

Enhancing the Fair Trial for People Suspected or Accused of Crimes

www.projectfair.eu

Best Practices Handbook



This project is funded by the EU. This deliverable has been produced with the financial support of the Justice Programme (2014-2020) of the European Union under Grant Agreement No 802040. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.

© Copyright by the FAIR (802040) consortium, 2018-2020.

Project acronym: FAIR
Project title: Enhancing the Fair Trial for People Suspected or Accused of Crimes

Grant Agreement No.: 802040
Call: JUST-JACC-AG-2017
Topic: Action grants to support transnational projects to enhance the rights of persons suspected or accused of crime and the rights of victims of crime

Project description: In 2009 the Justice Council of the European Union adopted a Roadmap on procedural rights. The document came to propose legislative measures to enhance the procedural rights of the persons suspected or accused of crime. The main objective of FAIR is to develop a multilingual information tool, which will introduce persons suspected or accused of crime to the nature of their procedural rights.

Project partners: VICESSE – Vienna Centre for Societal Security, www.vicesse.eu (AT) (coordinator), LIF – Law and Internet Foundation, www.netlaw.bg (BG), KEMEA – Center for Security Studies, www.kemea.gr (EL), MRGE – Minority Rights Group Europe, www.minorityrights.org (HU).
Project contact: Aram Bajalan (VICESSE), aram.bajalan@vicesse.eu

Start date: 01/10/18
Duration: 24 months

Website: www.projectfair.eu

| | |
|---|------------------------------|
| INDEX | ERROR! BOOKMARK NOT DEFINED. |
| IMPRINT | ERROR! BOOKMARK NOT DEFINED. |
| VERSION CONTROL | 2 |
| TABLE OF CONTENTS | 3 |
| ACRONYMS & DEFINITIONS | 7 |
| INTRODUCTION | 8 |
| SECTION 1: BEST PRACTICES | 9 |
| 1.1 DEFINITION OF BEST PRACTICES | 9 |
| 1.2 GUIDING PRINCIPLES | 9 |
| 1.2.1 PROCEDURAL SAFEGUARDS | 9 |
| 1.2.2 COMPLIANCE WITH MINIMUM STANDARDS | 9 |
| 1.2.3 DIVERSITY | 10 |
| 1.2.4 EQUALITY & NON-DISCRIMINATION | 10 |
| 1.2.5 ACCESSIBILITY | 10 |
| 1.2.6 INDIVIDUALITY | 10 |
| 1.3 CRITERIA FOR THE IDENTIFICATION OF BEST PRACTICES | 10 |
| 1.3.1 LEGAL FRAMEWORK | 10 |
| 1.3.2 PRE-TRIAL PROCEEDINGS | 11 |
| 1.3.3 TRIAL PROCEEDINGS | 12 |
| 1.3.4 TRAINING FOR CRIMINAL JUSTICE PRACTITIONERS | 13 |
| 1.3.5 COLLECTION AND EVALUATION OF DATA | 13 |
| 1.4 IDENTIFIED EXAMPLES OF BEST PRACTICES | 13 |
| 1.4.1 Pre-Trial | 14 |
| 1.4.2 Trial | 15 |
| 1.4.3 Remedies | 15 |
| 1.4.4 General | 16 |
| SECTION 2: COMPARATIVE ANALYSIS | 16 |
| 2.1 DIRECTIVE (EU) 2016/343 ON THE STRENGTHENING OF CERTAIN ASPECTS OF THE PRESUMPTION OF INNOCENCE AND OF THE RIGHT TO BE PRESENT AT THE TRIAL IN CRIMINAL PROCEEDINGS | 16 |
| 2.1.1 TRANSPOSITION | 16 |

