, have access to a lawyer, including legal aid, under favourable conditions, and benefit from additional procedural safeguards in accordance with their best interests.

[Directive 2016/1919](#) on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings has not yet been transposed in the Greek legal order as of the time of writing. Member States were obliged to comply with the Directive by 25 May 2019. On March 4 2020, the Greek Ministry of Justice posted on the internet for public deliberation a draft bill concerning the transposition of Directive 2016/1919.

Despite the Directive not being transposed into Greek law yet, legal aid is available to low income Greek and EU citizens by law 3226/2004<sup>15</sup>. In addition, children, victims of certain specific crimes (human trafficking, kidnapping, child abuse and molestation, child pornography and sexual exploitation) are always eligible for legal aid as regards their civil or criminal law claims, in accordance with Directive 2011/93/EU, without the need to fulfil any additional financial requirements. Furthermore, there is a process for the *ex officio* appointment of a lawyer unconditionally, during certain stages of the criminal procedure

<sup>14</sup> Available in Greek at <https://www.e-nomothesia.gr/kat-kodik-es-nomothesia/s-nomos-4620-2019-phek-96a-11-6-2019.html>.

<sup>15</sup> Available in Greek at <https://www.e-nomothesia.gr/kat-dikasteria-dikaio-sune/n-3226-2004.html>.



(especially during the trial and other hearings). It should be noted that legal aid (excluding the *ex officio* appointment) is not available in procedures regarding the execution of European Arrest Warrants or other instruments of mutual recognition.

## Austria

[Directive 2013/48/EU](#) on access to a lawyer was adopted on 22 October 2013 and transposed on 27 November 2016. The directive was transposed into national law under the Criminal Procedure Amendment Act I 2016<sup>16</sup> and the Criminal Procedure Amendment Act II 2016<sup>17</sup>. The amendments became effective on 1 January 2017. Under the Directive, the right of access to a lawyer should be guaranteed at any stage of the proceedings. The introduction of a legal on-call service (“Rechtsanwaltlicher Bereitschaftsdienst”) was an important step to facilitate access to a lawyer during police custody.<sup>18</sup> However, in practice, the vast majority of suspects in police interrogations are not legally represented, although the statements made before the police are highly relevant for the further criminal proceedings.<sup>19</sup> The reasons for this are mainly inadequate information about the existence of the legal on-call service and its effectiveness on the one hand, and the ambiguities regarding the cost to be paid or the bureaucratic hurdles to claim legal aid on the other hand.<sup>20</sup> During the main proceedings the accused may represent himself unless the legal defense is mandatory according to national criminal law.<sup>21</sup> Although a person unable to cover the cost of his/her legal defense can claim legal aid, there is in practice a high risk that the legal aid defender has no criminal law background and therefore cannot adequately defend the suspect.<sup>22</sup>

[Directive 2016/343](#) on the presumption of innocence was adopted on 9 March 2016 and transposed on 1 April 2018. The Directive 2016/343 regulates the presumption of innocence, the right to remain silent and the privilege against self-incrimination. The Criminal Procedure Amendment Act 2018<sup>23</sup> aimed, inter alia, at the transposition of the directive on the presumption of innocence. Due to the settled case law of the European Court of Human Rights and its incorporation in national law only minor changes were required.<sup>24</sup> Most of the provisions took effect on 1 June 2018. Although there were no fundamental legislative

<sup>16</sup> Published in: BGBl. I Nr. 26/2016, available at

[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2016\\_I\\_26/BGBLA\\_2016\\_I\\_26.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_26/BGBLA_2016_I_26.pdf#sig); see also <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32013L0048> (both accessed on 11 February 2020).

<sup>17</sup> Published in: BGBl. I Nr. 121/2016, available at

[https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2016\\_I\\_121/BGBLA\\_2016\\_I\\_121.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_121/BGBLA_2016_I_121.pdf#sig); see also <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32013L0048> (both accessed on 11 February 2020).

<sup>18</sup> *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 109.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> AT, CPC, art. 61 (1) Z.2.

<sup>22</sup> *Handbook, Dignity at Trial, Enhancing Procedural Safeguards for Suspects with Intellectual and Psychosocial Disabilities*, B. Lindner/N. Katona/J. Kolda and others, 2018, p. 93.

<sup>23</sup> Published in: BGBl. I Nr. 27/2018, available at: [https://www.sbg.ac.at/ssk/stpo/2018\\_i\\_27.pdf](https://www.sbg.ac.at/ssk/stpo/2018_i_27.pdf) (accessed on 11 February 2020).

<sup>24</sup> *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 99 f.

changes necessary, there still remain some major challenges in the practical application of these provisions. For example, it is crucial for the effectiveness of the rights under the directive to state clearly during the legal instruction that the exercise of the right to remain silent does not have any negative consequences for the further proceedings.<sup>25</sup> The presumption of innocence also prohibits a public reference to guilt by state authorities, including statements about the guilt also in media coverage, and the presentation of the defendant as looking guilty in court or public (e.g. use of shackles or glass boxes).<sup>26</sup> Violations of this right are occurring, and can not only render the proceedings unfair, but can also impact the dignity of the person.<sup>27</sup>

**Directive 2016/1919** on legal aid was adopted on 26 October 2016 and transposed on 25 May 2019. The Criminal Procedure and Juvenile Justice Amendment Act 2019<sup>28</sup> envisages the transposition of the Directive on legal aid. The legislative process has not yet been completed.<sup>29</sup> The implementation act provides, inter alia, that the costs for a defense lawyer on standby (“Verteidiger in Bereitschaft”) during a hearing concerning pre-trial detention shall not be borne by the suspect or accused if he/she claims to be unable to cover the costs.<sup>30</sup> The same rule applies to suspects or accused in a particularly vulnerable state.<sup>31</sup> Practical challenges may arise due to the high administrative burden imposed on the Austrian Lawyers Association (“Österreichischer Rechtsanwaltskammertag”) and the necessity to substantially increase the capacity of lawyers on standby (4200-5000 expected cases per year).<sup>32</sup>

**Directive 2016/800** on procedural safeguards for children who are suspects or accused persons in criminal proceedings was adopted on 11 May 2016 and transposed on 11 June 2019. The transposition of Directive 2016/800 is also entailed in the Criminal Procedure and Juvenile Justice Amendment Act 2019<sup>33</sup> which has not been adopted so far.<sup>34</sup> Due to the particular situation of children or juveniles in criminal proceedings, the foreseen legislative act contains several provisions to enhance their right to information<sup>35</sup> and their right on access to a lawyer,<sup>36</sup> although the mandatory defence during the investigation proceedings

<sup>25</sup> *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 106.

<sup>26</sup> *Guidebook, Strengthening the Rights of Suspects and Accused in Criminal Proceedings, The Role of National Human Rights Institutions*, G. Monina/N. Katona, 2019, p. 46 f.

<sup>27</sup> Ibid.

<sup>28</sup> A ministerial draft is available on

[https://www.justiz.gv.at/file/2c94848a6af8ac42016bc2a16bf104ca.de.0/entwurf\\_text\\_.pdf](https://www.justiz.gv.at/file/2c94848a6af8ac42016bc2a16bf104ca.de.0/entwurf_text_.pdf) (accessed 11 February 2020).

<sup>29</sup> See on the current status of the legislative procedure:

[https://www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME\\_00162/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME_00162/index.shtml) (accessed 11 February 2020).

<sup>30</sup> Ministerial Draft, § 59 (5) StPO, available on

[https://www.justiz.gv.at/file/2c94848a6af8ac42016bc2a16bf104ca.de.0/entwurf\\_text\\_.pdf](https://www.justiz.gv.at/file/2c94848a6af8ac42016bc2a16bf104ca.de.0/entwurf_text_.pdf) (accessed 11 February 2020).

<sup>31</sup> Ibid.

<sup>32</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 2 f., available on:

[https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME\\_05151/imfname\\_764632.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_05151/imfname_764632.pdf) (accessed on 12 February 2020).

<sup>33</sup> See [20].

<sup>34</sup> See [21].

<sup>35</sup> Ministerial Draft, § 32a JGG.

