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 1 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-Wiadererek (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 Hriptievschi, 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
TABLE OF CONTENTS

Preface and Acknowledgements....................................................................................... V

Table of Contents .............................................................................................................. IX

Biographies .................................................................................................................... XXIII

1. Authors ...................................................................................................XXIII
2. Project Team Members .........................................................................XXIV
3. Authors and Reviewers Country Reports ..........................................XXVI

PART I EFFECTIVE CRIMINAL DEFENCE IN A EUROPEAN CONTEXT .............. 1

Chapter 1 Effective Criminal Defence and Fair Trial ...................................................... 3

1. Introduction................................................................................................... 3
2. The human rights context............................................................................ 7
   2.1. The global context......................................................................................... 7
   2.2. The EU and procedural rights in criminal proceedings ..................... 8
   2.3. The Lisbon Treaty....................................................................................... 10
   2.4. The Court of Justice of the European Union and the ECHR............. 11
   2.5. New perspectives on enforcement mechanisms .................................... 12
3. The research project ................................................................................... 14
4. Research methodology............................................................................... 17
5. How to read the book ................................................................................ 19
6. Bibliography................................................................................................ 19

Chapter 2 The European Convention on Human Rights and the right to effective
defence........................................................................................................................ ......... 23

1. Introduction................................................................................................... 23
   1.1. The defence rights addressed in this study............................................. 25
# Table of Contents

1.1.1. Presumption of innocence, right to silence, equality of arms and adversarial trial ......................................................... 25
2. Procedural rights relating to fair trial in general ................................. 26
  2.1. The right to be presumed innocent ................................................. 27
  2.2. The right to silence including the prohibition of self-incrimination ... 28
  2.3. Bail or the right to be released pending trial ..................................... 30
  2.4. Equality of arms and adversarial hearing ......................................... 31
3. The right to information .................................................................... 32
  3.1. The right to information about the nature and cause of the accusation .............................................................. 33
  3.2. Information on defence rights ........................................................... 34
  3.3. Information concerning material evidence available to the police or prosecutor, and access to the case file .................. 34
4. The right to defence ............................................................................ 36
  4.1. Right to self-representation ............................................................... 36
  4.2. The right to legal advice and representation ...................................... 38
  4.3. The point at which the right to legal assistance arises ...................... 38
  4.4. The choice, and free provision, of a lawyer for indigent suspects .... 40
  4.5. The right to private consultation with a lawyer ................................. 42
  4.6. The standards, role and independence of lawyers ......................... 43
5. Rights that promote effective participation ......................................... 44
  5.1. The right to investigate the case ......................................................... 44
  5.2. The right of a defendant to be tried in their presence and to participate in the process .................................................... 45
  5.3. Adequate time and facilities for preparation of a defence ................. 46
  5.4. Right to call and question witnesses, including experts .................. 47
6. Free interpretation and translation ..................................................... 49
7. The right to reasoned decisions and appeal ....................................... 50
  7.1. Reasoned decisions .......................................................................... 50
  7.2. The right to appeal ............................................................................ 52
8. Conclusions ......................................................................................... 53
   8.1. The challenge of defining minimum standards .............................. 53
  8.2. Procedural rights relating to fair trial in general .............................. 54
    8.2.1. Presumption of innocence .......................................................... 54
    8.2.2. The right to remain silent ........................................................... 55
    8.2.3. The right to be released pending trial ......................................... 55
    8.2.4. Equality of arms and adversarial hearing .................................... 56
  8.3. The right to information .................................................................. 56
    8.3.1. Information on the nature and cause of the accusation ............... 56
    8.3.2. Information on defence rights .................................................... 57
    8.3.3. The right to disclosure of material evidence and access to the file ............................................................ 57
  8.4. The right to defence and legal assistance ....................................... 57
    8.4.1. The right to self-representation .................................................. 57
    8.4.2. The right to legal advice and representation ............................... 58
    8.4.3. The choice and free provision of a lawyer for indigent suspects ... 58
    8.4.4. Private consultation with a lawyer .............................................. 59
Table of Contents

