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Effective Criminal Defence in Europe



Criminal Justice 2007

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PREFACE AND ACKNOWLEDGEMENTS

This book is based on a research project, 'Effective defence rights in the EU and access to justice: investigating and promoting best practice', which was conducted over a three year period commencing in September 2007. The research was funded by an action grant from the EU Justice, Freedom and Security Directorate¹ and by the Open Society Institute. The project could not have been conducted without this generous financial support, for which we are very grateful.

The overall aim of the research project was to explore access to effective defence in criminal proceedings across nine European jurisdictions, but the project team also set out to contribute to effective implementation of the right of suspects and defendants, especially those who lack the means to pay for legal assistance themselves, to real and effective defence. Whilst the European Convention on Human Rights embodies fair trial rights, which include the right to legal assistance in criminal proceedings, the jurisprudence of the European Court of Human Rights demonstrates that many people who are suspected or accused of crime do not, in practice, enjoy such rights. Since the turn of the century a number of attempts have been made within the context of the European Union to establish minimum procedural rights for suspects and defendants but, although receiving widespread support, they met with little success. Ratification of the Lisbon Treaty and the introduction of the Stockholm Programme may, as we explore in this book, signal a change of fortune.

The project was co-ordinated by Professor Taru Spronken of Maastricht University, the Netherlands, working with: Professor Ed Cape of the University of the West of England, Bristol, United Kingdom; Zaza Namoradze, Director of the Open Society Justice Initiative's Budapest office in Hungary; and Roger Smith, Director of JUSTICE, a human rights NGO based in London, United Kingdom. All have current or previous experience as practising lawyers, and have wide knowledge and experience of criminal justice systems in a range of jurisdictions. Ed Cape and Taru Spronken collaborated, together with others, on a previous project funded by the EU under its AGIS programme, concerning the rights of suspects at

¹ Reference No. JLS/2007/JPEN/215.

the investigative stage of the criminal process.² Taru Spronken has also carried out a number of projects concerned with defence rights and the criminal process in the EU, including studies on procedural rights (Spronken and Attinger 2005, Spronken et al. 2009) and on best practice in relation to an EU-wide letter of rights in criminal proceedings.³ Zaza Namoradze has directed a large number of projects concerning legal aid reforms, including national legal aid reform initiatives in Lithuania and Bulgaria and was involved in designing and implementing a study on access to justice in nine EU accession countries (Public Interest Law Initiative 2003).⁴ Roger Smith has extensive experience of researching and writing on legal aid and methods of delivery of legal services, and the organisation of which he is Director has published extensively on criminal justice and the EU.

A project of this nature inevitably relies on a large number of people. The project team were given considerable assistance by a number of people, including Anna Ogorodova and Morgane Landel (Justice Initiative), Hayley Smith and Rachel Fleetwood (Justice), and Liesbeth Baetens (Maastricht University). All of them played a key role. Steven Freeland (Professor of International Law at the University of Western Sydney, Australia) brought his considerable knowledge, skills and experience to the task of editing the country reports which are set out as chapters in Part II. The in-country researchers, of course, played a crucial role and their names are set out in the respective chapters in Part II. The in-country reviewers also played an important role in providing a critique of, and validating, the data provided by the in-country researchers. The reviewers were: Gert Vermeulen (Belgium), Michael Zander (England and Wales), Jussi Tapani (Finland), Jacqueline Hodgson (France), Thomas Weigend (Germany), Karoly Bard (Hungary), Giulio Illuminati (Italy), Malgarzota Wasek-Wiaderek (Poland) and Asuman Aytekin Inceoglu (Turkey).

In addition, the project advisory team provided valuable guidance, particularly in the early stages of the research. The advisory team included: Marelle Attinger, Karoly Bard, Lee Bridges, Yonko Grozev, Nadejda Hriptievski, Han Jahae, András Kádár, Valentina Stoeva and Katalin Szarvas.

We thank Yleen Simonis at METRO, the Institute for Transnational Legal Research, at the University of Maastricht, for editing the final text, and extend our gratitude to all of those, both named and unnamed, who have contributed to the research project and the book.

We hope that this book, and the research reported in it, will contribute to a deeper knowledge and understanding of the factors that influence effective criminal defence, and will be a source of inspiration for a more constructive and effective programme of policies and actions within the EU designed to make access to effective criminal defence available to all who need it. The research is to be

² Cape, E., Hodgson, J., Prakken, T. & Spronken, T., *Suspects in Europe*, Antwerp: Intersentia, 2007.

³ The project, 'EU-wide Letter of Rights in Criminal Proceedings: Towards Best Practice', also funded by the European Union, JLS/2008/JPEN/032, is expected to be finalised in June 2010.

⁴ Public Interest Law Initiative, Forum Report: Access to Justice in Central and Eastern Europe, Budapest: Public Interest Law Initiative, 2003, available at <http://www.pili.org/images/forum_report.pdf>.

presented, and the book launched, at a conference in Brussels on 24 and 25 June 2010, to which are invited many of those who will have responsibility for implementation of defence rights. We trust that this book will provide them with a valuable source of information and analysis. The millions of people who, every year in the EU, are arrested, detained or prosecuted have a right to be dealt with fairly and justly.

May 2010

Ed Cape
Zaza Namoradze
Roger Smith
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