<sup>36</sup> Ministerial Draft, § 32 (3a) JGG.

is currently still limited to the charge of serious crimes.<sup>37</sup> Additional to the exhaustive list entailed in the transposition act,<sup>38</sup> legal defence during the court proceedings should also be mandatory if a prison sentence of more than one year could be imposed.<sup>39</sup> The presence of a legal representative or another person of trust will be obligatory through all stages of the criminal proceedings.<sup>40</sup> Under the implementation act, pre-trial interrogations of juveniles should be recorded.<sup>41</sup> However, the audiovisual recording may be omitted if severe technical problems arise which poses a high risk of circumvention.<sup>42</sup> Although, according to the envisaged legislative change, juvenile criminal cases must be handled with particular speed,<sup>43</sup> practical challenges may arise due to the lack of legal consequences of a violation<sup>44</sup> and the necessity for sufficient personal resources.<sup>45</sup>

While the Directives on procedural safeguards for children and legal aid have not yet been transposed in Austria, the other Directives found their ways into the national law. Numerous guarantees were already part of the Austrian Code of Criminal Procedure and did not need additional transposition. Overall, the challenges can be rather found in the implementation of the safeguards than in the legal framework. For example, the effective exercise of procedural safeguards is hindered by the fact that despite information is provided formally, it is not ensured that the suspects or accused persons also understand their rights, which again can be seen as a prerequisite of all the other safeguards. Further, while at the investigative stage a lawyer is rarely present, in later phases of the proceeding, it is often the quality of legal aid lawyers that is deficient. The appointed lawyers are not necessarily experts in criminal law, there are uncertainties about the costs at the investigation phase and in some instances the remuneration for legal aid is inadequate. Moreover, in lack of audio-visual recordings a violation of procedural safeguards is challenging to prove, the available remedies for violations of procedural safeguards in the investigative phase are limited and most frequently they do not render the evidence (e.g. police report) inadmissible. In lack of audio-visual recordings of police interviews, it is also difficult to prove interference with the procedural safeguards.

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<sup>37</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 4.

<sup>38</sup> Ministerial Draft, § 39 JGG,.

<sup>39</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 6.

<sup>40</sup> Ministerial Draft, § 37 JGG.

<sup>41</sup> Ministerial Draft, § 36a (2) JGG.

<sup>42</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 5.

<sup>43</sup> Ministerial Draft, § 31a JGG.

<sup>44</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 4.

<sup>45</sup> Stellungnahme der Vereinigung der Österreichischen Richterinnen und Richter, 2019, available on: [https://richtervereinigung.at/wp-content/uploads/delightful-downloads/2019/09/2019\\_Strafprozess-und-Jugendstrafrechts%3a4nderungsgesetz-2019.pdf](https://richtervereinigung.at/wp-content/uploads/delightful-downloads/2019/09/2019_Strafprozess-und-Jugendstrafrechts%3a4nderungsgesetz-2019.pdf) (accessed 12 February 2020).

## Spain

[Directive 2013/48](#) on the right of access to a lawyer was incorporated into Spanish law through several laws that amended two major laws, the Criminal Procedure Code and the Organic Law on Judicial Power. The transposition of Directive 2013/48 was carried out through the promulgation of the Organic Law 13/2015. Most of the procedural rights guaranteed by the Directive were already established in the article 520 of the Criminal Procedure. On the one hand, with regards to the right of access to a lawyer in criminal proceedings this article was amended to reinforce the right to have the assistance of a Lawyer. For example, it reinforced the article 520.7 the Criminal Procedure: *“Communication between the accused and their lawyer will be confidential in nature under the same terms and with the same exceptions provided for in paragraph 4 of article 118.”* On the other hand, article 520 Criminal Procedure was amended to guarantee the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. For example, its point two g) states that all arrested or imprisoned persons will have the following right: *“The right to be visited by their country’s consular authority and to communicate and correspond with them”*.

The provisions of [Directives 2016/343](#) on the presumption of innocence and [2016/1919](#) on legal aid, were already included in the previous amendment to the Criminal Procedure Code through the Organic Law 5/2015 and Organic Law 13/15. For this reason, the transposition of these Directives did not require the adoption of new laws to transpose it. However, as regards [Directive 2016/1919](#) on legal aid, Law 3/2018, amending Act 23/2011 on the mutual recognition of judicial decisions in criminal matters in the European Union, transposed certain additional guarantees. The Law established more guarantees regarding the provision of information in the European Arrest Warrant procedures and generalised the right to legal aid, in particular with regards to minor crimes.

Finally, regarding [Directive 2016/800](#) on procedural safeguards for children who are suspects or accused persons in criminal proceedings, the safeguards enshrined therein were included in the Organic Law 5/2000 regulating the Criminal Responsibility of Minors and the Royal Decree 1774/2004, which approves the Regulation implementing the Organic Law 5/2000. Organic Law 5/2000 regulating the Criminal Responsibility of Minors also establishes procedural rights of the minor offender and their direct relatives who were victims in cases of child-to-parent violence referred to in the Directive 2016/800. Therefore, in terms of the transposition the Directive 2016/800, it should be noted that, in many cases, the Spanish legislation on this matter (procedural safeguards for children who are suspects or accused persons in criminal proceedings) already complies with its requirements, and no new legislation needs to be enacted to transpose it.

Issues relating to the practical application of the Directives derive mainly not from a lack of transposition to the Spanish legislation or due to a defect in the transposition of the

directive, but rather due to the lack of allocation of financial means for the application in practice of the guarantees contained in the Directives.

## FINDINGS RELEVANT TO THE CONTEXT OF THE TRAINING (TRAINING AT THE EUROPEAN LEVEL)

### Training providers, recommended methodologies and indicative training material

**European Judicial Training Network (EJTN)**<sup>46</sup>. EJTN is the principal platform and promoter for the training and exchange of knowledge of the European judiciary. EJTN represents the interests of over 120,000 European judges, prosecutors and judicial trainers across Europe. Formed in 2000, EJTN's fields of interest include EU, civil, criminal and commercial law and linguistics and societal issues training. The vision of EJTN is to help to foster a common legal and judicial European culture.

EJTN's mandate is to help build a genuine European area of justice and to promote knowledge of legal systems, thereby enhancing the understanding, confidence and cooperation between judges and prosecutors within EU states. Charged with this mandate, EJTN promotes training programmes with a genuine European dimension for members of the judiciary in Europe. This involves analysing and identifying training needs, designing programmes and methods for collaborative training, developing exchanges, and disseminating experiences in the field of judicial training, coordinating programmes and providing training expertise and know-how. EJTN develops training standards and curricula, coordinates judicial training exchanges and programmes, disseminates training expertise and promotes cooperation between EU judicial training institutions.

EJTN coordinates a number of projects and programmes aimed at benefiting Europe's judges, prosecutors and judicial trainers at all stages of their careers, from initial training requirements to continuous training needs. Among them, the Exchange Programme<sup>47</sup>, offering short-term exchanges as well as study visits and long-term exchanges to EU institutions and the AIAKOS Programme<sup>48</sup>, aiming at bringing together future or newly appointed judges from different EU Member States. Furthermore, the EJTN coordinates the Judicial Training Methods Working Group<sup>49</sup>, aimed at providing ad hoc-training actions in civil, criminal, linguistic and administrative justice cooperation at EU level, creating the proper environment for identification, research and dissemination of training tools, and proposing the most efficient and concrete training methodologies, applicable in all contexts. An exchange programme for judicial trainers is also in place.

The EJTN organizes training seminars and workshops providing initial and continuous training, as well as training of judicial trainers. It has developed the Handbook on Judicial

<sup>46</sup> <http://www.ejtn.eu/en/>.

<sup>47</sup> <http://www.ejtn.eu/Exchange-Programme/>.

<sup>48</sup> <http://www.ejtn.eu/Exchange-Programme/Activities/AIAKOS-Programme/AIAKOS-PROGRAMME-IN-THE-DIFFERENT-MEMBER-STATES/>.

<sup>49</sup> <http://www.ejtn.eu/About-us/Projects--Programmes/Judicial-Training-Methods/>.

Training Methodology in Europe aimed at advising trainers on how to design and deliver functioning training sessions with a large variety of training methods, as well as Guidelines for the training of trainers issued by the Sub-Working Group “Training the Trainers”. Finally, EJTN conducted a thorough study to locate and document good judicial training practices from across Europe. 65 good training practices were collected from 23 judicial training organisations across Europe such as national judicial training institutions, the Academy of European Law (ERA), the European Institute of Public Administration (EIPA) and EJTN<sup>50</sup>. The good practices focus in five key areas: (a) training needs assessment; (b) innovative curricula or training plans; (c) innovative training methodology; (d) training tools to favour the correct application of EU law and international judicial co-operation; (e) Assessment of participants’ performance in training / effect of the training activities<sup>51</sup>.