8.4.5. Lawyer’s standards, roles and independence................................. 59
8.5. Rights that promote effective participation ............................................. 59
  8.5.1. The right to seek evidence and to investigate facts.......................... 59
  8.5.2. Presence at hearings........................................................................ 60
  8.5.3. Adequate time and facilities............................................................ 60
  8.5.4. Question witnesses and experts...................................................... 60
8.6. Right to free interpretation and translation........................................... 60
8.7. Right to reasoned decisions................................................................... 62
8.8. Right to appeal....................................................................................... 62
9. Bibliography............................................................................................ 62

PART II NATIONAL APPROACHES TO EFFECTIVE CRIMINAL DEFENCE ...... 65

Chapter 3 Belgium .......................................................................................... 67
1. Introduction............................................................................................... 67
  1.1. Political context and background of the criminal justice system........ 67
  1.2. Main characteristics of criminal proceedings ..................................... 68
  1.2.1. The investigation stage................................................................. 68
  1.2.2. The trial stage............................................................................... 69
  1.3. Significant data.................................................................................. 70
  1.4. Legal aid system.................................................................................. 71
2. Legal rights and their implementation..................................................... 73
  2.1. The right to information...................................................................... 73
  2.1.1. The right to be informed of the nature and cause of the accusation 73
  2.1.2. The right of access to the file.......................................................... 76
  2.1.3. Information on rights (letter of rights)............................................ 77
  2.2. The right to defend oneself................................................................. 78
  2.2.1. The right of a suspect/defendant to defend themselves............... 78
  2.2.2. The right to legal advice and/or representation............................. 78
  2.3. Procedural rights............................................................................... 82
  2.3.1. The right to release from custody pending trial............................ 82
  2.3.2. The right of a defendant to be tried in his/her presence............... 85
  2.3.3. The right to be presumed innocent............................................... 85
  2.3.4. The right to silence (including the prohibition of self-incrimination) 86
  2.3.5. The right to reasoned decisions ..................................................... 87
  2.3.6. The right to appeal...................................................................... 87
  2.4. Rights relating to effective defence.................................................... 88
  2.4.1. The right to investigate the case...................................................... 88
  2.4.2. The right to adequate time and facilities for the preparation of 90
          the defence..................................................................................... 90
  2.4.3. The right to equality of arms in examining witnesses..................... 92
  2.4.4. The right to free interpretation of documents and translation........ 93
3. Professional culture of defence lawyers.................................................... 95
  3.1. Introductory remarks......................................................................... 95
Table of Contents

3.2. Obstacles for criminal defence lawyers ................................................... 96
3.3. Perception of criminal defence lawyers ................................................... 97
3.4. Limitation of criminal defence work to specialized criminal defence lawyers ................................................... 98
3.5. Comments on the legal aid system in relation to criminal defence work .......................................................................................... 98
4. Political commitment to effective criminal defence ........................................... 99
4.1. Public attitude ............................................................................................. 99
4.2. The current political climate: shifting towards or moving away from fair trial rights? .......................................................................................... 100
5. Conclusions ............................................................................................................. 101
6. Bibliography ............................................................................................................ 102
7. Annex ............................................................................................................... 103
8. Abbreviations ........................................................................................................ 105

Chapter 4 England and Wales ....................................................................................... 107
1. Introduction ......................................................................................................... 107
1.1. Basic demographic information ........................................................................ 107
1.2. The nature of the criminal justice system ........................................................................ 107
1.3. The structure and processes of the criminal justice system .............................................. 109
1.4. Levels of crime and the prison population ........................................................................ 114
1.5. Legal aid for persons suspected or accused of crime ........................................... 115
2. Legal rights and their implementation .......................................................... 117
2.1. The right to information ......................................................................................... 117
2.1.1. Arrest .................................................................................................... 117
2.1.2. Police interview .................................................................................. 118
2.1.3. Charge .................................................................................................. 119
2.1.4. Pre-trial ................................................................................................ 119
2.2. The right to defend oneself .................................................................................. 122
2.2.1. The right of a person to defend him/herself .................................. 122
2.2.2. The right to legal advice at the investigative stage ........................ 122
2.2.3. The right to legal representation at the trial stage ......................... 125
2.2.4. Independence and competence of defence lawyers ....................... 129
2.3. Procedural Rights ........................................................................................... 131
2.3.1. The right to release from custody pending trial............................. 131
2.3.2. The right of a defendant to be tried in their presence...................... 135
2.3.3. The right to be presumed innocent .................................................. 136
2.3.4. The right to silence ............................................................................. 138
2.3.5. The right to reasoned judgements.................................................... 140
2.3.6. The right to appeal ............................................................................. 141
2.4. Rights relating to effective defence .................................................................... 143
2.4.1. The right to investigate the case ........................................................... 143
2.4.2. The right to adequate time and facilities for preparation of defence .......................................................................................... 145
2.4.3. The right to equality of arms in examining witnesses .......... 146
Table of Contents

