Breaking THE BARRIERS

TRANSNATIONAL PARTICIPATORY JUDICIAL TRAINING ON PROCEDURAL RIGHTS

PROCEDURAL SAFEGUARDS FOR SUSPECTS AND ACCUSED PERSONS IN CRIMINAL PROCEEDINGS –

EU Roadmap Directives

Training package

for Judges and Prosecutors

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ABBREVIATIONS

CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EJTN	European Judicial Training Network
ERA	Academy of European Law
EU	European Union
SC	Scientific Committee
TNA	Training Needs Assessment
TtT	Train the Trainers workshop

PROJECT AND PARTNERSHIP

The present training package was produced in the framework of the project *Breaking the Barriers: transnational participatory training on procedural rights – Breaking the Barrier*. The project aims to contribute to the effective application of procedural safeguards for suspects and accused persons in criminal proceedings, as established in the EU 'Roadmap' Directives on Access to a lawyer, Legal aid, the Presumption of innocence, and Procedural safeguards for children who are suspects or accused persons in criminal proceedings, in three EU Member States - Austria, Greece and Spain.

It will do so primarily through cross-border training activities for acting and trainee judges and prosecutors with limited participation in transnational trainings due to language barriers. In doing so, it will contribute to the goals of the European Judicial Training Strategy and promote judicial cooperation in criminal matters through the exchange of knowledge and experiences among justice professionals. The project is funded by the European Union's Justice Programme (2014-2020).

Breaking the Barriers is designed on the basis of state-of-the-art judicial training methodology. The project activities include a thorough assessment of the target groups' training needs, the training of trainers, transnational training seminars for acting and trainee judges and prosecutors, and dissemination and awareness-raising activities, both at the national and at the EU-level.

The project is implemented by a consortium of established research institutions and Judicial Schools from Austria, Greece, and Spain. The Centre for European Constitutional Law - Themistokles and Dimitris Tsatsos Foundation (Greece) is the project coordinator. The partnership further comprises the Spanish Judicial School - Escuela Judicial Del Consejo General Del Poder Judicial (Spain) and the Ludwig Boltzmann Institute of Fundamental and Human Rights (Austria). The Greek National School of the Judiciary and the Austrian Federal Ministry of Justice are official supporters of the project.

For more information on the project's activities and outputs, please visit the website https://www.breakingthebarriers.eu/.

INTRODUCTORY NOTE

The present training package will be used in the project activities 4.3 "Transnational training for trainee judges and prosecutors" and 4.4 "Transnational training for acting judges and prosecutors". This chapter aims to provide an overview of its structure and the methodology followed for its creation.

Methodology

The *Breaking the Barriers* training seminars are designed on the basis of state-of-the-art judicial training methodology, ensuring that their outcomes will be current, relevant, and have the maximum positive impact on the participants' daily practice. The project complements the activities of European training providers, such as the EJTN, by facilitating participation for justice professionals who do not usually have the opportunity to participate in cross-border training activities due to language barriers. This is achieved through simultaneous interpretation and the translation of the training material into national languages, ensuring easy linguistic access.

In designing the training methodology, we relied on established good practices in judicial training, and capitalised on the expertise of senior judges and prosecutors, in collaboration with the national Judicial Schools of Greece and Spain and the Federal Ministry of Justice in Austria. We opted to follow a participatory approach, based on the principles of peer learning. A Scientific Committee (SC) of experts was established to ensure the prime scientific quality of all outputs and deliverables. The SC designed research tools, oversaw the assessment of the target groups' training needs, trained the trainers who will carry the delivery of the transnational training activities, and actively participated in the development of the training material included in the present training package.

The development of the training package at hand began with a thorough Training Needs Assessment (TNA), led by the SC. The TNA was based on an analysis of numerical and qualitative data on the themes, trends, and frequency of cross-border trainings on EU law attended by judges and prosecutors in the partner countries. Furthermore, first-hand insights were drawn from focus group discussions with judges, prosecutors, judicial trainers, and representatives of judicial training providers, to identify gaps and needs from the perspective of the target groups. The research was conducted at the national level and compiled into an aggregate TNA report (available on the project website) which offers comparative insights, identifying gaps and needs common to the three partner countries, and proposing general directions on training methods and themes.

Next, the SC delivered a hybrid, transnational Train the Trainers workshop (TtT) for twelve judges and prosecutors from the partner countries. The trainers were trained on judicial training methodology, and engaged in a collaborative process

of co-creating the training material for the transnational training seminars. Their input was key, and the material which resulted from the TtT formed the basis for the final training material at hand.

Finally, the training package was fine-tuned through pilot training workshops for trainee and acting judges and prosecutors, which were organised in Greece and Spain, and assumed the same format to be utilised in the transnational trainings, in a condensed form. Participants in the pilots gave their views on the training themes, methods, and material. In Austria, expert judges provided in-depth feedback on the training package in writing.

In sum, a participatory process was followed, engaging judges and prosecutors at every step - from the assessment of their training needs, to the development of the training modules and material.

General objectives of the training activities

In the course of the above activities, we established concrete learning objectives for the translational training activities.

TNA. One of our key findings, which applies to both trainee and acting judges and prosecutors in all three partner countries, was a limited awareness of EU standards on criminal procedural rights established in the Roadmap Directives themselves, as opposed to the national laws transposing them. Indeed, although judges and prosecutors are very well versed in their domestic legal framework, their training does not adequately address EU standards, as incorporated in EU law and interpreted by the CJEU and the ECtHR. This creates a number of issues hindering the harmonious application of EU law:

- Incomplete or wrongful transposition of the Directives at the national level essentially leads to the application of different legal frameworks in each Member State;
- Lack of focus on the common principles of interpretation and application of EU law leads to the application of national standards which are based on divergent interpretations followed in the jurisprudence of national courts;
- Preponderance of nationally organised training activities for the vast majority of judges and prosecutors leads to limited exchange of ideas and experiences, which creates further rifts in the manner in which they apply EU law, including in cross-border cases, hampering judicial cooperation.

In terms of training methodologies, nationally organised trainings, which constitute the vast majority of initial and continuous training activities attended by national judges and prosecutors, rely primarily on theoretical analysis of the topics addressed and do not offer enough opportunities for practical application

of the knowledge gained or for interaction among participants. As a result, they do not lead to learning outcomes which are readily transferable to the daily practice of participants.

The TNA concluded that the *Breaking the Barriers* transnational trainings should:

- ➢ Empower judges and prosecutors to assume their role as the primary implementers of EU law in their Member States;
- ➢ Provide judges and prosecutors with the tools to interpret and apply EU standards as enshrined directly in EU law and the case law of the CJEU and the ECtHR;
- ➢ Highlight a rights-based approach in the interpretation of the relevant legal framework on procedural rights, in accordance with the ECHR and Strasburg court case law, as well as the CFREU;
- ➢ In terms of their methodology, the trainings should be practice-oriented and problem-based, with emphasis on case studies.

Target group feedback. Both trainee and acting judges and prosecutors underscored the benefits of the EU perspective presented to them. They particularly enjoyed the opportunity to discuss European case law, and reported to have been able to gain a comprehensive overview of the legal instruments in question, viewed as parts of the EU criminal law acquis. In terms of the learning topics, trainee judges and prosecutors did not express any particular preference and found all of them equally useful and compelling. Acting judges and prosecutors, on the other hand, showed a vivid interest in topics related to child-friendly justice and the procedural safeguards for children who are suspects or accused persons in criminal proceedings. These safeguards have been introduced fairly recently in the partner countries, and come with an active requirement for the specialised training of practitioners who deal with children involved in criminal justice proceedings. This is reflected in the training material, through the introduction of a specialised, interdisciplinary module for acting judges and prosecutors, which includes experiential training on child psychology and child-friendly communication.

As regards training methods, the target groups highlighted the benefits of practice-oriented training and indicated a particular preference for the case studies, which helped them achieve a deeper level of understanding of the theoretical information conveyed. In addition, the use of real-life cases provided them with learning material on CJEU and the ECtHR case law and facilitated comparisons between national and European standards. Finally, participants enjoyed the opportunity to exchange knowledge and ideas with their peers and the trainers directing the pilots, especially through the alternation of group and

plenary discussions. They mentioned that they were excited at the prospect of exchanging ideas with their peers from different Member States in a similar way.

In line with the above findings, the present training package will contribute toward the following objectives:

- ➢ Providing training focused on EU perspectives on criminal procedural law;
- ➢ Offering a rights-based approach, emphasising the principles established in ECtHR case law on art. 6 ECHR;
- ➢ Engaging participants in participatory practical exercises which foster cross-country dialogues and the exchange of experiences and ideas;
- ➢ Providing ready-to-use practical tools and resources for the further deepening of the knowledge gained;
- ➢ Creating opportunities for the exchange of knowledge and experiences through transnational dialogues.

Structure and content

The training package contains: (a) two distinct sets of training modules for trainee judges and prosecutors and for acting judges and prosecutors; (b) a set of training material subdivided into material for trainee judges and prosecutors, material for acting judges and prosecutors, and material common to both target groups. The common features of the two trainings result from the findings supporting their common needs, as described above.

The differences highlighted through the TNA and the target groups' feedback in relation to specific needs are mainly reflected in the differences between the two sets of training modules. Thus, the training provided will be tailored to each group's level of knowledge and practical experience on criminal procedural law. The training of trainees will focus more on imparting general knowledge, coupled with practical, interactive exercises, including a moot court exercise. By contrast, the training of acting judges and prosecutors will focus on advanced themes of special interest.

The training will be structured around the following modules: (a) general overview of the EU framework – European and comparative perspectives; (b) access to a lawyer and legal aid (addressed together in light of their complementarity); (c) presumption of innocence; (d) procedural safeguards for children suspects and accused persons. The content of each module varies between the two sets, as described above and as shown in the following chapter.

The module outlines contain: the module's general description; an overview of its specific learning objectives and expected outcomes; an outline of its structure; the training methods to be used for the achievement of its goals; an

exhaustive list of the training material corresponding to it, as included in the *training material* chapter.

The training material is presented in one common set, as explained above. It is divided in sections based on the modules it corresponds to, and further subdivided into material for trainee judges and prosecutors, material for acting judges and prosecutors, and material common to both target groups. It, further, includes classroom material, to be used during the training; supporting material, which highlights certain elements of the training, providing a more in-depth analysis; and material for further study, which is relevant to the content of the training and may be consulted after the training for more information and resources on the topics addressed.

TRAINING MODULES

Training modules for Trainee Judges and Prosecutors

Module 1

Module title

General Overview of the EU framework – European and comparative perspectives

Overview/summary

Brief description of the Module (50-100 words)

This module will comprise (a) general presentations on the EU framework on procedural rights, highlighting its fundamental rights dimension (esp. the ECHR perspective and landmark ECtHR case law on its interpretation); (b) a moot court exercise; (c) national dialogues in plenary, where participants will have the opportunity to share their perspectives and experiences.

Learning objectives and expected outcomes

Learning objectives. The aim of this module is to acquaint participants with the relevant EU framework, to introduce them to the main principles for its interpretation, including those elaborated through the case law of the ECtHR, and, finally, to build on their variant national experiences to promote a deeper understanding and foster transnational dialogues.

This module will highlight the benefits of training on EU law vs domestic standards and motivate participants to embrace their role as future EU judges and prosecutors.

Expected outcomes. Upon completion of this module, participants should be able to:

- Understand the scope and main principles underpinning the Roadmap Directives addressed in the project, as a whole;
- Understand the principles of a rights-based approach to the interpretation of the procedural safeguards enshrined in the Directives;
- Recall concepts and standards applied in their domestic frameworks and compare with EU standards;
- Understand the relevance of training on EU law and its usefulness in practice.

Module outline

Component 1: General principles for the interpretation of the Directives / ECHR perspective

Component 2: Overview of procedural safeguards in criminal proceedings – the Greek example

Component 3: Moot court exercise

Component 4: Plenary discussion on national perspectives

Training methods

The training methods selected as the most suitable to achieve the learning objectives are:

- Presentations
- Interactive exercise (moot court)
- Plenary discussion

Related training material

Classroom material

- Presentation "General principles for the interpretation of the Directives / ECHR perspectives".
- Presentation "Collecting evidence during the investigation of criminal law cases, the institutional role of the Prosecutor and the procedural rights of suspects and accused persons – the Greek example".
- Outline of the Moot Court exercise
- ECHR text (art.6)
- CFREU text art. 47 & 48

Supporting material

- Summary of the Directives
- *Breaking the Barriers* Booklet on EU standards on procedural rights of suspects and accused persons in criminal proceedings
- Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings
- Directive 2012/13/EU on the right to information in criminal proceedings

Material for further study

- ECHR guide on art. 6 Criminal limb
- Explanations of the Praesidium on the Charter of Fundamental Rights of the European Union
- Relationship of the Charter to the ECHR and national human rights provisions
- Resolution of the Council on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings
- ERA – Library of the project Procedural Rights in the EU
- EJTN: Procedural safeguards in criminal proceedings in the European Union in practice – Seminar materials (2020)
- Fair Trials Europe – Legal Experts Advisory Panel: Mapping CJEU Case Law on EU Criminal Justice Measures (2020)

- Ludwig Boltzmann Institute of Human Rights: Strengthening the rights of suspects and accused in criminal proceedings – the role of National Human Rights Institutions – Guidebook (2019)

Module 2

Module title

Access to a lawyer and legal aid

Overview/summary

Brief description of the Module (50-100 words)

This module will comprise (a) a presentation on the main standards and provisions enshrined in the Directives on Access to a lawyer and on Legal aid; (b) a presentation on specific topics related to access to a lawyer and legal aid; (c) plenary discussion with participants; (d) a case study on Access to a lawyer; (e) a case study on Legal aid.

The presentations will form the theoretical part of the module, introducing participants to general concepts and standards, as well as specialised topics of interest (as identified through the TNA and during the TtT workshop). This part will be followed by a discussion in plenary.

Case studies based on real cases discussed in European courts will follow the theoretical part. They will be examined by participants divided in groups; a representative of each group will present their findings in plenary; a plenary discussion on each case study will follow.

Learning objectives and expected outcomes

Learning objectives. The aim of this module is to allow participants to gain a deeper understanding of these two legal instruments on access to a lawyer and legal aid, viewed separately and in relation to each other. The trainers will provide a detailed overview of the two directives, citing case law and addressing specialised topics related to current issues of practical importance. Participants will then have the opportunity to apply the knowledge gained in practical exercises, and analyse their insights in group and plenary discussions. This will lead to a deeper level of knowledge on the topics at hand.

The module is designed to promote cross-border exchanges of ideas and experiences, and foster networking and cooperation.

Expected outcomes. Upon completion of this module, participants should be able to:

- Understand the standards enshrined in the Directives on Access to a lawyer and legal aid;
- Apply the Directives in practice;
- Analyse EU standards autonomously to relevant domestic concepts;
- Have a basic understanding of specialized topics.

Module outline

Component 1: Access to a lawyer and legal aid – Presentation on main standards and provisions

Component 2: Access to a lawyer and legal aid – Presentation on specialised topics

Component 3: Plenary discussion on the Access to a lawyer and Legal aid directives

Component 4: Case study on access to a lawyer

Component 5: Case study on legal aid

Training methods

The training methods selected as the most suitable to achieve the learning objectives are:

- Presentations
- Case studies
- Group and Plenary discussion

Related training material

Classroom material

- Presentation "Access to a lawyer and legal aid – Presentation on main standards and provisions"
- Access to a lawyer and legal aid – Presentation on specialised topics
- Directive 2013/48/EU on the right of access to a lawyer
- Directive (EU) 2016/1919 on legal aid
- Case study on access to a lawyer
- Case study on legal aid

Supporting material

- Fair Trials Europe – Legal Experts Advisory Panel – Roadmap practitioner tools: Access to a lawyer
- Fair Trials Europe – Legal Experts Advisory Panel – Roadmap practitioner tools: Legal aid

Material for further study

CoE – Access to a lawyer as a means of preventing ill-treatment

Module 3

Module title

Presumption of innocence

Overview/summary

Brief description of the Module (50-100 words)

This module will comprise (a) a presentation on the main standards and provisions enshrined in the Directive on the Presumption of innocence; (b) a presentation on a specialised topic related to the Presumption of innocence; (c) a plenary discussion; (d) a case study on the Presumption of innocence.

The presentations will form the theoretical part of the module, introducing participants to general concepts and standards, as well as specialised topics of interest (as identified through the TNA and during the TtT workshop). This part will be followed by a discussion in plenary.

Case studies based on real cases discussed in European courts will follow the theoretical part. They will be examined by participants divided in groups; a representative of each group will present their findings in plenary; a plenary discussion on each case study will follow.

Learning objectives and expected outcomes

Learning objectives. The aim of this module is to allow participants to gain a deeper understanding of the Directive on the Presumption of innocence. The trainers will provide a detailed overview of the directive, citing case law and addressing specialised topics related to current issues of practical importance. Participants will then have the opportunity to apply the knowledge they would have gained in practical exercises, and analyse their insights in group and plenary discussions. This will lead to a deeper level of knowledge on the topics at hand.

The module is designed to promote cross-border exchanges of ideas and experiences, and foster networking and cooperation.

Expected outcomes. Upon completion of this module, participants should be able to:

- Understand the standards enshrined in the Directive on the Presumption of innocence;
- Apply the Directive in practice;
- Analyse EU standards autonomously to relevant domestic concepts;
- Have a basic understanding of specialized topics.

Module outline

Component 1: Presumption of innocence – Presentation on main standards and provisions

Component 2: Presumption of innocence – Lecture on specialised topics

Component 4: Plenary discussion on the theory of the Presumption of innocence

Component 5: Case study on the Presumption of innocence

Training methods

The training methods selected as the most suitable to achieve the learning objectives are:

- Presentations
- Lecture
- Case studies
- Group and Plenary discussion

Related training material

Classroom material

- Presentation "Presumption of innocence – Presentation on main standards and provisions"
- Presumption of innocence – Lecture on specialised topics
- Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence
- Case study on the Presumption of innocence

Material for further study

- Council of Europe Guide on communication with the media and the public for courts and prosecutors

Module 4

Module title

Procedural safeguards for children

Overview/summary

Brief description of the Module (50-100 words)

This module will comprise (a) a presentation on the main standards and provisions enshrined in the Directive on Procedural safeguards for children who are suspects and accused persons in criminal proceedings; (b) plenary discussion; (d) a case study on Procedural safeguards for children suspects and accused.

The presentation will form the theoretical part of the module, introducing participants to general concepts and standards, as well as specialised topics of interest (as identified through the TNA and during the TtT workshop). This part will be followed by a discussion in plenary.

Case studies based on real cases discussed in European courts will follow the theoretical part. They will be examined by participants divided into groups; a representative of each group will present their findings in plenary; a plenary discussion on each case study will follow.

Learning objectives and expected outcomes

Learning objectives. The aim of this module is to allow participants to gain a deeper understanding of the Directive on Procedural safeguards for children suspects and accused persons in criminal proceedings. The trainers will provide a detailed overview of the directive, citing case law. Participants will then have the opportunity to apply the knowledge they would have gained in practical exercises, and analyse their insights in group and plenary discussions. This will lead to a deeper level of knowledge on the topics at hand.

The module is designed to promote cross-border exchanges of ideas and experiences, and foster networking and cooperation.

Expected outcomes. Upon completion of this module, participants should be able to:

- Understand the standards enshrined in the Directive on Procedural safeguards for children suspects and accused;
- Apply the Directive in practice;
- Analyse EU standards autonomously to relevant domestic concepts.

