

# *Breaking* THE BARRIERS

TRANSNATIONAL PARTICIPATORY  
JUDICIAL TRAINING ON PROCEDURAL RIGHTS

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

## TRAINING PACKAGE

### Guidance and Training Materials for Trainers

on

### Procedural Safeguards for Suspects and Accused Persons in Criminal Proceedings

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## METHODOLOGICAL INFORMATION FOR TRAINERS

EJTN (2016): Handbook on Judicial Training Methodology in Europe  
[http://www.ejtn.eu/Documents/EJTN\\_JTM\\_Handbook\\_2016.pdf](http://www.ejtn.eu/Documents/EJTN_JTM_Handbook_2016.pdf)

### Virtual Training – Methodological Guidance

This Manual was drafted in the first months of the Covid-19 pandemic, when Europe was facing bans on travel and we were limited to virtual meetings. This situation but also an increased awareness that we all should reduce our carbon footprint has motivated and for the purpose of our current project also forced us to think about, how trainings and seminars can function also remote.

In principle, there are several possibilities to hold a seminar virtually. There are a plenty of platforms that provide for virtual meeting spaces. Most of them enable moderators to hold presentations to a large audience (Webinars), but also to work interactively with a smaller group and even split their audience into smaller groups in break-out sessions.

Interaction within participants and between participants and trainers are possible, even if face-to-face communication is not completely replaceable. In any case, there are certain rules that make virtual communication easier, which might not be evident, when being used to meeting participants in person and which we want to share.

#### **Before the meeting/Webinar/Workshop takes place**

Take care that you use a video-conferencing tool, that is adequate for the format you have chosen. This can mean that for a Webinar, it might be sufficient that participants can see you as a facilitator and your presentation, whilst for a more interactive Workshop you might want all participants to be able to opt for the possibility to see all participants.

There are also differences, when it comes to the possibilities provided to

- Send participants into breakout rooms
- Share documents via a chat function
- Provide for a White-Board, that can serve as a tool for brainstorming
- Collect opinions with a survey function

Share the agenda beforehand and think about any other information that participants might need in order to be able to follow the workflow.

### **When the meeting/Webinar/Workshop starts**

Make sure all participants have all arrived

Make sure that participants connect with you and other participants

Take care that participants put their micros on 'mute', when there are not talking themselves

Introduce gestures that participants can use, when they want to say something

### **Conducting the meeting/Workshop/Webinar**

Use virtual Whiteboards in order to collect participants' ideas as a basis for further discussion

You can start in the virtual plenary and the use breakout rooms in order to split participants into working groups. You can set the time frame for these meetings and can also as the facilitator visit all groups and participate in or monitor their discussion.

Depending on the size of the whole group, it can be very helpful to have an assistant facilitator. After the time span has expired all participants automatically are redirected into the plenary room. You can visualize the remaining time span with a timer function.

Take care you plan enough breaks!!! In order to keep participants' attention, you should plan a short break each hour at least.

### **End of the meeting/Workshop/Webinar**

As with a face-to-face meeting a proper closure of the event should be planned and done. Make sure that participants have time to ask final questions and allocate time for responding to them.

Feed-Back can be collected as in a face-to-face setting by a final evaluation round or you can prepare a survey that can be completed after the closure of the meeting.

## LEGAL FRAMEWORK

### 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<sup>1</sup>.

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

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

The presumption of innocence directive applies from 31 March 2016. EU countries have had to incorporate it into national law by 1 April 2018<sup>2</sup>.

The [legal aid directive](#) establishes common minimum rules concerning the right to legal aid in criminal proceedings across the EU. It sets clear criteria for granting legal

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<sup>1</sup> Source: EC Summary of Directive 2013/48/EU <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32013L0048>.

<sup>2</sup> Source: EC Summary of Directive (EU) 2016/343 <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L0343>.

aid, quality standards and remedies in case of breach. The directive is meant to complement EU rules on access to a lawyer and on procedural safeguards for children who are suspected or accused of crimes and does not affect the rights they define.

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

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

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

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

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

The directive has applied since 10 June 2016. EU countries have had to incorporate it into national legislation by 11 June 2019<sup>4</sup>.