2.4.4. The right to free interpretation of documents and translation 147
3. The professional culture of defence lawyers 149
4. Political commitment to effective criminal defence 151
5. Conclusions 153
6. Bibliography 156

Chapter 5 Finland 165

1. Introduction 165
   1.1. Basic demographic information 165
   1.2. The nature of the criminal justice system 166
   1.3. The structure and processes of the criminal justice system 168
   1.4. Levels of crime and the prison population 173
   1.5. The organization of legal aid 174
   1.6. Legal aid for persons suspected or accused of crime 176
2. Legal rights and their implementation 177
   2.1. The right to defend oneself and the right to legal advice and/or representation 177
   2.2. Procedural rights 180
      2.2.1. The right to respond to charges without restrictions on personal freedom 180
      2.2.2. The right of a defendant to be tried in his/her presence 181
      2.2.3. The right to be presumed innocent and the right to silence 183
      2.2.4. The right to reasoned decisions 184
      2.2.5. The right to appeal 184
   2.3. Rights relating to effective defence 185
      2.3.1. The right to information 185
      2.3.2. The right to investigate the case 186
      2.3.3. The right to adequate time and facilities for the preparation of the defence 188
      2.3.4. The right to equality of arms in examining witnesses 188
      2.3.5. The right to free interpretation of documents and translation 188
3. Professional culture of defence lawyers 189
4. Political commitment to effective criminal defence 192
5. Conclusions 194
6. Bibliography 198

Chapter 6 France 203

1. Introduction 203
   1.1. Basic demographic information 203
   1.2. The nature of the criminal justice system 204
   1.3. The structure and processes of the criminal justice system 205
   1.4. Levels of crime and the prison population 212
   1.5. Legal aid for persons suspected or accused of crime 214
## Table of Contents

2. Legal rights and their implementation .......................................................... 218
2.1. The right to information .......................................................................... 219
2.2. The right to defend oneself ..................................................................... 221
   2.2.1. The right of a person to defend him/herself ................................ 221
   2.2.2. The right to legal advice at the investigative stage ................. 222
   2.2.3. The right to legal representation at the trial stage ...................... 228
2.3. Procedural rights ...................................................................................... 228
   2.3.1. The right to release from custody pending trial ....................... 228
   2.3.2. The right of a defendant to be tried in his/her presence .......... 230
   2.3.3. The right to be presumed innocent .............................................. 231
   2.3.4. The right to silence ........................................................................ 232
   2.3.5. The right to reasoned judgements ............................................... 232
   2.3.6. The right to appeal ......................................................................... 233
2.4. Rights relating to effective defence ........................................................ 234
   2.4.1. The right to investigate the case .................................................... 234
   2.4.2. The right to adequate time and facilities for the preparation of the defence .......................................................... 235
   2.4.3. The right to equality of arms in examining witnesses ............... 237
   2.4.4. The right to free interpretation of documents and translation.... 239
3. Professional culture of defence lawyers .................................................... 241
4. Political commitment to effective criminal defence ..................................... 243
5. Conclusions .................................................................................................. 246
6. Bibliography .................................................................................................. 247

Chapter 7 Germany .......................................................................................................... 253