| | |
|---|----|
| 2.1.2 PUBLIC REFERENCES TO GUILT | 17 |
| 2.1.3 PRESENTATION OF PSACS | 17 |
| 2.1.4 BURDEN OF PROOF | 18 |
| 2.1.5 THE RIGHT TO REMAIN SILENT | 18 |
| 2.1.6 THE RIGHT TO BE PRESENT | 18 |
| 2.1.7 TRIALS IN ABSENTIA | 18 |
| 2.1.8 INFORMATION ABOUT THE RIGHT TO A NEW TRIAL | 18 |
| 2.1.9 CIRCUMVENTION OF THE PRESUMPTION OF INNOCENCE | 19 |
| 2.1.10 CHALLENGES | 19 |
| 2.2 DIRECTIVE (EU) 2010/64 ON THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS | 20 |
| 2.2.1 TRANSPOSITION | 21 |
| 2.2.2 THE RIGHT TO TRANSLATION | 21 |
| 2.2.3 ACCESS TO TRANSLATION | 21 |
| 2.2.4 ALTERNATIVE MEASURES | 22 |
| 2.2.5 EUROPEAN ARREST WARRANT PROCEEDINGS | 22 |
| 2.2.6 THE QUALITY OF TRANSLATION | 22 |
| 2.2.7 WRITTEN TRANSLATION OF CASE DOCUMENTS | 22 |
| 2.2.8 ORAL TRANSLATION | 23 |
| 2.2.9 WAIVING THE RIGHT TO TRANSLATION | 23 |
| 2.2.10 RECORD-KEEPING | 23 |
| 2.2.11 CHALLENGES | 23 |
| 2.3 DIRECTIVE (EU) 2016/1919 ON LEGAL AID FOR SUSPECTS AND ACCUSED PERSONS IN CRIMINAL PROCEEDINGS AND FOR REQUESTED PERSONS IN EUROPEAN ARREST WARRANT PROCEEDINGS | 24 |
| 2.3.1 TRANSPOSITION | 24 |
| 2.3.2 LEGAL AID | 24 |
| 2.3.3 MEANS TEST | 24 |
| 2.3.4 MERITS TEST | 24 |
| 2.3.5 GRANTING LEGAL AID IN CRIMINAL PROCEEDINGS | 25 |
| 2.3.6 EUROPEAN ARREST WARRANT PROCEEDINGS | 25 |
| 2.3.7 THE QUALITY OF LEGAL AID | 26 |
| 2.3.8 TRAINING | 26 |
| 2.3.9 REPLACEMENT OF LEGAL AID LAWYERS | 26 |

| | |
|---|----|
| 2.3.10 REMEDIES | 26 |
| 2.3.11 CHALLENGES | 26 |
| 2.4 DIRECTIVE (EU) 2013/48 ON THE RIGHT OF ACCESS TO A LAWYER IN CRIMINAL PROCEEDINGS AND IN EUROPEAN ARREST WARRANT PROCEEDINGS, AND ON THE RIGHT TO HAVE A THIRD PARTY INFORMED UPON DEPRIVATION OF LIBERTY AND TO COMMUNICATE WITH THIRD PERSONS AND WITH CONSULAR AUTHORITIES WHILE DEPRIVED OF LIBERTY | 27 |
| 2.4.1 TRANSPOSITION | 27 |
| 2.4.2 ACCESS TO A LAWYER | 27 |
| 2.4.3 CONFIDENTIALITY | 27 |
| 2.4.4 THE LAWYER'S PRESENCE DURING THE INTERROGATION | 27 |
| 2.4.5 TEMPORARY DEROGATIONS | 29 |
| 2.4.6 THE RIGHT TO COMMUNICATE WITH A THIRD PERSON WHILE DEPRIVED OF LIBERTY | 29 |
| 2.4.7 COMMUNICATION WITH CONSULAR AUTHORITIES WHILE DEPRIVED OF LIBERTY | 30 |
| 2.4.8 WAIVING THE RIGHT TO A LAWYER | 30 |
| 2.4.9 EUROPEAN ARREST WARRANT PROCEEDINGS | 30 |
| 2.4.10 CHALLENGES | 31 |
| 2.5 DIRECTIVE 2012/13 ON THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS | 31 |
| 2.5.1 TRANSPOSITION | 31 |
| 2.5.2 INFORMATION ABOUT PROCEDURAL RIGHTS | 31 |
| 2.5.3 THE LETTER OF RIGHTS | 32 |
| 2.5.4 EUROPEAN ARREST WARRANT PROCEEDINGS | 33 |
| 2.5.5 THE RIGHT TO ACCESS TO THE MATERIALS OF THE CASE | 33 |
| 2.5.6 REMEDIES | 33 |
| 2.5.7 TRAINING | 33 |
| 2.6 DIRECTIVE 2016/800 ON PROCEDURAL SAFEGUARDS FOR CHILDREN WHO ARE SUSPECTS OR ACCUSED PERSONS IN CRIMINAL PROCEEDINGS | 34 |
| 2.6.1 TRANSPOSITION | 34 |
| 2.6.2 THE AGE OF CRIMINAL LIABILITY | 34 |
| 2.6.3 THE RIGHT TO INFORMATION | 36 |
| 2.6.4 THE RIGHT OF ACCESS TO A LAWYER | 36 |
| 2.6.5 INDIVIDUAL ASSESSMENT | 36 |
| 2.6.6 MEDICAL EXAMINATION | 36 |
| 2.6.7 DEPRIVATION OF LIBERTY | 38 |
| 2.6.8 TIMELY AND DILIGENT TREATMENT OF CASES | 38 |