## National frameworks

### Greece

[Directive 2013/48](#) on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty was transposed in the Greek legal order with Law no 4478/2017<sup>5</sup> which modified the Greek Code of Criminal Procedure (currently included in no 4620/2019<sup>6</sup>)

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<sup>3</sup> Source: EC Summary of Directive (EU) 2016/1919 [https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L1919#keyterm\\_E0001](https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L1919#keyterm_E0001).

<sup>4</sup> Source: EC Summary of Directive (EU) 2016/800 <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32016L0800>.

<sup>5</sup> Available in Greek at [https://www.kodiko.gr/nomologia/document\\_navigation/260208/nomos-4478-2017](https://www.kodiko.gr/nomologia/document_navigation/260208/nomos-4478-2017).

<sup>6</sup> Available in Greek at [https://www.kodiko.gr/nomologia/document\\_navigation/530491/nomos-4620-2019](https://www.kodiko.gr/nomologia/document_navigation/530491/nomos-4620-2019).

and Law no 3251/2004<sup>7</sup>. Directive 2013/48 stipulates that Member States were obliged to bring it into force by 27 November 2016. Greece only completed the transposition in 26.2.2019. Greek law does not comprise of a provision explicitly guaranteeing the right of suspects or accused persons to “meet in private” with their lawyer, as required by Article 3(a) of Directive 2013/48<sup>8</sup>. That omission constitutes a flaw in the transposition of the Directive. Article 12 of Directive 2013/48 concerning remedies was not transposed since the already existent remedies in the Greek legal order were deemed sufficient by the Greek legislator. Article 13 of Directive 2013/48 regarding vulnerable persons was not transposed either. However, the Greek Code of Criminal Procedure (Article 95) states that the particular needs of vulnerable persons must be taken into account when they are being informed of their rights in criminal proceedings. The remaining provisions of Directive 2013/48 (right to access to a lawyer, confidentiality, rights to have a third person informed of the deprivation of liberty, rights to communicate with third persons and consular authorities, waiver, rights in European arrest warrant proceedings) have been adequately transposed with Law no 4478/2017 (Articles to 48-52) and they are currently included in the Greek Code of Criminal Procedure (Articles 89-100) and Law no 3251/2004 (Article 15). The Greek legislator has chosen not to allow public authorities to derogate from the application of the right to access to a lawyer in exceptional circumstances, notwithstanding that Article 3(6) of the Directive 2013/48 provided for such possibility. On the other hand, under the Greek Code of Criminal Procedure, the right to have a third person informed of the deprivation of liberty and the right to communicate with third persons may be limited or suspended due to exceptional circumstances, in accordance with Articles 5(3) and 6(2) of Directive 2013/48.

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

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<sup>7</sup> Available in Greek at [https://www.kodiko.gr/nomologia/document\\_navigation/168097/nomos-3251-2004](https://www.kodiko.gr/nomologia/document_navigation/168097/nomos-3251-2004).

<sup>8</sup> See “The rights of access to a lawyer and to legal assistance in the EU”(in Greek), D. Arvanitis, 2019, available on <https://theartofcrime.gr/may-2019/>.

<sup>9</sup> Available in Greek at [https://www.kodiko.gr/nomologia/document\\_navigation/499589/nomos-4596-2019](https://www.kodiko.gr/nomologia/document_navigation/499589/nomos-4596-2019).

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<sup>10</sup> 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<sup>11</sup> 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 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<sup>12</sup> and the Criminal Procedure Amendment Act II 2016<sup>13</sup>. The amendments became effective on 1 January 2017. Under the Directive, the right of access to a lawyer should be guaranteed at any stage of the proceedings. The introduction of a

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<sup>10</sup> Available in Greek at <https://www.e-nomothesia.gr/kat-dikasteria-dikaiosune/nomos-4689-2020-phek-103a-27-5-2020.html>

<sup>11</sup> Available in Greek at <https://www.e-nomothesia.gr/kat-dikasteria-dikaiosune/n-3226-2004.html>.

<sup>12</sup> Published in: BGBl. I Nr. 26/2016, available at [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2016\\_I\\_26/BGBLA\\_2016\\_I\\_26.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_26/BGBLA_2016_I_26.pdf#sig); see also <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32013L0048> (both accessed on 11 February 2020).

