

Good afternoon, ladies and gentlemen. My purpose today is to ask for your assistance in completing my project, and I believe that your help is extremely important in ensuring the quality of my findings. I will speak first about the scope of my research, and then about the proposed methodology and where you all would play a role.

My project is entitled “Towards Guaranteeing the Right to Effective Assistance of Defence Counsel in Member States in Trans-border Criminal Cases”. It focuses on remedies for violation of the right to counsel provided in Article 12 of Directive 2013/48/EU on the right to access to lawyer. Although the title of the project so indicates, I do not limit the research to trans-border cases, but extend it to all criminal proceedings conducted in Member States of the EU, that is, to all cases to which Directive 2013/48/EU is applicable. This is mainly for two reasons. First, I believe that all suspects and accused persons in the EU should have a right to fair trial. Second, according to Article 10 the extent of the right to counsel in EAW cases is dependent on the right to counsel guaranteed to all suspects and accused persons with the directive.

I have two years to conduct the project at the Maastricht University under supervision of Prof. Taru Spronken. In the course of project activities I will publish a number of articles, and the final result of the project is a report on the kinds of remedies provided by MS for breaches of the right to counsel. I believe that based on this knowledge we could move towards a better common understanding on remedies within whole EU.

Now, allow me to delve a little deeper into the subject of the project. The provision that is central to my project is Article 12 of Directive 2013/48/EU, which has two paragraphs. The first imposes an obligation to the MS to ensure effective remedies to suspects and accused persons in case the right to counsel is violated. The second paragraph does not help us further on question what effective remedy is as it first, stresses that the Directive does not alter the systems on the admissibility of evidence in MS; and second, provides that while using evidence obtained in breach of the right to a lawyer, the rights of the defence and the fairness of the proceedings are respected. In my opinion, the right to a remedy is defined in the Directive in an unsatisfactory manner and leaves the MSs with wide margin of appreciation. This, however, does not promote the right to counsel as the MSs may provide remedies that due to their lenient nature do not promote the right to counsel at all.

The remedy depends on the content of right - *Ubi jus ibi remedium* – where there is a right, there is also a remedy. For instance, if national law provides the right to have counsel present during questioning, but provides no additional duties on the actions of counsel, and counsel is passive during this stage, then no remedy follows as there has been no violation of the right. In case the very same counsel sits passively during questioning in a country that provides counsel’s duty to actively advise the suspect during questioning, a remedy follows, as there has been violation of the right. But the content of the right also depends on the remedy - *Ubi remedium ibi ius* – where there is no remedy, there is no right. This means that without a proper, effective remedy, the right loses its existence not only in a concrete case where it has been violated, but also potentially in all cases as the authorities are not motivated to respect it.

The application of a remedy depends not only on the content of the right. It also depends on procedural rules – from whom and how it could be asked. When applying

remedies a granting body, mainly the court, encounters something that is called remedial deterrence. This means that although the court concludes that there has been a violation, it is reluctant to apply a remedy due to competing societal interests and therefore finds excuses not to remedy the violation. And finally, the application of a remedy also depends on list of remedies that national law recognises. The content of the right will soon, at least to some point, harmonised across the MSs thanks to the Directive 2013/48/EU. Yet, procedural rules and remedial deterrence is something that we cannot affect directly in the level of EU.

Therefore, in order to guarantee applicability of the right to counsel, we have to move towards harmonisation of the remedies that I am proposing in my project. Only then is the right to counsel exercised on the level provided by the Directive within the all EU. In order for the remedy to be effective, I propose that it should aim to put a person back to a place he would have been in the criminal proceedings if violation had not occurred.

In order to answer the questions on whether it is possible to have a common list of remedies and what these remedies could be, I will follow the following methodology. First, I will search for meaning of effective remedy and potential remedies from the experience of number of international courts and from the case law of the US, as the US discussions over effective remedies in case the right to counsel has been breach have been long-standing and intense. In addition, I will take into account what other researchers in my area have written about the matter. Second, I will look for common practices as well as exemplary practices among the MSs. In order to do that I have composed a questionnaire, which focuses on determining the law and case law of the MS providing remedies for violation of the right to counsel. I will distribute it to the Ministries of Justices and when I receive answers, you, the members of the local bars, come into play. To be more exact, in order to verify the answers received from the Ministries, I am planning to send these answers to local lawyers. I believe that such a check is crucial, as it is the lawyers in a system that truly experience how the law works in practice and whether it reflects the rules and procedures indicated in the written law.

Through combining desktop research and the answers to my questionnaire, I hope not only to summarise the practice of the MSs in granting remedies for violation to right to counsel, but also propose a common list of remedies. The final result, a report, will also be sent to interested institutions, including the European Commission.