Module outline

Component 1: Procedural safeguards for children suspects and accused – Presentation on main standards and provisions

Component 3: Plenary discussion on the theory of Procedural safeguards for children suspects and accused

Component 4: Case study on Procedural safeguards for children suspects and accused

Training methods

The training methods selected as the most suitable to achieve the learning objectives are:

- Presentations
- Case studies
- Group and Plenary discussion

Related training material

Classroom material

- Presentation "Procedural safeguards for children suspects and accused – Presentation on main standards and provisions"
- Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings
- Case study on the procedural safeguards for children

Supporting material

- Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice

Material for further study

- UN Interagency Panel on Juvenile Justice
- ERA Training materials on child-friendly justice

Training modules for Acting Judges and Prosecutors

Module 1

Module title

General Overview of the EU framework – European and comparative perspectives

Overview/summary

Brief description of the Module (50-100 words)

This module will comprise (a) a keynote speech by a representative of the European Court of Human Rights on the application of procedural safeguards in ECtHR case law; (b) a detailed presentation on the EU framework on procedural rights and its human rights dimension (incl. the ECHR perspective and main ECtHR case law principles for its interpretation); (c) a national case law panel where speakers and participants will discuss the manner in which criminal procedural rights are applied in their domestic frameworks.

Learning objectives and expected outcomes

Learning objectives. The aim of this module is twofold: (a) to present a comprehensive overview of the European framework on procedural rights, underscoring its fundamental rights dimension, in particular as established in ECtHR case law; (b) to offer participants a comparative perspective on how EU standards are applied in different EU member states.

In doing so, the module will highlight the benefits of training on EU law, and motivate participants to look beyond domestic interpretations. National dialogues will be promoted to aid the exchange of judicial practices and decision-making processes with the view to promote judicial cooperation in criminal matters.

Expected outcomes. Upon completion of this module, participants should be able to:

- Understand the scope and principles underpinning the Roadmap Directives addressed in the project, as a whole, as well as their individual standards;
- Understand the key principles behind a rights-based approach on criminal procedural rights, and the main standards on their application as applied in ECtHR case law on art. 6 ECHR (criminal limp);
- Recall concepts and principles applied in their domestic frameworks and compare with EU standards;
- Understand the relevance of training directly on EU law and its usefulness in practice.

Module outline

Component 1: Keynote speech on the ECtHR case-law on procedural rights of the accused

Component 2: General principles for the interpretation of the Directives / ECHR perspective - Presentation

Component 3: Plenary discussion

Component 4: National case law panel

Training methods

The training methods selected as the most suitable to achieve the learning objectives are:

- Presentations
- Plenary discussion

Related training material

Classroom material

- ECtHR case-law on procedural rights of the accused – Keynote Speech
- Presentation "General principles for the interpretation of the Directives / ECHR perspectives".
- National case law panel – speakers' presentations
- ECHR text (art.6)
- CFREU text art. 47 & 48.

Supporting material

- Summary of the Directives
- *Breaking the Barriers* Booklet on EU standards on procedural rights of suspects and accused persons in criminal proceedings
- Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings
- Directive 2012/13/EU on the right to information in criminal proceedings

Material for further study

- ECHR guide on art. 6 Criminal limb
- Explanations of the Praesidium on the Charter of Fundamental Rights of the European Union
- Relationship of the Charter to the ECHR and national human rights provisions
- Resolution of the Council on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings
- ERA – Library of the project Procedural Rights in the EU
- EJTN: Procedural safeguards in criminal proceedings in the European Union in practice – Seminar materials (2020)
- Fair Trials Europe – Legal Experts Advisory Panel: Mapping CJEU Case Law on EU Criminal Justice Measures (2020)

- Ludwig Boltzmann Institute of Human Rights: Strengthening the rights of suspects and accused in criminal proceedings – the role of National Human Rights Institutions – Guidebook (2019)

Module 2

Module title

Access to a lawyer and legal aid

Overview/summary

Brief description of the Module (50-100 words)

This module will comprise (a) a presentation on the main standards and provisions enshrined in the Directives on Access to a lawyer and on Legal aid; (b) a presentation on specialised topics related to the Access to a lawyer and legal aid directives; (c) a plenary discussion on the two directives; (d) a case study on Access to a lawyer; (e) a case study on Legal aid.

The presentations will form the theoretical part of the module, introducing participants to general concepts and standards, as well as specialised topics of interest (as identified through the TNA and during the TtT workshop). This part will be followed by a discussion in plenary.

Case studies based on real cases discussed in European courts will follow the theoretical part. They will be examined by participants divided in groups; a representative of each group will present their findings in plenary; a plenary discussion on each case study will follow.

Learning objectives and expected outcomes

Learning objectives. The aim of this module is to allow participants to gain a deeper understanding of these two legal instruments on access to a lawyer and legal aid, viewed separately and in relation to each other. The trainers will provide a detailed overview of the two directives, citing case law and addressing specialised topics related to current issues of practical importance. Participants will then have the opportunity to apply the knowledge gained in practical exercises, and analyse their insights in group and plenary discussions. This will lead to a deeper level of knowledge on the topics at hand.

The module is designed to promote cross-border exchanges of ideas and experiences, and foster networking and cooperation.

Expected outcomes. Upon completion of this module, participants should be able to:

- Understand the standards enshrined in the Directives on Access to a lawyer and legal aid;
- Apply the EU standards in practice;
- Analyse EU standards autonomously to relevant domestic concepts;
- Understand the specialized topics.

Module outline

Component 1: Access to a lawyer and legal aid – Presentation on main standards and provisions

Component 2: Access to a lawyer and Legal aid – Presentation on specialised topics

Component 3: Plenary discussion on the Access to a lawyer and Legal aid directives

Component 4: Case study on access to a lawyer

Component 5: Case study on legal aid

Training methods

The training methods selected as the most suitable to achieve the learning objectives are:

- Presentations
- Case studies
- Group and Plenary discussion

Related training material

Classroom material

- Presentation "Access to a lawyer and legal aid – Presentation on main standards and provisions"
- Access to a lawyer and Legal aid subtopic – Presentation on specialised topics
- Directive 2013/48/EU on the right of access to a lawyer
- Directive (EU) 2016/1919 on legal aid
- Case study on access to a lawyer
- Case study on legal aid

Supporting material

- Fair Trials Europe – Legal Experts Advisory Panel – Roadmap practitioner tools: Access to a lawyer
- Fair Trials Europe – Legal Experts Advisory Panel – Roadmap practitioner tools: Legal aid

Material for further study

- CoE – Access to a lawyer as a means of preventing ill-treatment

Module 3

Module title

Presumption of innocence

Overview/summary

Brief description of the Module (50-100 words)

This module will comprise (a) a presentation on the main standards and provisions enshrined in the Directive on the Presumption of innocence; (b) a discussion in plenary; (c) a case study on the Presumption of innocence.

The presentations will form the theoretical part of the module, introducing participants to general concepts and standards. This part will be followed by a discussion in plenary.

Case studies based on real cases discussed in European courts will follow the theoretical part. They will be examined by participants divided into groups; a representative of each group will present their findings in plenary; a plenary discussion on each case study will follow.

Learning objectives and expected outcomes

Learning objectives. The aim of this module is to allow participants to gain a deeper understanding of the Directive on the Presumption of innocence. The trainers will provide a detailed overview of the directive, citing case law. Participants will then have the opportunity to apply the knowledge gained in practical exercises, and analyse their insights in group and plenary discussions. This will lead to a deeper level of knowledge on the topics at hand.

The module is designed to promote cross-border exchanges of ideas and experiences, and foster networking and cooperation.

Expected outcomes. Upon completion of this module, participants should be able to:

- Understand the standards enshrined in the Directive on the Presumption of innocence;
- Apply the EU standards in practice;
- Analyse EU standards autonomously to relevant domestic concepts;
- Understand the specialized topic.

Module outline

Component 1: Presumption of innocence – Presentation on main standards and provisions

Component 2: Plenary discussion on the Presumption of innocence

Component 3: Case study on the Presumption of innocence

Training methods

The training methods selected as the most suitable to achieve the learning objectives are:

- Presentations
- Case studies
- Group and Plenary discussion

Related training material

Classroom material

- Presentation "Presumption of innocence – Presentation on main standards and provisions"
- Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence
- Case study on the Presumption of innocence

Material for further study

- Council of Europe Guide on communication with the media and the public for courts and prosecutors

Module title

Procedural safeguards for children

Overview/summary

Brief description of the Module (50-100 words)

This module comprises (a) a presentation on the main standards and provisions enshrined in the Directive on Procedural safeguards for children suspects and accused; (b) a presentation on a specialised topic related to Procedural safeguards for children; (c) discussion in plenary; (d) a case study on Procedural safeguards for children suspects and accused; (e) a session on child psychology and child-friendly communication.

The presentations will form the theoretical part of the module, introducing participants to general concepts and standards, as well as specialised topics of interest (as identified through the TNA and during the TtT workshop). This part will be followed by a discussion in plenary.

Case studies based on real cases discussed in European courts will follow the theoretical part. They will be examined by participants divided in groups; a representative of each group will present their findings in plenary; a plenary discussion on each case study will follow.

Finally, a specialised session on child psychology and child friendly communication, comprising an interactive presentation and an experiential, role playing exercise, will combine group and plenary work.

Learning objectives and expected outcomes

Learning objectives. The aim of this module is twofold: (a) to allow participants to gain a deeper understanding of the standards enshrined in the Directive on Procedural safeguards for children suspects and accused persons in criminal proceedings; (b) to provide specialised, interdisciplinary training to judges and prosecutors dealing with criminal proceedings involving children. We opted to award extra weight to this section of the training, in accordance with the TNA findings and the feedback received from the target groups. Through this session we aim to contribute toward the fulfilment of the requirement for specialised training for judges and prosecutors, enshrined in art. 20 of the Directive on procedural safeguards for children.

The trainers will provide a detailed overview of the directive, citing case law and addressing specialised topics related to current issues of practical importance. Participants will then have the opportunity to apply the knowledge gained in practical exercises, and analyse their insights in group and plenary discussions of a theme-specific case study. Finally, in a specialised child psychology and child-friendly communication session will be led by a child psychiatrist and a psychologist who work with children involved in criminal justice and have previous experience as trainers for professionals who come into contact with children. The session will centre around an experiential, role playing exercise which will build on the participants' prior experiences engaging with children to improve their current skills to create a deeper understanding the issues at stake.

The module is designed to promote cross-border and cross-professional exchanges of ideas and experiences, and foster networking and cooperation.

Expected outcomes. Upon completion of this module, participants should be able to:

- Understand the standards enshrined in the Directive on Procedural safeguards for children suspects and accused;
- Analyse EU standards autonomously to relevant domestic concepts;
- Apply the EU standards in practice;
- Understand specialized topics;
- Understand and reflect on the basic principles of child psychology and child friendly communication;
- Apply these principles in practice.

Module outline

Component 1: Procedural safeguards for children suspects and accused – Presentation on main standards and provisions

Component 2: Procedural safeguards for children suspects and accused – Presentation on specific topic

Component 4: Plenary discussion on the theory of Procedural safeguards for children suspects and accused

Component 5: Case study on Procedural safeguards for children suspects and accused

Component 6: Training on child psychology and child friendly communication

Training methods

The training methods selected as the most suitable to achieve the learning objectives are:

- Presentations
- Case studies
- Group and Plenary discussion
- Role playing

Related training material

Classroom material

- Presentation "Procedural safeguards for children suspects and accused – Presentation on main standards and provisions"
- Procedural safeguards for children suspects and accused – Presentation on specific topic

- Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings
- Case study on procedural safeguards for children who are suspects or accused persons in criminal proceedings;
- Outline of child psychology and child friendly communication module;
- Presentation on child psychology and child friendly communication;
- Outline of role playing exercise on child psychology and child friendly communication.

Supporting material

- Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice

Material for further study

- UN Interagency Panel on Juvenile Justice
- ERA Training materials on child-friendly justice

TRAINING MATERIAL

Module 1 – General Overview

Common Material

The EU Framework

Main Directives dealt with in the training

Directive 2013/48/EU on the right of Access to a Lawyer in Criminal and European Arrest Warrant Proceedings

Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings

Other Roadmap Directives

Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

Directive 2012/13/EU on the right to information in criminal proceedings

Brief summary of the Directives

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 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[1].

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[2].

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

[1] Source: EC Summary of Directive 2013/48/EU https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32013L0048.
[2] Source: EC Summary of Directive (EU) 2016/343 https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L0343.

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.

The legal aid directive has applied since 24 November 2016 and has had to become law in the EU countries by 5 May 2019[3].

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[4].

For an in-depth analysis of the standards enshrined in the four Directives addressed in the project, please visit the link below:

BOOKLET on EU standards on procedural rights of suspects and accused persons in criminal proceedings

[3] Source: EC Summary of Directive (EU) 2016/1919 https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L1919#keyterm_E0001.
[4] Source: EC Summary of Directive (EU) 2016/800 https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L0800.

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[5] which modified the Greek Code of Criminal Procedure (currently included in no 4620/2019[6]) and Law no 3251/2004[7]. 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. 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[8]. 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

[5] Available in Greek at https://www.kodiko.gr/nomologia/document_navigation/260208/nomos-4478-2017.
[6] Available in Greek at https://www.kodiko.gr/nomologia/document_navigation/530491/nomos-4620-2019.
[7] Available in Greek at https://www.kodiko.gr/nomologia/document_navigation/168097/nomos-3251-2004.
[8] 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/.

proceedings was transposed in the Greek legal order with Law no 4596/2019[9] 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, 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).

Directives 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, and 2016/1919 on legal aid have been transposed into the Greek legal order with law 4689/2020[10] of 27/5/2020, a year after the expiration of the transposition period forecast in the Directives.

Law 4689/2020 amended the Code of Criminal Procedure and Law 3226/2004[11] on legal aid. Regarding procedural guarantees for children, the law strengthened the role of child protective services and established a rigorous individual assessment process. Regarding legal aid, additional safeguards for suspects and accused were introduced, including, in particular, the right to legal aid in EAW procedures in both the issuing and the executing state. It should be

[9] Available in Greek at https://www.kodiko.gr/nomologia/document_navigation/499589/nomos-4596-2019.
[10] Available in Greek at https://www.e-nomothesia.gr/kat-dikasteria-dikaiosune/nomos-4689-2020-phek-103a-27-5-2020.html
[11] Available in Greek at https://www.e-nomothesia.gr/kat-dikasteria-dikaiosune/n-3226-2004.html.

noted that in the Greek legal order there is also a separate process for the ex officio appointment of a lawyer unconditionally and regardless of any financial considerations in certain stages of the criminal proceedings (especially during the trial and other hearings).

Both Directives were introduced more or less verbatim into the Greek framework, although a lot of the rights they guarantee were already part of Greek law. As their transposition is very recent, there is no data available on their application in practice and their impact on safeguarding procedural rights for suspects and accused.

Austria

Directive 2013/48/EU on access to a lawyer

(Adoption: 22 October 2013; Transposition: 27 November 2016)

The directive was transposed into national law under the Criminal Procedure Amendment Act I 2016[12] and the Criminal Procedure Amendment Act II 2016[13]. 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.[14] 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 criminal proceedings down the line.[15] The reasons for this are mainly insufficient 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.[16] During the main proceedings the accused may represent themselves, unless representation by a legal counsel is mandatory according to national criminal law.[17] Although a person unable to cover the cost of his/her legal defense can request to receive 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.[18]

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[12] 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.pdfsig; see also https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32013L0048 (both accessed on 11 February 2020).

[13] 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.pdfsig; see also https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32013L0048 (both accessed on 11 February 2020).

[14] *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 109.

[15] Ibid.

[16] Ibid.

[17] AT, CPC, art. 61 (1) Z.2.

[18] *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.

Directive 2016/1919 on legal aid

(Adoption: 26 October 2016; Transposition: 25 May 2019)

The Criminal Procedure and Juvenile Justice Amendment Act 2019 envisaged the transposition of the Directive on legal aid. A new article 59 para 2 of the Criminal Procedure Act *inter alia* provides that the costs for a defence 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. The same rule applies to suspects or accused in a particularly vulnerable state. 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).[19]

Directive 2016/343 on the presumption of innocence

(Adoption: 9 March 2016; Transposition: 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[20] 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.[21] Most of the provisions took effect on 1 June 2018. Although there were no fundamental legislative 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 rest of the proceedings.[22] 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).[23]

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19 Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 2 f., available on: https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_05151/imfname_764632.pdf (accessed on 12 February 2020).

20 Published in: BGBl. I Nr. 27/2018, available at: https://www.sbg.ac.at/ssk/stpo/2018_i_27.pdf (accessed on 11 February 2020).

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

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

23 *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.

Directive 2016/800 on procedural safeguards for children, who are suspects or accused persons in criminal proceedings

(Adoption: 11 May 2016; Transposition: 11 June 2019)

The transposition of Directive 2016/800 is also included in the Criminal Procedure and Juvenile Justice Amendment Act 2019. Due to the particular situation of children or juveniles in criminal proceedings, the new legislation contains several provisions to enhance their right to information[24] and their right on access to a lawyer.[25] The presence of a legal representative or another person of trust is now obligatory through all stages of the criminal proceedings.[26] Pre-trial interrogations of juveniles should be recorded, if no legal representative or another person of trust, respectively a lawyer is present.[27] However, the audiovisual recording may be omitted if severe technical problems arise which poses a high risk of circumvention. Although juvenile criminal cases must be handled with particular speed,[28] practical challenges may arise due to the lack of legal consequences of a violation[29] and the necessity for sufficient personal resources.[30]

The Directives – some with delay - 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 - but not only - 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.,

[24] § 32a JGG.
[25] § 39 JGG.
[26] § 37 JGG.
[27] § 36a (2) JGG.
[28] § 31a JGG.
[29] Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 4.
[30] 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%c3%a4nderungsgesetz-2019.pdf (accessed 12 February 2020).

police report) inadmissible. In lack of audio-visual recordings of police interviews, it is also difficult to prove interference with the procedural safeguards.

Spain

Directive 2013/48 on the right of access to a lawyer was incorporated into Spanish law through several legal texts which amended two major laws – the Code on Criminal Procedure and the Organic Law on Judicial Power. The transposition of Directive 2013/48 was carried out through the enactment of Organic Law 13/2015. Most of the procedural rights guaranteed by the Directive were already established in article 520 of the Code of 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 be assisted by a Lawyer. For example, article 520.7 of the Code of Criminal Procedure underscores that "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". In addition, article 520 was also 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 2(g) states that all arrested or imprisoned persons will have "The right to be visited by their country's consular authority and to communicate and correspond with them".

As regards Directive 2016/343 on the presumption of innocence and 2016/1919 on legal aid, their main standards have been largely implemented through the previous amendment to the Code of Criminal Procedure by Organic Laws 5/2015 and 13/15. For this reason, the transposition of these Directives did not require Spain to adopt any new laws in order to transpose it. Furthermore, regarding the Directive on legal aid, Law 3/2018 transposed a minor part of it. This law amended Act 23/2014, of 20 November, on mutual recognition of judicial decisions in criminal matters in the European Union and established more guarantees with regards to the provision of information in cases involving European Arrest Warrants. In addition, Law 3/2018 introduced legal aid for minor crimes, where appropriate. In reality, Directive 2016/2019 is closely related to Directive 2013/48/EU. As a consequence, most of its main provisions have been transposed trough the transposition of the Access to a lawyer Directive.