Related seminars Recently implemented EJTN seminars, relevant to the present project’s topic include (training modules and materials may be found in the links provided):

- Procedural safeguards in criminal proceedings in the EU in practice CR/2018/04<sup>52</sup>.
- Procedural safeguards in criminal proceedings in the EU in practice-CR/2019/04<sup>53</sup>.
- Procedural safeguards in criminal proceedings in the EU in practice-CR/2020/03<sup>54</sup>.

[European Institute for Public Administration \(EIPA\)](#)<sup>55</sup>. EIPA was created in 1981 on the occasion of the first European Council held in Maastricht. It is supported by the EU Member States and the European Commission and serves officials in national and regional public administrations in Member States, in the European Commission itself, and in other EU institutions.

EIPA has been leading learning and development programmes in EU public affairs for over 35 years. Their core mission is to provide a mix of deep insights and practical knowledge about EU policies to all professionals related to EU public affairs, with the key objective of further improving their skills and capabilities for efficient management of the policies.

EIPA offers a variety of courses on EU law, targeting a diverse group of professionals, including justice professionals. They offer both online and in-person training, and often use simultaneous interpretation – albeit in a limited number of languages (usually English-French). They employ a practical approach helping trainees to apply the acquired knowledge

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<sup>50</sup> All the above are available at <http://www.ejtn.eu/Methodologies--Resources/Training-Methods/>.

<sup>51</sup> The good practices collected are available at <http://www.ejtn.eu/Resources/Good-judicial-training-practices/>.

<sup>52</sup> <http://www.ejtn.eu/Catalogue/EJTN-funded-activities-2018/Procedural-safeguards-in-criminal-proceedings-in-the-EU-in-practice-CR201804-/>.

<sup>53</sup> <http://www.ejtn.eu/Catalogue/EJTN-funded-activities-2019/Procedural-safeguards-in-criminal-proceedings-in-the-EU-in-practice-CR201904-/>.

<sup>54</sup> <http://www.ejtn.eu/Catalogue/EJTN-funded-activities-20191/Procedural-safeguards-in-criminal-proceedings-in-the-EU-in-practice-CR202003-/>.

<sup>55</sup> <https://www.eipa.eu/>



in their daily work. They use training methods such as group work, interactive workshops, case studies, and simulation games. Special emphasis is placed on practical exercises, discussions, and exchange among the participants and experts and the opportunity is offered to exchange perspectives and engage with participants from different Member States.

EIPA's seminars are offered at a fee in the area of € 1.000 per participant, depending on the training topic. Prices are discounted for EIPA members.

**Academy of European Law (ERA)**<sup>56</sup>. The Academy of European Law began work in Trier in March 1992. Its genesis was associated with the rapid pace of European integration during the late 1980s and 1990s. With the Single European Act in 1986 and the Maastricht Treaty in 1992, the scope of European legislation became wider than ever before. It was clear that lawyers, judges and other legal practitioners at all levels and in almost all fields of law would need regular training and a forum for debate in order to keep up-to-date with the latest developments. In 1990 the European Parliament recommended that the Commission invest in a centre for the continuing education of lawyers in order to improve the application of European law.

In accordance with its statute, ERA is a non-profit foundation with the objectives to enable individuals and authorities involved in the application and implementation of European law in Member States and in other European States interested in close co-operation with the European Union to gain a wider knowledge of European law, in particular European Union law and its application and to make possible a mutual and comprehensive exchange of experiences. This objective is pursued by organising courses, conferences, seminars and specialist symposia, particularly for the purposes of continuing vocational training, by issuing publications and by providing a forum for discussions.

The ERA provides training to a large number of professionals, including judges, prosecutors, and other justice professionals, through physical and e-learning courses on all topics of EU law, including Criminal Procedural Law. The courses are available at a fee, and are usually administered in English.

The ERA has built up a specialised library that includes publications on all areas of EU law from both the European and national perspectives. It also offers a e-library of legal documents by training theme, available on its website.

Recently implemented ERA seminars, relevant to the present project's topic include (training modules and materials may be found in the links provided):

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<sup>56</sup> [https://www.era.int/cgi-bin/cms?\\_SID=NEW&\\_sprache=en&\\_bereich=ansicht&\\_aktion=detail&schluessel=era](https://www.era.int/cgi-bin/cms?_SID=NEW&_sprache=en&_bereich=ansicht&_aktion=detail&schluessel=era)



- Procedural Rights in the EU: Status Quo and the Need for Further Measures<sup>57</sup> (Lisbon, 27 February 2020 – 28 February 2020). This conference aimed at presenting an update on the state of play regarding the six EU Directives on procedural rights and discussing the need for further measures at EU level. The conference offered lectures, round-tables and discussions for judges, prosecutors, defence lawyers, court interpreters, as well as prison and probation staff from all over the EU. Training materials included: Directives, Lectures, working groups (case studies);
- Procedural Rights in Light of the European Arrest Warrant and Detention<sup>58</sup>. Update on the state of play regarding the EU Directives on procedural rights, i.e. the right to information, legal aid and access to a lawyer, presumption of innocence, and the position of children in criminal proceedings. Training materials included: Directives, Lectures, working groups (case studies);
- Summer Course on European Criminal Justice<sup>59</sup>. The rights to interpretation and translation, information, access to a lawyer, legal aid and procedural safeguards for children suspected or accused in criminal proceedings. Training materials included: Directives, Lectures, working groups (case studies).

**Council of Europe - Human Rights Education for Legal Professionals (HELP)**<sup>60</sup>. HELP develops and implements online courses on human rights for legal and other (justice) professionals. Its main objective is to enhance the capacity of judges, lawyers and prosecutors, in all 47 Council of Europe member states and beyond, to apply the European human rights standards in their daily work. This is done through the HELP online courses that cover a range of human rights topics. The online courses can be tailored to the different needs of countries, institutions and professionals. Both the initial and continuous training of judges, prosecutors and lawyers, as well as the university education for students, related to the European Convention on Human Rights are part of HELP's mandate. Since 2015, other professionals are increasingly interested in accessing HELP courses such as court staff, prison or probation officers or health practitioners.

HELP's three components are:

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<sup>57</sup> [https://www.era.int/cgi-bin/cms?\\_SID=NEW&\\_sprache=en&\\_bereich=artikel&\\_aktion=detail&idartikel=129291](https://www.era.int/cgi-bin/cms?_SID=NEW&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=129291).

<sup>58</sup> [https://www.era.int/cgi-bin/cms?\\_SID=cb77953d11115608b0f18cd4a91c552001f05df400665482355371&\\_sprache=en&\\_bereich=artikel&\\_aktion=detail&idartikel=129400](https://www.era.int/cgi-bin/cms?_SID=cb77953d11115608b0f18cd4a91c552001f05df400665482355371&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=129400).

<sup>59</sup> [https://www.era.int/cgi-bin/cms?\\_SID=NEW&\\_sprache=en&\\_bereich=artikel&\\_aktion=detail&idartikel=129334](https://www.era.int/cgi-bin/cms?_SID=NEW&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=129334).

<sup>60</sup> <https://www.coe.int/en/web/help/home>.

1. The **HELP Network** is the only European Network of national training institutions for judges, prosecutors and lawyers in the 47 CoE member States (and beyond).

2. The **HELP Human rights online courses** for self-study in the [HELP e-learning platform](#). HELP courses (initially developed in English) have the potential to be translated into national languages, adapted to the national legal orders, and tested with selected categories of legal professionals.

3. A human rights training methodology to develop HELP courses that can be later taken in two distinct formats:

- self-study (free access in the HELP platform) or
- tutored in groups organised in co-operation with national training institutions or universities.

HELP also conducts training-of-trainers (ToT) sessions, equipping future HELP tutors with technical skills to implement a HELP tutored course on the HELP online platform in line with the HELP Training Methodology. Candidates for the HELP ToTs are selected jointly with the HELP Network members, namely by the national training institutions for judges and prosecutors and Bar associations, on the basis of their background and professional experience. Successful participants in the ToTs are certified by the Council of Europe HELP Programme and are inserted in a list of certified HELP tutors, available on the HELP website<sup>61</sup>.