<sup>13</sup> Published in: BGBl. I Nr. 121/2016, available at [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2016\\_I\\_121/BGBLA\\_2016\\_I\\_121.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_121/BGBLA_2016_I_121.pdf#sig); see also <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32013L0048> (both accessed on 11 February 2020).



legal on-call service (“Rechtsanwaltlicher Bereitschaftsdienst”) was an important step to facilitate access to a lawyer during police custody.<sup>14</sup> However, in practice, the vast majority of suspects in police interrogations are not legally represented, although the statements made before the police are highly relevant for the further criminal proceedings.<sup>15</sup> The reasons for this are mainly inadequate information about the existence of the legal on-call service and its effectiveness on the one hand, and the ambiguities regarding the cost to be paid or the bureaucratic hurdles to claim legal aid on the other hand.<sup>16</sup> During the main proceedings the accused may represent himself unless the legal defense is mandatory according to national criminal law.<sup>17</sup> Although a person unable to cover the cost of his/her legal defense can claim legal aid, there is in practice a high risk that the legal aid defender has no criminal law background and therefore cannot adequately defend the suspect.<sup>18</sup>

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

(Adoption: 22 May 2012; Transposition: 2 June 2014)

This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and the accusation against them. The necessary amendments to national criminal law were introduced by the Criminal Procedure Amendment Act 2013<sup>19</sup> and the Judicial Cooperation in Criminal Matters with the Member States of the EU Amendment Act 2013<sup>20</sup> and entered into force on 1 January 2014. In accordance with the Directive, the authorities are obliged to provide suspects and accused persons who are arrested or detained with a written Letter of Rights. Although it may be observed that the written information generally fulfills the formal standards required, too little attention is paid to the actual understanding of the existence and the scope of these rights.<sup>21</sup> Legal instructions should not only be formally correct, but must also be understood by the persons concerned irrespective of their social background or personal capabilities. This is equally relevant for court proceedings and judgements. However, the main trial does not put enough focus on the way the accused person is informed in some cases because it is believed that he/she should already have been instructed about his/her rights during the investigation proceedings.<sup>22</sup>

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

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

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> AT, CPC, art. 61 (1) Z.2.

<sup>18</sup> *Handbook, Dignity at Trial, Enhancing Procedural Safeguards for Suspects with Intellectual and Psychosocial Disabilities*, B. Lindner/N. Katona/J. Kolda and others, 2018, p. 93.

<sup>19</sup> Published in: BGBl. I Nr. 195/2013, available at [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2013\\_I\\_195/BGBLA\\_2013\\_I\\_195.html](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_195/BGBLA_2013_I_195.html); see also <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32012L0013> (both accessed on 11 February 2020).

<sup>20</sup> Published in: BGBl. I Nr. 175/2013, available at [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2013\\_I\\_175/BGBLA\\_2013\\_I\\_175.pdf#sig](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_175/BGBLA_2013_I_175.pdf#sig); see also <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32012L0013> (both accessed on 11 February 2020).

<sup>21</sup> *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 68 f.

<sup>22</sup> *Handbook, Dignity at Trial, Enhancing Procedural Safeguards for Suspects with Intellectual and Psychosocial Disabilities*, B. Lindner/N. Katona/J. Kolda and others, 2018, p. 90.

(Adoption: 20 October 2010; Transposition: 27 October 2013)

The legislator reacted to the need for adaptation, particularly with regard to the Code of Criminal Procedure 1975, in the course of the Criminal Procedure Amendment Act 2013<sup>23</sup>. Most of the provisions entered into force on 1 January 2014. Under the Directive, suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned must be provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities. In practice, problems to quickly find qualified interpreters due to the great demand for certain languages and the now lower pay were reported.<sup>24</sup> The use of insufficiently qualified interpreters leads to situations for suspects and accused persons where interrogations and hearings are recorded that do not adequately reflect the conversation.<sup>25</sup>