| | |
|--|-------------------------------------|
| 2.6.9 ACCOMPANYING HOLDER OF PARENTAL RESPONSIBILITY | 38 |
| 2.6.10 THE RIGHT TO BE PRESENT AND TO PARTICIPATE AT TRIAL | 38 |
| 2.6.11 ALTERNATIVE MEASURES | 39 |
| 2.6.12 AUDIO-VISUAL RECORDING | 39 |
| 2.6.13 TRAINING | 39 |
| 2.6.14 COSTS | 40 |
| 2.6.15 CHALLENGES | 40 |
| SECTION 3: RECOMMENDATIONS FOR PRACTITIONERS | 41 |
| 3.1 POLICE OFFICERS | 41 |
| 3.2 PROSECUTORS | 43 |
| 3.3 JUDGES | 45 |
| 3.4 LAWYERS | 47 |
| CONCLUSION | ERROR! BOOKMARK NOT DEFINED. |

| | |
|-------|---|
| AV | Audio-visual |
| CA | Consortium Agreement |
| CO | Confidential, only for members of the consortium (including the Commission Services) (Dissemination Level) |
| D | Deliverable |
| DEM | Demonstrator (Deliverable Type) |
| EAW | European Arrest Warrant |
| EC | European Commission |
| ECHR | European Convention on Human Rights |
| EU | European Union |
| FS | Financial Statement |
| GA | Grant Agreement |
| ICT | Information Communication Technology |
| IP | Implementation Plan |
| KOM | Kick-off Meeting |
| M | Month |
| MS | Milestone |
| NPM | National Preventive Mechanism |
| NHRI | National Human Rights Institutions |
| O | Objective |
| OTH | Other (Deliverable Type) |
| PC | Project Coordinator |
| PM | Project Manager |
| PO | Project Officer |
| PP | Restricted to other programme participants (including the Commission Services) (Dissemination Level) |
| PSAC | Person Suspected or Accused of Crimes |
| PU | Public (Dissemination Level) |
| R | Report (Deliverable Type) |
| RE | Restricted to a group specified by the consortium (including the Commission Services) (Dissemination Level) |
| T | Task |
| UNCAT | United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| UNCRC | United Nations Convention on the Rights of the Child |
| V | Version |
| WP | Work Package |

The FAIR Best Practice Handbook is aimed at providing selected criminal justice practitioners, particularly police officers, prosecutors, judges and lawyers with recommendations for their daily work in order to enhance the fair trial for people suspected or accused of crimes (PSACs). Moreover, the current handbook includes precise and up-to-date knowledge about the implementation of six EU Directives (procedural roadmap) in Austria, Bulgaria, Greece and Hungary, as well as about the practical challenges for the authorities and PSACs alike.

Built on the previously conducted research, which was implemented under the project, in the period of January 2019 until March 2019, the FAIR Best Practice Handbook presents data and relevant information which was gathered and analysed by the members of the FAIR consortium, namely VICESSE – Vienna Centre for Societal Security (AT), LIF – Law and Internet Foundation (BG), KEMEA – Center for Security Studies (GR) and MRGE – Minority Rights Group Europe (HU).

This Handbook is divided into three main sections. Firstly, Section 1 provides for a definition of ‘best practices’ in the context of the project FAIR. Subsequently, guiding principles and criteria for the identification of best practices are delineated, followed by the identified best practices examples from partner countries. In Section 2, a comparative analysis along the six Directives will showcase the main findings from the previously conducted research, particularly on the basis of the FAIR Data Collection Report and the FAIR Evaluation of the Legislation. Lastly, Section 3 provides recommendations for selected criminal justice practitioner groups regarding the appropriate adoption of best practices.

Based on FAIR partners’ rich expertise in the field of criminal justice and the previously conducted research within the framework of the FAIR project, attempts should be made to institutionalise best practices in order to ensure the adequate application of the procedural rights enshrined in the Directives in question. Ultimately, the FAIR Best Practices Handbook addresses the need to improve knowledge of criminal justice practitioners with regard to new European standards and is aimed at inspiring exchange among partner countries and to enhance the fair trial for PSACs.

1.1 DEFINITION OF BEST PRACTICES

In the context of the FAIR project, 'best practices' are those practices, which ensure that PSACs within the jurisdiction of a member state, have access to the right to a fair trial and the rights as set forth in the Directives¹, regardless of their cultural-, social-, ethnic-, religious- or linguistic-background. More precisely, the concept of 'best practices' refers to well-established procedures or working models that have proven to be efficient in certain (domestic) contexts with the potential to be transferred to other member states, hence with a certain degree of transferability.