Finally, as regards Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings it is important to note that all rights that the Directive incorporates are 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. The Organic Law 5/2000 regulating the Criminal Responsibility of Minors also includes procedural safeguards for the minor defendant (as well as the parent who is the victim) 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 must be taken into account that, in many cases, the Spanish legislation on procedural safeguards for children who are suspects or accused persons in criminal proceedings already complies with the Directive Standards.

Issues relating to the practical application of the Directives mainly derive not from a lack of transposition to the Spanish legislation or due to a defect in the transposition of the directive, but rather the lack of allocation of financial means to apply in practice the guarantees contained in the Directives.

ECHR and Charter Rights

European Convention on Human Rights

Relevant text of the Convention

ARTICLE 6 Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

European Court of Human Rights Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trail – Criminal limp (2021)

This guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular guide analyses and sums up the case-law on the criminal limb of Article 6 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents. The case-law cited has been selected among the leading, major, and/or recent judgments and decisions. The Court's judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties.

Charter of Fundamental Rights of the European Union

Relevant text of the Charter

ARTICLE 47 Right to an effective remedy and to a fair trial

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

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

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

ARTICLE 48 Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanations relating to the Charter of Fundamental Rights (2007/c 303/02)

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have

the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

Explanation on Article 47 — Right to an effective remedy and to a fair trial

The first paragraph is based on Article 13 of the ECHR: 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.' However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles 251 to 281 of the Treaty on the Functioning of the European Union, and in particular in the fourth paragraph of Article 263. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows: 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.' In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, 'Les Verts' v European Parliament (judgment of 23 April 1986, [1986] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union. With regard to the third paragraph, it should be noted that in accordance with the case-law of the European Court of Human Rights, provision

should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR judgment of 9 October 1979, Airey, Series A, Volume 32, p. 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Explanation on Article 48 — Presumption of innocence and right of defence

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows: '2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.' In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

For more information on the relationship between the EU Charter of Fundamental Rights and the ECHR, see Dr Tobias Lock, Relationship of the Charter to the ECHR and national human rights provisions - ERA Training seminar (Available in English).

Presentations

ECtHR's interpretative approach with regard to the Directives on criminal procedure law as demonstrated by the Court's case law

THEOKTI NIKOLAIDOU, Judge at the Thessaloniki Court of Appeals

In accordance with Article 32 ECHR, the ECtHR has exclusive jurisdiction over all questions relating to the interpretation and application of the Convention and its Protocols, which are submitted to it under the conditions laid down in Articles 33, 34, 46 and 47. Although the European Union is not a party to the Convention, the ECtHR interprets and examines EU law's compatibility with ECHR when reviewing its implementing acts on behalf of the Member States, which were parties to the ECHR, especially in cases where a question relating to a violation of the Convention by a Member State adopting measures in compliance with EU legislative requirements arises. The fact that national rules are of Union origin

does not therefore prevent the Strasbourg Court from reviewing their compatibility with the ECHR. However, the risk of Member States' division cannot be disregarded, since they are subject, on the one hand, to obligations arising from the ECHR and, on the other hand, to obligations arising from EU legislation. In that context, the ECtHR recognises a "rebuttable presumption of compatibility of EU law with the ECHR" in so far as EU law provides "equivalent protection" of fundamental rights in light of both the substantive guarantees and their monitoring mechanisms that are established by the Convention (Bosphorus Airways v. Ireland, judgment of 30 June 2005). Equivalent protection is deemed to be "comparable" protection, while this presumption, which is rebuttable (Tarakhel v. Switzerland, judgment of 5 November 2014), means that it is subject to review in the light of changes in the protection of fundamental rights and can be rebutted if, in the circumstances of a particular case, the protection of Convention rights is considered to be manifestly deficient.

A review of the case law of the ECtHR demonstrates that the Court has chosen an approach with regard to the interpretation of legal provisions that ensures the fulfilment of the purpose of the Convention (protection of rights) and renders the exercise of the rights "practical and effective" (Soering v. the United Kingdom, judgment of 7 July 1989; Svinarenko and Slyadnev v. Russia, judgment of 17 July 2014; Magyar Helsinki Bizottsag v. Hungary, judgment of 8 November 2016). A typical example is the representation of accused persons by a lawyer in criminal cases. In this case, it has been held that the purpose of this fundamental right, which is inextricably linked to a fair trial, is not exhausted by the mere presence of a lawyer, who is limited to a passive role. It is instead fulfilled by ensuring unimpeded communication with the accused person, providing copies of the case file, etc.; this way, the accused person's defence is effective by means of developing legal arguments, presenting the facts of the case, submitting requests both at the pre-trial and the trial stage, etc. In addition, it has been held in the context of practical and effective exercise of the right to be represented by a lawyer that access to a lawyer must be ensured as early as the pre-trial stage, such as during the preliminary criminal investigation which is conducted ex-officio by the police, as this is a crucial procedural stage, during which evidence that is decisive for the outcome of the case is collected, while it has been stressed that easy access to a lawyer protects the accused person from self-incrimination (Salduz v. Turkey, judgment of 27 November 2008).

It is also indicative that the ECtHR perceives the text of the Convention as a living legal document rather than a static one. It thus opts for a dynamic interpretative approach that takes into account the living legal reality and the actual circumstances in the context of which a right is exercised, their possible change etc., instead of a narrow literal interpretation. This approach to the Convention is undoubtedly consistent with the fulfilment of its objectives; this would not be possible if the interpretation methodology of the relevant

provisions was not broad and was instead confined to a narrow literal framework (Ferrazzini v. Italy, judgment of 12 July 2001; Bayatyan v. Armenia, judgment of 7 July 2011; Tyrer v. the United Kingdom, judgment of 25 April 1978). A typical example of broad interpretation is the view that serving a complete sentence of life imprisonment without possibility of conditional release constitutes degrading treatment of the sentenced person under article 3 ECHR (Sandor Varga and Others v. Hungary, judgment of 17 June 2021; Petukhov v. Ukraine, judgment of 12 March 2019).

In general, the ECtHR follows its jurisprudence by invoking the need for legal certainty, predictability and equality before the law (Cossey v. the United Kingdom, judgment of 27 September 1990; Demir v. Turkey, judgment of 12 November 2008), but this does not exclude the possibility that the particular characteristics of a case may necessitate a different approach (Kart v. Turkey, judgment of 3 December 2009).

The ECtHR has made it explicit, and unfortunately in view of the pandemic it has become particularly relevant, that, in a contemporary legal order, the exercise of rights - with the exception of the absolute right guaranteed by Article 3 ECHR that prohibits torture, inhuman and degrading treatment - is subject to limitations under conditions, such as the pursuit of a legitimate aim, the existence of relevant and sufficient reasons and the observance of the principle of proportionality (P.N. v. Germany, judgment of 11 June 2020; Maestri v. Italy, judgment of 17 February 2004).

For example, the ECtHR has ruled that, without disregarding the importance of the relationship of trust between lawyer and client, the right to choose a lawyer in legal aid is necessarily subject to regulation, as the state controls the criteria and funding of legal aid in cases of appointment of a lawyer, while the courts must take into account the relevant requests of the party; however, these may be dismissed on relevant and sufficient grounds in the interest of justice. In particular, in Lagerblom v. Sweden (judgment of 14 January 2013) the applicant, who was a Finnish national, requested the appointment of a lawyer who was proficient in Finnish, even though he had sufficient knowledge of Swedish to enable him both to communicate with the lawyer and to participate effectively in the proceedings. In these circumstances, the ECtHR held that the dismissal of his request did not constitute a violation of his right to a fair trial as enshrined in Article 6 ECHR.

In addition, undoubtedly, there can be no question of a fair trial without respect for the presumption of innocence (Supreme Court (in plenary) judgment no. 4/2020, published on the official website of the Supreme Court). This does not certainly mean that any reference to a pending case, until it becomes final and the case is concluded, does not comply with respect for the presumption of innocence. Nevertheless, the presumption of innocence is violated when a court

decision or a statement by a public official concerning an accused person expresses the opinion that the person is guilty before they are proven guilty according to the law. In other words, in this case, it is as if the ECtHR is using a "legal compass" through the establishment of criteria based on which a fundamental distinction must be made between a statement that a person is merely suspected of committing a crime and a clear statement that the accused person committed the act attributed to them, without a final conviction, by assessing the general context in which the statement in question was made (Allen v. the United Kingdom, judgment of 12 July 2013). In this context it was held that: (a) references to the reasoning of a court judgment discontinuing the proceedings against an accused person on the grounds of time-barring that "if the proceedings had not become time-barred, the available evidence would very probably have led to the accused person's conviction" do not comply with respect for the presumption of innocence despite the careful wording in question ("very probably", Minelli v. Switzerland, judgment of 25 March 1983); (b) a public statement by a prosecutor in a pending case that the court's only choice should be conviction clearly goes beyond the mere description of a pending case (Khuzin and Others v. Russia, judgment of 23 October 2008).

Useful links for further reading (Available in English)

Resolution of the Council on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings

ERA – Library of the project Procedural Rights in the EU

EJTN: Procedural safeguards in criminal proceedings in the European Union in practice – Seminar materials (2020)

Fair Trials Europe – Legal Experts Advisory Panel: Mapping CJEU Case Law on EU Criminal Justice Measures (2020)

Ludwig Boltzmann Institute of Human Rights: Strengthening the rights of suspects and accused in criminal proceedings – the role of National Human Rights Institutions – Guidebook (2019)

Material for trainee judges and prosecutors

Presentation

Collecting evidence during the investigation of criminal law cases, the institutional role of the Prosecutor and the procedural rights of suspects and accused persons – the Greek example

STAMATIOS DASKALOPOULOS, Director of Studies for the Prosecutors Division of the Greek National School of the Judiciary, Prosecutor of the Court of Appeal, Head of the Larisa Court of Appeals Prosecutors Office

The investigation in the broadest sense of the term and the investigative acts constitute an intrinsic part of the pre-trial stage in the criminal proceedings which precedes the judicial decision on the referral of the accused to trial and of the thereinafter main court proceedings in the criminal court which will try a criminal case. In order to correctly understand the Greek criminal justice system and of the collection of criminal evidence during the investigation, it must first be clarified what are the stages of the criminal proceedings before the case reaches the trial stage, and secondly what is the institutional role of the Greek prosecutor and of the investigating judges and the other investigating officers who collect the evidence.

Regarding the first issue, we may discern three stages of the criminal investigation in terms of evidence gathering in criminal law cases. In the first stage, the investigation - in the broadest sense - aims to determine whether there is evidence and identify those, in order for the prosecutor to decide whether to prosecute one or several crimes and if so against which persons or whether he will not prosecute the case at all, and place it in his file. This stage is called the preliminary examination. The second and third stages of the criminal investigation exist only if the prosecutor decides to prosecute and follow the stage of the preliminary examination. Thus, the second stage - the preliminary investigation - concerns minor crimes, which we call misdemeanors, and in the third stage, the main investigation concerns the most serious crimes, which we call felonies.

At this point we need to underscore the institutional role played by the prosecutor in the Greek criminal system for collecting and evaluating evidence and his functional competence before the accused person's referral to trial. Thus, our modern criminal procedural system considers and utilizes the prosecutor clearly as a justice official, as enshrined in the Greek Constitution of 1975. The function of the prosecutor, as an institutionally independent justice official is guaranteed by all relevant regulatory provisions in Greek law, as is the legal nature of the prosecution as an independent - from all other - judicial authority. The above apply whether the prosecutor conducts investigative acts himself or when he orders, directs or supervises these investigative acts and when he then evaluates the evidence gathered so that he may decide whether or not to prosecute, whether or not to refer someone to the criminal court via a judicial decision or an exclusively prosecutorial one, i.e., via a decision issued by the prosecutor,

or by the judicial council, based on the prosecutor's proposal, in accordance with the relevant procedure prescribed by law.

In sum, the above-described institutional role of the Greek prosecutor is divided into two separate sets of competences within the Greek criminal procedural system. In the context of the first one, he orders or performs investigative acts, while in the context of the second one, he exercises his judicial function by formulating judicial judgments.

The first stage of investigative acts in the broad sense, the so-called preliminary examination, precedes the criminal prosecution. The modern format of the preliminary examination, as a valuable investigative function preceding the criminal prosecution, guarantees an easier clarification of the facts of the criminal case, so as to award - if a criminal prosecution ends up being instituted - the correct legal characterization of the criminal behaviour under evaluation. Therefore, the central goal of the investigation during this first stage of the preliminary examination is to gather all that crucial evidence in order to ensure the correct judgment of the prosecutor as to whether or not to prosecute and, if he ends up prosecuting, which particular crime or crimes will form the charges. In this investigative context, the preliminary examination will be carried out either by the prosecutor of all levels himself, or, upon his written order, by the investigative officers who are either justice officials of various ranks or police officers holding the rank specified in the law. This type of investigation can also be carried out by the so-called special investigators. These are public employees of various specialties, for example Customs officials, who may perform investigative acts under the conditions of special laws, and report directly to the prosecutor.

The examination of witnesses, the performance of autopsies, the attainment of specialists' opinions, in situ searches, the collection of documents and all other investigative acts will be ordered on the basis of the above-mentioned purposes of this first stage of the criminal investigation. Under this most recent procedure for the preliminary examination, as regulated in detail in article 244 of the Greek Code of Criminal Procedure, the person against whom this investigation is directed, i.e., the suspect, specifically the person to whom a criminal offense is attributed, is now been shielded with rights similar to those enjoyed by an accused person who is officially prosecuted.

These rights, enshrined in investigative practice, must be well known to the person conducting the preliminary examination and the investigative acts based on it. The main rights, about which the person conducting the investigation must inform the person to whom the crime is attributed are: the right of this person to be present with a lawyer as well as his right to timely information on the charges against him; their right to be summoned five or fifteen days in advance, depending on the case, to give additional information; their right to receive

copies of the case file, and to propose witnesses in their defense; their right to have at least forty-eight hours to prepare their defense (a time frame which may be extended by the person conducting the preliminary examination); and, finally, the right to remain silent. The prosecutor directing and supervising the preliminary examination is tasked with guaranteeing and overseeing the proper application of these rights. Closing this chapter on the preliminary examination, we must emphasize that its introduction into Greek criminal law, in its current form, a significant investigative step now precedes the decision to prosecute the most serious crimes with significant guarantees for the person who allegedly committed a criminal act and, in fact, before the person acquires the status of the accused, i.e., before the decision of the prosecutor whether or not he will prosecute him.

Based on the evidence gathered, and provided that the prosecutor evaluating them in his judicial capacity decides to prosecute an attribute a legal characterization to the act committed, there are now two possible routes which the investigation - in broad sense – may take. The first is discretionary for the prosecutor and, under the new Code of Criminal Procedure, applies only to misdemeanors in a very limited way. Under Greek criminal law, misdemeanors are crimes that due to their nature and the proportionally lesser intensity in terms of the assault or endangerment of the respective legal good are punished more leniently, i.e., with a term of imprisonment of ten days to five years or with a fine or with community service. Felonies, on the other hand, are more serious crimes that are punished either with life imprisonment or with temporary imprisonment of five to fifteen years. The prosecutor must order a main investigation for the latter more serious crimes, if they end up being prosecuted. Therefore, in the Greek criminal justice system, two kinds of investigation are instituted after the prosecution of an offence: the preliminary investigation, with has a very narrow scope and is limited, as mentioned, to the comparatively lighter offences, and the main investigation, which is ordered for the more serious crimes. We will start with the first one. Greek criminal law provides for and regulates two forms of pre-trial investigation. One is the so-called ex-officio or police preliminary investigation, which is carried out mainly by police officers for the vast majority of applicable cases or, in some exceptional cases, by so-called special investigating officers, such as the Fire Brigade investigating officers for the crime of arson, committed by negligence or with criminal intent, or the investigating officers of the Forest Protection Service for forest crimes. Exceptionally, the police preliminary investigation is conducted before the criminal prosecution of the offence is initiated. All the above persons, i.e., the police officers with the requisite rank and the other special investigating officers mentioned earlier, carry out the above type of preliminary investigation without an order by the prosecutor as soon as there are indications of a crime having been perpetrated. In this case, all the above persons are obligated to undertake all the investigative

acts that are necessary to ascertain the perpetration of the crime and the specific circumstances under which it was perpetrated. To this end, they take witness statements, perform autopsies, order specialists' expert opinions, perform, collect biological material or fingerprints, in order to locate the perpetrator of the crime as well as to arrest him when the crime is committed in flagrante delicto, i.e., when the perpetrator is identified immediately at the time, he commits the crime or in the immediate aftermath. Then those who conduct the investigation will take his statement, as an accused person, who also has all the rights mentioned earlier. To perform the above acts, those who carry out the investigation have three obligations. The first is to immediately inform the prosecutor, on all their investigative acts and their outcomes; the second is to submit the case file with all its contents to the prosecutor, as soon as their investigation is completed; and the third is to safeguard the aforementioned rights of the accused. In fact, if the perpetrator was arrested, those who carried out the investigative acts and arrested them must immediately bring him before the prosecutor, along with the case file formed.

The second type of preliminary investigation in the Greek criminal justice system is the so-called regular preliminary investigation. This also applies to the comparatively lighter crimes, misdemeanours and may comprise all the above investigative acts. Its difference from the first type, i.e., the police preliminary investigation is the following: (a) This regular preliminary investigation is carried out after the prosecution is officially initiated and only by written order of the prosecutor or, in some limited cases, of the judicial council, which covers only specific investigative acts, listed in it; and (b) the investigative acts conducted in the context of this type of preliminary investigation are carried out not only by the above-mentioned investigative officers but also, in the most complex cases, by magistrates in the Courts of Peace - who are also justice officials. During this process of the regular preliminary investigation, the accused has all the above rights, which the suspect has during the preliminary examination.

Nevertheless, the most important investigative process is the so-called main investigation. This is carried out only by written order of the prosecutor, when the prosecution is instituted for a felony and is mandatory. The main investigation is mostly performed by the investigative judge of the court of first instance or in extremely serious cases - with a particularly significant moral disapprobation – by the specialist investigator of the Court of Appeals. That is, the main investigation is carried out only by a justice official with the rank of judge at the Court of first Instance or the Court of Appeals, depending on the case. Because the investigation of the above crimes and especially for the crime of corruption or for crimes of mainly a financial nature is often difficult and requires specialised and technical knowledge on finances, the investigating judge is supported by the requisite number of specialist scientists or experts. With their specialist knowledge, they assist the investigator in understanding specific issues that arise

during his investigative acts, such as the interpretation of the multi-layered documents of the banking system to reveal money laundering in bank accounts or the detection of complex black money routes. It should be noted here that the Five-Member Athens Court of Appeals, in whose composition I had the honor to participate as the bench prosecutor, has rightfully found in a trial concerning money laundering and bribing where the accused was a former Minister, that the above expert scientists who contribute to the investigation, are lawfully permitted to be examined during trial as witnesses to the facts that they already knew or became aware of through their scientific engagement providing special assistance to the investigative judge. This was decided by the Court through an interlocutory decision, during the course of said trial. This - correct – decision was ratified by the Greek Supreme Court of Cassation, Areios Pagos. Finally, according to an explicit requirement of article 86 of the Greek Constitution, when it comes to crimes of members of the Government or Deputy Ministers, committed in the exercise of their duties, the duties of investigator are exercised by a member of the Greek Supreme Court, Areios Pagos.