### **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<sup>26</sup> aimed, inter alia, at the transposition of the directive on the presumption of innocence. Due to the settled case law of the European Court of Human Rights and its incorporation in national law only minor changes were required.<sup>27</sup> 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 further proceedings.<sup>28</sup> The presumption of innocence also prohibits a public reference to guilt by state authorities, including statements about the guilt also in media coverage, and the presentation of the defendant as looking guilty in court or public (e.g. use of shackles or glass boxes).<sup>29</sup> Violations of this right are occurring, and can not only render the proceedings unfair, but can also impact the dignity of the person.<sup>30</sup>

### **Directive 2016/1919 on legal aid**

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

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<sup>23</sup> Published in: BGBl. I Nr. 195/2013, available at [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2013\\_I\\_195/BGBLA\\_2013\\_I\\_195.html](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_195/BGBLA_2013_I_195.html); see also <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32010L0064> (both accessed on 11 February 2020).

<sup>24</sup> *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 43.

<sup>25</sup> E.g. *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 108. This was also confirmed at the focus group discussion.

<sup>26</sup> Published in: BGBl. I Nr. 27/2018, available at: [https://www.sbg.ac.at/ssk/stpo/2018\\_i\\_27.pdf](https://www.sbg.ac.at/ssk/stpo/2018_i_27.pdf) (accessed on 11 February 2020).

<sup>27</sup> *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 99 f.

<sup>28</sup> *Die ersten 48 Stunden – Beschuldigtenrechte im Ermittlungsverfahren*, G. Zach/N. Katona/M. Birk, 2018, p. 106.

<sup>29</sup> *Guidebook, Strengthening the Rights of Suspects and Accused in Criminal Proceedings, The Role of National Human Rights Institutions*, G. Monina/N. Katona, 2019, p. 46 f.

<sup>30</sup> Ibid.

The Criminal Procedure and Juvenile Justice Amendment Act 2019<sup>31</sup> envisages the transposition of the Directive on legal aid. The legislative process has not yet been completed.<sup>32</sup> The implementation act provides, inter alia, that the costs for a defense lawyer on standby (“Verteidiger in Bereitschaft”) during a hearing concerning pre-trial detention shall not be borne by the suspect or accused if he/she claims to be unable to cover the costs.<sup>33</sup> The same rule applies to suspects or accused in a particularly vulnerable state.<sup>34</sup> Practical challenges may arise due to the high administrative burden imposed on the Austrian Lawyers Association (“Österreichischer Rechtsanwaltskammertag”) and the necessity to substantially increase the capacity of lawyers on standby (4200-5000 expected cases per year).<sup>35</sup>

**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 entailed in the Criminal Procedure and Juvenile Justice Amendment Act 2019<sup>36</sup> which has not been adopted so far.<sup>37</sup> Due to the particular situation of children or juveniles in criminal proceedings, the foreseen legislative act contains several provisions to enhance their right to information<sup>38</sup> and their right on access to a lawyer,<sup>39</sup> although the mandatory defense during the investigation proceedings is currently still limited to the charge of serious crimes.<sup>40</sup> Additional to the exhaustive list entailed in the transposition act,<sup>41</sup> legal defense during the court proceedings should also be mandatory if a prison sentence of more than one year could be imposed.<sup>42</sup> The presence of a legal representative or another person of trust will be obligatory through all stages of the criminal proceedings.<sup>43</sup> Under the implementation act, pre-trial interrogations of juveniles should be recorded.<sup>44</sup> However, the audiovisual recording may be omitted if severe technical problems arise which poses a high risk of circumvention.<sup>45</sup> Although, according to the envisaged legislative change, juvenile criminal cases must be handled with

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<sup>31</sup> A ministerial draft is available on [https://www.justiz.gv.at/file/2c94848a6af8ac42016bc2a16bf104ca.de.0/entwurf\\_text\\_.pdf](https://www.justiz.gv.at/file/2c94848a6af8ac42016bc2a16bf104ca.de.0/entwurf_text_.pdf) (accessed 11 February 2020).

<sup>32</sup> See on the current status of the legislative procedure: [https://www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME\\_00162/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME_00162/index.shtml) (accessed 11 February 2020).

<sup>33</sup> Ministerial Draft, § 59 (5) StPO, available on [https://www.justiz.gv.at/file/2c94848a6af8ac42016bc2a16bf104ca.de.0/entwurf\\_text\\_.pdf](https://www.justiz.gv.at/file/2c94848a6af8ac42016bc2a16bf104ca.de.0/entwurf_text_.pdf) (accessed 11 February 2020).