1. Introduction ...................................................................................................... 253
   1.1. Basic demographic information .............................................................. 253
   1.2. Basic statistical information on crime and punishment ................. 253
   1.3. Basic constitutional information ............................................................. 254
       1.3.1. Federalism and its discontents.................................................. 254
       1.3.2. Codifications and the role of the courts of law ....................... 254
   1.4. Basic information about the administration of criminal justice ....... 255
       1.4.1. Phases of the criminal proceeding; the use of the deal .......... 255
       1.4.2. Provisional detention and provisional arrest ............................ 258
       1.4.3. The court system ....................................................................... 258
   1.5. The status of the accused ........................................................................ 259
   1.6. Legal aid ..................................................................................................... 261
       1.6.1. State spending on the German criminal legal aid equivalent ...... 261
       1.6.2. The German criminal legal aid equivalent .................................... 261
       1.6.3. Organizational responsibility for administering the German criminal legal aid equivalent .............................................. 264
       1.6.4. Results of field research ............................................................... 265
   1.7. Additional challenges to the German criminal justice system .......... 266
2. Legal rights and their implementation .................................................. 268
   2.1. The right to information .......................................................................... 268

XIV
## Table of Contents

2.1.1. Interrogation by the investigating authorities (police, prosecution, investigating judge)............................................................. 268
2.1.2. Provisional arrest and provisional detention........................................... 270
2.1.3. The writ of indictment ........................................................................ 272
2.1.4. Confirmation of the charges and the trial phase ............................ 273
2.1.5. Access to the Case File ..................................................................... 273
2.2. The right to defend oneself .................................................................... 276
2.2.1. The right to defend oneself in person at all stages of the proceedings .......................................................... 276
2.2.2. The right to legal representation at all stages of the proceedings ........................................................................ 277
2.2.3. Access to legal representation in the investigation phase (particularly during interrogation)................................................... 278
2.2.4. Right to consult and communicate in private with a lawyer.............. 280
2.2.5. The independence and competence of defence lawyers:
      Theory and practice........................................................................... 280
2.2.6. Vulnerable persons.......................................................................... 282
2.3. Procedural rights .................................................................................... 283
2.3.1. The right to release from custody pending trial............................. 283
2.3.2. The right of a defendant to be tried in his/her presence .............. 286
2.3.3. The right to be presumed innocent; *in dubio pro reo*; burden of proof....................................................................................... 287
2.3.4. The right to silence ........................................................................ 288
2.3.5. The right to a reasoned decision....................................................... 290
2.3.6. The right to appeal ......................................................................... 291
2.4. Rights relating to effective defence ........................................................ 292
2.4.1. The right to investigate the case; equality of arms; line-ups........... 292
2.4.2. The right to adequate time and facilities for preparation of the defence .................................................................................. 295
2.4.3. The right to equality of arms in examining witnesses................... 297
2.4.4. The right to free interpretation of documents and translation.... 298
3. Professional culture of defence lawyers.................................................. 302
3.1. Bar associations......................................................................................... 302
3.2. Specialisation in criminal law, legal aid equivalent, and quality assurance ......................................................................................... 303
3.3. Role of defence lawyers........................................................................... 304
3.4. Perception of defence lawyers (particularly in cases of mandatory legal representation)................................................................. 305
4. Political commitment to effective criminal defence and public
   perception about crime ........................................................................... 306
5. Conclusions ............................................................................................... 308
6. Bibliography .............................................................................................. 309
7. Annex ....................................................................................................... 315
8. Abbreviations and Translations ............................................................ 317