Recently implemented HELP seminars, relevant to the present project's topic include (training modules and materials may be found in the links provided:

- Course on Procedural Safeguards in Criminal Proceedings and Victims' Rights<sup>62</sup>. The course was developed by the Council of Europe HELP Programme thanks to EU support, being financed by the EU-Council of Europe "[HELP in the EU](#)" Project. The HELP online course is based on the HELP methodology and combines both the fundamental procedural rights of accused and suspected persons in criminal proceedings (focusing on EU Directive topics, notably the presumption of innocence) and the rights of victims of crime (emphasis on access to justice).
- Children rights and Child-friendly justice<sup>63</sup>.

<sup>61</sup> <https://www.coe.int/en/web/help/help-tutors>.

<sup>62</sup> [https://www.coe.int/en/web/help/help-in-the-eu/-/asset\\_publisher/AeCZv4dyHoY2/content/new-course-on-procedural-safeguards-in-criminal-proceedings-and-victims-rights-is-now-available-on-the-help-e-learning-platform?inheritRedirect=false](https://www.coe.int/en/web/help/help-in-the-eu/-/asset_publisher/AeCZv4dyHoY2/content/new-course-on-procedural-safeguards-in-criminal-proceedings-and-victims-rights-is-now-available-on-the-help-e-learning-platform?inheritRedirect=false).

<sup>63</sup> <http://help.elearning.ext.coe.int/course/index.php?categoryid=48>.

## EU-funded projects on judicial training

### Active Charter Training Through Interaction of National Experiences (ACTIONES)

ACTIONES was an EU funded project under the coordination of the EUI Centre for Judicial Cooperation, and involving 17 partners: 7 academic institutions, a European-wide association of judges, and 9 national institutions entrusted with the task to train judges and lawyers. The Project ran from 1 November 2015 until 31 October 2017.

ACTIONES was based on the premise that a high and coherent standard of fundamental rights protection within the EU requires way more than simple knowledge on the EU Charter of Fundamental Rights. It provided a set of transnational and local training events, which were based on an easy-to-use toolkit through which legal practitioners should become familiar with the techniques of vertical and horizontal interaction between European and national courts, ensuring the effective implementation of the European Charter of fundamental rights and adequate remedies to its violations.

Several handbooks were produced in the course of the project that are all accessible online. These *inter alia* included handbooks on

- the scope and application of the EU Charter of Fundamental Rights<sup>64</sup>;
- Criminal Law<sup>65</sup>;
- Right to an Effective Remedy<sup>66</sup>.

All the outputs of the Project are freely available in the ACTIONES Platform<sup>67</sup>.

### Inside Police Custody 2: Suspects' rights at the investigative stage of the criminal process

Inside Police Custody 2<sup>68</sup>, co-funded by the European Union, aimed to contribute to the successful implementation of EU legislation on the procedural rights of suspects in criminal matters, with an aim to develop recommendations for legislative and policy changes. Along with the nine country reports, a report was published comparing the legal and practical application of suspects' rights to the existent EU legal standards and frameworks of protection.

### Judging the Charter - The Charter in judicial practise with a special focus on the case of protection of refugees and asylum seekers

The project Judging the Charter<sup>69</sup>, co-funded by the European Union, had targeted judges and aimed at providing trainings and training materials on Charter rights in legal practise. A

<sup>64</sup> <https://www.eui.eu/Projects/CentreForJudicialCooperation/Documents/D1.1.a-Module-1.pdf>.

<sup>65</sup> <https://www.eui.eu/Projects/CentreForJudicialCooperation/Documents/D1.1.g-Module-7.pdf>.

<sup>66</sup> <https://www.eui.eu/Projects/CentreForJudicialCooperation/Documents/D1.1.c-Module-3.pdf>.

<sup>67</sup> <https://www.eui.eu/Projects/CentreForJudicialCooperation/Projects/ACTIONES/ACTIONESplatform>.

<sup>68</sup> <https://www.iccl.ie/wp-content/uploads/2018/12/Inside-Police-Custody.pdf>.

<sup>69</sup> <https://charter.humanrights.at>.

series of trainings for judges and other legal professionals was conducted in the course of the project in Austria, Croatia, Greece, Italy and Poland. Trainings tackled questions of applicability of the Charter, questions related to procedural rights, equality law and there was a special focus also on the protection of refugees and asylum seekers and the rights guaranteed by the Charter in this regard.

The project Website aims at serving as an entry point into information on Charter rights with relevant case law, training materials, graphs, e-learning tools and links to further materials. A special section is dedicated to procedural rights.

### CO-MINOR-IN/QUEST

In two consecutive projects coordinated by the KU Leuven research was conducted on questions of interpreter-mediated questioning of minors. In the second project apart of research findings also joint training module on interpreter-mediated child interviewing in a plenary session was developed. The following deliverables and outputs are available:

- A Manual on interpreter-mediated child interviews is available in five languages (EN, NL, HU, FR, IT)<sup>70</sup>;
- Project findings also fed into a training video for professionals<sup>71</sup>;
- Animation movies (for children) for children aged three to six<sup>72</sup> and children aged six to 18<sup>73</sup> about the role of the interpreter.

### Effective legal assistance in pre-trial detention decision-making (EF-PTD)

The project was coordinated by Fair Trials and covered five European countries: Bulgaria, Greece (CECL), Hungary, Italy, and Romania and focused on the implementation of the Access to a lawyer Directive in pre-trial proceedings.

The project had the following three key objectives:

- Increase the understanding of the barriers to effective legal assistance in pre-trial detention procedures in the five Partner countries;
- Facilitate national and EU-wide dialogues between criminal justice actors to increase awareness of the constructive role that lawyers can play and develop strategies for removing the barriers that lawyers face in pre-trial detention proceedings; and

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<sup>70</sup> [https://www.arts.kuleuven.be/english/rg\\_interpreting\\_studies/research-projects/co-minor-in-quest-ij/manual-interpreter-mediated-child-interviews](https://www.arts.kuleuven.be/english/rg_interpreting_studies/research-projects/co-minor-in-quest-ij/manual-interpreter-mediated-child-interviews)

<sup>71</sup> <https://videolab.avnet.kuleuven.be/video/?id=08f1246ce5f9efca72a977d8b4ae792b&height=390&width=640&autoplay=false>.

<sup>72</sup> <https://videolab.avnet.kuleuven.be/video/?id=5af49e61d19c500705d82bdef891056e&height=390&width=640&autoplay=false>.

<sup>73</sup> <https://videolab.avnet.kuleuven.be/video/?id=033e00870b742c03fa15aad54cb07907&height=390&width=640&autoplay=false>.

- Improve the capacity and willingness of lawyers to provide effective legal assistance in the context of decisions on pre-trial detention.

The project engaged a variety of stakeholders, instituting National Dialogue Working Groups, consisting of representatives of the judiciary, lawyers and policy-makers, and organising national roundtable discussions with the aim to produce a National Action Plan on improving access to a lawyer at the pre-trial stage of the criminal proceedings.

The project's deliverables include country reports on the implementation of the Access to a lawyer Directive, as well as a Regional<sup>74</sup> and five country-specific handbooks<sup>75</sup> serving as tools for the practical application of the Directive.

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<sup>74</sup> [https://fairtrials.org/sites/default/files/publication\\_pdf/Fair-Trials-EFPTD-regional-handbook.pdf](https://fairtrials.org/sites/default/files/publication_pdf/Fair-Trials-EFPTD-regional-handbook.pdf).

<sup>75</sup> <https://www.apador.org/wp-content/uploads/2019/07/manual.pdf> (Romanian); <https://www.cecl.gr/kategoria-programmata/symvouleftiki-ypostiriksi/2017/07/19/effective-legal-assistance-in-pre-trial-detention-decision-making/> (Greek); <https://www.bghelsinki.org/media/uploads/special/2019-effective-legal-aid-preliminary-detention.pdf> (Bulgarian); <http://www.antigone.it/upload2/uploads/docs/EFPTDcountryspecifichandbookIT.pdf> (Italian); <https://www.helsinki.hu/hatekony-jogi-segitsegnyujtas-a-kenyszerintezkedesekkel-kapcsolatos-eljarasokban/> (Hungarian).