<sup>34</sup> Ibid.

<sup>35</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 2 f., available on: [https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME\\_05151/imfname\\_764632.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_05151/imfname_764632.pdf) (accessed on 12 February 2020).

<sup>36</sup> See [20].

<sup>37</sup> See [21].

<sup>38</sup> Ministerial Draft, § 32a JGG.

<sup>39</sup> Ministerial Draft, § 32 (3a) JGG.

<sup>40</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 4.

<sup>41</sup> Ministerial Draft, § 39 JGG,.

<sup>42</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 6.

<sup>43</sup> Ministerial Draft, § 37 JGG.

<sup>44</sup> Ministerial Draft, § 36a (2) JGG.

<sup>45</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 5.

particular speed,<sup>46</sup> practical challenges may arise due to the lack of legal consequences of a violation<sup>47</sup> and the necessity for sufficient personal resources.<sup>48</sup>

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

## Spain

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

As regards the **Directive 2016/343** on the presumption of innocence and **2016/1919** on legal aid, the basic measures have been largely implemented by the previous

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<sup>46</sup> Ministerial Draft, § 31a JGG.

<sup>47</sup> Stellungnahme, Österreichischer Rechtsanwaltskammertag, 2019, p. 4.

<sup>48</sup> Stellungnahme der Vereinigung der Österreichischen Richterinnen und Richter, 2019, available on: [https://richtervereinigung.at/wp-content/uploads/delightful-downloads/2019/09/2019\\_Strafprozess-und-Jugendstrafrechts%3a4nderungsgesetz-2019.pdf](https://richtervereinigung.at/wp-content/uploads/delightful-downloads/2019/09/2019_Strafprozess-und-Jugendstrafrechts%3a4nderungsgesetz-2019.pdf) (accessed 12 February 2020).

amendment to the Criminal Procedure Code through the Organic Law 5/2015 and Organic Law 13/15. For this reason the transposition of these Directives did not required by the Spanish State adopted new laws to transpose it. As regards the **Directive 2016/1919** on legal aid, the basic measures have been largely implemented by the previous amendment to the Criminal Procedure Code through the Organic Law 5/2015 and Organic Law 13/15. For this reason the transposition of these Directives did not required by the Spanish State adopted new laws to transpose it. on legal aid is certainly true that Law 3/2018 transposed a minor part of the Directive, this law amending Act 23/2014, of 20 November, on mutual recognition of judicial decisions in criminal matters in the European Union. The Law established more guarantees of information in case of the European Arrest Warrant by the accused person. But really the Directive 2016/2019 has an intimate connection with Directive 2013/48/EU with the consequence that the transposition of this Directive (2016/1919) has been done ahead of the transposition Directive 2013/48/EU. The new Directive only introduces few amendments throw Law 3/2018. For instance, generalization of legal aid and, where appropriate, free of charge for minor crimes

Finally, about the **Directive 2016/800** on procedural safeguards for children who are suspects or accused persons in criminal proceedings is important to notice 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 the position of the procedural rights of the minor offender and the progenitor who is 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 occasionally the Spanish legislation on this matter (procedural safeguards for children who are suspects or accused persons in criminal proceedings) already comply with this outcome, and in this moment Spain would be required only to keep its laws in place.

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

## THE DIRECTIVES

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

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>

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

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>

**Directive 2013/48/EU – Right of Access to a Lawyer in Criminal and European Arrest Warrant Proceedings**

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>

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

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L1919&from=EN>

**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**

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L0343&from=EN>

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

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L0800&from=EN>

## ECHR AND CHARTER RIGHTS

European Court of Human Rights (2019) – Guide on Article 6 of the European Convention on Human Rights

[https://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf)

Charter of Fundamental Rights of the European Union

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN>

## TEMPLATE CHECKLIST APPLICABLE STANDARDS

Template for the development of a checklist for 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.

Standards inserted serve for explanatory purposes – will be completed during the ToT.