Under the Greek criminal justice system, in all cases where the prosecutor orders a main investigation, the investigative judge, in accordance with Article 247 of the Code of Criminal Procedure, has the right to disagree with the prosecutor's order in four cases, which are strictly enumerated. That is, the investigative judge has the right not to execute the order of the prosecutor to conduct a main investigation and, thus, the right to not carry out investigative acts only if: (a) he considers that he does not have jurisdiction in accordance to the law; (b) he does not consider the act for which he is asked to conduct an investigation to be of a criminal nature; c) the statute of limitations has expired; and d) there are reasons provided by law that prevent or suspend the criminal prosecution, for example if it appears that the accused has been irrevocably convicted or acquitted of the same act for which the prosecutor ordered the investigating judge to perform the main investigation. In such cases the dispute is resolved by the Judicial Council. If the latter deems the disagreement of the investigative judge to be unfounded, it will order them to proceed with the main investigation. In the latter case, as well as in all cases where there is no dispute, the investigating judge conducting a main investigation will perform all legal investigative acts to solve the crime or crimes for which the prosecutor has pressed charges, i.e., they will hear, for example, testimonies of witnesses, conduct searches of homes or shops, lift banking privacy or telecommunications privileges in accordance with the procedure provided by law, conduct an autopsy or request an expert opinion, if such investigative acts are necessary to discover the truth or to locate the perpetrators.

In order to expedite the main investigation, Article 248 (1) of the Code of Criminal Procedure stipulates that if it was preceded by an ex-officio preliminary investigation or by a preliminary examination - of which we spoke earlier - the investigative judge does not repeat the investigative acts conducted in their framework. For example, the investigative judge will not re-examine the same witness, who was examined by the police during a police preliminary investigation. There is an exception to this rule only in two cases: a) If the investigating judges deems that the previously conducted investigative acts were not performed in a lawful manner and b) If he deems that the substantive needs of the investigation require that these acts need to be supplemented in a specific way. In these two cases he repeats the investigative acts, for example by now applying the appropriate legal procedure for their execution or by calling the witness for additional testimony or for clarifications to their previous testimonies. Furthermore, the investigative judge may also order additional investigative acts at their discretion, in order to ensure a more thorough investigation of a case.

It should be noted here that the new Code of Criminal Procedure, which is valid since 1-7-2019, provides the accused with a special right, enshrined in in article 274, to ask the investigator himself to carry out new investigative acts for the purpose of examining all the facts that contribute to the defense of the accused, provided that the investigative judge finds them of use toward determining the truth. The content of this right is clearly described in Article 102 of the new Code of Criminal Procedure. According to it, "The accused has the right to request through a freestanding reasoned request to the investigating judge that the latter investigates to rebut the accusation against him." The investigating judge may reject this request only by a reasoned decision, and after receiving the written opinion of the prosecutor on the matter, in accordance with point (b) of article 274 of the new Code of Criminal Procedure.

For the conclusion of the main investigation, the investigative judge must call on the accused, who also has all the aforementioned rights, to provide his official statement, after he has duly gained knowledge all the documents of the investigation. Following the statement, the investigative judge and the prosecutor, will hear the accused in an oral hearing and decide whether to release him or whether to impose certain restrictive conditions such as a bail or a travel ban or whether the accused is going to be placed in pre-trial detention of no more than eighteen or twelve months, as prescribed by law. If the investigating judge and the prosecutor disagree on any of the above, the dispute is resolved by the judicial council.

In conclusion, ladies and gentlemen, in light of the above, I must emphasize that the Greek investigative system is governed by three fundamental principles: a) the principle of the equality of arms i.e., of a balanced and fair search for the

substantive truth to establish either the guilt or the innocence of a person involved in a criminal case, (b) the institutional function of the prosecutor, who performs, directs or supervises the investigation in broad sense, as that of an independent justice official, and (c) the absolute protection of the rights of the suspect or accused person, as explicitly required by the European Convention on Human Rights. and in particular Article 6 thereof.

Moot court exercise – Outline

Moderator: LAMBROS TSOGKAS, Vice-Prosecutor of the Larissa Court of Appeals

Participants:

Foivi Zografaki, Student of National School of Judges (Presiding Judge)

Despoina Gkinoglou, Student of National School of Judges (Judge #2)

Ploumitsa Varkari, Student of National School of Judges (Judge #3)

Eleni Sideri, Student of National School of Judges (Prosecutor)

Alexios Vlachos, Student of National School of Judges (Defendant)

Panagiota Gerovasileiou, Student of National School of Judges (Counsel)

Harikleia Gemenetzi, Student of National School of Judges (Witness)

Main proceedings – court hearing

Presiding Judge (PJ): Good Morning everyone, the court hearing of the three-member Court of Appeals for felonies is beginning. Please be seated.

First case, The State v. Abdul Amirahov. The present case concerns the transportation of irregular immigrants and is brought before this Court upon appeal of the defendant against the decision of the one-member Court for felonies. At the first instance, the defendant was found guilty and was convicted to a total of eight years of imprisonment with the mitigating factor of having a prior honourable life.

Abdul Amirahov (?)

Defendant (D): Present, your Honour.

Counsel (C): Your honour, the defendant will be represented by me, Panagiota Gerovasileiou, in the ongoing process and that's why he just appointed me.

PJ: Madam Prosecutor you may now proceed to analyse the first instance decision and the reasons for the defendant's appeal.

Prosecutor (P): Honourable Court,

The defendant was sentenced at the first instance before the One-Member Court of Appeals for Felonies to a total of eight years of imprisonment, and the mitigating factor of prior honourable life was recognized in his favour. His conviction at the first instance concerned a violation of the law on irregular migration with the aggravated circumstance of potentially endangering a life.

In this case, the defendant is accused of intentionally picking up, on the vehicle which he was driving, nationals of a third country, who had no right of entering the Hellenic Republic, with a view to transporting them to the Greek mainland from a point near the Greek borders where he picked them up. He did so repeatedly, five times in total, and with the aim to profit. Specifically, officers of the special unit for the prosecution of irregular immigration apprehended the defendant in the area of the Evros river at around midnight on February 2, 2021. The defendant was driving a white Volvo private vehicle. He boarded on it third-country nationals who, during the night hours between February 1 and February 2, 2021, were transported by one or more smugglers of Turkish nationality from Turkey to an area of the Greek borders near the Evros river. The migrants, after having crossed the river in two plastic boats, remained hidden in a forested area near the national highway within the Evros prefecture until the morning hours of February 2, 2021. The defendant picked them up from this area in the aforementioned vehicle and entered the Egnatia highway with the aim of taking them to their final destination, inland Greece. His actions were aimed at him gaining profit, as he would be paid for each one of the persons transported. Let it be noted that the first instance sentencing decision held that, under the particular circumstances of the perpetration of the offence at issue, the defendant could potentially have placed human lives in danger, and hence he was convicted under the

aggravating circumstances of Art. 30, para. 1 cases b and c of Law 4251/2014.

PJ: Madam Prosecutor, what is your opinion on the admissibility of the appeal?

P: Honourable Court,

Taking under consideration the fact that the appeal was lodged in accordance with the relevant legal framework and within the time frame prescribed by law, the court must proceed to examine the substance of the case. Furthermore, I reserve the right to take a position on the grounds of appeal, after the examination of the substance of the case. Thank you.

PJ: Counsel, do you agree?

C: Yes, I agree with Madam Prosecutor's statement.

PJ: The Court will now proceed to deliberate on the admissibility of the appeal.

The present appeal is filed in accordance with the procedure prescribed in law.

Do you agree Judges #2 and #3?

Judges #2 (J2): Yes, I agree.

Judges #3 (J3): I also agree.

PJ: The Court has found the appeal to be admissible. We shall now proceed to examine the substance of the appeal.

Defendant you may now state your reasons of appeal.

D: Your Honour, I have been found guilty by the Court of First Instance without knowledge of my crime. I didn't understand what they were telling me, when the police stopped me. They arrested me and I had no knowledge of the reason. There wasn't a Kurdish interpreter to help me in my native language. The only interpreter was one of the English language. I cannot communicate in English, apart from one or two simple phrases. The police did not explain to me what was going on. The same happened afterwards before the investigating judge. I couldn't understand the process. The interpreter, once again, didn't speak Kurdish, only English. I had no lawyer and nobody informed me about my right to be represented

by a lawyer. They sent me to prison without me understanding the reason. Afterwards, when I was summoned to court, the documents were in Greek, so I couldn't read them. I had a lawyer for the first time and started to understand my situation during the first instance court proceedings. This is not right.

PJ: Counsel?

C: At this point of the procedure, I would like to propose 2 procedural infringements which lead to the absolute invalidity of the criminal proceedings. The claims/reasons of appeal are admissible as they were first brought before the Court of first instance, and are explicitly mentioned as specific grounds (of appeal) in the appeal document. Despite the fact that the defendant stated to the police-officer who conducted the ex-officio preliminary investigation and to the competent investigating judge that he doesn't speak or understand Greek, that he also doesn't adequately understand English and that he only speaks and understands the Kurdish language, nevertheless they didn't provide him with an interpreter who would explain to him the charges against him and inform him of his rights, in particular of his right to interpretation and translation, in a language which he comprehends. They also didn't provide him with a letter of rights, written in a language which he comprehends. As it has been already ruled by ECHR in the case BROZICEK v. ITALY, if the accused does not adequately comprehend the language in which the information on his rights is provided, the authorities must provide him with a translation of that information in a language which he understands. Moreover, the investigating officer didn't provide him with a defense lawyer, even though he was accused of a felony. As it has been already decided by ECHR in the case QUARANTA v. SWITZERLAND, legal assistance must be provided to the defendant for free. In this case, the defendant's rights have been violated during the criminal proceedings and specifically the right of the accused to be informed, the right to interpretation and translation, the right of access to a lawyer and the right to a fair trial pursuant to art 6 par 1 and 3 of ECHR.

Moreover, the writ of summons that was served to the defendant was not written in the Kurdish language, that is the only language the defendant understands. Therefore, the service of the writ summons is absolutely

void, as the defendant's right to interpretation and translation was once again violated.

PJ: Madam Prosecutor what is your opinion on the reasons of appeal?

P: Honourable Court, the summons was in effect serviced to him in the Greek language but, in accordance with the relevant report that has been issued, it is confirmed that the summons serviced was translated into the Kurdish language by a fellow detainee of the defendant, at which point the defendant gained full knowledge of its contents, as prescribed in art. 237 of Criminal Procedural Code which incorporated the Directives 64/2010 and 13/2012.

Let it be noted that during the proceedings before the Court of First Instance the defendant attended with an interpreter of the Kurdish language and was represented by an attorney. In any case, I would like to emphasize that there is no question of a violation of the right of the defendant to a fair trial in accordance with Art. 6 para. 1 & 3 ECHR and Art. 14 para. 3 of International Covenant on Civil and Political Rights (ICCPR), as it is part of the established case-law of the European Court of Human Rights, that the trial conducted domestically is looked at in its entirety, and whether or not the defendant's rights have been safeguarded must be assessed within the framework of the entire hearing and all its procedural stages. In the present case, said protection was fully safeguarded, since, during the first instance trial the defendant was represented by an attorney, and attended the hearing with an interpreter of his mother tongue. By virtue of all the above, and taking into account that all the grounds for invalidity of the pre-trial proceedings raised by the defendant have not been raised until he was irrevocably referred to trial, I propose that the claims of the appeal be dismissed in their entirety.

PJ: The court shall now recess to deliberate in camera.

In Camera deliberation

PJ: Honorable fellow Judges, first of all, on the Counsel's argument on the violation of art. 6 § 3 of the ECHR, I would like to draw your attention to the established case law of the Court, as for example in case IBRAHIM AND OTHERS v. the UNITED KINGDOM (2016), that the domestic courts need to assess the overall fairness of the criminal proceedings in order to estimate whether a violation of the said article has occurred. In the present case, the defendant was both represented by an attorney and was assisted by an interpreter at the first instance trial. Therefore, having regard to the process as a whole, I would like to hear your opinions.

Judge #2 on the first claim/allegation regarding the invalidity of the preliminary proceedings?

J2: On the first allegation, I endorse the statement made by the Prosecutor. The abovementioned invalid actions, which are on one hand the fact that the competent authorities did not provide him with an interpreter and that the writ of summons was not translated in its essential parts in Kurdish and on the other hand the fact that no defense attorney was appointed to him, both actions did take place. However, they occurred at an early procedural stage, which is the preliminary proceedings. They should have been put forth earlier with a special statement, in order to be examined and accepted by the court or not. Instead, the defendant appeared and was represented by a counsel at first instance and nobody addressed this issue. An interpreter was present at the court hearing as well. Therefore, as the allegations were not met by the proper judicial remedy, there is nothing we can do at this procedural stage.

PJ: Judge #3 do you agree?

J3: Yes, I agree with you.

PJ: I agree too. We now proceed with the second reason regarding the invalidity of the summons.

J3: In my opinion, we must focus on the documents in our file. In this particular case, as it appears from the report which is attached to the summons and is signed by the defendant, the summons was orally translated in all essential parts to the defendant, by a fellow inmate, who speaks his native language. That means that the defendant was informed about the charge against him, in his native language. In the cases of HERMI v. ITALY and HUSAIN v. ITALY (ECHR) the Court noted that paragraph 3 (e) of Article 6 does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. In that connection, it should be noted that the text of the relevant provisions refers to an "interpreter", not a "translator". This suggests that oral linguistic assistance may satisfy the requirements of the Convention. The fact remains, however, that the interpretation provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events.

In this particular case, it appears with certainty that the defendant was provided with the essential information to defend himself, through an oral translation of the summons to a language he fully understands. He did not contest the quality of the translation and he was represented by an attorney at the first instance trial. As a result, in these particular circumstances, the absence of a written translation of the summons neither prevented him from defending himself nor denied him a fair trial, thus, his claim should be rejected.

PJ: Judge #2?

J2: I agree, therefore, both allegations are overruled.

The court hearing resumes

Court hearing

PJ: The court hearing resumes. The Court ruled that both legal reasons of the appeal should be rejected.

We may proceed with the facts of the case. Witness X?

Witness X (W): Present, your Honor.

PJ: Please approach. Raise your right hand and swear upon your honour and conscience that you shall state nothing but the truth.

W: I serve at the Department of cross-border security. Our duty is to prevent and deal with the crimes of illegal transportation into Greece of third country nationals who do not have the right to enter the Greek borders. We noticed the defendant as he was driving the vehicle in a suspicious manner. We immediately asked him to immobilize the vehicle so that we could proceed to an inspection.

PJ: Madam Prosecutor do you have any questions?

P: Your Honour, nothing further, thank you.

PJ: Counsel?

C: Yes, your Honour, I would like to pose a critical question to the witness; the moment you asked the defendant to stop for your search, he immobilized his vehicle immediately, is that correct? He then allowed you to proceed with your inspection of his vehicle, without any resistance; do you confirm this?

W: I confirm that, your Honor. That is how he acted.

D: Your Honour, I also have a question.

PJ: Proceed

D: Please ask the officer, despite the fact that it was difficult for me to understand them, because they were speaking in English, did I comply with everything they ordered me to?

PJ: You may answer the question.

W: We had a simple conversation in English. I asked him if he comprehended what I had told him and what I had asked of him and his answer was affirmative. When I asked him to open the trunk, he did so immediately.

J2: Your Honour, I have a question (/thank you)

(...) Mrs Witness, can you please inform the Court if it was possible for the defendant to flee?

W: Yes, that would have been possible. Due to the peculiarity of the ground, as the vehicle was immobilized on a country road, the defendant would have had the opportunity to escape.

J2: Thank you, your Honour. Nothing further.

J3: - Your Honor, I also have a question for the witness.

Mrs Witness, can you tell us how were the persons stacked in the car's trunk and whether their life was at risk?

W: The space where the transported persons were hidden was very narrow and they were stacked on top of each other. The transport conditions were adverse, the transported persons could breathe with difficulty, therefore their lives were in danger.

D: reacts in surprise, however, he remains calm so as not to lose the mitigating circumstance.

J3: I have nothing further to ask, thank you.

D: Your Honour, after the officer's testimony, I would like to plead guilty. I would like to, also, request that you consider my cooperation with the police in your judgement, and I request to declare further mitigating circumstances.

PJ: Thank you, you may step down.

Madam Prosecutor we await your proposal on the guilt of the defendant.

P: Your Honour, honourable court, I propose that the defendant be found guilty as charged, with the mitigating circumstance of the prior honourable life being recognised to him, as it had also been recognised at the first instance and, also, that the mitigating circumstance pursuant to Art. 84 para. 2d of Criminal Code be recognised to him, because the defendant showed indeed remorse, cooperated with the authorities, and admitted his act.

PJ: Counsel?

C: Your Honour, Honourable Court, I ask you to consider that although the defendant was not capable of understanding the language of the proceedings, he cooperated with the competent authorities and facilitated their duties. Furthermore, in order to cooperate with the judicial authorities to face a trial, he did not flee (despite the fact that he had the possibility to do so). For the reasons mentioned above, we request from the Court to regard the good faith and cooperation of the defendant with the competent authorities as a mitigating circumstance/factor in combination with his willingness through his actions to try to annul or reduce the effects of his initial behaviour. Considering, therefore, that in this case there is cumulation of mitigation circumstances, his penalty can be reduced according to art. 85 Criminal Code.

PJ: The court shall now recess to deliberate on the guilt of the defendant.

Deliberation

PJ: Judge #2 what is your opinion on the guilt of the defendant?

J2: Due to the latest act of the defendant, him pleading guilty, there is only one matter to rule on. Given the fact that the New Criminal Code on Article 85 recognises the Court's discretion to evaluate more than one attenuating circumstance, I have the opinion that we should recognise to the defendant the mitigating factor of article 84 paragraph 2d as a second mitigating factor. Not only he showed repentance, but also, he willingly cooperated with the authorities.

PJ: And you Judge #3?

J3: I also agree that a second mitigating factor should be recognised for the defendant, given that it appeared that he did not fully understand, yet he cooperated from the beginning.

PJ: I agree with you both. The Court finds the defendant guilty and recognises both mitigating circumstances.

Madam Prosecutor what do you propose on the sentence?

P: Honourable Court, in accordance with your decision I propose that a total of five years of imprisonment be imposed on him, namely three years as a base sentence plus 6 months for each one of the persons transported and that the time of pre-trial detention be deducted from the sentence.

PJ: Counsel?

C: The minimum penalty your Honour.

PJ: The Court will now deliberate to deliver its final decision. Judge #2 what is your opinion on the sentence? Judge #3?

J2: I endorse the position of madam prosecutor and I consider this is a fair penalty**.**

J3: I agree, too.

PJ: I agree with you both.

The Court has found the defendant guilty and he is sentenced to three years as a base sentence plus six months for each of the persons transported, meaning a total of five years of imprisonment. The period of pre-trial detention shall be deducted.

Thank you all, the Court is adjourned.

Material for acting judges and prosecutors

Presentations

ECtHR case-law on procedural rights of the accused

KATERINA LAZANA, Référendaire, European Court of Human Rights

Article 6

Article 6 § 1

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ..."

Article 6 § 2

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law

Article 6 § 3

Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Procedural requirements of fairness

- access to court;
- effective participation in the proceedings;
- equality of arms and adversarial trial;
- proper administration of evidence;
- immediacy;
- legal certainty;
- adequate reasoning;
- protection from self-incrimination;
- entrapment;
- virulent media campaign;
- plea bargaining.