## TRAINING AT THE NATIONAL LEVEL

### Greece

The principle training provider for judges and prosecutors in Greece is the National School of the Judiciary (NSJ). Founded in 1994, the NSJ is an independent public body, and the only mandated training provider for the initial training of judges and prosecutors in Greece, certifying their capacity to perform their duties<sup>76</sup>. The School is also mandated to provide life-long continuous training to judges and prosecutors, and may collaborate for that purpose with educational institutions and other educational or vocational training bodies in the public or private sector in Greece or abroad. Moreover, the NSJ is a member of the European Judicial Training Network (EJTN) and participates in exchange programmes for judges and prosecutors. Furthermore, it undertakes initiatives for cooperation both with European institutions offering training on issues relating to justice (e.g. OSCE ), and with educational institutions of European countries which have judicial education as their subject (e.g. Ecole National d 'Administration), and organizes educational trips to European courts (ECJ, ECHR) to inform students about the operation and the work of these institutions.

The School's curriculum is divided in three main modules: (a) training for judges of the civil and criminal branch of justice; (b) training for judges of the administrative branch of justice; (c) training for prosecutors. Each module comprises a theoretical part (11 months) and a court placement (5 months). The theoretical part is, in turn, divided into two further parts. Part A focuses in theory, judicial ethics and other subjects relevant to the exercise of judges' and prosecutors' duties. Part B' focuses on the practical application of knowledge and includes case studies, critical analysis of case law, drafting of decisions and other relevant documents, court visits, seminars etc. The theoretical part is followed by graduation exams which include testing the prospective graduates' knowledge on EU law and the European Convention on Human Rights.

NSJ has developed a uniform methodology for the delivery of its education programme, following the basic norms of andragogy. The methodology is based on experiential learning: pre-existing concrete experiences are observed and reflected upon, leading to the ability to form abstract concepts which are then tested in new situations. Learning is participatory and combines theory with practical exercises.

As regards the training subjects addressed in the "civil and criminal justice" and in the "prosecutors" modules, these include both European Law, including criminal procedural law, the Charter of Fundamental Rights, and EU case law, as well as criminal procedural rights, including those established in the Directives on access to a lawyer, and the presumption of

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<sup>76</sup> By Law 2236/1994, now replaced by Law 3689/2008 (O.G.G. issue A' 164/5.8.2008).

innocence, as incorporated into Greek law<sup>77</sup>. While, as already mentioned, the Directives on legal aid and on procedural safeguards for children who are suspects or accused persons in criminal proceedings have not been transposed into Greek law as of yet, the Greek Code of Criminal Procedure, as well as other relevant legislation, contain relevant provisions, safeguarding the rights of suspects and accused persons. All the above are part of the current curriculum applied in the initial training of criminal law judges and prosecutors in Greece.

The training curriculum is delivered exclusively in Greek, although foreign speakers may be invited to speak to training seminars organized for the benefit of the students.

As regards training at the EU level, this is organized in the context of the School's International Relations initiatives. Students participate in exchanges through the EJTN AIAKOS programme as well as to the THEMIS competition. Since 2015, more than 100 NSJ students have participated in the AIAKOS exchanges.

As regards continuous training, the NSJ is, once again, the primary training provider in Greece, either on its own or in collaboration with other public or private actors. Regarding the topics addressed in the present project, no trainings dedicated specifically to the Directives on access to a lawyer, the presumption of innocence, legal aid and procedural safeguards for children who are suspects or accused persons in criminal proceedings, have been organized by the School. Nevertheless, the NSJ has organized a number of trainings<sup>78</sup> on criminal procedure, including procedural rights of suspects and accused, which touch on various of the topics addressed in this project. A training was organized in October 2019 on the newly enacted Code of Criminal Procedure<sup>79</sup>, which included a separate session on procedural rights.

Continuous training is also usually delivered in Greek, with the exception of cross-border seminars organized for both Greek and foreign participants in the context of international cooperation between judicial school and participation in judicial networks.

It should be noted that, in light of the introduction of the new Code of Criminal Procedure in July 2019, both public and private actors have organized several seminars addressing, among others, criminal procedural rights (Bar Associations, the Hellenic Criminal Bar Association and other private legal training providers). These seminars are open to all justice professionals and have been advertised on websites and blogs for judges and prosecutors but it is difficult to estimate the number of judges and prosecutors who actually attended them.

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<sup>77</sup> See above under legal framework regarding the transposition of the Directives addressed in the present project into Greek law.

<sup>78</sup> <http://www.esdi.gr/nex/index.php/el/2015-07-21-12-01-18>.

<sup>79</sup> <http://www.esdi.gr/nex/index.php/el/2015-07-21-12-01-18>.



Finally, the Hellenic Criminal Bar Association organized a conference on the criminal procedure of the EU in March 2019<sup>80</sup>, attended by judges and prosecutors, among other criminal justice professionals. The conference included speeches focused on the right to access to a lawyer, as well as on the presumption of innocence and the right to be present at the trial.

Regarding the training of acting judges and prosecutors at the European level, this is provided mainly by the EJTN and the other training abovementioned training providers. A total of eight (8) Greek judges and prosecutors have participated in the recurring seminars on Procedural safeguards in criminal proceedings in the EU in practice, organized in 2017 and 2019, which included training on the Directives on access to a lawyer, presumption of innocence, children's rights and legal aid.

To complement the findings of the desk research and provide in-depth insights on the training needs of judges and prosecutors in Greece, a focus group was organized by the NSJ in Thessaloniki, on Friday, 13 March 2020 with the participation of eight (8) senior judges and prosecutors who were also members of the School's faculty. Due to their capacity, they were able to give feedback on the training needs of all three target groups: acting judges and prosecutors, trainee judges and prosecutors, and judicial trainers. Furthermore, all focus group participants have also participated as both trainers and trainees in numerous trainings both in Greece and abroad and were able to give a well-rounded perspective on training methodologies and gaps in trainings at the national level.

The focus group was based on the focus group guide annexed in the present report, and described above in the section on methodology.

The participants agreed that the training provided in Greece on criminal procedural rights covers the topic adequately, although not explicitly addressing the EU Directives. This is due to the fact that the Directives have either been fully transposed or, where they haven't been transposed yet, equivalent provisions already exist in Greek legislation, which are applied in the judges' and prosecutors' daily practice and are the topic of frequent training as described above.

All participants reported that they are familiar with the Directives and have been applying their standards, as incorporated into Greek law, in their daily practice for a long period of time. Nevertheless, they did show an interest for additional training on procedural rights for children suspects and accused, which is consistent with the fact that the relevant Directive has not been transposed yet. In particular they mentioned the following topics as being of interest to them, both as practitioners and as trainers: legal aid for children suspects

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<sup>80</sup> See <https://hcba.gr/η-ποινικη-δικονομια-της-ευρωπαϊκης-εν/>.



and accused and judicial approaches to the procedural treatment of children with the assistance of specialists such as psychologists, social workers etc.

Furthermore, participants mentioned that they would be particularly interested on a theoretical seminar focused on judicial cooperation, as applied to all the topics addressed in the present action, and reported an increased interest of the judicial community on this issue.

Regarding the training needs of trainee judges and prosecutors, participants also consider that they are being adequately familiarized with the theoretical framework on criminal procedural rights and the standards established in the Directives, as incorporated in the Greek legal context. Their comments were more focused on the training methods they consider as effective for initial training, indicating that there is a need for more practice-oriented training. They generally seemed to favour activities that encourage the interactive participation of trainees, including having them draft model documents and decisions and participate in moot interrogations, trials and deliberations. They also added that it would be useful to familiarize trainees with the content and format of relevant documents and submissions they may be presented with when applying the requested to apply the relevant standards.

## Austria

Training for judges and prosecutors is provided by the Higher Regional Courts, by the department for further education of the Federal Ministry of Justice and by the Association of Austrian Judges and its focus groups.

In the field of procedural rights, the focus group on criminal rights of the Association of Austrian Judges is organising a two/three-days seminars each year, where important aspects and recent developments are discussed. This seminar was attended by 51 participants in 2018 as well as in 2019. The Association additionally is organising an annual professional training seminar in the field of criminal justice, which was attended by 63 participants in 2018 and 48 in 2019. Specific three-days meetings have taken place organised by the focus group for juvenile justice with 15 participants in 2018 and 58 in 2019.