XV
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Introduction</td>
<td>321</td>
</tr>
<tr>
<td>1.1</td>
<td>General data</td>
<td>321</td>
</tr>
<tr>
<td>1.2</td>
<td>Outline of the legal system</td>
<td>322</td>
</tr>
<tr>
<td>1.3</td>
<td>Outline of the criminal justice system</td>
<td>323</td>
</tr>
<tr>
<td>1.4</td>
<td>Basic statistics of the criminal justice system</td>
<td>327</td>
</tr>
<tr>
<td>1.5</td>
<td>Outline of the legal aid system</td>
<td>328</td>
</tr>
<tr>
<td>2.</td>
<td>Legal rights and their implementation</td>
<td>329</td>
</tr>
<tr>
<td>2.1</td>
<td>The right to information</td>
<td>329</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Information on the nature and cause of the accusation</td>
<td>329</td>
</tr>
<tr>
<td>2.1.2</td>
<td>Detailed information concerning the relevant evidence/material available to the police/prosecutor</td>
<td>331</td>
</tr>
<tr>
<td>2.1.3</td>
<td>Letter of rights (information on rights)</td>
<td>332</td>
</tr>
<tr>
<td>2.2</td>
<td>The right to defence</td>
<td>333</td>
</tr>
<tr>
<td>2.2.1</td>
<td>Choice of lawyer and provision of a lawyer for the indigent defendant</td>
<td>334</td>
</tr>
<tr>
<td>2.2.2</td>
<td>Arrangements for access to lawyers</td>
<td>335</td>
</tr>
<tr>
<td>2.2.3</td>
<td>The right to an independent and competent lawyer who is professionally required to act in the best interests of the client</td>
<td>337</td>
</tr>
<tr>
<td>2.2.4</td>
<td>The right to consult and communicate in private with the lawyer</td>
<td>339</td>
</tr>
<tr>
<td>2.2.5</td>
<td>Special provisions for vulnerable suspects/defendants</td>
<td>340</td>
</tr>
<tr>
<td>2.2.6</td>
<td>Existence of legal aid schemes</td>
<td>340</td>
</tr>
<tr>
<td>2.2.7</td>
<td>Remuneration of lawyers</td>
<td>342</td>
</tr>
<tr>
<td>2.3</td>
<td>Procedural rights</td>
<td>343</td>
</tr>
<tr>
<td>2.3.1</td>
<td>Right to release from custody pending trial</td>
<td>343</td>
</tr>
<tr>
<td>2.3.2</td>
<td>The right of a defendant to be tried in his/her presence</td>
<td>346</td>
</tr>
<tr>
<td>2.3.3</td>
<td>The right to be presumed innocent</td>
<td>347</td>
</tr>
<tr>
<td>2.3.4</td>
<td>The right to silence and the prohibition against self-incrimination</td>
<td>348</td>
</tr>
<tr>
<td>2.3.5</td>
<td>The right to reasoned decisions</td>
<td>349</td>
</tr>
<tr>
<td>2.3.6</td>
<td>The right to appeal</td>
<td>350</td>
</tr>
<tr>
<td>2.4</td>
<td>Rights relating to effective defence</td>
<td>351</td>
</tr>
<tr>
<td>2.4.1</td>
<td>Rights to investigate the case</td>
<td>351</td>
</tr>
<tr>
<td>2.4.2</td>
<td>The right to adequate time and facilities for preparation of defence</td>
<td>354</td>
</tr>
<tr>
<td>2.4.3</td>
<td>The right to equality of arms in examining witnesses</td>
<td>355</td>
</tr>
<tr>
<td>2.4.4</td>
<td>The right to the use of the suspect’s own language</td>
<td>357</td>
</tr>
<tr>
<td>2.4.5</td>
<td>The consequences of the breach of defence rights</td>
<td>358</td>
</tr>
<tr>
<td>3.</td>
<td>Professional culture of defence lawyers</td>
<td>360</td>
</tr>
<tr>
<td>3.1</td>
<td>The bar associations and their role in the provision of criminal defence</td>
<td>360</td>
</tr>
<tr>
<td>3.2</td>
<td>Lawyers’ role in criminal proceedings and duty to the client as reflected in ethical standards</td>
<td>362</td>
</tr>
<tr>
<td>3.3</td>
<td>Perception of defence lawyers and their relationship with other legal professions</td>
<td>363</td>
</tr>
</tbody>
</table>


Table of Contents

3.4. Legal aid and quality assurance ............................................................. 364
4. Political commitment to effective criminal defence ............................. 367
5. Conclusions ............................................................................................... 370
6. Bibliography .............................................................................................. 371

Chapter 9 Italy ................................................................................................................ .. 373

1. Introduction ............................................................................................... 373
   1.1. Basic demographic information .............................................................. 373
   1.2. The nature of the criminal justice system ............................................. 374
   1.3. Structure and processes of the criminal justice system ....................... 378
       1.3.1. Jurisdiction .................................................................................. 378
       1.3.2. Structure of the Italian criminal process ..................................... 379
       1.3.3. Arrest and detention of a person suspected of a crime ............... 383
   1.4. Levels of crime and the prison population ........................................... 384
   1.5. Legal aid for persons suspected or accused of crime........................... 387

