Effective Criminal Defence in Europe

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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 Directorate 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

the investigative stage of the criminal process. 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. 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). 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

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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.
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
Taru Spronken
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Michele Caianiello (Bologna, 1970), is associate professor in Criminal Procedure, and European & International Criminal Procedure at the University of Bologna, Faculty of Law. He graduated *cum laude* in 1994, with a thesis on the detention pending the proceedings. From 2000, he is Doctor Juris in Criminal Procedure, with a thesis on the International Criminal Tribunals. He also lectures in European Criminal Procedure at the LUISS University of Rome. In his academic career he studied the subject of the decision to charge a suspect with a crime, especially the powers recognised by the law to the victims and to the private citizens on this issue. He also conducted a research in the field of Evidence Law in the International Criminal Justice Systems. He is the author of 2 books (*Poteri dei privati nell’esercizio dell’azione penale*, Giappichelli, 2003; *Ammissione della prova e contraddittorio nelle giurisdizioni penali internazionali*, Giappichelli, Torino, 2008). He is a lawyer since 1998, and practiced until 2006, in the field of Criminal Law.

3.7.2. **Giulio Illuminati**

Giulio Illuminati (Ancona, 1946) is Professor Criminal Procedure at the Faculty of Law of the University of Bologna. He is head of the Department of Law of the University of Bologna, and chief and coordinator of the PhD course in Criminal Law and Procedure. At present he also lectures in Criminal Procedure at the L.U.I.S.S. University Guido Carli in Rome. He is member of the Editorial Board of the review *Cassazione penale*. He is member of the Board of the Directors of the series of essays and comments *Procedura penale* published by Giappichelli, Turin. Between 1987 and 1989 he was appointed as member of the Committee, established by the Minister of Justice, for the drafting of the New Code of Criminal Procedure; in 2000, he was member of the Committee for the drafting of the Rules of Procedure and Evidence before the justice of the peace. From July 2006 to December 2008 he has been member of the Ministerial Committee that drafted a Bill of Delegation for the reform of the Code of Criminal Procedure. In June 2009 he taught a course at the National Prosecutors College of the People Republic of China, organized by the China-EU School of Law.

3.8. **Poland**

3.8.1. **Dorris de Vocht**

Dorris de Vocht is assistant professor of criminal law and criminal procedure at Maastricht University. She coordinates and teaches courses on criminal (procedure) law at bachelor's and master's level. In 2009 she successfully defended her doctoral dissertation on the right to legal assistance in Polish criminal procedure. Her current research mainly focuses on procedural rights of suspects in criminal proceedings within the European Union.

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3.8.2. Małgorzata Wasek-Wiaderek

Małgorzata Wasek-Wiaderek, (Ph.D. in law from Catholic University of Lublin; LL.M. in European Law at the Katholieke Universiteit Leuven), since 2002 associate professor at the John Paul II Catholic University of Lublin (Department of Criminal Procedure, Criminal Executive Law and Forensic Sciences); since 2004 member of the Research and Analyses Office of the Polish Supreme Court.

3.9. Turkey

3.9.1. Asuman Aytekin İnceoğlu

Asuman Aytekin İnceoğlu has studied law at Istanbul University Faculty of Law where she obtained her Bachelor of Laws (LL.B.) degree in 1996. Upon graduation, she has worked at Yarımaltu Law Firm as a trainee. She attended Marmara University Faculty of Law to complete her masters degree in law (LL.M.) in 2000 where she specifically focused on ‘presumption of innocence and the right to remain silent’. She subsequently enrolled to the PhD program at Marmara University and obtained her doctorate degree in law in 2006. During her PhD studies, she focused on economic crimes and banking crimes in particular. Dr. İnceoğlu is currently an Assistant Professor at Istanbul Bilgi University Faculty of Law, where she teaches criminal law general and special provisions, criminal law and human rights, banking crimes and introduction to moot court competition. Dr. İnceoğlu is also working on mediation, hate crimes/hate speech and crimes against women on which she is giving seminars and doing international projects, some in collaboration with UN and the Turkish Ministry of Justice.

3.9.2. Idil Elveris

Idil Elveris graduated from Istanbul University School of Law in 1996. She obtained her LLM degree from Tulane University in 1998 and practiced as a lawyer and legal consultant in New York, Kosovo, UK and Istanbul. She joined Istanbul Bilgi University School of Law in 2003 and has pioneered legal clinics in Turkey. Her areas of interest include access to justice, poverty and law, judiciary, justice system and courts. She is currently writing her PHD thesis in the Istanbul Bilgi University Political Science program.