Presumption of innocence under Article 6 § 2

- Governs criminal proceedings in their entirety and is relevant irrespective of the outcome of the case;
- Applies until the final resolution of the case
- Once an accused has been proved guilty of an offence, Article 6 § 2 can have no application in relation to allegations made about the accused's character and conduct as part of the sentencing process, unless such

accusations are of such a nature and degree as to amount to the bringing of a new "charge" within the autonomous Convention meaning'

- Preconceived idea of guilt
- The burden of proof
- Presumption of innocence outside the criminal trial

Article 6 § 3 (c)

- right to defend oneself
- right to a lawyer of one's own choosing
- right to a legal aid lawyer

Right to a lawyer of one's own choosing

- From the initial stages of the proceedings
- Right may be overridden only if there are relevant and sufficient reasons in the interest of justice
- Choice must be an informed one

Legal aid lawyer

Right to a legal aid lawyer if

- Applicant not have sufficient means to pay for the legal representation and

The interest of justice requires legal representation

National case law panel

Greek case law on translation and interpretation, and representation by a lawyer

LAMBROS TSOGAS for Greece

Supreme Court judgment no. 567/2018 (Mandatory representation by a lawyer before the Greek Supreme Court - ECHR).

The law does not provide for the appointment of a lawyer, either of the court's own motion or upon request, to an appellant who appeared in person at the hearing of the Supreme Court relating to an appeal on points of law, for any reason, such as the appellant's financial inability to appoint a lawyer of his/her choice, even if the case involves a felony. In addition, neither article 6 paragraph

3 ECHR nor article 20 of the Constitution are violated because a lawyer was not appointed of the court's own motion and the appellant, who is not a lawyer, was not allowed to appear in person and to be present at the trial, because the Supreme Court examines merely legal issues and not the merits of cases. In any case, a procedure for the appointment of a lawyer before the Supreme Court has been established by the Greek state, in line with ECHR principles, in accordance with the provisions of articles 1, 2, 6 and 7 of Law 3226/2004. This procedure shall take place before the trial and not during the hearing, through a registry kept by the Bar Association, following a simple request by the appellant/accused person, without the intervention of a lawyer, addressed to the President of the Supreme Court, for low-income citizens without the means to pay for a lawyer to present before the Supreme Court, submitted 15 days before the trial, if they have been sentenced to a term of imprisonment of at least 12 months. Thus, the above-mentioned obligation imposed by the legislator on the appellant/accused person to present before the Supreme Court accompanied or represented by a lawyer that acts as his/her representative, is not excessive, ensures the proper functioning of justice at this highest level of appellate review of decisions and does not impede free access of the accused person to the Supreme Court (see also Supreme Court (in plenary) judgment no. 2/2008). Therefore, it does not contravene the provisions of articles 20 paragraph 1 of the Constitution and 6 paragraph 3 of the European Convention on Human Rights (ECHR), which guarantee the right to judicial protection and the consequent right to a fair, public and impartial trial to every person, since the latter provisions of the European Convention do not prevent the ordinary legislature from laying down conditions and restrictions on the exercise of the right to legal protection established by those provisions, provided that those restrictions do not restrain the possibility of recourse to the courts in such a way or to such an extent that the very core of the right to judicial protection is undermined. In the case in question, it is evident from the proof of service by the bailiff of the Supreme Court's Prosecutor's Office, LH, to the appellant, dated 6 February 2018, that the appellant was summoned by the Prosecutor of the Supreme Court, by means of summons no. ...2-2018, in due time and manner, in accordance with articles 155 paragraph 1(a) and 166 of the Code of Criminal Procedure, to duly appear at the hearing mentioned at the beginning of this judgment regarding his application dated 20 January 2018, lodged on 24 January 2018 before the Supreme Court's Prosecution Office, for a review of the grounds of appeal on points of law which had not been submitted before and grounds which he claims were not examined by decision no. 1880/2017 of the Supreme Court. However, he did not appear before the court in due manner, accompanied or represented by a lawyer. Consequently, since the applicant/appellant did not appear before the court accompanied or represented by a lawyer and does not himself have the status of a lawyer, the abovementioned application for a review of the grounds of appeal on points of law, which were not examined by Supreme Court's judgment

no. 1880/2017, and the additional grounds submitted by the application dated 10 February 2018, must be dismissed because he did not appear properly and did not present and appear in due manner at the relative hearing, and he must be ordered to pay the costs of the criminal proceedings (article 583(1) of the Code of Criminal Procedure), as set out in the operative part of the decision.

Supreme Court judgment no. 732/2020 (preparation of defence lawyer, motion to stay proceedings and dismissal)

At the public hearing of April 18, 2019, the accused persons' defence lawyers, who represented them before the court, submitted a motion for a stay of the proceedings, in order to prepare their defence, which the Prosecutor of the court proposed to be accepted. The court, however, in proper application of the aforementioned provisions, dismissed it on the following grounds: "In view of the fact that: (i) the trial has lasted for a long time, (ii) neither the Prosecutor nor the civil party to the criminal proceedings introduced any new or substantially different elements from those introduced to date in the proceedings before this court of appeal on points of law, or in the trial at first instance, in their pleas on the guilt of the accused persons, and (iii) notably, at first instance the accused persons were represented by AG, one of their lawyers also at the current proceedings, whose plea was submitted in writing and entered in the trial's minutes, numbered with the same number as the contested judgment of the first instance court, the provision of additional time to the accused persons' lawyers, in order to prepare their defence, does not appear to be justified". Following the motion's dismissal, the defence lawyers departed, the court declared the hearing concluded and published the contested judgment. From the entire course of the proceedings, from which it is demonstrated that fourteen days elapsed between the conclusion of evidence taking and the date of the submission of the abovementioned motion, and in particular from the assumptions of the contested judgment that the trial lasted for a long time, that neither the Prosecutor nor the civil party to the criminal proceedings introduced any new or substantially different elements from those introduced up to that point in time in the proceedings before the court of appeal on points of law, or in the trial at first instance, in their pleas on the guilt of the accused persons, and that at first instance the accused persons were represented by Alkiviadis Grigoriadis, one of their lawyers also at the appeal on points of law proceedings, whose plea was submitted in writing and entered in the trial's minutes, numbered with the same number as the contested judgment of the first instance court, it is evident that the accused persons' lawyers had sufficient time and facilitation to prepare their defence. Therefore, the relevant first ground of the appeal on points of law, in accordance with article 510 paragraph 1(A) of the Code of Criminal Procedure, by which the appellants challenge the contested judgment, in so far as it dismissed their motion for a stay of the proceedings in order to prepare their defence, alleging that the hearing procedure was absolutely null

due to violation of article 171 paragraph 1(d) of the Code of Criminal Procedure and article 6 paragraph 3(b) of the ECHR is unfounded.

Supreme Court judgment no. 1750/2016 (In exceptional cases, an oral summary translation of the essential documents is sufficient, such as when an arrested person is to be extradited under a European arrest warrant)

In the third ground of appeal on points of law, the appellant claims that the Council of the Court of Appeal erroneously dismissed his request to adjourn the trial in order to translate the contested European arrest warrant into English, which he understands, and that his rights under article 6 paragraph 1 of the Constitution and article 6 paragraph 1 of the ECHR have been violated. In the present case, the requested person requested, through his lawyer, the translation of the European arrest warrant which was being executed into English, which he understands, during the hearing before the Council of the Athens Court of Appeal. This request was dismissed by the Council on the grounds that the requested person had been made aware of the documents of the case file in a language he understands by means of an oral translation, which was deemed to be preferable, in view of the extremely urgent procedure of extradition within the tight timeframe of Law 3251/2004. From the documents in the case file it is demonstrated that the requested person was arrested on 24-8-2016 in ..., on the basis of a relevant order of the Prosecutor of the Athens Court of Appeal, following the faxed document under reference ... of the S.I.R.E.N.E. Department of France, dated 17-3-2016, (which, according to article 6 paragraph 1 of Law 3251/2004, has the status of and is equivalent to a European arrest warrant, if it also contains the information prescribed in article 2 paragraph 1 of the same Law), for the execution of the European arrest warrant in question and the surrender of the requested person to French judicial authorities in order to serve the remainder of the sentence imposed on him by the Paris Court of Appeal. Subsequently, the requested person was brought before the Prosecutor of the Athens Court of Appeal. At that stage EK was appointed as an interpreter of English and French and the requested person was informed of the existence and the content of the European arrest warrant (as depicted in the S.I.R.E.N.E. France document), and of his right to recourse to legal representation and interpretation services. In addition, a document in English and French was read out to him, to inform him of his rights, in accordance with aforementioned article 15 paragraph 1 and 5 of Law 3251/2004, as amended by articles 11 and 7 of law 4236/2014 (see judicial authority's report dated 26-8-2016). The aforementioned S.I.R.E.N.E. France document is equivalent to the European arrest warrant that is being executed, as it contains and covers all the information that must be contained in a European arrest warrant in accordance with article 2 paragraph 1 Law 3251/2004, including a reference to the enforceable conviction of the Paris Court of Appeal, on the basis, for the enforcement and in execution of which the European arrest warrant was issued, the sentence imposed and the remainder

of the sentence to be served, the offences for which the requested person was convicted, the time and place of their commission, a summary description of the facts substantiating them, etc. It is also apparent from the information in the file that the requested person did not appear in person at the trial before the Paris Court of Appeal, but was represented by a lawyer of his own choice, from whom he was obviously informed at the time of the issuance of the judgment of conviction and its contents, against which he chose not to appeal and not to raise objections to any errors in accordance with French law. From the aforementioned information it is evident that the appellant received the necessary information (in order to defend himself against the execution of the European arrest warrant) and became aware of the essential documents relating to the execution procedure of the European arrest warrant, by means of an oral translation into a language which he understood. This is deemed sufficient and appropriate, taking into account the nature and specific characteristics of the proceedings for the execution of a European arrest warrant, the conduct and completion of which are subject to extremely tight time limits from the arrest of the requested person, as prescribed in articles 15 paragraph 3 and 21 paragraph 3 of Law 3251/2004. Therefore, the aforementioned provisions were not violated, nor did the Council of the Court of Appeal err in dismissing the applicant's request in that regard. As such, the third ground of appeal on points of law is unfounded.

Supreme Court judgment no. 729/2020 (Court's obligation to examine whether the accused person understands Greek by all appropriate means during evidence taking).

According to article 233 paragraph 1 of the Code of Criminal Procedure, as replaced by article 1 of Law 4236/2014 "At any stage of the criminal proceedings, when a suspect, accused person or witness who does not speak or sufficiently understand Greek is to be examined, he or she shall be provided with interpretation without delay. Where necessary, interpretation shall be provided for communication between accused persons and their lawyers at all stages of the criminal proceedings … At any stage of the criminal proceedings, the person conducting the examination shall ascertain by all appropriate means whether the suspect or accused person speaks or understands Greek and whether he or she is in need of assistance of an interpreter. The suspect or the accused person has the right to object to the decision which has held that the provision of interpretation is not necessary or when the quality of the interpretation is not sufficient." Moreover, it follows from the combination of articles 562 and 563 of the Code of Criminal Procedure that the prosecutor and the convicted person may appeal against the decision of the Three-member Magistrates' Court which has been issued following the objections of the sentenced person with regard to the duration of the sentence. From the fourth subparagraph of the first paragraph of the provision of article 233 of the Code of Criminal Procedure and in

accordance with article 2 paragraph 4 of Directive 2010/64/EU, it follows that is established that the person conducting the examination is obliged to ascertain, by any appropriate means, whether the accused persons speaks or at least understands sufficiently the Greek language, in order to further determine whether there is a need for the appointment of an interpreter – translator, at any stage of the criminal proceedings. This provision overturned the previous position that, in order to establish absolute nullity of the procedure on the grounds of lack of provision of interpretation to the accused person, under article 171 paragraph 1(b) of the Code of Criminal Procedure, it had to be proved from the minutes of the trial that he or she informed the court that he or she did not know or sufficiently understand Greek. Therefore, even if an accused person who is a foreigner does not state that he or she does not adequately know Greek, the court must examine whether he or she speaks and sufficiently understands Greek and thereafter, the judge chairing the hearing makes an authoritative ruling with regard to the appointment of an interpreter, which is not subject to review on appeal on points of law. In the present case, from the review of the minutes of the contested judgment no. 1193/2019 of the Three-member Magistrates' Court of Chalkida, which is deemed admissible for the purposes of appellate review, it is evident that the judge chairing the hearing did not seek of his own motion to ascertain whether or not an interpreter should be appointed, even though it was necessary to examine this issue by all appropriate means, since the applicant was a foreigner, a Romanian national, apparently because the latter did not state that he did not know or sufficiently understand Greek. This omission, however, constitutes a violation of the rights of defence of the applicant – accused person, resulting to absolute nullity of the hearing proceedings, without taking into account the fact that the appellant provided some clarifications in Greek during the proceedings, since it is not certain whether he at least sufficiently understood the issues under investigation. Consequently, the relevant ground of appeal on points of law, raised in accordance with article 510 paragraph 1(A) in conjunction with article 171 paragraph 1(d) of the Code of Criminal Procedure, which challenges the contested judgment on the ground of absolute nullity of the hearing proceedings, is well founded and must be accepted, so that there is no need to examine the other grounds of appeal on points of law as this is immaterial. Consequently, as accepted by the appeal on points of law in question, the contested judgment must be set aside and the case shall be referred back to the same court which delivered the contested judgment, composed of judges other than those who heard the case (article 519 of the Code of Criminal Procedure).

Supreme Court judgment no. 1685/2017 (How to determine whether the accused person does not actually understand the language in which the indictment that was served on him was drafted, the influence of his active and

effective participation in the defence against the charges in pre-trial proceedings through lawyers with written power of attorney, drafted and signed in Greek)

Article 236A paragraph 1 of the Code of Criminal Procedure, added by article 4 of Law 4236/2014 (Government Gazette 33 A' 11.2.2014), which transposed into Greek law Directive 2010/64 EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, stipulates that "Suspects or accused persons who do not understand the language of the criminal proceedings shall be, within a reasonable period of time, provided with a written translation of all essential documents or passages of documents of the proceedings. Essential documents shall include any decision involving the deprivation of a person's liberty, any charge or indictment and any judgment relating to the charge…". Essential documents include the writ of summons or the indictment, which, given the fact that they are the only documents containing the charge, are required, under penalty of absolute nullity (article 171 paragraph 1(d) of the Code of Criminal Procedure), to be accompanied by an official translation in a language the accused person understands so that the latter can effectively prepare his or her defence and thus safeguard his or her right to a fair trial (Supreme Court judgment no. 2014/2009 NOMOS, Supreme Court judgment no. 645/2004, Supreme Court judgment no. 184/2004 Poin.D.2004.541, Athens Court of Appeal 3242/2016). In the present case, from the review of the documents in the criminal file and in particular from the review of the indictment and the proof of service on the second accused person RVP, it was established that when the indictment was served on the latter, no accompanying official translation of it into Dutch was served, since the accused person in question is a Dutch national and understands Dutch. This way, however, the accused person's rights of defence and his right to a fair trial are violated, as set out above. As such, the objection raised by the lawyers representing the accused person in this case that the indictment is null on the ground that it has not been translated into Dutch should be accepted and, consequently, the service of the indictment in question should be declared null and the hearing should be declared inadmissible". On the basis of these assumptions, the Athens One-member Magistrates' Court, which issued the contested judgment, did not provide the specific and detailed reasoning required by articles 93 of the Constitution and 139 of the Code of Criminal Procedure, since: (i) the facts are not set out clearly and fully in the judgment, (ii) the evidence based on which it was established that the accused person did not understand the Greek language, in which the indictment was served on him, is not mentioned and (iii) it does not unequivocally follow from the reasoning of the judgment that the court took into account and considered all the evidence, and not just part of it, at its own discretion, in order to form its judgment, as required by the provisions of articles 177 paragraph 1 and 178 of the Code of Criminal Procedure [Supreme Court (in plenary) judgment no. 1/2005]; therefore the

judgment's reasoning in that regard is insufficient and imprecise. In particular, while, according to the assumptions of the contested judgment, it was based on the content of the documents attached to the case file, from the review of the documents of the criminal case file, which is deemed admissible for the purposes of appellate review, it follows that a selective assessment and evaluation took place instead of a consideration of all the documents and that critical documents were ignored, which the accused person himself drafted in Greek and signed, having his signature authenticated, with which he granted power of attorney and mandated his lawyers to take procedural actions, and from which a conclusion contrary to the above judgment is drawn. Specifically, the judgment ignored and did not take into consideration: a] the written power of attorney in Greek, dated 19-5-2015, drafted by the accused person, with his signature authenticated by lawyer DD, by which he appointed four lawyers to represent him at the pre-trial stage, namely: 1] XP, 2] KP, 3]DD and 4] DM, providing them special mandate and power of attorney to appear before the 14th Judge of the Athens District Criminal Court, either jointly or separately, assisted by four practicing lawyers, whom he named, to inspect and receive copies of the criminal file pending against him and to request a deadline for the provision of written explanations, submit a memorandum of written explanations on his behalf, as well as authorizing them to represent him in all procedural acts relating to this case; b] the written power of attorney dated 14-7-2015, also in Greek, drafted by the accused person himself, whose signature is authenticated by the same lawyer DD, by which he mandated and provided power of attorney to the lawyers: a] KP, b] MF, c] AA and d] DD to jointly or separately represent him before the aforementioned One-member Magistrates' Court at the hearing of the case on 3-9-2015 and at any other hearing following adjournment or stay, in relation to the charges against him, in accordance with case number.... indictment issued by the Prosecutor at the Athens Court of First Instance, to take all necessary procedural steps to represent and defend him, to submit any document or appeal in case he is convicted, to plead the fact that he has no prior criminal record and request suspension of the issued judgment's execution and in general to take any required action; c] the written power of attorney dated 21-11-2016, also in Greek, drafted by the accused person himself, whose signature is authenticated by lawyer DD, by which he appointed the following lawyers as representatives and authorized to receive service of documents: 1] KP, 2]AP, 3] MF, 4] DD and 5] A-M B, and granted them the specific mandate and power of attorney to appear and represent him, jointly or separately, before the abovementioned One-member Magistrates' Court, at the adjourned hearing of the case on 30-11-2016, as well as at any other hearing following adjournment or stay, in relation to the charges against him in accordance with the contested case number.... indictment issued by the Prosecutor at the Athens Court of First Instance and to take all necessary procedural steps to represent and defend him, to submit any document and appeal in case he is convicted, to plead the fact

that he has no prior criminal record and request the suspension of the judgment and to take any legal action required for this purpose and d] another power of attorney, also dated 21-11-2016, drafted in Greek by the accused person himself, whose signature was authenticated by lawyer DD, by which he authorized and granted a special mandate and power of attorney to the Athens lawyer PK to appear and represent him before the abovementioned Athens One-member Magistrates' Court at the adjourned hearing of 30 November 2016, as well as at any other hearing following adjournment or stay, in relation to the charges against him, in accordance with case number .... indictment issued by the Prosecutor at Athens First Instance Court, as well as to take all necessary procedural steps for his representation and defence, to submit any document or appeal in case he is convicted, to plead that he has no prior criminal record and request a suspension of the judgment's execution and in general to take any legal action required for the abovementioned purpose. Despite the fact that it was proven that the accused person RVP knew the Greek language by the abovementioned procedural documents, by virtue of which he fully exercised his procedural rights through his lawyers, both in the pre-trial proceedings, providing detailed written explanations and contesting the charges against him for repeated abuse of a dominant position within the market, on the basis of decision no. 581/n11/2013 of the Plenary Session of the Competition Commission, as well as during the trial proceedings preceding the hearing of 30 November 2016, without ever raising any complaints or objections regarding his lack of understanding of the Greek language, the abovementioned court did not take these documents into consideration for the formation of its legal judgment. Furthermore, in view of the large number of the aforementioned documents and the fact that he [the accused person] contested the charges with reference number identical to that of the indictment served on him during the pre-trial proceedings, the contested judgment did not contain any reasoning as to the accused person's failure to understand the indictment because he did not understand Greek and, moreover, it did not contain any reasoning or reference to the evidence based on which the court reached the conclusion that he did not understand Greek and he only understood Dutch, merely by mentioning the fact that he was a Dutch citizen, despite the fact that the abovementioned essential documents, which, as stated above, were not taken into consideration in the formation of its judgment, proved the opposite.