2. Legal rights and their implementation .................................................. 390
   2.1. Right to information ............................................................................. 390
       2.1.1. Letters of rights ........................................................................... 390
       2.1.2. Arrest and questioning before the police, the prosecutor and the judges .............................................................. 391
       2.1.3. Trial .............................................................................................. 394
   2.2. Right to defend oneself ......................................................................... 395
       2.2.1. The right of a person to defend him/herself ............................... 395
       2.2.2. The right to legal advice at the investigative stage ..................... 395
       2.2.3. The right to legal representation at the trial stage ..................... 396
       2.2.4. Independence and competence of defence lawyers ................. 398
   2.3. Procedural Rights .................................................................................. 399
       2.3.1. The right to release from custody pending trial .......................... 399
       2.3.2. The right to be tried in his/her presence .................................... 401
       2.3.3. The right to be presumed innocent ............................................ 403
       2.3.4. The right to silence ...................................................................... 404
       2.3.5. The right to a reasoned judgment .............................................. 405
       2.3.6. The right to appeal ...................................................................... 406
   2.4. Rights relating to effective defence .................................................... 407
       2.4.1. The right to investigate the case .................................................. 407
       2.4.2. The right to adequate time and facilities for the preparation of the defence .............................................................. 409
       2.4.3. The right to equality of arms in examining witnesses ................. 409
       2.4.4. The right to free interpretation of documents and translation .... 411

3. The professional culture of defence lawyers .......................................... 412
4. Political commitments to effective criminal defence ........................... 414
   4.1. Perception of criminal justice system .................................................. 414
   4.2. Political commitment to criminal justice ............................................. 417
5. Conclusions ............................................................................................... 419
6. Bibliography .............................................................................................. 421

XVII
Chapter 10 Poland

1. Introduction ............................................................................................................ 425
   1.1. General information ....................................................................................... 425
   1.2. Outline of the legal system ............................................................................. 426
      1.2.1. History ................................................................................................. 426
      1.2.2. Sources of law ..................................................................................... 426
      1.2.3. Court system ....................................................................................... 427
      1.2.4. Role of European Convention on Human Rights ................................... 427
   1.3. Outline of the criminal justice system ............................................................ 428
      1.3.1. General information ........................................................................... 428
      1.3.2. Phases of criminal proceedings ........................................................ 429
      1.3.3. Participants in the proceedings ......................................................... 430
      1.3.4. Consensual and special proceedings ............................................... 431
      1.3.5. Legal aid system ................................................................................. 432
      1.3.6. Political and public perceptions of crime ........................................ 434
   1.4. Statistics on the criminal justice system ......................................................... 434

2. Legal rights and their implementation ............................................................... 435
   2.1. The right to information .......................................................................... 435
      2.1.1. Information on the nature and cause of the accusation ....................... 435
      2.1.2. Information concerning the relevant evidence/material available to the authorities ........................................................................................................... 438
   2.2. The right to defend oneself ..................................................................... 443
      2.2.1. The right of a suspect/defendant to defend themselves ...................... 443
      2.2.2. The right to legal advice and/or representation ..................................... 445
   2.3. Procedural rights ...................................................................................... 455
      2.3.1. The right to release from custody pending trial .................................. 455
      2.3.2. The right of a defendant to be tried in his/her presence ..................... 457
      2.3.3. The right to be presumed innocent .................................................. 458
      2.3.4. The right to silence ............................................................................. 459
      2.3.5. The right to reasoned decisions ........................................................ 460
      2.3.6. The right to appeal ............................................................................. 461
   2.4. Rights relating to effective defence ........................................................... 461
      2.4.1. The right to investigate the case ....................................................... 461
      2.4.2. The right to adequate time and facilities for the preparation of the defence ........................................................................................................... 466
      2.4.3. The right to equality of arms in examining witnesses ............................ 467
      2.4.4. The right to free interpretation of documents and to translation ...... 468

3. Professional culture of defence lawyers ............................................................ 471
   3.1. Professional organisation ........................................................................... 471
   3.2. Professional ethics .................................................................................... 473
      3.2.1. Organisation of the disciplinary procedures ....................................... 473
      3.2.2. Rules of professional ethics ............................................................... 474
   3.3. Perception of defence lawyers and their relationship with other legal professions ........................................................................................................... 475
Table of Contents

