Effective Criminal Defence Rights in Europe

The goal of the project is to determine and define the right to effective defence in criminal proceedings in accordance with human rights standards, and to empirically examine compliance with those standards across nine European jurisdictions.

This is done particularly in relation to procedural rights such as the rights to information, effective advice and representation, free legal aid for poor defendants, and to interpretation.

In addition the project aims to develop monitoring indicators which may be used to assess the extent to which effective criminal defence is available in any jurisdiction.

Project partners

Maastricht University
University of the West of England
Open Society Justice Initiative
JUSTICE

This project is funded by the European Community and the Open Society Institute.
Project Team

Taru Spronken
Ed Cape
Roger Smith
Anna Orogodova
Zaza Namadze
Previous study

- In practice, police often carry out interrogation without supervision
- The product of interrogation is normally included in the dossier
- Practice frequently departs from the formal legal position, to the detriment of suspects
- Lack of data or rigorous, scientific, evidence on how the investigative stage works in practice
<table>
<thead>
<tr>
<th>Countries</th>
<th>Study and Timetable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>Poland</td>
</tr>
<tr>
<td>France</td>
<td>Germany</td>
</tr>
<tr>
<td>Turkey</td>
<td>Finland</td>
</tr>
<tr>
<td>III</td>
<td>II</td>
</tr>
<tr>
<td>---January 2008</td>
<td>September 2007-</td>
</tr>
</tbody>
</table>

--- June 2010 | September 2009 | Overall Report by

Countries in study and timetable

[Logos]
Four major research questions

1. What are the core procedural safeguards for effective defence in general and for indigent suspects in particular?

2. By which indicators can these procedural safeguards be monitored?

3. To what extent are the requirements for an effective defence met in practice in a range of selected European countries?

4. To what extent (if at all) is the regulatory regime deficient in ensuring access to effective criminal defence, and what role might be played by the EU?
Our approach to effective criminal defence

• Effective participation
• Effective representation, and
• Equality of arms

A human rights approach that focuses on the suspected/accused
Article 6(1) – the substantive right

In the determination 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.
Free use of interpreter if required

Examination of witnesses

It is in the interests of justice

Free legal aid where accused has insufficient means and

Right to defend in person or through legal assistance

Adequate time and facilities to prepare defence

Article 6(2) – the specific requirements
ECHR – some unanswered questions

- When does the right to legal assistance arise (the meaning of ‘charge’)?
- At what point does the right to state funding arise?
- What information should be given to the accused about their rights, and about legal aid – when and in what form?
- Who should appoint the defence lawyer?
- What is the role of the defence lawyer?
- What quality of legal assistance is required?
- What is the relationship between fair trial, procedural rights and criminal defence?
Some preliminary findings
Hungary

- No obligation to provide a 'letter of rights'
- Ploys to avoid legal advice prior to interviews
- Rights of suspects avoided by informal questioning and questioning as a witness
- Lack of defence access to information at the investigative stage (affecting pre-trial detention decisions)
- Appointment of substitute lawyers at short notice in cases of mandatory defence
- No mandatory translation of key documents, and poor quality of translation
- Indigent defendants particularly disadvantaged, eg. police choose lawyer at investigative stage, lawyers not attending investigative acts, no contact with detained defendants, some activities not remunerated, weak quality assurance of lawyers
No research evidence of quality of defence lawyers, but some evidence of poor

Inadequate remuneration for defence lawyers in state funded cases

Over-use of pre-trial detention resulting from lack of facilities and poor knowledge of

Poor level of quality of interpreters and no quality assurance

No right to access to the file at the investigative stage

No right to the presence of a lawyer during interrogation by police or investigating

No obligation to provide a letter of rights

No general obligation to inform persons interrogated of nature and cause of

Belgium
England and Wales

- A guilty plea system heavily dependant on availability and competence of defence lawyers
- ‘Letter or rights’ required at investigative stage, but not thereafter
- No right to information at investigative stage, and limited right at trial stage – yet no ‘right to silence’
- No special provisions for legal representation for vulnerable groups
- Increasing obligations on accused and their lawyers to provide information to the prosecution
- Police have extensive rights to conditionally release suspects where proceedings have not commenced
- Systemic disincentives to appeal
- No clear statutory right to interpretation and translation
Ensuring effective criminal defence rights

Legal regulation is a necessary, but not a sufficient, condition for especially for poorer people.

There are major deficiencies in those jurisdictions examined so far.

Compliance with ECHR fair trial rights is variable.

ECHR does not cover all aspects of effective criminal defence.

**Emerging themes**