Most trainings at the national level are organised by the regional higher courts. In 2018 seminars have been conducted on criminal and criminal procedural law (44 participants) and specifically for district court judges and trainee judges (22) in the court Sprengel of Linz, as well as in the court Sprengel of Graz (51 participants). The Sprengel of Innsbruck has organised a dialogue on criminal justice on the tensions between the ECHR and criminal procedural rights (29 participants). Nine judges in 2018 and 6 in 2019 have participated in a seminar on recent case law in district courts in the Sprengel of Vienna and eight in 2018 as well as nine in a private tuition for district judges of the regional court of Korneuburg in 2019.

In 2019 the Sprengel of Graz has organised an exchange of experience for practitioners in criminal law with 15 participants and a seminar on criminal justice with 61 participants. A practise seminar on criminal and criminal procedural law judges has been organised in the Sprengel of Linz for 35 participants and specifically for district judges and trainee judges with another 35 participants. Seven judges and state attorneys attended a seminar with the organisation NEUSTART, which provides for probationary services, in Salzburg. The court Sprengel of Linz has offered nationwide seminars on sources of error in criminal procedures (48 participants), a practise seminar on the topic of extradition from Austria to other EU Member States and third countries (35 participants) and two modules on European Law for judges and state attorneys, which also included references to European criminal procedural law aspects for 20 participants.

For 2020 the court Sprengel of Innsbruck is planning to organise a three-days seminar on criminal justice with a lecture on the trial and the tension between the public, the ban on film and new media. A seminar on civil rights and empirical questions in criminal procedures, one for practitioners at district courts and trainee judges and an exchange of experiences for judges of the regional higher courts in criminal law cases are planned by the Sprengel of Linz.

Nationwide seminars have been offered by the presidium of the Austrian supreme court on security in appeal procedures (19 participants in 2018 and 20 in 2019) and recent case law in criminal cases (20 participants in 2018).

Specific trainings for prosecutors are organised by the regional senior state prosecutors' offices. In 2018/2019 these included a workshop of state attorneys (30 participants in 2018 in Klagenfurt and 37 in 2019 in Graz), a seminar on role models in trials (14 participants in 2018 and ten in 2019) and an interdisciplinary congress on the tension and cooperation between psychiatry and criminal law (10 participants) in Innsbruck, where also a nationwide forum for Austrian prosecutors takes place each year (89 participants in 2018 and 64 in 2019).

Training for trainee judges and prosecutors is provided by the Regional Higher Courts. In the field of fundamental rights, there exist a cooperation with the three Austrian human rights research institutes, the Ludwig Boltzmann Institut of Human Rights (BIM) in Vienna, the European Training- and Research Centre for Human Rights and Democracy at the University of Graz (UNI-ETC) and the Austrian Human Rights Institute at the University of Salzburg. Trainee judges and prosecutors have to participate in on-going training courses throughout their period of formation, which lasts approximately five years. Usually they have to attend weekly lectures on various topics including criminal and procedural aspects. Trainees in the Sprengel of Innsbruck for example attended three-hour lectures on remedies in criminal procedures and international cooperation in criminal matters in 2019. The Sprengel of Innsbruck additionally is organising a five days seminar on criminal law and self-

perception, which is composed of theoretical input and video analysis of participants' performance in an exercise trial situation.

Participation of Austrian judges and prosecutors in transnational and/or cross-border trainings is low. Four judges and five prosecutors have participated in trainings in the area of criminal justice provided by the European Law Academy (ERA) in 2019, in 2018 the numbers were even lower with three participants for each target group. These numbers include also two attendees to the annual conference on EU Criminal Justice, which has taken place in Lisbon in November 2019.

The same applies to seminars organised by the European Judicial Training Network (EJTN), with one participant for most seminars and a maximum of six participants at the seminar on EU Cross Border Evidence in Practise in Barcelona in March 2018. In this context however it should also be mentioned that for most seminars organised by EJTN there is a limit of two participants per country. Other seminars of relevance that were attended by Austrian participants included CEPOL-EJTN Training on Forensic Science and Evidence Policing in Tampere in October 2018 (1 participant), Procedural Safeguards in Criminal Proceedings in the EU in Practise in Vilnius in April 2018 (4 participants) and in Valetta in April 2019 (4 participants), International Legal Cooperation in Criminal Matters in Sofia in April 2018 (1 participant) and on the European Investigation Order in Practise in Madrid in October 2019 (5 participants).

Overall, 21 judges and/or prosecutors attended transnational trainings in English with a criminal law focus in 2018 and 26 in 2019.

The focus group discussion was very helpful for getting an overview on the obstacles and challenges, when it comes to the provision of trainings on the one hand and on the attendance of trainings on the other. We had invited representatives of the judiciary, who themselves are in charge of trainings for trainee judges and prosecutors and/or involved in providing further training for judges and state attorneys. In addition, the invitation was extended to representatives of the department of further education within the Federal Ministry of Justice, representatives of the focus groups on fundamental rights and on criminal law by the Association of Austrian judges and interpreters with experience at court as well as in research on translation in criminal proceedings.

Austrian judges and prosecutors are well trained during the time of their traineeship. Further professional training is provided by the Regional Higher Courts and by the Educational Department of the Federal Ministry of Justice, but is not obligatory. Many judges and prosecutors do take part in training activities at the national level, however participants rates in transnational trainings is considerably low. Language barriers do play a role in this regard.

Other issues that do challenge the participation of acting judges and prosecutors in further professional trainings are the massive workload many of them are facing, the lack of practical relevance of some trainings and the administrative efforts to apply for a business trip order and write the subsequent report for trainings provided abroad. When it comes to trainee judges and prosecutors it has to be stated that they are generally quite willing to attend trainings provided in addition to their ongoing formation courses. However, they already have a high number of leave days due to the trainings they have to take part in, with sufficient days of practise as the core part of their traineeship. This sometimes can cause hesitance on the side of their supervising judges to agree on another leave.

Another issue that has to be considered for the Austrian case is the existence of a certain reluctance to attend trainings on EU legislation based on the assumption that Austria is anyway “over-fulfilling” and that the Directives have been comprehensively transposed into national law.

In order to attract participants for trainings on recent EU legislation in the field of criminal procedural rights, training organisers most importantly should take care that the description of what can be expected by an attendance of the training is very clear, focussed and concise. Reading the invitation should not require a high attention span and it should be easy to grasp, what is new, why it is relevant to acquire more knowledge in this regard and how this will improve everyday work of practitioners. For the field of juvenile justice, the call could be linked to an envisaged obligation to participate in specific trainings for the transposition of Directive 2016/800/EU.

Also, when it comes to the design of trainings, the practical relevance should be the main focus. What is presented and how should provide for a real added value and substantial time saving for the everyday work of target group members. When elaborating training materials and the methodology of the training, guidance should be to demonstrate the actual relevance of the directives’ requirements in practise and in concrete for each and any instance within the court system.

Trainers should be chosen based on their quality and competence not only in terms of knowledge about the content of the directives and the relevant case law but also in terms of procedural practise and target group needs as well as methodological competence. Interdisciplinarity could be another asset, especially with regard to juveniles in criminal proceedings.

Judges and prosecutors appreciate, if they can work on concrete cases, based on the case law of the CJEU, the ECtHR as well as of national courts. Also, imaginary cases with cross-border implications could be interesting tools. In a transnational training setting national “grouping” and a separation of judges and prosecutors should be avoided.

Aside of case law and the transfer of knowledge of the formal requirements there might also be a need for raising awareness about the importance of the criminal procedural rights enshrined in EU law and their practical relevance in the daily procedural routine. Trainings therefore should also include exercises or interventions that show the consequences of any deficiencies in this regard, like limitations of comprehensiveness, limited quality of defence or specific challenges in juvenile justice that might not be evident from a formal legal perspective.

Training materials should be in German and tailored to the needs of the national settings. For Austria, this can mean that they should be adequate to be used in more general trainings, for example on criminal procedures or on fundamental rights, in order to feed in European developments and the relevant *Acquis*.

In sum, Austrian judges and prosecutors are very well trained due to their long formation as trainee judges after having completed their legal studies at university. They have to pass four years as trainee judges with weekly lectures on all law areas, including criminal justice and criminal procedural rights. Trainee judges and prosecutors also have to attend specific seminars on fundamental rights and are offered a variety of other seminars in the course of their traineeship. More recent generations of judges and prosecutors also have been trained in EU legislation, either at university or in the seminars provided in their trainee time by the regional higher courts. This is not necessarily the case for more senior judges, who sometimes lack the necessary knowledge about European law.