Spanish case law on Access to a lawyer

ROBERTO ALONSO BUZO, Senior Judge and Professor of the Judicial School of Spain, for Spain

I will present the follow case by Spanish courts, which deal the directive access to a lawyer, Directive 2013/48:

On 20 April 2018, the police in Badalona (Spain) filed a report in respect of alleged offences of driving without a licence and forgery of documents with regard to VW, following a roadside check during which he presented an Albanian driving licence.

On 19 May 2018, the expert report concluded that that document was a forgery.

By order of 11 June 2018, the Juzgado de Instrucción No 4 de Badalona (Court of Preliminary Investigation No 4, Badalona, Spain), before which the criminal proceedings against VW were brought, decided to hear VW. An officially designated lawyer was appointed for that purpose. After several attempts to summon the person concerned were unsuccessful because his whereabouts were unknown, a warrant was issued on 27 September 2018 for his arrest and for him to be brought before the court.

On 16 October 2018, a lawyer sent, by fax, a letter in which she stated that she was entering an appearance in the proceedings on behalf of VW, together with a signed authority to act and consent to let her take on the case given by the officially designated lawyer of the person concerned. She requested that future procedural documents be sent to her and that the arrest warrant issued against her client be suspended, stating that her client wished in any event to appear before the court.

Since VW did not appear when first summoned and is subject to an arrest warrant, the referring court asks whether the former's right of access to a lawyer may be delayed until that warrant has been executed, in accordance with the national rules on the rights of the defence.

In that regard, that court states that those rules are based on Article 24 of the Constitution and that, in criminal matters, the rights of defence of the person under investigation are governed by Article 118 of the Code of Criminal Procedure. That court adds that those provisions are interpreted by the Tribunal Constitucional (Constitutional Court, Spain) and the Tribunal Supremo (Supreme Court, Spain) as meaning that the right of access to a lawyer may be subject to the obligation, for the person accused, to appear in person before the court. In particular, in accordance with the settled case-law of the Tribunal Constitucional (Constitutional Court), the benefit of such a right may be refused when that person is absent or cannot be located. According to that case-law, the requirement for the person concerned to appear in person is considered reasonable and does not have a significant impact on the rights of the defence. In essence, the presence of the person under investigation is an obligation. It may be necessary to clarify the facts. Moreover, in the event of persistent absence on the part of that person at the conclusion of the investigation, the hearing cannot

be held and judgment cannot be given, so that the proceedings are paralysed to the detriment of both the individuals concerned and the public interests at issue.

Furthermore, the referring court observes that that case-law has been maintained notwithstanding the reform which took place in 2015, in particular in order to ensure that Directive 2013/48 is transposed into Spanish law. That court also observes that, under Article 118 of the Code of Criminal Procedure, the right of access to a lawyer is limited solely in the cases referred to in Article 527 of that code, which is expressly cited in that provision.

Therefore, that court raises the question of the scope of the right of access to a lawyer provided for in that directive. In particular, it has doubts as to whether that case-law complies with Article 3(2) of that directive and Article 47 of the Charter.

In those circumstances, the Juzgado de Instrucción n. 4 de Badalona (Court of Preliminary Investigation No 4, Badalona) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling.

Module 2 – Access to a lawyer and legal aid

Common Material

Directives

Directive 2013/48/EU on the right of Access to a Lawyer in Criminal and European Arrest Warrant Proceedings

Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

Presentations

Directive 2013/48/ΕΕ of the European Parliament and of the Council, of 22 October 2013, 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.

ALKIVIADIS FERESIDIS, Presiding Judge at the First Instance Court of Piraeus

Scope

- Article 2 paragraph 1: "This Directive applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal."
- See also recitals 21 and 22
- Minor offences (Article 2 paragraph 4)

The right of access to a lawyer in criminal proceedings

- Article 3 paragraph 2: "Suspects or accused persons shall have access to a lawyer without undue delay".

- Timeframes:

  (a) before they are questioned by the police or by another law enforcement or judicial authority;

  (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;

  (c) without undue delay after deprivation of liberty;

  (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

- ECtHR judgment of 27 November 2008, Salduz v. Turkey
- ECtHR judgment of 13 October 2009, Dayanan v. Turkey
- ECtHR judgment of 21 April 2011, Nechiporuk and Yonkalo v. Ukraine

The content of the lawyer's role

- Article 3 paragraph 3 of the Directive.
- Recital 22: "…Member States may make practical arrangements concerning the duration and frequency of such meetings, taking into account the circumstances of the proceedings, in particular the complexity of the case and the procedural steps applicable. …"
- Recital 23: "… Member States may make practical arrangements concerning the duration, frequency and means of such communication, including concerning the use of videoconferencing and other communication technology in order to allow such communications to take place…"

Permissible derogations

Article 3 paragraph 5: "In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty."

Recital 30: "…such as in overseas territories or where the Member State undertakes or participates in military operations outside its territory…".

- Article 3 paragraph 6: "…exceptional circumstances:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings."

- Examination of the legality of derogations under Article 8: "General conditions for applying temporary derogations"
- November 2021: the European Commission has sent letters of formal notice to Greece, Estonia, Lithuania, Luxembourg, Hungary and Portugal due to the incorrect transposition of the Directive provisions on permissible derogations from the right to access to a lawyer and the right to inform a third party upon deprivation of liberty.

The confidentiality of communication between accused persons and their lawyer

- Article 4: "Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law."
- ECtHR judgment of 16 October 2001, Brennan v. the United Kingdom
- ECtHR judgment of 27 November 2007, Zagaria v. Italy
- The right to have a third person (relative or employer) informed of the deprivation of liberty of suspect or accused person (Article 5)
- The right of suspect or accused person to communicate, while deprived of liberty, with third persons (relatives) (Article 6)
- The right of suspects or accused persons who are non-nationals and who are deprived of liberty to have the consular authorities of their State of nationality informed of the deprivation of liberty and to communicate with those authorities (Article 7)
- Waiver of right to legal assistance under strict conditions (Article 9)

The right to a double defence in European arrest warrant proceedings

- Article 10:
- paragraph 4: "The competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State. The role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA."
- paragraph 6: "The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority to decide, within those time-limits and the conditions

defined under that Framework Decision, whether the person is to be surrendered."

Final provisions

- Member States shall ensure that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive (Article 12)
- Member States shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive (Article 13)
- Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection (Article 14)

CONCLUSION

- Positive assessment of the Directive's results so far.
- The quintessence of the principles of a fair trial, as developed by the ECtHR case law.

Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

ALKIVIADIS FERESIDIS, Presiding Judge at the First Instance Court of Piraeus

- Stockholm Programme 2010
- See relevant Directives: 2010/64 on interpretation and translation in criminal proceedings, 2012/13 on the right to information in criminal proceedings, 2013/48 on access to a lawyer

Article 82 paragraph 2 TFEU

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

- (b) the rights of individuals in criminal procedure,
- (c) the rights of victims of crime,
- (d) […]
- Directive 2013/48 on the right of access to a lawyer
- Articles 47 paragraph 3 and 48 of Charter of Fundamental Rights of the European Union
- Article 6 paragraph 3(c) ECHR
- Article 14 paragraph 3(d) of the International Covenant on Civil and Political Rights
- UN Guidelines on access to legal aid in criminal justice systems (adopted by General Assembly on 20-12-2012)

Article 1-subject matter

1. This Directive lays down common minimum rules concerning the right to legal aid for:

(a) suspects and accused persons in criminal proceedings; and (b) persons who are the subject of European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).

2. This Directive complements Directives 2013/48/EU and (EU) 2016/800. Nothing in this Directive shall be interpreted as limiting the rights provided for in those Directives.

Article 2-scope

1. his Directive applies to suspects and accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU and who are:

(a) deprived of liberty;

(b) required to be assisted by a lawyer in accordance with Union or national law; or

(c) required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following:

(i) identity parades,

(ii) confrontations,

(iii) reconstructions of the scene of a crime.

2. This Directive also applies, upon arrest in the executing Member State, to requested persons who have a right of access to a lawyer pursuant to Directive 2013/48/EU.

3. This Directive also applies, under the same conditions as provided for in paragraph 1, to persons who were not initially suspects or accused persons but

become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.

4. Without prejudice to the right to a fair trial, in respect of minor offences:

(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction, this Directive applies only to the proceedings before a court having jurisdiction in criminal matters. In any event, this Directive applies when a decision on detention is taken, and during detention, at any stage of the proceedings until the conclusion of the proceedings.

Article 3-definition

For the purposes of this Directive, 'legal aid' means funding by a Member State of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer.

Article 4- legal aid in criminal proceedings

1. Member States shall 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.

2. Member States may apply a means test, a merits test, or both to determine whether legal aid is to be granted in accordance with paragraph 1.

3. Where a Member State applies a means test, it shall take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State, in order to determine whether, in accordance with the applicable criteria in that Member State, a suspect or an accused person lacks sufficient resources to pay for the assistance of a lawyer.

4. Where a Member State applies a merits test, it shall take into account the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake, in order to determine whether the interests of justice require legal aid to be granted. In any event, the merits test shall be deemed to have been met in the following situations: (a) where a suspect or an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and (b) during detention.

5. Member States shall ensure that legal aid is granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering acts referred to in point (c) of Article 2(1) are carried out.

6. Legal aid shall be granted only for the purposes of the criminal proceedings in which the person concerned is suspected or accused of having committed a criminal offence.

Article 5-legal aid of requested persons

1. The executing Member State shall ensure that requested persons have a right to legal aid upon arrest pursuant to a European arrest warrant until they are surrendered, or until the decision not to surrender them becomes final.

2. The issuing Member State shall ensure that requested persons who are the subject of European arrest warrant proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State in accordance with Article 10(4) and (5) of Directive 2013/48/EU have the right to legal aid in the issuing Member State for the purpose of such proceedings in the executing Member State, in so far as legal aid is necessary to ensure effective access to justice.

3. The right to legal aid referred to in paragraphs 1 and 2 may be subject to a means test in accordance with Article 4(3), which shall apply mutatis mutandis.

Article 6-decisions regarding the granting of legal aid

1. Decisions on whether or not to grant legal aid and on the assignment of lawyers shall be made, without undue delay, by a competent authority. Member States shall take appropriate measures to ensure that the competent authority takes its decisions diligently, respecting the rights of the defence.

2. Member States shall take necessary measures to ensure that suspects, accused persons and requested persons are informed in writing if their request for legal aid is refused in full or in part.

Article 7- quality of legal aid services and training

1. Member States shall take necessary measures, including with regard to funding, to ensure that: (a) there is an effective legal aid system that is of

an adequate quality; and (b) legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession.

2. Member States shall ensure that adequate training is provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings.
3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.
4. Member States shall take the necessary measures to ensure that suspects, accused persons and requested persons have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced, where the specific circumstances so justify.

Article 8: remedies

Article 9: vulnerable persons

Article 10: provision of data

- Principle of subsidiarity
- Principle of proportionality

The right to legal aid

YIOTA MASSOURIDOU, Attorney at law

- The right to legal aid is enshrined in EU law prior to the adoption of Directive 2016/1919. It is expressly provided for in Directive 2013/48. *"[..]Member States should apply their national law in relation to legal aid, which should be in line with the Charter, the ECHR and the case-law of the European Court of Human Rights" [preamble 48]*
- "This Directive is without prejudice to national law in relation to legal aid, which shall apply in accordance with the Charter and the ECHR" [Art. 11].
- Note: The term "legal aid" is rendered with different definitions in Greek. In Article 11 of Directive 2013/48 it is rendered in Greek as "euergetima penias" (legal aid). In Directive 2016/2019 it is rendered as "dikastiki arogi (judicial assistance/legal aid)". The national legislator in Law 3226/2004 chooses the term "nomiki syndromi" (legal aid). All of the above definitions constitute "legal aid" as this right is enshrined in EU law and interpretations that restrict the right should be avoided.

- What does the EU legislator therefore seek to achieve with the directive on legal aid? Although the right to legal assistance predates Directive (EU) 2016/1919, practical experience shows that the right to legal assistance is not effectively implemented in the Member States and is a matter of concern for the national courts of the Member States, especially in execution of European arrest warrants proceedings.
- Directive (EU) 2016/1919 lays down minimum rules and imposes an obligation on Member States to comply with certain conduct.
- The minimum guarantees it enshrines safeguard the fundamental right to a fair trial in the EU. Member States are free, depending on their economic means and policies, to extend the conditions of access to legal aid but are not free to adopt rules on legal aid that fall below the standards set by Directive (EU) 2016/1919, the Charter or the ECHR.
- Article 7 of the Directive is one of the most important provisions of the Directive. EU law requires Member States to establish an effective and high-quality system of legal aid by ensuring the independence of the lawyers involved.
- To date there are still many deviations from the standards set by the Directive in many EU countries (lack of resources and priorities) and this is an issue that has been plaguing the legal world in the EU.
- The provisions of the preamble are particularly enlightening for the direct application of the provisions of the Directive by the national judge:
- *"This Directive should apply to suspects, accused persons and requested persons regardless of their legal status, citizenship or nationality. Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth. This Directive upholds the fundamental rights and principles recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence, and the rights of the defence. This Directive should be implemented in accordance with those rights and principle"* [preamble 29)
- Decisions on whether or not to grant legal aid and on the assignment of lawyers shall be made, without undue delay. [Art. 6] The Directive defines the concept of "without undue delay" as follows: *"The competent authorities should grant legal aid without undue delay and at the latest*

before questioning of the person concerned by the police, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts referred to in this Directive are carried out. If the competent authorities are not able to do so, they should at least grant emergency or provisional legal aid before such questioning or before such investigative or evidence-gathering acts are carried out". [preamble 19].

Case law

- Quality of legal aid: Daud v. Portugal no 11/1997/795/997, Lagerblom v. Sweden 26891/95,
- S. v. Switzerland nos 12629/87; 13965/88, Croissant v. Germany 13611/88, Meftah and others v. France nos. 32911/96, 35237/97 and 34595/97, Quaranta v. Switzerland 12744/87
- Waiver of the right to legal aid: Supreme Court of Greece 1413/2010.

Case Studies

CASE STUDY 1 – The right of access to a lawyer

Facts

On 26 August 2015, after the discovery of a lifeless body in a street in Medkovets (Bulgaria), police officers went to the home of EP, the victim's son. EP admitted that he had committed homicide against his mother. After witnesses informed the above-mentioned police officers about the mental disorders EP was suffering from, the officers led him to the emergency service of a psychiatric hospital.

The Rayonen sad Lom (Lom District Court, Bulgaria) ordered EP's placing in a psychiatric hospital for six months by a judgment issued on 12 September 2015. This judgment, which was taken on the basis of the Health Act, was continuously renewed until the date of issuance of the referral judgment.

The psychiatric experts report, which was entrusted to two hospital psychiatrists, concluded that EP was suffering from paranoid schizophrenia.

By order of 7 July 2016, the Prosecutor of the city of Montana (Bulgaria) discontinued the criminal case on the grounds that EP suffered from mental illness. Considering that the latter was not able to participate in the proceedings, the prosecutor did not send the order to EP.

On 29 December 2017, the Apelativna prokuratura Sofia (Sofia Prosecutor's Office at the Court of Appeal, Bulgaria) ordered the continuation of the proceedings and reviewed the continuation of EP's placing in a psychiatric hospital under the Health Act.

An order issued on 1 March 2018 terminated the criminal proceedings against EP. The prosecution concluded that it was necessary to order compulsory medical measures because EP had intentionally committed a criminal offence under the state of mental disorder, which meant that he was not criminally liable. This order was served on the victim's daughter. As no appeal was filed by the due date, this order became final on March 10, 2018.

The Rayonna prokuratura Lom (Lom Prosecutor's Office, Bulgaria) submitted to the requesting court, the Rayonen sad Lukovit (Lukovit District Court, Bulgaria), a request for EP's placing in a psychiatric institution under Articles 427 et seq. of the Bulgarian Code of Criminal Procedure.

EP was never questioned during the criminal investigation and he was not notified of the initiation of criminal proceedings against him. As no criminal proceedings were brought against him, he was not provided with legal aid. He could not exercise any legal remedy to challenge the legal and factual conclusions of the prosecution.

Legal framework

Regarding proceedings for compulsory medical measures under Articles 427 et seq. of the Code of Criminal Procedure, national law does not allow the judge to examine whether the alleged perpetrator of the offence was afforded the basic procedural safeguards for the exercise of the rights of the defence during the initial investigation.

Questions

Under those circumstances, the Rayonen sad de Lukovit (Lukovit District Court) decided to suspend the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

1) Does the present procedure regarding the imposition of compulsory medical treatment measures, which constitute a form of state coercion against persons who, according to the findings of the public prosecutor, have committed an act representing a danger to the general public, fall within the scope of Directive 2012/13 and Directive 2013/48?

2) Do the Bulgarian provisions of procedural law, which regulate the special procedure for the imposition of compulsory medical treatment measures under Articles 427 et seq. of the Code of Criminal Procedure, under which the court does not have the power to refer the case back to the Prosecutor's Office and instruct it to correct the substantial procedural errors committed in the pre-

trial stage, but only to accept or dismiss the application for imposition of compulsory medical treatment measures, constitute an effective remedy within the meaning of Article 12 Directive 2013/48 and Article 8 Directive 2012/13, read in conjunction with Article 47 of the [Charter], which guarantees the right of an individual to challenge in court any act that may affect their rights in pre-trial proceedings?

CASE STUDY 2 – Legal aid as an aspect of the right to a fair trial.

Facts

The applicant is a Tanzanian national, born in 1957 and residing in Tanzania. He is a seaman. In 1986 he was convicted to a fixed-term sentence for drug-related offences in Greece. In November 1989 he was released from prison and deported from Greece.

On February 16, 1990, a Mr GC was arrested for drugs transportation at Athens Airport. A telephone number was found on him, which, after tracing, turned out to belong to a hotel in Piraeus, where the applicant, who had returned to Greece, was staying at the time. The police went to the hotel. A forged passport was found in the applicant's possession. However, no drugs or other incriminating evidence appears to have been found on him.

The applicant was arrested and brought before the police in Athens, where he was subjected to questioning. According to his examination report, the applicant claimed that he did not speak Greek, but only English, and for this reason he was assisted by the Hellenic Police officer, HL, who was English-speaking and acted as an interpreter. In the report it is also mentioned that the applicant was asked about the events leading to his arrest and about the forged passport found in his possession. Although he gave full details of his movements after his deportation from Greece three months earlier, he denied any involvement in drug trafficking. The following day, the police questioned him again. The Hellenic Police officer HL performed interpretation duties once again.

On 18 February 1990 the applicant was brought before the Prosecutor, who initiated criminal proceedings against him for forgery and various drug-related offences. The applicant does not dispute the fact that an interpreter was present during those proceedings (before the Prosecutor).