### Pre-Trial Phase

	Was this applied?			Comments
Standard 1	Yes	No	N/A	
Access to materials of the case provided	Yes	No	N/A	
Standard 3	Yes	No	N/A	
Standard 4	Yes	No	N/A	

### In the Court Room

Right to be present	Yes	No	N/A	
Right to remain silent and right not to incriminate oneself	Yes	No	N/A	
<i>in dubio pro reo</i>	Yes	No	N/A	
Standard 4	Yes	No	N/A	

### Outside of the Court Room

Have I referenced to the guilt of the accused publicly?	Yes	No	N/A	
Standard 2	Yes	No	N/A	
Standard 3	Yes	No	N/A	
Standard 4	Yes	No	N/A	

### Written Communication

Standard 1	Yes	No	N/A	
Standard 2	Yes	No	N/A	
Standard 3	Yes	No	N/A	
Standard 4	Yes	No	N/A	

**Judgement**

<i>in dubio pro reo</i>	Yes	No	N/A	
Standard 2	Yes	No	N/A	
Standard 3	Yes	No	N/A	
Standard 4	Yes	No	N/A	

**After the judgement**

Standard 1	Yes	No	N/A	
Standard 2	Yes	No	N/A	
Standard 3	Yes	No	N/A	
Standard 4	Yes	No	N/A	

**Under 18 years of age**

Can underage suspect follow the proceedings? Can it understand, what is happening?	Yes	No	N/A	
Can the underage suspect express his/her view?	Yes	No	N/A	
Is the child accompanied by an appropriate adult?	Yes	No	N/A	
Standard 4	Yes	No	N/A	



## TRAINING MODULES

### Module 1 - Training on procedural safeguards - the EU Acquis

- Making trainers familiar with the EU legal framework for procedural rights
- Work with Case Studies - Case Studies – Cases that reflected the whole process – from police – to prosecutor - to the court room

### Module 2 - Training Methodology

#### How to conduct a training for judges and public prosecutors

- An education informed approach to the training
  - How learning happens – how does this apply to judges
  - Principles of experiential and problem-based teaching – how these can best apply to judges and prosecutors
  - Basics of managing learning in a virtual environment
  - Managing team work
  - Giving feedback

### Module 3 – Developing Training Content

- Decision on the focus of the transnational trainings
- Selecting the case studies
- Development of a common understanding and approach of how to best use the case studies
- How to design a moot court
- Role Plays on specific aspects of procedural rights' guarantees
- Short Films
- Other interventions aiming at raising awareness about the need to apply procedural rights' guarantees like providing wrong translations

### Module 4 – Developing Training Materials

- Elaborate Case Studies
- Finalise Directive Checklist template
- Develop Moot Court Materials
- Design Role Plays

### Focus Group Evaluation Session

## TRAINING MATERIALS

### Case Studies

Case Study – In Custody Forever? - C-310/18 PPU – Milev

[https://www.breakingthebarriers.eu/upload/Case\\_Study\\_Milev.pdf](https://www.breakingthebarriers.eu/upload/Case_Study_Milev.pdf)

[https://www.breakingthebarriers.eu/upload/Solution\\_Guidance\\_Milev.pdf](https://www.breakingthebarriers.eu/upload/Solution_Guidance_Milev.pdf)

Case Study - The Agreement with the Prosecutor - C-377/18 – AH and others

[https://www.breakingthebarriers.eu/upload/Case\\_Study\\_AH\\_others.pdf](https://www.breakingthebarriers.eu/upload/Case_Study_AH_others.pdf)

[https://www.breakingthebarriers.eu/upload/Solution\\_Guidance\\_AH\\_others.pdf](https://www.breakingthebarriers.eu/upload/Solution_Guidance_AH_others.pdf)

Case Study - No Lawyer for those who cannot be held criminally liable? - Case C-467/18 EP

[https://www.breakingthebarriers.eu/upload/Case\\_Study\\_EP.pdf](https://www.breakingthebarriers.eu/upload/Case_Study_EP.pdf)

[https://www.breakingthebarriers.eu/upload/Solution\\_Guidance\\_EP.pdf](https://www.breakingthebarriers.eu/upload/Solution_Guidance_EP.pdf)

Case Study – A Suspect in a Foreign Country

[https://www.breakingthebarriers.eu/upload/Case\\_Study\\_Suspect\\_Foreign\\_Country.pdf](https://www.breakingthebarriers.eu/upload/Case_Study_Suspect_Foreign_Country.pdf)