Aspects of European law and fundamental rights are covered by trainings organized by the professional focus groups of the Association of Austrian judges. Moreover, the groups on fundamental rights also regularly send out relevant information via e-mail and discussions on legal amendments or instructions for the implementation of directives usually take place. However, this service is mostly utilized by those specifically interested and does not reach all.

## Spain

CGPJ is mandated by law to provide training to judges. Its competences include the initial and continuous training of Judges, the operation of a permanent training research centre and the authority exchange programme. It has two headquarters, one in Barcelona and the other in Madrid. Barcelona is the headquarter for the initial training, which is mandatory. This initial training is offered to the newly appointed judges who must spend a year in the Judicial School in Barcelona before officially becoming judges. Thereby they are schooled in many areas such as criminal, civil, constitutional, administrative and labour among others. All the training is administered in Barcelona.

Madrid is the headquarter for the continuous training, which is non-mandatory. This continuous training is offered to those already appointed as judges with some professional experience. The courses offered in continuous training may sometimes also be extended to other professionals of the law branch, such as prosecutors, lawyers, judicial secretaries or legal doctors. As Spain finds itself politically divided in several counties (regions with a certain degree of autonomy), continuous training offers courses both at a national level and at a county level. In Spain, those counties bear the name of “Comunidades Autónomas”, which literally translates itself into “autonomous communities”.

CGPJ has a team of highly specialized full-time trainers (judges, jurists and university professors) as well as a network of affiliated external experts, such as judges, lawyers and experts, who participate as guests in its training activities. The School ensures its alumni combine knowledge-based, functional and personal competencies of the highest calibre: through their studies, they acquire an in-depth understanding of the Law, both theoretical and practical, analytical skills helping them to process information and produce well-reasoned decisions, and, finally, interpersonal skills helping them to communicate effectively with defendants, victims, citizens, professionals, and different institutions. In addition to initial training, CGPJ also offers individual, specialised, high-quality continuous training to judges, as mandated by Spanish law. Its curriculum includes courses provided in accordance with the State Plan, decentralised programmes, and on-line training. Furthermore, the school has an international vocation programme followed by more than two thousand jurists and judges from Iberoamerica.

Below follow details on the training available on the topic of the Directives, provided both at the initial and at the continuous level.

As regards initial training, the training provided by the CGPJ in relation to the Directives is centred, basically, on the 2013/48/EU Directive regarding access to a lawyer. Its transposition is what has provoked the modification on more fundamental precepts of the Criminal Prosecution Law. The directive is addressed in the context of the training provided in relation to detention and *habeas corpus*.

In Continuous Training the offer is broader. In relation to the Directive 2013/48/EU on access to a lawyer and Directive (EU) 2016/343, on the presumption of innocence there are many activities in Continuous Training related to one or both Directives, as their topics are deeply connected. In total, during the last two years, (2019 and 2020) Continuous Training has offered over twenty-six (26) courses. Some of these courses are offered at a national level, and some others are dealt with at an autonomous level.

Most of them are one-time attendance courses and seminars with lectures, but there also exists a possibility of an exchange within the European Institutions and a long-distance learning course.



In relation to Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings during the last two years (2019 and 2020) Continuous Training has offered between fifteen and twenty (15-20) activities that address the topic directly or indirectly. Among these activities it is relevant to point out the Meeting with Juvenile Judges in which these Directives have always been analysed. On long distance learning there is a course concerning “Initial training to the juvenile area” that also focuses on those Directives.

The Spanish Judicial Council has signed a collaboration agreement with the Spanish Legal Centre for Prosecutors and they both work together with Judges and Prosecutors in order to focus on the rights of children and other accused persons.

At an autonomous level, in Madrid, Andalucía, Galicia, Castilla León, Castilla La Mancha and País Vasco during the last two years there have also been continuous training courses related to that topic.

The methodology has mainly been courses and seminars with lectures. There have been some structured meetings with Juvenile Senior Judges as well as with other Juvenile experts such as lawyers or doctors.

In general, we estimate that approximately 350 places for judges and prosecutors, senior judges and prosecutors have been offered for training related to the topic of these two Directives for the last two years.

As regards Directive (EU) 2016/1919 on legal aid, the trainings organised were very few. During 2019 there have only been two activities: The first one about the “Anteproyecto de Ley para el impulso de la mediación” which raised the topic of legal aid. The second one regarding an International Congress about Universality, Justice and Gender-based violence with one specific lecture about legal aid.

At an autonomous level, in Andalucía in 2019 there was a seminar about “El reto de la inmigración” (Migration Milestone and its problematics) for fifteen (15) Senior Judges with a lecture about the legal representation for migrant people who cross the Spanish borders via crippled skiffs called “pateras”. The main point on this lecture was the analysis of their fundamental right to access to justice.

All activities organized by both initial and continuous training at a national or autonomous level are given in Spanish, with exception for the previous referred exchange in the European Institutions that is given in English.

The focus group organised on the 19<sup>th</sup> of March 2020, offered some interesting additional feedback on the topics at hand. Almost all participants with the exception of one, said that they had participated in more than one training specifically on EU law. Some of the participants have also acted as trainers in European Law courses or seminars. In most cases

the trainings were organized in Spain. However, some of the participants noted that they have also participated in trainings on EU criminal law, which were organized abroad, including by the EJTN, albeit not on the specific topics addressed in the present project. Participants noted that they usually come into these trainings with high expectations which, however, are usually not fully met. One participant mentioned that the trainings they have followed have not been particularly helpful as regards the practical application of the knowledge they acquired.

Although most participants reported that they predominantly apply Spanish, rather than European, law and jurisprudence in the exercise of their duties, they also responded that they feel sufficiently equipped to apply EU law, in particular the Directives on the procedural rights of suspects and accused persons in criminal proceedings. The participating trainers reported that feel equipped to provide training in the EU Law.

As regards training specifically on the Directives addressed in the present action approximately half of the members said they had received training specifically on these Directives, while the other half responded they did not.

Those who responded affirmatively gave different opinions about these trainings. One senior criminal judge pointed out she regularly participated in courses offered by the international relation service of the General Council of the Judiciary and, therefore, is familiar to her. Other manager training answered he is member of an investigation group in this field and for this reason he also is very familiar from his personal professional experience.

It is important to highlight that all of these Directives have amended the Spanish Criminal Procedure Code and that there are two courses offered by the CGPJ in continuous training, relating to this field. One of them is an online course.

Regarding training material available in Spanish, the trainers generally consider it unsatisfactory mainly due to the lack of a uniform methodology, content and predetermined curricula for trainers. Another complaint was the lack of comprehensive, as well as practice-oriented material. One participant highlighted the need to enhance the role of the national judge as a European judge, and stated that they found the training material available insufficient for that purpose.

Participants also gave their input on the training methods most frequently used in trainings. Participants noted that training methods used vary depending on the training provider and the trainer in charge. Initial training at the CGPJ combines theory and practice. There are seminars, which are considered more practice-oriented and courses, which are usually geared toward theory. One participant mentioned the online course “practical criminal proceedings” as an example of good practice. One participant mentioned the practical tools available on the EU websites and at national level, such as the international



judicial cooperation handbook. The importance of cross-professional training was also mentioned.

Finally, participants proceeded to make suggestions regarding improvements to the training on EU law, including the addition of EU law to the subjects tested in the School's entry exams and incorporating training on EU law in all the legal fields addressed in initial training provided by the school. Furthermore, they suggested using online tools, such as Mooc courses and short asynchronous courses on specific topics. They stressed the importance of having a coherent ongoing training plan in the field of EU Law developed over several years to create continuity in the training of justice professionals, and involving the EJTN in the planning of trainings. Finally, they underscored the need to train trainers and design practical tools on EU law.

## SUMMARY OF FINDINGS

All three participating Member States invest in the training of their justice professionals and have well thought out systems in place, ensuring that those entrusted with the administration of justice are well equipped to perform their duties with competence and integrity. Nevertheless, the research conducted reveals certain deficiencies with particular relevance to the trainings organised in the context of this project. In this section of the Report we will focus on common issues observed in all three Member States, which we will aim to address through the project's activities.