3.3.1. General comments .............................................................................. 475
3.3.2. Quality (assurance) of free and retained legal assistance .............. 475
3.3.3. Perceptions on the role of the defence lawyer ............................... 476
4. Political commitment to effective criminal defence ............................... 478
4.1. Public perception of crime ................................................................... 478
4.2. Changes in criminal policy ................................................................. 479
5. Conclusions .......................................................................................... 480
6. Bibliography ......................................................................................... 482

Chapter 11 Turkey ......................................................................................... 489
1. Introduction .......................................................................................... 489
1.1. Basic demographic information ......................................................... 489
1.2. The nature of the criminal justice system ....................................... 490
1.3. The structure and the processes of criminal justice system .......... 494
1.4. Levels of crime and the prison population ........................................ 503
1.5. Legal aid for persons suspected or accused of a crime ................. 505
2. Legal rights and their implementation ................................................ 509
2.1. The right to information ................................................................ 509
2.1.1. Apprehension: ........................................................................... 509
2.1.2. Police interview ......................................................................... 512
2.1.3. Charge ....................................................................................... 514
2.1.4. Pre-trial stage and trial ............................................................... 514
2.2. The right to defend oneself .............................................................. 516
2.2.1. The right of a person to defend him/herself ............................... 516
2.2.2. The right to legal advice at the investigation stage ................. 516
2.2.3. The right to legal representation at the trial stage .................... 518
2.2.4. Independence and competence of defence lawyers .................. 519
2.3. Procedural Rights ........................................................................... 520
2.3.1. The right to release from custody pending trial ....................... 520
2.3.2. The right of a defendant to be tried in his/her presence .......... 522
2.3.3. The right to be presumed innocent ........................................... 523
2.3.4. The right to silence .................................................................... 524
2.3.5. The right to a reasoned judgment ............................................. 526
2.3.6. The right to appeal .................................................................... 527
2.4. Rights relating to effective defence .................................................. 530
2.4.1. The right to investigate the case ............................................... 530
2.4.2. The right to adequate time and facilities for the preparation of the defence ....................................................... 531
2.4.3. The right to equality of arms in examining witnesses ............ 532
2.4.4. The right to free interpretation of documents and to translation ................................................................. 533
3. The professional culture of defence lawyers ....................................... 534
4. Political commitment to effective defence ........................................... 538
5. Conclusions ......................................................................................... 539
6. Bibliography ......................................................................................... 540
7. Annex .................................................................................................. 544

XIX
# Table of Contents

**PART III ANALYSIS AND CONCLUSIONS**

Chapter 12 The state of the nations: compliance with the ECHR

1. Introduction ............................................................................................... 547
2. National contexts ...................................................................................... 547
3. Compliance with ECHR standards ....................................................... 550
   3.1. Procedural rights relating to fair trial in general............................... 550
   3.2. The presumption of innocence and the right to silence ...................... 551
   3.3. Bail and pre-trial detention .............................................................. 552
   3.4. Equality of arms and adversarial hearing ............................................. 553
   3.5. Right to information on the nature and cause of the accusation and access to the file ......................................................................................... 555
   3.6. Rights to information on defence rights ................................................. 556
   3.7. Disclosure of the evidence and access to the case file ......................... 557
   3.8. Right to self-representation ............................................................... 558
   3.9. Right to legal assistance and to legal aid ................................................ 558
      3.9.1. Belgium ........................................................................................ 559
      3.9.2. England and Wales ................................................................. 559
      3.9.3. Finland ....................................................................................... 560
      3.9.4. France ........................................................................................ 561
      3.9.5. Germany ..................................................................................... 561
      3.9.6. Hungary ..................................................................................... 561
      3.9.7. Italy .............................................................................................. 562
      3.9.8. Poland .......................................................................................... 563
      3.9.9. Turkey .......................................................................................... 564
      3.9.10. Standards of representation, roles and independence ................ 565
   3.10. Right to investigate ............................................................................. 567
   3.11. Right to be tried in one’s presence and to participate ......................... 568
   3.12. Adequate time and facilities to prepare the defence ........................... 569
   3.13. Right to free interpretation and translation .......................................... 570
4. Conclusion ................................................................................................. 570
5. Bibliography .............................................................................................. 572