1.2 GUIDING PRINCIPLES

While the FAIR consortium acknowledges that the adaption of certain practices might be challenging due to diverging legal cultures and domestic contexts, the following guiding principles were formulated on the basis of FAIR partners' rich expertise in the field of criminal justice and in the course of the research conducted under WP2, FAIR State of the Art, particularly the Data Collection Report (D2.2) and the Evaluation of Legislation (D2.3), in order to ensure a unified approach towards the identification of best practices. Moreover, and in line with the current state of the art, similar principles have been identified in relevant scientific literature.²

1.2.1 PROCEDURAL SAFEGUARDS

All actors involved in criminal proceedings have respect for the procedural rights of people suspected or accused of crimes. Relevant legal provisions which safeguard the effective participation of people suspected or accused of crimes in criminal proceedings are implemented in the member state.

1.2.2 COMPLIANCE WITH MINIMUM STANDARDS

Domestic criminal law is compliant with the provisions of regional and international minimum standards³ as well as with Directives 2010/64/EU, 2012/13/EU, 2013/48/EU, (EU) 2016/343, (EU) 2016/800, (EU) 2016/1919.

¹ Directives: 2010/64/EU, 2012/13/EU, 2013/48/EU, (EU) 2016/343, (EU) 2016/800 and (EU) 2016/1919.

² Cf., *Best Practices of Implementation of Human Rights at local and regional level in member states of the Council of Europe and other countries*, Monitoring Committee of the Council of Europe, 2014, <https://rm.coe.int/168071aeed>; Cf., *Dignity at Trial – Enhancing Procedural Safeguards for Suspects with Intellectual and Psychosocial Disabilities*, Ludwig Boltzmann Institute of Human Rights, 2018, https://bim.lbg.ac.at/sites/files/bim/attachments/1_handbook_dignity_at_trial.pdf

³ Such as the European Convention on Human Rights (ECHR) or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

1.2.3 DIVERSITY

Different cultural, ethnic, linguistic and social backgrounds are taken into account and respected in the criminal justice system of the member state.

1.2.4 EQUALITY & NON-DISCRIMINATION

PSACs are not subjected to discrimination in the exercise of their rights during all stages of the criminal proceedings and are treated equally considering their particular needs.

1.2.5 ACCESSIBILITY

PSACs are provided with information in an accessible and understandable format considering the potential need for translation and interpretation.

1.2.6 INDIVIDUALITY

An individual approach recognizing and adapting to the heterogeneous needs of PSACs is applied in the implementation of procedural safeguards.

1.3 CRITERIA FOR THE IDENTIFICATION OF BEST PRACTICES

The following sub-section showcases selected criteria for the identification of best practices which facilitated the process of identifying relevant best practice examples from Austria, Bulgaria, Greece and Hungary. Moreover, and in line with the current state of the art, similar criteria have been identified in relevant scientific literature (see footnote Guiding Principles).

1.3.1 LEGAL FRAMEWORK

Codification of the right to a fair trial: Does the law of your country provide for a fair trial? Is the independence of the judiciary ensured by law? Which measures are implemented in order to ensure equality before the law? Which measures are implemented in order to ensure that PSACs who do not speak the official language of your country receive information about the right to a fair trial (e.g. is translation of the information available)?

Adherence with relevant minimum standards for the deprivation of liberty: Are relevant minimum standards for police custody, pre-trial-detention as well as other forms of detention and deprivation of liberty implemented in your country (pre-requisites, duration, prison conditions)?

Existence of legal remedies: Does the law of your country provide for appeal procedures? Do PSACs have access to legal remedies in your country? Is confidentiality of the communications ensured (e.g. between PSACs and their lawyers)?

Existence of monitoring bodies: Is there an independent and impartial NPM (national preventive mechanism) which monitors places of detention in your country (police detention centres, prisons, psychiatric hospitals)?

1.3.2 PRE-TRIAL PROCEEDINGS

Adequately equipped police premises: Are police facilities equipped with adequate rooms for conducting interrogations in your country (e.g. nonviolent atmosphere at police offices, police officers do not carry weapons openly in police premises, no continuous external disturbances or noises in or around the interrogation room)?

Recognition of individual needs: Are PSACs who are interrogated treated in such a manner as to allow them to take breaks if necessary? Do police officers provide interrogated PSACs with something to drink or other refreshments?

Police custody: Are spatial and hygienic minimum standards ensured regarding custody cells in your country? Have PSACs the opportunity to leave the cell/go outside for at least one hour per day? Do PSACs get edible food and is attention paid to special diets?

Pre-trial detention: Are spatial and hygienic minimum standards ensured regarding the cells in your country? Have PSACs the opportunity to leave the cell/go outside for at least one hour per day? Do PSACs get edible food and is attention paid to special diets? Are pre-trial detention facilities equipped with smoking zones and areas for physical activities?