- 1. Emphasis on domestic frameworks.** The majority of training activities organized nationally address the domestic legal framework encompassing the Directives' standards, rather than the Directives themselves. With the exception, perhaps, of the Access to a lawyer Directive, which instigated widespread reforms in the domestic legal frameworks since its enactment in 2013, national training dedicated exclusively to one or more of the Directives is scarce. This is consistent with the overall approach observed in domestic judicial practice, whereby primacy is given to domestic legislation and case law, while justice professionals admit that they seldom draw directly on EU law and its interpretation by the Court of Justice of the EU. This has been shown to reflect on the content of trainings at all levels, perhaps most prominently on continuous training.

EU law plays a larger part in initial training, where it is taught either as part of the curriculum of Judicial Schools in Greece and Spain, or as part of the seminars of the judges and prosecutors' traineeship programme in Austria. Even so, initial training in EU law is in neither case provided in a systematic manner, and is often intertwined with national provisions. In addition, as its introduction in the training plan is fairly recent, significant discrepancies in the general level of familiarity with EU law between junior and more senior judges and prosecutors may be presumed. Participants in the focus groups organised in Greece and Spain agreed that EU law should be included in the entry exams to the Judicial Schools.

- 2. Limited participation in cross-border trainings.** The participation of judges and prosecutors in all stages of their career in cross-border trainings is presented as minimal in all three participating countries. This includes trainings organised by the EJTJN, which draw disappointing numbers of participants from Greece, Austria and Spain. Despite the expressed interest of judges, prosecutors and trainers who participated in this research in enhancing cooperation with their counterparts from other Member States and participating in cross-border training activities, the language barrier, heavy workloads, and administrative obstacles, such as securing leaves of absence, have been cited as factors which dissuade justice professionals

from applying to participate in these activities and contribute to the low numbers of participants in cross-border trainings observed.

This finding, in conjunction with the limited emphasis placed on EU law when it comes to trainings organised nationally, allows us to draw the conclusion that there are significant deficiencies in the training of judges and prosecutors on the guiding principles regarding the correct and effective application of EU law, which is essential to perform judicial review of the national legal framework and effectively uphold EU standards on procedural rights for suspects and accused persons in criminal proceedings.

- 3. Lack of systematic training for judicial trainers.** The data on the training of trainers is limited, as their training is generally not centralised and depends predominantly on their own initiative. Although the persons entrusted to provide both initial and continuous training to judges and prosecutors are in all the cases examined very highly qualified professionals with extensive practical experience and theoretical expertise on the topics they teach, there is no system in place for their training as trainers at the national level. At the same time, participation in the EJTN's trainers exchange programme is, again, very limited and insufficient for the formation of a critical mass of trained trainers in the participating countries. This indicates a gap in the judicial trainers' knowledge regarding the delivery of training based on recommended judicial training methodologies and a need to provide them with the skills and tools to be able to effectively deliver their considerable knowledge to their students.
- 4. Preponderance of theory over practice.** The preponderance of theoretical lectures over practical exercise has been noted in particular as regards continuous training. Most continuous training is provided through seminars of limited duration, using lectures and presentations as their main training method and seldom encouraging interactive exercise and active participation from their audience. The perspective of a participant in the Spanish focus group, who mentioned that the trainings they participated in failed to meet their expectations and provide them with the skills to apply EU law in practice, is noteworthy in this regard.

As regards initial training, much greater emphasis is placed in practice-oriented and participatory methodologies. However, judicial trainers who participated in the research conducted in the context of this project emphasised the need to continue to employ these methods and apply them in trainings on EU law as the most effective ones for this target group and those which provide the most added value. Nevertheless, a combination of theory and practice is always optimal.

## LEARNING POINTS TO BE TAKEN INTO ACCOUNT IN THE NEXT PROJECT STEPS - RECOMMENDATIONS

Based on the above analysis and the concrete suggestions offered by participants in the focus groups organised in Greece, Austria and Spain, the following conclusions may be drawn with regards to the training needs of the target groups and the ways in which to address them.

**Training content.** The TNA clearly demonstrates that the added value of the project (and its complementarity to national and existing programmes) is to emphasise the role of the national judge and prosecutor as an EU judge and prosecutor. The training activities should empower justice officials to assume their role as the primary implementers of EU law in their Member States and provide them with the tools to apply it with confidence in practice. Judges and prosecutors should be able to effectively perform judicial review of their national legislation to assess its compatibility with EU law, in accordance with their responsibility to uphold the latter's primacy. In this regard, the principles for the interpretation of EU law, in particular of EU directives, should be rendered clear, including the notion of minimum standards. The role of the CJEU and the specific standards it applies when interpreting the Directives should be explained and analysed in-depth. Judges and prosecutors, in particular trainees, should be familiarised with the preliminary ruling procedure.

The content of the Directives and the standards and safeguards they introduce should be analysed independently of the domestic law transposing them. As the directives on legal aid and on procedural safeguards for children suspects and accused have either not been transposed fully or at all in the three participating Member States, despite the fact that the deadline for their transposition has expired, guidelines on the direct application of EU law in criminal proceedings should be provided. Problematic transposition should be highlighted and examples of corrective action which may be undertaken by judges and prosecutors should be offered. The Directives' practical relevance in the daily practice of criminal justice professionals and their impact on the criminal procedure should also be emphasised. The consequences of disregarding the directives' standards on judicial practice, including on the comprehensiveness of decision reasoning and the quality of defence, especially as regards children's rights should be underscored.

Finally, assuming an integrated, rights-based approach and examining the directives in the context of the right to a fair trial as established in the ECHR and the EU Charter of Fundamental Rights is essential to provide, especially prospective, judges and prosecutors with a sense of the concrete human dimension of procedural safeguards and the potential impact of disregarding them on the lives of suspects and accused persons. The notion of the best interests of the child should also be explored in depth, as regards the rights of children

involved in criminal proceedings. Emphasis should be placed on ECtHR case law establishing standards on the topics addressed in the Directives.

Since training on the Directives has generally been found to be lacking, no significant differentiations in the content of trainings provided at the initial and continuous level are warranted. Instead, differences will be focused on the delivery of the trainings and the training methods applied, as analysed below.

**Training methods.** The TNA clearly documents the need to emphasise practice over theory. Practice-oriented, problem-based training is a methodology recommended by all training providers as a best practice in adult training, both initial and continuous. Trainers trained in the context of this project should be familiarised with these training methods and acquire the skills to design their trainings based on them.

The case study should have a central role as a training method in both initial and continuous training. Case studies may be based either on real case law – especially on the case law of the CJEU and the ECtHR – or on imaginary cases with cross-border implications. As regards initial training, moot courts, depositions, and deliberations are considered as particularly beneficial.

The training material provided should complement the practical orientation of the trainings. Material should include tools and guidelines which can be used by participants beyond the training activities and in their daily practice. As already foreseen in the project's design, all material should be provided in the participant's national languages. An overview of existing online tools available for use could also be useful.

Finally, participants may be trained in plenary or work in smaller groups. However, national "grouping" and a separation of judges and prosecutors should be avoided in order to preserve the cross-border and cross-professional benefits of the training methodology. Interdisciplinary training on topics regarding children suspects and accused should be considered as an option for a specific module on Directive (EU) 2016/800.

**Organisational aspects.** In order to attract participation, special attention should be paid to describing the added value of the trainings in a clear, focused, and concise manner. The call to participants should be brief and describe the timeliness, relevance and practical benefits of attending the training to their everyday work. In the field of juvenile justice, this call could also be linked to the obligation to participate in specific trainings, envisaged in Directive (EU) 2016/800.

To tackle repeat participation of the same justice professionals in multiple trainings, priority should be given to those with limited to no previous attendance in cross-border trainings, as well as to those with limited English language skills. This should be ensured

through the establishment of the appropriate selection criteria which will be notified to prospective participants through the application process.

In sum, the training needs assessment conducted in the context of the ‘Breaking the Barriers’ project highlighted the need to empower national judges and prosecutors to view themselves as EU judges and prosecutors, responsible to uphold EU law in accordance with its status and primacy. To do so, a transnational perspective, promoting a common judicial culture, cross-border dialogue, and judicial cooperation, is essential and should be made available to all justice professionals of all career stages and irrespective of language or other barriers.

Moreover, to promote the uniform and effective application of EU criminal procedural law, the cross-border dimension of the training activities should be coupled with a practical focus, providing participants with the tools necessary to apply the knowledge they acquire in their daily work, directly linking it with the administration of criminal justice.

Finally, the training activities organised should pursue these goals with due regard to the primary beneficiaries of the guarantees enshrined in the Directives – suspects and accused persons – and ensuring that a rights-based approach is followed at all times.