Remedies for Violation of the Right to Counsel in National Legal Systems

Anneli Soo, PhD
Maastricht University
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About the Project

• **Title**: Towards Guaranteeing the Right to Effective Assistance of Defence Counsel in Member States in Trans-border Criminal Cases
• **Supervisor**: Prof. Taru Spronken
• **Scheme**: Marie Skłodowska-Curie IEF
• **Period**: 1st of January 2016 until 31st of December 2017
• **Main result**: Report
Scope of the Study

• Article 12 (1) of the Directive 2013/48/EU which provides: *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.*

• What is the effective remedy for violation of the right to counsel?
Implementation of the right to A2L (Oct 2016)

Changes to national law on the right to access to a lawyer

No changes: 1. EE 2. HU 3. PT

Not decided: Changes: AT, BE, BG, HR, CZ, FI, DE, GR, IT, LV, LT, LU,
Implementation of Article 12 (Oct 2016)

Changes to national law on the remedies for violation of the right to access to a lawyer

- Changes: 3
- No changes: 18
- Not decided: 1

Changes:
1. HR
2. FI
3. LV (alleged amendments but failed to show)

Not decided:
SI

No changes: AT, BE, BG, CZ, EE, DE, GR, HU, IT, LT, LU,
Remedies for violation of the right to A2L (1)

- Exclusion of statements:
  - No: 5
  - Yes: 23

- Exclusion of other evidence received based on statements:
  - No: 12
  - Yes: 16
Remedies for violation of the right to A2L (2)

- **No exclusion of statements**: AT, CY, DK, PL, SE
- **Exclusion of statements**: BE, BG, HR, CZ, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, NL, PT, RO, SK, SI, ES, UK
- **No exclusion of any other evidence gathered based on statements**: AT, BE, BG, CY, CZ, DK, EE, DE, HU, IE, IT, LV, LT, PL, SE, UK
- **Exclusion of any other evidence gathered based on statements**: HR, FI, FR, EL, LU, MT, NL, PT, RO, SK, SI, ES
Remedies for violation of the right to A2L (3)

• If the exclusionary rule is applied, will statements be still brought to the eyes of the court deciding the case?
• Depending on a case: BE (occasionally), FR (most serious charges - no, less serious charges - yes), IE (jury trial - no, trial before a panel of judges - yes), MT (occasionally)
• No: HR, IT, SI (official statements), UK
• Yes: BG, CZ, EE, FI, DE, EL, HU, LV, LT, LU, NL, PT, SK, RO, ES
Additional reading


Thank you for your attention!

Questions, remarks:
anneli.soo@maastrichtuniversity.nl