Chapter 13 The effective criminal defence triangle: comparing patterns

1. A model for analysis ................................................................................... 573
2. The content and scope of effective criminal defence ................................ 574
3. The effective criminal defence triangle .................................................. 577
   3.1. The rationale for the triangle .............................................................. 578
   3.2. An aspirational model ......................................................................... 579
   3.3. A worked example ............................................................................... 580
4. Five central issues ..................................................................................... 581
   4.1. Introduction ........................................................................................ 581
   4.2. Legal assistance .................................................................................. 581
      4.2.1. Deficient legal assistance: an example ................................................ 581
      4.2.2. Legal assistance and the ECHR ....................................................... 583
# Table of Contents

4.2.3. Access to legal assistance .................................................................................. 584
4.2.4. Timeliness ........................................................................................................... 585
4.2.5. Choice of lawyer .................................................................................................. 586
4.2.6. Compensation for lack of access to legal assistance? ....................................... 586
4.2.7. Procedural and evidential rules ......................................................................... 587
4.2.8. The professional and inter-professional context ................................................. 588
4.2.9. The quality of legal assistance ........................................................................... 588
4.3. Legal aid................................................................................................................ 589
  4.3.1. Complicated, unclear and slow application methods ........................................ 590
  4.3.2. Availability, quality and independence of criminal defence lawyer in legal aid cases ........................................................................................................ 591
4.4. Interpretation and translation .............................................................................. 592
  4.4.1. The significance of interpretation and translation ............................................. 592
  4.4.2. Identification of the need for interpretation and translation ............................ 594
  4.4.3. Accessibility of interpretation and translation .................................................... 595
  4.4.4. Which documents are to be translated? .............................................................. 595
  4.4.5. Quality and independence .................................................................................. 596
4.5. Adequate time and facilities .................................................................................. 597
  4.5.1. Preparation at the initial stages of the investigation .......................................... 598
  4.5.2. Preparation for pre-trial detention hearings and trial ........................................ 600
  4.5.3. Preparation for expedited hearings .................................................................... 601
4.6. Pre-trial detention .................................................................................................. 602
  4.6.1. The implications of pre-trial detention ............................................................... 603
  4.6.2. Recognition of a right to pre-trial release in practice ......................................... 603
  4.6.3. Effective participation in pre-trial detention hearings ......................................... 604
  4.6.4. Legal assistance and pre-trial detention .............................................................. 604
  4.6.5. The impact of being in pre-trial detention .......................................................... 605
5. Conclusions .............................................................................................................. 605
  5.1. Legal assistance ..................................................................................................... 605
  5.2. Legal aid ................................................................................................................ 606
  5.3. Interpretation and translation ................................................................................ 607
  5.4. Adequate time and facilities ................................................................................. 608
  5.5. Pre-trial detention ................................................................................................. 609
6. Towards effective criminal defence – the interrelationship between principles, laws, practices and cultures ........................................................................ 610
7. Bibliography ............................................................................................................. 611

Effective Criminal Defence in Europe
Executive Summary and Recommendations ................................................................ 613

1. Introduction ............................................................................................................... 613
2. Issues and recommendations concerning individual jurisdictions .......................... 614
  2.1. Belgium .................................................................................................................. 614
  2.2. England and Wales .............................................................................................. 616
  2.3. Finland ................................................................................................................... 617
  2.4. France .................................................................................................................... 618
XXI
2.5. Germany ................................................................. 619
2.6. Hungary ............................................................... 620
2.7. Italy ........................................................................ 621
2.8. Poland ..................................................................... 622
2.9. Turkey ................................................................. 624
3. Overall conclusions and recommendations .................. 625
   3.1. General recommendations ................................... 626
   3.2. Specific proposals ............................................... 627
       3.2.1. Information on rights and charges .............. 627
       3.2.2. Legal assistance and legal aid .................. 628
       3.2.3. Interpretation and translation ................... 629
       3.2.4. Access to the case-file, and time and facilities to prepare the
defence ................................................................... 629
       3.2.5. Pre-trial detention ....................................... 630

Annex 1 Desk Review Pro-forma .................................. 633
Annex 2 Critical Account of the Criminal Justice System Pro-forma .... 647
Annex 3 Guidance for Country Reports .......................... 651
Annex 4 The role of the Country Reviewer ...................... 656
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XXVIII
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3.8.2. Malgorzata Wasek-Wiaderek

Malgorzata Wąsek-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 Yarsuvat 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. İdil Elveris

İdil 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.