[https://www.breakingthebarriers.eu/upload/Solution\\_Guidance\\_Suspect\\_Foreign\\_Country.pdf](https://www.breakingthebarriers.eu/upload/Solution_Guidance_Suspect_Foreign_Country.pdf)

### Case Law for the Development of Case Studies

- *Panovits v Cyprus*, ECtHR 4268/04, 11 March 2009  
<http://hudoc.echr.coe.int/eng?i=001-90244>
- *Ibrahim & others vs. UK*, ECtHR 50541/08, 50571/08, 50573/08 & 40351/09, 13 September 2016  
<http://hudoc.echr.coe.int/eng?i=001-166680>

## Evaluation of the Workshop – Train the Trainers – Focus Group Discussion

**Date:** September 15-17, 2020

**Place:** Barcelona (Spain), Thessaloniki (Greece), Vienna (Austria) and cyberspace

**Method:** distance learning

**Trainers:** members of the Scientific Committee

**Target group:** 12 trainers, who are judges and/or have experience in training judges

**Aims of the workshop** (according to grant agreement)

- (a) ensure a uniform level of understanding regarding procedural safeguards
- (b) transfer knowledge of state-of-the-art training methodologies
- (c) establish specific training methods and tools which will be used
- (d) establish training objectives
- (e) design the outline of the training material for acting and trainee judges

**Quality of training materials** (according to grant agreement)

- (a) accuracy of content
- (b) understandable
- (c) clear and focused
- (d) practical
- (e) user friendly

### Focus group discussion

Suggestions for key areas for discussion

- experiences with distance learning and take-away points for national pilot training sessions and transnational training activities
- experiences with the methodologies the participants have been trained on and how they will make use of them in future training activities (esp. national pilot training sessions)
- benefits/challenges of jointly developing training materials
  - selecting and preparing the case studies
  - group work on the case studies to be used in the trainings
  - development of a common understanding and approach of how to best use the case studies
  - development of a Moot Court Exercise
  - development of a checklist on procedural rights' guarantees
- whether the training materials developed for the workshop are a good basis for preparing and implementing the national pilot training sessions/the transnational training activities – if no, what needs to be changed, if yes, what are the highlights
  - PPTs
  - Hand Outs
  - Case studies
  - Guidance for development of Moot court exercise

## LITERATURE AND FURTHER MATERIALS

CO-MINOR-IN/QUEST II - [Video for stakeholders in interpreter-mediated child interviews](#)

ERA – Library of the project Procedural Rights in the EU: <https://procedural-rights.legal-training.eu/library/>

EJTN (2016): Handbook on Judicial Training Methodology in Europe  
[http://www.ejtn.eu/Documents/EJTN\\_JTM\\_Handbook\\_2016.pdf](http://www.ejtn.eu/Documents/EJTN_JTM_Handbook_2016.pdf)

EJTN (2020): Procedural safeguards in criminal proceedings in the European Union in practice Seminar materials  
[http://www.ejtn.eu/Documents/About%20EJTN/Criminal%20Justice%202019/CR201904\\_Valletta/Materials%20list.pdf](http://www.ejtn.eu/Documents/About%20EJTN/Criminal%20Justice%202019/CR201904_Valletta/Materials%20list.pdf)

LEAP (2020): Mapping CJEU Case Law on EU Criminal Justice Measures,  
<https://www.fairtrials.org/sites/default/files/Mapping-CJEU-Case-Law-on-EU-Criminal-Justice-Measures-February-2020.pdf>

Ludwig Boltzmann Institute of Human Rights (2019): Strengthening the rights of suspects and accused in criminal proceedings – the role of National Human Rights Institutions – Guidebook 2019,  
[https://bim.lbg.ac.at/sites/files/bim/anhang/publikationen/guidebook\\_strengthening\\_the\\_rights\\_of\\_suspects\\_and\\_accused\\_in\\_criminal\\_proceedings\\_english.pdf](https://bim.lbg.ac.at/sites/files/bim/anhang/publikationen/guidebook_strengthening_the_rights_of_suspects_and_accused_in_criminal_proceedings_english.pdf)