Appropriate interrogation methods: Do police officers apply respectful, deescalating and stress-reducing communication during the interrogation (e.g. avoidance of aggressive interrogation methods)? Do police officers pose open questions? Is it ensured that interrogated PSACs have fully understood the questions? Are PSACs provided with enough time to respond, to repeat or to ask again if necessary and to bring their answer/explanation forward to the police officers? Do investigating authorities ensure an individual approach regarding the length and circumstances of the interrogation (e.g. power of concentration of the PSAC, potential need for breaks of the PSAC)?

Existence of evaluation procedures: Do PSACs have the opportunity to give anonymous feedback regarding the way and manner the interrogation was conducted as well as the way the information (about their rights) was provided to them (e.g. evaluation form/feedback box)?

Effective vulnerability assessments: Are there mandatory assessment mechanisms in place used by police officers and pre-trial judges in order to determine any potential vulnerabilities on the side of the PSAC (e.g. in form of checklists, questionnaires, validated expert opinions or other predetermined indicators)?

Adequate information about procedural rights: Are PSACs adequately informed about their procedural rights in your country (e.g. access to a lawyer, right to remain silent, the right to contact a person of trust, the right to information regarding the further course of the proceedings)?

Adequate information about remedies: Are PSACs informed about the existence and possibility to use complaint mechanisms (e.g. NHRI, NPM, Ombudsman, etc.) and legal remedies in your country?

Accessible format of the provided information: Do the authorities of your country provide information in an accessible format and language to PSACs, ensuring that the provided information has been fully understood prior to conducting the interrogation (e.g. by asking PSACs to summarise the information given)?

Ensuring access to a lawyer/person of trust: Do PSACs have the opportunity to consult with a lawyer/to contact a person of trust upon arrest in your country (e.g. family member, guardian, social worker)?

Access to medical assistance: Is it ensured that PSACs receive medical assistance during all stages of the criminal proceedings in your country? Are medical assistance procedures adapted to the PSACs' substantive health conditions in cases where this is necessary? Is access to a doctor and access to medication ensured during all stages of the criminal proceedings, particularly during pre-trial detention and during police custody? Do PSACs have the possibility to choose their own doctor? Are PSACs provided with the possibility to consult with their doctor regularly or whenever needed? Are third persons of trust asked by the authorities about any necessary medication or medical assistance needed by the PSAC? Is it possible for a third person of trust, if requested by the PSAC, to be present during the medical examinations/consultations?

Appropriate legal representation: Is it ensured that PSACs have received comprehensible information regarding the possibility to have their lawyer present during the interrogation? Is it ensured that the authorities postpone the interrogation until a mandated lawyer is present? Is it ensured that PSACs have adequate time to consult with their lawyer and to discuss the case? To this end, can they meet with their lawyer in private? Is it ensured that the lawyer adds information after the PSAC has been questioned? Is effective participation of the lawyer during the interrogation ensured in your country? Are PSACs provided with information regarding the possibility to receive legal aid?

AV-recording of police interrogations: Is it ensured that pre-trial hearings and police interrogations are audio-visually recorded in your country? Do PSACs get informed about the fact that audio-visual recordings will not be made public and that they have the right to view them?

1.3.3 TRIAL PROCEEDINGS

Access to information regarding the setting of court proceedings: Do PSACs receive information regarding the setting of the court proceedings prior to the first hearing (e.g. where to find the court room, rest rooms, etc.)? Do PSACs receive information regarding the seating order, the functions and roles of all persons present during the hearing? Is it ensured that PSACs know about the possibility to take a break (e.g. toilet break)?

Understandable and respectful pronouncement of the judgement: Is it ensured that judgements are pronounced and explained to PSACs in an understandable and respectful manner? Is it ensured that judges prove if PSACs have fully understood the relevant information of the judgement (e.g. by asking to repeat or summarise in their own words)?

Adequate legal representation: Is it ensured that PSACs have the possibility to meet with their lawyers prior to the trial hearing with adequate time for preparation and to discuss the case? Is it ensured that PSACs are provided with information regarding the possibility to receive legal aid?

AV-recording of the main trial proceedings: Are court hearings audio-visually recorded in your country? Do PSACs get informed about the fact that audio-visual recordings will not be made public and that they have the right to view them?

1.3.4 TRAINING FOR CRIMINAL JUSTICE PRACTITIONERS

Attempts to enhance professional capacities: Are training programmes for criminal justice practitioners aimed at enhancing knowledge about procedural rights of PSACs available in your country (e.g. for police, prosecutors, judges, lawyers)? If yes, are these programmes mandatory for criminal justice practitioners who are in direct contact with PSACs? What are the contents and objectives of such programmes (e.g. communication, de-escalation, intercultural sensibility, etc.)? To this end, do the authorities of your country have access to relevant educational materials (e.g. handbooks, online tools, webinars, etc.)?