The applicant was then brought before the Investigating Judge, who read the charges against him. The report drawn up on that day indicates that a lawyer who spoke English and acted as an interpreter was present.

On 20 February 1990 the applicant appeared again before the Investigating Judge, to whom he submitted a memorandum. It appears from his plea report drawn up on that day that Mr A, a lawyer from Athens, and an English-

language interpreter were present. The Investigating Judge ordered the applicant's remand in custody.

On 21 June 1991 the applicant and three of his co-accused persons appeared before the Athens Three-member Felony Court of Appeal, which appointed an interpreter. The applicant stated that he was represented by counsel Mr. A and requested an adjournment of the hearing of the case due to lawyers' abstention, in which his lawyer participated. A similar request was made by his co-accused persons. The case was adjourned.

On 12 July 1991 the applicant and his co-accused persons appeared again before the Court and an interpreter was re-appointed. The applicant's lawyer at the time, Mr L, was absent, so the Court asked the defence lawyer of a co-accused person, Mr N, whether he could also represent the applicant. Mr N accepted his appointment and the Court briefly suspended the hearing, in order to allow Mr N to be briefed on the applicant's part of the case.

On 16 July 1991 the Athens Three-member Felony Court of Appeal found the (herein) applicant guilty for drugs importation and trafficking as well as use of forged documents. It imposed on him a sentence of life imprisonment and a monetary penalty of 6,000,000 drachmas for breaches of the Narcotics Act and an eight-month prison sentence for use of forged documents. The (herein) applicant appealed against this judgment.

On 18 March 1993 the appeal was heard before the Athens Five-member Felony Court of Appeal, before which an interpreter was present and the applicant was represented by counsel Mr EL, a lawyer provided by a humanitarian organization. The applicant was found guilty of simple complicity in drugs importation and trafficking and use of forged documents and acquitted of the other charges. He was sentenced with twelve months imprisonment and a monetary penalty of 5,000,000 drachmas for breaches of the Narcotics Act and three months imprisonment for use of forged documents. The judgment was finalized on 4 May 1993. According to the record of the appeal hearing, the President of the Court duly informed all the co-accused persons, including the applicant, of the time limit for filing an appeal on points of law, information which was translated to the applicant.

The applicant filed an appeal on points of law on 26 March 1993, by filling in a form, which he handed to the prison officials. In the relevant section of the form on the grounds for appeal on points of law he indicated that they would be submitted in due course by his lawyer. On the same form, he appointed Mr P as his representative.

On 8 June 1993 the applicant applied to the Prosecutor of the Supreme Court for legal aid in the appeal proceedings, through the prison. On 12 July 1993

the Supreme Court dismissed the appeal on grounds of law as inadmissible for failure to raise grounds for appeal.

On 4 April 1994 the applicant made a second request for legal aid before the Prosecutor of the Supreme Court, referring to his financial situation and asking to be informed of the progress of his appeal proceedings. On 27 April 1994 the applicant was informed by prison officials that his appeal on points of law had been rejected.

In a letter addressed to the State Legal Council (the representative of the Greek Government in the proceedings before the ECtHR), the Deputy Prosecutor of the Supreme Court stated that he could not find any request for legal aid from the applicant to the President or the Prosecutor of the Supreme Court. He also noted that the Court was not obliged by law to provide legal aid (appointment of lawyer) for an appeal on points of law. Therefore, even if the applicant had indeed submitted a request for legal aid before the Supreme Court, the latter was not obliged to respond to it.

Questions

1) Was there a violation of the applicant's right to a fair trial in this case due to the failure to provide him with legal aid in the proceedings of appeal on points of law? If so, what evidence should the Court before which the application for legal aid was submitted have taken into account?
2) Would the answer to the first question change if the applicant had already applied for legal aid at first instance?

Useful links for further reading (Available in English)

CoE – Access to a lawyer as a means of preventing ill-treatment

Fair Trials Europe – Legal Experts Advisory Panel – Roadmap practitioner tools: Access to a lawyer

Fair Trials Europe – Legal Experts Advisory Panel – Roadmap practitioner tools: Legal aid

Module 3 – Presumption of Innocence

Common Material

Directive

Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

Presentations

Issues related to the transposition and implementation of Directives (EU):

Directive (EU) 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

GEORGIOS SAFOURIS, Judge at Thessaloniki Court of First Instance

Directive (EU) 2016/343 – presumption of innocence

Legal basis of presumption of innocence – international instruments

- Article 6 paragraph 2 ECHR: "Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law".
- Article 14 paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR), adopted in December 1966 and ratified in Greece by Law 2462/1997.
- Article 11 paragraph 1 of the Universal Declaration of Human Rights (UDHR), dated 10-12-1948.

Greek law

- Combination of constitutional provisions, in particular articles:

  2 paragraph 1 (human dignity)

  5 paragraph 1 (personality)

  6 paragraph 1 (personal security)

  7 paragraph 1 (principle of legality)

  (Supreme Court judgment no. 92/2013, Supreme Court judgment no. 207/2014, Council of State judgment no. 3336/2007)
- Article 108(f) Code of Civil Servants (Law 2683/1999), providing that one of the principles applicable in disciplinary proceedings is that of the "presumption of innocence of the person against whom disciplinary proceedings have been initiated".

- Article 11 paragraph 1 Code of Conduct for news and other journalistic and political broadcasts of the National Council for Radio and Television (PD 77/2003), according to which radio and television broadcasters are bound by the presumption of innocence.

Article 3 paragraph 3 Law 1730/1987 relating to the National Radio and Television, provides that radio and television broadcasts, when reporting on events relating to criminal offences, must respect the principle that the accused person is presumed innocent until convicted.

Charter of Fundamental Rights of the EU

- adopted at the Nice Summit on 7 December 2000 as a joint political declaration
- following the Lisbon Treaty, which entered into force in December 2009, it constitutes binding primary EU law

Article 48 paragraph 1 CFREU

"Everyone who has been charged shall be presumed innocent until proved guilty according to law."

Article 51 paragraph 1 CFREU

The Charter is addressed to Member States only when they apply Union law.

CJEU judgment, 5.12.2019, C-671/18, Centraal Justitieel Incassobureau

- Directive 2016/343 of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, adopted on 9 March 2016 (4 chapters, 16 articles, 51 recitals)
- Deadline for compliance: 1 April 2018 (Article 14 paragraph 1)
- All articles of the Directive were transposed into Greek law by Law 4596/2019 of 26 February 2019, Chapter B, articles 5-10, with the exception of articles 5 and 9, because the provisions contained in them that were already in force in Greek law.

Recital 10: By establishing common minimum rules on the protection of procedural rights of suspects and accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems.

Article 1: It applies at all stages of the criminal proceedings, from the moment when a natural person is suspected or accused of having committed a criminal offence until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.

Article 2: For as long as guilt has not been proven, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to the suspect or accused person as being guilty.

- Article 3 Directive ➔ Article 71 (former 72A) Code of Criminal Procedure

"Suspects and accused persons are presumed innocent until proved guilty according to law"

- Articles 4 and 10 Directive ➔ Article 7 Law 4596/2019

Right to bring action for compensation of damages caused by breach of the presumption of innocence, under Articles 105-106 of the Introductory Law to the Civil Code

- Article 6 Directive ➔ Article 178 paragraph 2 (former 177A) Code of Criminal Procedure

Burden of proof in favor of the accused person

- Article 7 Directive ➔ Article 104 (former 103A) Code of Criminal Procedure

Right of suspect/accused person to remain silent – The exercise of the right shall not be used against them

- Article 8 Directive ➔ Article 155 paragraph 2 final sentence Code of Criminal Procedure

Effective search of the accused person's residence by all reasonable means, based on the address on their tax declaration

➔ Article 340 paragraph 4 (former paragraph 3) Code of Criminal Procedure

The accused person shall be tried as if he/she had been present, provided that he/she has been informed that if he/she does not appear, or is not represented, the trial shall be held in his/her absence

Content of the presumption of innocence

- Internal aspect: effectiveness of criminal proceedings

  Standard of good conduct of bodies conducting criminal proceedings

  Standard of evidence control.

- External aspect: protection of the reputation of the person concerned from statements made by any person or third party involved in the criminal proceedings.

In general, the external aspect extends beyond criminal proceedings (such as disciplinary proceedings, administrative trial), but Directive 2016/343 applies only in criminal proceedings.

CJEU judgment of 19.09.2018, Milev, C-310/18 PPU

"Directive 2016/343 and, in particular, Article 3 and Article 4(1) thereof, do not preclude the adoption of preliminary decisions of a procedural nature, such as a decision taken by a judicial authority that pre-trial detention should continue,

which are based on suspicion or on incriminating evidence, provided that such decisions do not refer to the person in custody as being guilty. Moreover, […], as to the degree of certainty which [the Court] must have concerning the perpetrator of the offence, the rules governing examination of various forms of evidence, and the extent of the statement of reasons that it is required to provide in response to arguments made before it, such questions […] fall solely within the remit of national law."

Violations of the presumption by Greece brought before the ECtHR:

a. Rejection of claim for compensation of persons who were deprived of liberty and subsequently acquitted

Article 536 Code of Criminal Procedure: The State has no obligation to pay compensation if the person who was deprived of his/her liberty was intentionally liable for the deprivation of his/her liberty.

The Court detected scepticism as to the applicant's innocence.

(ECtHR cases Mosinian, Kabili, Alija v. Greece)

b. Evidential value of an acquittal in administrative proceedings

The operative part of an acquittal judgment must be respected by any authority ruling, directly or indirectly, on the criminal liability of the person concerned.

(ECtHR cases Stavropoulos, Kapetanios v. Greece)

Supreme Court (in plenary) judgment no. 4/2020 (11 June 2020)

- A prerequisite for the application of the presumption of innocence in subsequent proceedings of non-criminal nature is the existence of a correlation between the criminal proceedings and the subsequent non-criminal proceedings.
- The constitutional provision of three distinct jurisdictions precludes the existence of a single legal order, under which an irrevocable acquittal judgment must be accepted by the civil court, leading to an outcome that is compatible with the criminal acquittal.
- The civil court, when deciding whether a civil offence, which is at the same time a criminal offence, has been committed, cannot disregard the accused person's acquittal.
- Violation of the presumption of innocence should always be determined in concreto.

Case Studies

CASE STUDY 3

Facts

As AA, a policeman, was driving his private car after a night out, he hit three minors, aged 10 years, causing their death. After the crash, he left the scene of the accident. The following day he surrendered to the police authorities, admitting his responsibility for the death of the three minors, but denying that he was driving under the influence of alcohol.

The news gained massive attention in his country, and the media reported extensively on the circumstances of the accident and the lack of responsibility demonstrated by many police officers in the past. In particular:

1) The Minister of Public Order stated the following: "Apologies are not enough. The Chief of Police must assume personal responsibility for this terrible incident. This is not the first time that police officers, who are supposed to control traffic violations, have caused terrible accidents."
2) Five days after the incident, under pressure of public opinion, the Minister of Public Order and the Chief of Police submitted their resignation.
3) In the wake of the crisis within the Police, the President of the Republic made the following statements: "The loss of the three children, the crime committed by an officer and its circumstances require clear answers and solutions. It is unacceptable that crimes committed by police officers are punished with relatively mild sentences."
4) The newspaper "Early Edition" published a photo of the accused person and the headline of the article next to it was: "The police officer who caused the crime, AA, surrendered to the authorities only after it would not have been possible to detect alcohol in his body. Those responsible should resign."

AA claims that the publication of his photograph, as well as all the above facts (under 1-4) violated the presumption of innocence, in accordance with Directive 2016/343, as transposed into national law, and Article 6 paragraph 2 ECHR.

Questions

1. Do all the above-mentioned alleged violations of the presumption of innocence fall within the scope of Directive 2016/343?
2. If not, do they fall within the scope of Article 6 paragraph 2 of the ECHR?
3. Do you agree with AA's allegations that the presumption of innocence was violated in this case?

Useful links for further reading (Available in English)

Council of Europe Guide on communication with the media and the public for courts and prosecutors

Module 4 – Procedural Safeguards for Children

Common Material

Directive

Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings

Presentations

Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

GEORGIOS SAFOURIS, Judge at Thessaloniki Court of First Instance

- Directive 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings adopted on 11 May 2016 (27 articles, 71 recitals)
- Deadline for compliance: 11 June 2019 (Article 24 paragraph 1)
- All articles of the Directive were transposed into Greek law by Law 4689/2020 of 26 May 2020, Part A, articles 1-20.
- ECtHR case of 2.3.2010, Panovits v. Cyprus
- The Court took into consideration: 1) the fragile mental state of the minor (feelings of guilt and shame), 2) the minor's limited perceptual capacity.
- A waiver of a right at the pre-trial stage can only be accepted where it is expressed in an unequivocal manner after the authorities have taken all reasonable steps to ensure that the person who waives of a right is fully aware of his/her rights of defence and can appreciate, as far as possible, the consequence of his/her conduct.
- Violations of Article 6 ECHR: 1) no sufficient information on the right to be represented by a lawyer and the right to remain silent was provided to either the minor or his father, 2) during his first questioning by the police the minor was alone, without the presence of a parent or other adult person.
- ECtHR case of 11.12.2008, ADAMKIEWICZ v. Poland
- The minor could not reasonably have known of his right to seek legal assistance, nor could he have appreciated the consequences of the absence of such assistance during his questioning.

- He remained in isolation in a juvenile detention center when he should have had broad access to a lawyer from the early stages of the proceedings.
- It is clear from the wording of the criminal judgments that were issued subsequently that the information collected by the authorities during the preliminary investigation was broadly used to support his conviction.
- Consequently, there was a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 of the ECHR.

Directive recitals – Aim

- (8) Member States should ensure that the child's best interests are always a primary consideration, in accordance with Article 24(2) of the Charter of Fundamental Rights of the EU.
- (9) Children who are suspects or accused persons in criminal proceedings should be given particular attention in order to preserve their potential for development and reintegration into society.
- Law 4689/2020
- Article 2: Applicable in case of minors' acts for which, when committed by an adult, a sentence of minimum 6 months' imprisonment is provided
- Article 4: Right to be informed about rights at every stage
- Article 6: Legal assistance before questioning by authorities
- Articles 7-8: Right to individual assessment/specialized assessment - right to medical examination for minors deprived of their liberty
- Article 9: Electronic audiovisual recording of questioning
- Article 12: Conduct as a matter of priority / diligence / necessity

Case Studies

CASE STUDY 4

Facts

A, B, C, D, E and F are accused of participating in a criminal organization operating in Sofia (Bulgaria), which aimed to forge identity cards and driving licenses for motor vehicles.

One of the six accused persons, A, expressed his wish to enter into an agreement with the prosecutor in which he would plead guilty in exchange for a reduced sentence. The five other accused persons provided their "procedural consent" to the conclusion of such an agreement between A and the prosecutor, expressly stating that this did not mean that they plead guilty. F, a minor, requested that the Court appoint a lawyer for him, and the prosecutor assured

him that he would appoint a lawyer for him immediately after the agreement with A had been concluded.

The text of the agreement between A and the prosecutor shall be submitted to the competent court in Bulgaria for approval. The participation of all the accused persons is mentioned in the text, just as in the indictment. All accused persons are identified in the same way, i.e., by their first name, father's name, surname and national identification number. The only difference in the way they are identified is that A is also identified by his date and place of birth, address, nationality, ethnicity, marital status and criminal record.

According to the practice in Bulgaria, the text of such an agreement must correspond to the exact text of the indictment. Moreover, the offence of criminal organization requires the participation of at least three persons.

Question

Is the practice that was followed in accordance with EU law?

Useful links for further reading (Available in English)

Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice

UN Interagency Panel on Juvenile Justice

ERA Training materials on child-friendly justice

Material for acting

Presentations

Directive on procedural safeguards in criminal proceedings against children

PROF. DR. BABEK OSHIDARI, Austria, Supreme Court

Starting Point and Scope

- **Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016, OJ L 2016/132 of 21 May 2016**
- **Implementation of minimal standards until June 11th 2019**
- **Children below 18 years of age**
    - Until the final termination of the criminal proceedings.

- Continued validity possible after reaching the age of 18 (Art 2 Abs 3)

- **Exemptions for minor offences (Art 2 Abs 6)**
  - Sanctions that are not imposed by a criminal court but by an authority
  - Offences for which deprivation of liberty is not provided as a sanction

Rights of legal representatives

- **Art 5**
- Right to information on those points on which the juvenile himself/herself is also to be informed.
- The Directive does not provide for any rights of appeal or powers of independent appeal.

Assistance by a lawyer and legal aid

- **Right to assistance by a lawyer (Art 6, see also Art 6 Abs 3 lit c EMRK)**
- **Assistance by a lawyer is obligatory**
  - When being questioned by the public prosector or the police
    - Exceptions for certain investigative measures (e.g. alcohol test)
  - In the case of confrontations or a reconstruction of the crime
  - Immediately after deprivation of liberty
  - In case of a summons to court

Limitations of the necessary defense in cases of disproportionality with the associated expense

- **Individual assessment by organs of juvenile court assistance (Art 7)**
  - Usually before the indictment
  - Multidisciplinary approach by qualified bodies
  - Exceptions possible if no disadvantages for the personality development of the juvenile are to be expected
- **Right to medical examinations in case of deprivation of libertiy (Art 8)**
  - To assess whether the detained juvenile is up to the measures taken or planned against him or her
  - Costs are to be borne by the state, even in the event of a guilty verdict
- **Audiovisual recording of questioning as the norm, written minutes only in case of technical problems (Art 9)**

Deprivation of liberty and alternative measures

- **Deprivation of liberty before the clarification of the question of guilt to be avoided, only as a measure of last resort (Art 10)**
    - However, arrest in case of committing an offence in the act remains possible
    - Special acceleration requirement in detention cases
- **Alternatives (Art 11)**
    - Vow, instructions
    - Educational measures
    - Assisted living communities
- **Deprivation of liberty (Art 12)**

Separate housing for youth and adults and access to educational facilities.

Special procedural rights

- Priority completion (Art 13)
- Protection of privacy (Art 14)
    - In principle exclusion of the public
- Participation of the legal guardians in the proceedings (Art 15)
- Presence of the juvenile at the main hearing (Art 16)
- Application of Art 4, 5, 6, 8, 10-15 and 18 to the procedure for executing a European arrest warrant
- Legal aid (Art 18)
- Legal remedies (Art 19)
- Obligation to train judges and prosecutors working in juvenile criminal matters (Art 20)

Right to information

- **Art 4**
    - Necessary defense and legal aid
    - Participation of the legal representative
    - Exclusion of the public in the main hearing
    - Obligatory juvenile examinations
    - Medical examination
    - Limitation of deprivation of liberty and alternative measures
    - Right to be present at the main hearing
    - Appeals and remedies

- Special treatment during deprivation of liberty

Implementation of the Directive – the Austrian example

- **Amendments to the Juvenile Justice Act (JGG)**
  - Special acceleration requirement explicitly mentioned
  - Legal instruction newly regulated
  - Interrogation newly regulated
    - Video recording, if the juvenile has no defense counsel and no legal representative is present
  - Involvement of a defense attorney and participation of the legal representative expanded
  - Necessary defense newly regulated
  - Juvenile investigations and juvenile court assistance expanded

Material on child psychology and child-friendly communication

General context – detailed outline of the module

The philosophy of the Society of Social Psychiatry and Mental Health P. Sakellaropoulos (SSP&MH P. Sakellaropoulos) is based on social/community psychiatry, aiming at the effective and as complete as possible coverage of the needs of the population with emphasis on the provision of care for psychosocial problems.