Availability of supervision: Do criminal justice practitioners of your country have access to regular supervision (e.g. stress coping strategies, burnout prevention)?

1.3.5 COLLECTION AND EVALUATION OF DATA

Collection of data: Is data from the criminal justice sector collected in your country (e.g. numbers of PSACs with foreign nationalities in police-custody)? If yes is the collected data accessible for criminal justice practitioners or for the public?

Evaluation: Are evaluation measures implemented in your country? If yes, how are they implemented (e.g. automatic, selective, cycle)? Is the collected data used in order to evaluate and improve current processes in the criminal justice system of your country?

1.4 IDENTIFIED EXAMPLES OF BEST PRACTICES

The following section contains the identified examples of best practices from partner countries clustered along the different stages of the criminal proceedings. An additional table was added for general best practice examples which do not relate to a specific stage of the proceedings.

In the case of Greece, it should be mentioned, that most of the identified examples of best practices do not constitute already applied and tested forms of practical action, as they mainly represent recommendations for future action. Therefore, they were fully incorporated into Section 3.

1.4.1 Pre-Trial

| Example | Country |
|---|---|
| <ul style="list-style-type: none"> • The availability of the letter of rights in more than one language. • The availability of an electronic police protocol system, which requires that information on procedural rights is provided to PSACs by before an official protocol can be generated. • The use of translation apps through the police (e.g. google translate) for communication with PSACs who do not speak the country's official language (e.g. initial communication for assessing whether a case is criminally relevant). • The use of video translation systems for less common languages in cases where it is not possible to ensure the presence of a translator. • The establishment of a free of charge defender emergency hotline offering initial legal advice. • Oral clarifications from multilingual police officers at the time of an arrest. • Immediate access to oral and written translation upon arrest and before an official accusation can be made. • Longstanding cooperation between police officers and translators. • Involvement of psychologists or pedagogues during the interrogation in cases involving children PSACs. • Pre-trial detention of children PSACs constitutes an exceptional practice. • Keeping interrogations of children PSACs as short as possible. • Conducting interrogations involving children PSACs in the afternoon for the purpose of safeguarding the privacy of children PSACs. | <ul style="list-style-type: none"> • Austria, Greece • Austria • Austria, Bulgaria • Austria • Austria • Austria, Bulgaria, Hungary • Bulgaria • Bulgaria • Bulgaria • Bulgaria • Hungary • Hungary |

1.4.2 Trial

| Example | Country |
|--|---|
| <ul style="list-style-type: none"> • The deployment of trained judges for cases involving children PSACs. • The existence of “social network conferences” to avoid the imprisonment of children PSACs and to foster the social reintegration. • The gathering of additional evidence on the education and the family environment, as well as any possible influence of adults in cases involving children PSACs through prosecuting authorities. • The use of various means to provide access to the materials of the case (e.g. the defence can take photographs of the case files or may request that copies are sent via e-mail) • The practice of appointing lawyers with adequate experience in criminal law in cases where legal aid is granted. • The court’s practice to consistently interpreting unnecessary handcuffing as a breach of human dignity justifying the awarding of non-pecuniary damages. • Allowing the use of texting and internet-based applications to inform third parties in order to make notification efforts more effective. | <ul style="list-style-type: none"> • Austria • Austria • Austria, Bulgaria • Hungary • Hungary • Hungary • Hungary |

1.4.3 Remedies

| Example | Country |
|--|--|
| <ul style="list-style-type: none"> • The existence of the legal opportunity to object against the decision of the appointment of a legal aid lawyer and to request (from the Court or the Prosecutor) the appointment of another public defender. | <ul style="list-style-type: none"> • Bulgaria |

1.4.4 General

| Example | Country |
|---|--|
| <ul style="list-style-type: none"> • The legal distinction between suspects, accused persons and defendants according to the different stages of the criminal proceedings, which entails that all provisions referring to the accused person are also applicable to suspects and defendants. | <ul style="list-style-type: none"> • Austria |
| <ul style="list-style-type: none"> • The existence of strict legal requirements as prerequisites for conducting trials in absentia (e.g. prior interrogation of the PSAC clarifying the grounds of the allegation, personal notification about the trial). | <ul style="list-style-type: none"> • Austria |
| <ul style="list-style-type: none"> • The availability of learning materials such as handbooks for lawyers regarding effective defence of children PSACs in criminal proceedings. | <ul style="list-style-type: none"> • Austria, Hungary |
| <ul style="list-style-type: none"> • The establishment of an electronic system for lawyers for substituting one another in cases where defence is mandatory which contributes to resolving the problem of weekend, bank holiday or delayed appointment of defence counsels). | <ul style="list-style-type: none"> • Hungary |

ION 2: COMPARATIVE ANALYSIS

Based on the results of WP2, FAIR State of the Art, particularly the findings from the Data Collection Report (D2.2) and the Evaluation of Legislation (D2.3), the following section presents a comparative analysis along each Directive.

2.1 DIRECTIVE (EU) 2016/343 ON THE STRENGTHENING OF CERTAIN ASPECTS OF THE PRESUMPTION OF INNOCENCE AND OF THE RIGHT TO BE PRESENT AT THE TRIAL IN CRIMINAL PROCEEDINGS

2.1.1 TRANSPOSITION

Austria, Bulgaria, Greece and Hungary have partially transposed Directive (EU) 2016/343 into their legal framework, since some of the provisions enshrined by the Directive already have an appropriate correspondence in national law. However, the presumption of innocence and the right to be present at trial are followed by all four countries, as it is a general principle of criminal law that applies during all stages of the proceedings.

2.1.2 PUBLIC REFERENCES TO GUILT

Regarding the implementation of preventive measures against public references of guilt made by public authorities and before a final judgment is delivered, only Greece provides for such measures in practice. Interviewed experts from Bulgaria considered the preventive measures and the remedies in case of breach, although existent, as ineffective in practice, which was also confirmed by the European Court of Human Rights (ECtHR). Hungary did not implement preventive measures, but ensures the availability of effective remedies in case of breach of the presumption of innocence. Austria could not find any specific information regarding this matter.

2.1.3 PRESENTATION OF PSACS

Austria and Hungary adopted measures against the presentation of PSACs as guilty through the use of measures of physical restraint. In Bulgaria and Greece measures of physical restraint are used in practice. Whereas, this is prohibited by law in Bulgaria, Greece grants limited protection to old persons, children, clergymen and persons with physical disabilities or illness. Additionally, apart from Austria, where no relevant information could be found, measures of physical restraint may be applied for security reasons and for PSACs suspected of escaping, resisting or illegitimately trying to communicate with third persons.

2.1.4 BURDEN OF PROOF

All four countries ensure that the burden of proof is placed on the prosecution. Any doubt as to the question of guilt is to the benefit of the PSACs in all four countries.

2.1.5 THE RIGHT TO REMAIN SILENT

PSACs have the right to remain silent and to not incriminate themselves in all four countries. Nevertheless, the lawful collection of evidence obtained through the use of legal powers of compulsion or which has an existence independent of the will of the PSAC is permitted. Based on international standards, all four countries ensure that the use of torture as well as improper interrogation methods violating fundamental rights are prohibited by law.

2.1.6 THE RIGHT TO BE PRESENT

PSACs have the right to be present at trial in all four countries. At the same time, it is possible to conduct trials in absentia under specific sine qua non requirements, including the timely notification of PSACs about the time and the date of the trial as well as about the consequences of non-appearance at trial.

2.1.7 TRIALS IN ABSENTIA

The frequency of non-appearances varies from country to country. Non-appearances are frequent in Austria, Hungary and Greece, whereas trials in absentia are an exception in Bulgaria. One of the main reasons for non-appearances in all four countries, is the fact that PSACs do not receive the notification letter (e.g. due to a change of residence). Another reason is that they either left the country or live in remote places. Against this background, Austrian interviewees stated that non-appearances might also be a result of deportation (e.g. as in asylum procedures). Moreover, Greek and Hungarian interviewees highlighted that this might be a result of a strategy to avoid the administration of justice or to delay the proceedings. Another reason for trials in absentia that was observed in Hungary, is the lack of financial means necessary for travelling to court. Regarding the consequences of non-appearance, each country follows a different practice. However, with the exception of Bulgaria, where trials in absentia are a rare phenomenon and merely permitted in case the defence lawyer is present at trial, a common finding is that courts in all four countries have the legal power to issue a warrant in order to proceed with the person present at trial.

2.1.8 INFORMATION ABOUT THE RIGHT TO A NEW TRIAL

PSACs in Austria and Greece get informed about the possibility to challenge the court's decision and of their right to a new trial or to another legal remedy, while they are not appropriately informed about this possibility in Bulgaria and Hungary.