In recent years, complex cases of children, adolescents and their families that require diagnosis and support from specialists emerge in Greece. Consequently, more and more judicial officers are requesting the assistance of mental health professionals to assess the psychological aspects of cases of young persons as well as all the persons related to them.

This can be explained by significant increase in social awareness of children's rights and child protection issues in our country over the last twenty years. Changes in the social and economic level as well as in family's structure and function have been associated with phenomena of child abuse and child and youth delinquency.

A child's assessment in the context of judicial proceedings is a process that aims to bring the disciplines of child psychiatry and child psychology closer to the

legal framework and concerns the protection of children's rights, the purpose of which is to provide the court with objective evidence for the child's benefit.

The procedure that is being followed differs from that of a clinical psychiatric/psychological examination and usually concerns the following cases: (a) custody arrangement and communication issues relating to the parent who does not reside with the child; (b) inability of both or one parent to exercise parental responsibility; (c) arrangement of parental responsibility or custody due to child abuse or neglect; (d) delinquency issues; (e) compensation for non-material harm; and (f) physical/sexual abuse of the child.

Role of mental health specialist/expert

With regard to assessment of cases following requests addressed to mental health professionals and in particular child psychiatrists by the judicial authorities, the assistance of an expert is requested. The responsibilities of the expert are mostly related to diagnosis but also to therapy, focusing on guaranteeing the child's mental health, his/her consent, provision of information with regard to the limits of confidentiality (it should be noted that the code of conduct specifically mentions that confidentiality does not apply in the context of the expert report) and the overall procedure followed. Particularly in cases of juvenile delinquency, the assessment is aimed at proposing treatment plans for the child's welfare and not correction.

When the assessment is concluded, an expert report is drafted and submitted to the court. It is important to stress that the overall assessment process includes both sources of information through observation and use of data collection tools such as psychometric tools in order to carry out an expert report that is clear and accurate (according to the American Psychological Association, the American Academy of Child and the British Psychological Association.)

Role of mental health specialist/mediator (recommended as a "facilitating" role of the mental health specialist)

An individual meeting is held with the child to explain the legal procedure from a psychological point of view. The child's psychological state in relation to the incident (without focusing on it) is briefly examined and in general the child is supported psychologically.

The professional in question should take into consideration that the place of the first meeting with the child should be quiet, familiar, simple, without many distracting stimuli and appropriately lit. At the same time, it is important that the professional creates the right atmosphere so that the child or adolescent feels comfortable and perceives the whole process as less "threatening". A neutral

and professional attitude during the interview is recommended, in combination with emotional presence and generosity in order to "earn" the child's trust and cooperation.

An important factor in reducing the child's anxiety and embarrassment during the interview is to ensure privacy and quiet in the office where the contact with the judicial officer and the mental health professional is conducted. Even in case of a child who does not wish to be alone with us and reacts, we shall make sure that we meet the child together with one of his or her parents for a short time to establish a relationship of trust and emotional safety.

Proposed methodology during judicial testimonies

It is essential to clarify and distinguish the roles of each professional involved in extrajudicial or judicial testimonies.

It would be appropriate for children to be informed about the process according to their age, mental state (e.g., if a child suffers from an intellectual disability, the language used should be simpler and flexible in terms of repetition, further explanation, etc.).

It is also necessary to reassure the child about protection of personal information.

In addition, the definition and content of the process followed by the mental health specialist in order to examine a child's mental and perceptual capacity should be clarified to the authorities.

The presence of a specialist, either a psychologist or a psychiatrist, during the testimony could also be facilitating and supportive especially for the child but also for the judicial officer. This "mediator" role can be differentiated by the child and adolescent forensic psychiatrist (expert).

The mental health specialists who support the process should be experienced and well-trained and enlisted from specialized staff of security departments, specialized NGOs or other public services and hospitals.

Due to the fact that the cases are usually of an urgent and severe nature, children are sometimes left for long hours in offices or rooms without adequate food, drink, etc., so this should be included in the main methodology.

It is important to build a cooperation bridge between authorities and mental health specialists to consolidate continuous assistance when needed.

The main objectives of mental health specialists' action in psychiatric forensic cases involving children and adolescents, based on the experience of SSP&MH, are the following:

Awareness of basic topics relating to psychology/psychiatry in order to render the process more "child-friendly" with more "psychological" means of dealing with the situation, approaching people, gaining more empathy, knowing how to individualize each case.

Training on social/community psychiatry also by the Society of Social Psychiatry P. Sakellaropoulos and its experience over the years.

Working groups with an appropriate facilitator to enhance judicial officers' psychological state, support them and possibly reduce stress (not psychotherapeutic groups)

Experiential exercises in groups to gain more empathy and share experiences.

Information on existing psychosocial services

Training by peers (at more advanced level) - trained judicial officers could train/support other colleagues in awareness of basic psychology and mental health first aid

Expected benefits of this seminar

Awareness of basic topics relating to psychology/psychiatry in order to render the process more "child-friendly" with more "psychological" means of dealing with the situation, approaching people, gaining more empathy, knowing how to individualize each case.

Experiential exercise to gain more empathy and share experiences.

Description of experiential workshop

The activity will last approximately 1.5 hours. The facilitators will start with a short theoretical approach on the axioms of communication and fruitful outreach to the population of children and adolescents, which is the aim of the action. The facilitators' aim is to stress out, among other things, where the communication style and emotional needs of this population differ from those of adults.

In the second part of the workshop, the facilitators highlight the specific characteristics and needs which are related to the outreach to populations that display psychopathological entities often involved in acts that are harmful to others – antisocial, such as personality disorder, hyperactivity, intellectual disability, autism, traumatized populations, other vulnerable minority groups at risk of developing psychopathology and delinquency, etc. At this stage,

participants are encouraged to debate and exchange ideas so that conclusions are reached in an experiential (Socratic maieutic) way.

At the end of the workshop, the participants are led to a summary and overall understanding of the findings, with the assistance of the facilitators. Time is also provided for questions, as well as for recommendations and reflections on future challenges in this field.

Recommended literature

Douzenis Athanasios & Likouras Eleftherios. 'Forensic psychiatry of children and adolescents'. Medical Publications Paschalidis. Athens 2008

Frangouli Athina, Karantzali Angeliki, Balomenou Maria, Argyropoulou Ioanna, Rigatou Alexandra. 'Protocol for handling child psychiatric cases following requests by the Public Prosecutor's Office or the Police'. Mobile Psychiatric Unit of N. Fokida. Fokida, 2019

Azeredo A, Moreira D, Figueiredo P, Barbosa F. 'Delinquent Behavior: Systematic Review of Genetic and Environmental Risk Factors'. Clin Child Fam Psychol Rev. 2019 Dec;22(4):502-526.

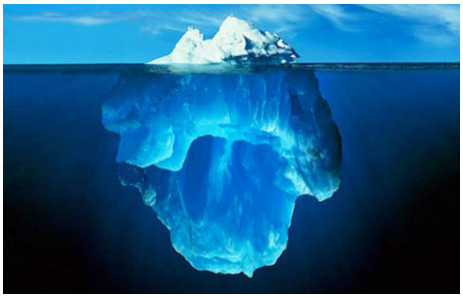
Child-friendly communication in judicial procedures: challenges from a children's developmental and psychological point of view

DR IOANNIS SYROS, Child and Adolescents Psychiatrist Children's' hospital Agia Sofia

ANGELIKI KARANTZALI Psychologist, MSc, Society of Social Psychiatry P. Sakellaropoulos

Virginia sire (1989)

Communication functions on 2 levels content & context



Communication axioms for children and adolescents

- In case of developmental poor speech organ it is important to pay attention to the external – verbal Communication
- Developmental and cultural adaptation to the vocabulary and social conciliation.
- Respect of what he/she desires to be addressed at.
- Regarding children and adolescents, reduced spatial and temporal orientation is desired.
- Under the state of intense stress, loss of control of reality is possible
- Use of his/her own vocabulary is acceptable.

- Faster fatigue to children/adolescents is expected compared to adults, and thus sometimes the information becomes unreliable.
- Initiation of the connection with the child/adolescent "with the safe place of the teenager" (what he/she likes, hobbies, preferences).
- Respect and understanding for the gradual transition to the issue of delinquency from the side of the child/adolescent
- 'A message that is sent, does not necessarily mean that it is fully understood'
- Children and adolescents do not often tolerate painful feelings for long amount of time and therefore they often disorient the conversation or desire the interview to come an end soon.
- Empathy: being able "to put ourselves to his/her shoes" → this skill seems to affect our understanding
- Recognizing aspects of violent behavior as a potential usable/beneficial form of communication.
- Recognizing that a disruptive behavior is not necessarily an element of an individual temperament but a "product" of the dynamics of the relationships in each social group where the adolescent participates and functions.
- Careful observation and listening
- Clarity and respect in communication
- Coordination of emotions

- ❖ Every behavior sustains communication, there is no case of no communication.
- ❖ Only 35% of the communication is verbal. In other words, the importance of non-verbal communication that defines the relationship and human contact, is highlighted

Psychopathological entities involved in delinquency

- Conduct Disorder
- ADHD
- Emotional disorders
- Autism
- Schizophrenia
- Personality Disorders
- Mental disability
- Adaptation disorder due to a traumatic / adverse life event
- (Precursor)Personality Disorder
- Adjustment disorder due to traumatic/adverse life event

Conduct disorder

- **Characteristics of the clinical profile:**

➢ Systematic behaviors that violate human rights

➢ Background of learning difficulties and developmental deficits

- **Characteristics during the clinical interview:**

➢ *Learning Disabilities Background: Giving Time for Understanding.*

Grace.

➢ *Need to repeat and confirm that he understood.*

Impulsivity on behalf of the child/adolescent

➢ *Adolescent's need of control and handling behaviors.*

➢ *Need for stability, clear frames.*

No excessive intimacy and pervasiveness on the part of the interviewer

Attention Deficit Hyperactivity Disorder

- **Characteristics of the clinical profile:**

❑ Hyperactivity

❑ Difficulty maintaining concentration

❑ Impulsivity

❑ **Characteristics during the clinical interview:**

❑ *Decomposition of concentration: Difficulty to retrieve information.*

Deficits in time orientation

❑ *Learning Disabilities Background: Giving Time for Understanding.*

❑ *Indulgence. Need to repeat and confirm that he understood.*

Impulsivity (responds without thinking, interrupts, etc.)

Attention Deficit Hyperactivity Disorder

❑ *He/she gets tired easily*

❑ *He/she often chats, not being able to focus.*

❑ *Emotional instability (easily frustrated or stressed).*

Depression

- **Characteristics of the clinical profile:**
- In delinquent young people, it sometimes coexists with a conduct
- The cause of comorbidity is the share of common risk factors (environment of emotional neglect, abuse, highly expressed emotion in the family, depression in parents)
- **Characteristics during the clinical interview**:
- *Psychomotor stimulation or burden*
- *Irritability and outbursts of rage*
- *Discount on cognitive functions*
- *Reduced action for change ("It does not make sense to change ..")*
- *Low self-esteem*

Anxiety disorder

- **Characteristics of the clinical profile:**

- In delinquent young people, it sometimes coexists with a conduct behavior
- Aggressive behavior is sometimes interpreted on the occasion of his/her need to satisfy his/her Obsessive/compulsive behaviors or his /her inability to control stress
- **Characteristics during the clinical interview:**
- *Cognitive stiffness*
- *Irritability and distrust: He/she loses his/her temper.*
- *Emotional Discount on cognitive functions*
- *Low self-esteem*

Bipolar disorder

- **Characteristics of the clinical profile:**
- In delinquent young people with conduct disorder (CDs) usually during the manic episode
- Interval episodes of depression and mania / hypomania
- **Characteristics during the clinical interview:**
- *Reduced insight*
- *High risk behaviors*
- *Ideology, incomprehensible speech*
- *Psychotic manifestations*

Autism spectrum disorder

- **Characteristics of the clinical profile:**
- In delinquent young DDs, usually during the manic episode
- Quality discount on social conciliation
- Deficiencies in verbal and nonverbal communication
- Stereotypes and special (obsessive) interests
- Sensory peculiarities

Characteristics during the clinical interview

Need for stability

Reduced insight

Need to satisfy obsessive concerns, without predicting the future consequences.

Difficulties in understanding speech, especially metaphorical speech.

Decomposition of concentration

Communication disruption (obsession with one topic, difficulty shifting to another, etc.)

Deficiencies in the Theory of Mind (cannot understand that the other has a different attitude / thought towards a behavior of his/her).

Intellectual disability

Characteristics of the clinical profile:

- Deficiencies in adaptive skills
- Difficulty in regulating emotion and behavior,
- Replacement behaviors
- **Characteristics during the clinical interview**:
- *Paranoid alertness-*
- *Difficulty in :1. understanding2. building experience and therefore low sensitivity on its difficulties.3. understanding the consequences of his/her actions.*

Intellectual disability

- *Low problem-solving repertoire*
- *Low self-esteem*
- *Suggestibility*
- *Gives unreliable information to guided & closed questions*

(Precursor) Personality Disorder

- **Characteristics of the clinical profile:**
- variability in emotion and behavior
- Emotional (anxiety, depression) and psychotic manifestations (paranoia) when under stress
- Aggressive behavior in ambiguous or controversial social situations
- Trauma history / Problematic family environment
- **Characteristics during the clinical interview:**
- *Lack of empathy for the pain he/she caused.*
- *Inability to feel guilt and remorse*
- *Interviewer handling and control behaviors.*
- *Impulsivity*

Adjustment disorder to a traumatic/adverse life event

- **Characteristics of the clinical profile:**
- Usually, vulnerable temperament
- Responds by behavioral problems to stress. Also, self-destructive behaviors
- Need to seek (cry) for help
- **Characteristics during the clinical interview:**
- *There is cooperation*
- *Achieves emotional connection*
- *Transient difficulties, and usually a positive prognosis*

Experiential exercise – Role play

Scenario

ANGELIKI KARANTZALI

In a small Greek provincial town, one day in the autumn, the local AT service officer is informed by a local businessman that his small fenced business with a bar and amusement park has been burglarized with crowbars and has been also vandalized. He testified that on top of the damage and vandalism that occurred to his business, he considered that they were possibly adolescents as revealed by the security camera that his business had (mainly due to their body type). In fact, he was supposedly able to name one of the "perpetrators" as he happened to meet him through his family, also due to the fact that the adolescent used to visit his business and due to the "closed character" of the local community. In fact, as he highlighted, the adolescent was at the "front line" of the burglary and the damage caused.

At the beginning of the police investigation, in compliance with the prescribed protocols and in the midst of verifying fingerprints and other data, the parents of the aforementioned adolescent (12 years old) are summoned. Parents experience great stress, surprise and anger at the first hearing of this situation and are also asked to manage their child's first approach to such a difficult situation. As Mrs. A., boy's mother, stated to the psychologist, she mainly felt ashamed and very angry. In the meantime, the businessman contacted the parents to state that he was "willing" to make an out-of-court settlement by the payment of a large sum of money, possibly higher than the cost of the damages, but he estimated that the extent of the damages was so large, to do not sue.

The adolescent G. (12 years old) after a discussion with his parents admitted that he did this act at the provocation of two of his friends as an exercise of courage, without thinking at all about the consequences. He even made a testimony to the Police Department. In the period that followed and in the midst of further proceedings by the police (informing the Prosecutor and following the prescribed procedures - note that there was no juvenile prosecutor in the area) the parents were in agony, grief and stress while hiding the fact from the rest of

the family because they were ashamed. They also limited their social contacts as they feared the stigmatization of their child and his further isolation. The minor G. was more closed to himself, avoided talking about it and mainly felt fear for what was to come.

The parents did not seem to trust the lawyer to whom the case was assigned and she herself seemed to advise the parents more to reach an out-of-court settlement as she considered that if the legal procedures were followed, "they will get more involved and have more costs".

The mother seemed to be aware of the possibility of their son having child psychiatric expertise examination, without knowing where to get advice, however, she wondered and feared that "if from now their 12-year-old son commits such crimes, what will he do next? » She also expressed anger towards her husband, as he says she did not understand the extent of the problem. It should be noted that the adolescent C, had therapy by a mental health service in the area with a diagnosis of DE-PY with morbidity depressive feeling, and then by a private specialist, mainly having refused to attend in parallel with the parents' distrust towards the effectiveness of mental assistance health in recent years, resulting in no consistency in his therapy.

The mother continued to be having therapy by the psychologist throughout the process, with her main concern being the lack of information about the criminal proceedings, the stigma of her child from society, as well as the fear of re-traumatization of her son during the court proceedings as she was afraid of her son been treated "like a criminal ...".

Checklist of Applicable Standards

Checklist of applicable standards as laid down in Directive 2013/48/EU on access to a lawyer, Directive 2016/343 on the presumption of innocence, Directive 2016/1919 on legal aid and Directive 2016/800 on procedural safeguards for children. Analysis of individual standards may be found in the Project's Booklet on Roadmap Directives.

Directive Standard	**Stage of the proceedings where it is applicable (pre-trial, trial, on appeal/cassation)**	**Was it applied at the pre-trial stage (yes, no, N/A)?**	**Was it applied at the trial stage (yes, no, N/A)?**	**Was it applied at the appeal/cassation stage (yes, no, N/A)?**	**Comments**
Access to a lawyer without undue delay	All stages				
Practicable and effective exercise of defence rights	Pre-trial stage				
Right to meet in private and to communicate with a lawyer	All stages				
Right to have a lawyer participate effectively in the criminal proceedings	Pre-trial stage				
Right to confidentiality of communications	All stages				

Right to have a third party informed and to communicate with third persons and with consular authorities	Pre-trial stage				
Conditions for waivers	All stages, depending on the right which is waived				
Right legal aid in criminal proceedings	All stages				
Right legal aid in EAW proceedings	All stages in the issuing State / Surrender proceedings in the executing state				
Application of a means and merit tests	When legal aid is requested				
Right not to be referred to as being guilty	All stages (at minimum until appeal)				
Right not to be presented as being guilty	All stages (in particular before the Court)				
Burden of proof	All stages				

Right to remain silent and to not incriminate oneself	All stages				
Right to be present at the trial	Trial				
Right to a new trial	Trial				

Standards applicable specifically to children, in accordance with Directive 2016/800

Directive Standard	**Stage of the proceedings where it is applicable (pre-trial, trial, on appeal/cassation)**	**Was it applied at the pre-trial stage (yes, no, N/A)?**	**Was it applied at the trial stage (yes, no, N/A)?**	**Was it applied at the appeal/cassation stage (yes, no, N/A)?**	**Comments**
Right to information	Pre trial stage or at the earliest appropriate stage				
Right of the child to have the holder of parental responsibility informed	Pre trial stage or at the earliest appropriate stage				
Assistance by a lawyer	All stages				

Right to an individual assessment	Pre trial stage or at the earliest appropriate stage				
Right to a medical examination	Pre trial stage or at the earliest appropriate stage				
Audiovisual recording of questioning	Pre trial stage				
Limitation of deprivation of liberty and alternative measures	All stages				
Specific treatment in the case of deprivation of liberty	Upon detention (including Pre trial detention)				
Timely and diligent treatment of cases	All stages, in particular pre-trial, trial				
Right to protection of privacy	All stages				
Right of the child to be accompanied by the holder of parental responsibility during the proceedings	All stages				

Right of children to appear in person at, and participate in, their trial	Trial				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