2.1.9 CIRCUMVENTION OF THE PRESUMPTION OF INNOCENCE

Interviewees from all four countries have affirmed the existence of cases where the presumption of innocence was circumvented. The extent of circumvention varies according to many factors, such as the existing national legal framework and the particular stage of the criminal proceedings. For example, the Bulgarian legislation does not provide for the concept of 'suspect', who in this case cannot benefit from the rights granted to an 'accused persons'. A common finding that was identified in all four countries pertains to the impact of news reports and media coverage regarding the presumption of innocence. Considering this, Bulgarian and Hungarian experts emphasised the negative impact of using unnecessary measures of physical restraint. Greece and Hungary reported about the fact that defence lawyers generally hesitate to react officially, either by seeking judicial review or exemption of judges, because of the apprehension that such course of action might cause 'problems' for PSACs in the following stages of the proceedings.

2.1.10 CHALLENGES

Whereas the examined countries follow different approaches with regards to safeguarding the presumption of innocence and the right to remain silent, a common finding from Austria, Bulgaria and Hungary is that the authorities might exercise pressure, suggesting PSACs the benefits of confessing or testifying. Another finding from Austria and Greece is that the right to remain silent is poorly communicated in practice. Oftentimes PSACs are reluctant to use their right to remain silent, based on the apprehension that using it implies negative consequences for their credibility and hence, could negatively influence the further course as well as the outcomes of the proceedings. Another challenge that exists in all four countries concerns increasing amounts of resources necessary that accompany police efforts in locating PSACs who have changed their address or who have absconded from the country. Finally, the impact of police officers' emotional involvement and psychological burden and more generally the existence of stereotypes regarding certain categories of crimes (e.g. murder, sexual assault) and PSACs with different backgrounds (e.g. non-nationals such as asylum seekers or migrants) was identified as a practical challenge for safeguarding the presumption of innocence.



2.2 DIRECTIVE (EU) 2010/64 ON THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS

2.2.1 TRANSPOSITION

Austria and Greece have fully transposed Directive (EU) 2010/64 into their national legal frameworks, while Bulgaria and Hungary have partially transposed the Directive.

2.2.2 THE RIGHT TO TRANSLATION

All four countries have provisions in their national laws to ensure that PSACs who do not speak or understand the language of the proceedings are provided with translation for the communication with the authorities and their lawyers during all stages of the proceedings. This also includes appropriate assistance for PSACs with hearing or speech impediments. Only Hungary reported a lack of an adequate procedure or mechanism for assessing PSACs' need for translation. Whereas it rarely happens that PSACs who do not speak Hungarian are not provided with a translator, the fact that Hungary does not ensure that PSACs have the right to challenge a decision finding that there is no need for interpretation or to complain about the quality of the interpretation, was reported to be challenging.

2.2.3 ACCESS TO TRANSLATION

A common conclusion that can be drawn is that the procedure for providing PSACs with access to translation usually proceeds without undue delay and that PSACs who do not have access to translation are a rare phenomenon. In practice, PSACs have access to a translator immediately upon police questioning in the majority of the examined countries (in Bulgaria after the arrest and before an official accusation is made). However, there are a number of country-specific issues. For example, in Austria interviewees recommended the establishment of a centralized coordination and administration unit for translation services at the police, in order to cope with the existing challenge of safeguarding qualified translation during pre-trial proceedings. Furthermore, interviewees in Austria and Greece indicated that translators are oftentimes reluctant to cooperate with the police and that the existence of certain cultural stereotypes might deteriorate the communication between PSACs, translators and police officers. Against this background, Hungarian interviewees mentioned issues of mistrust between PSACs and police-appointed translators as a practical challenge. Finally, a common finding from all four countries pertains to the occurrence of delays regarding access to translation in remote areas or in cases involving PSACs with special needs (e.g. psycho-social disabilities).

2.2.4 ALTERNATIVE MEASURES

A common practice in all four countries regarding the use of alternative measures in cases where access to a professional translator is difficult (e.g. in remote areas), is that for the initial assessment of a crime multilingual police officers themselves try to translate or to deploy ICT-tools (e.g. translation apps, video translation systems). Furthermore, consulting persons of the same nationality or who speak the same language or dialect as the PSAC concerned was mentioned as an alternative that is widely used in practice.

2.2.5 EUROPEAN ARREST WARRANT PROCEEDINGS

In cases where a European Arrest Warrant (EAW) is issued, all four countries ensure that PSACs who do not speak or understand the official language are provided with translation (as in national criminal proceedings). In Austria, Greece and Hungary, anyone who has been arrested on the basis of an EAW and who needs translation shall be provided with a written translation. In Bulgaria there is no explicit provision regulating such cases, nevertheless, the appointment of a translator in EAW proceedings is stipulated in the Bulgarian legislation.

2.2.6 THE QUALITY OF TRANSLATION

Regarding the quality of translation, there are measures taken in all four countries. However, in Austria (predominantly during pre-trial proceedings) and Hungary they are considered to be insufficiently implemented. All four countries have set up a register of independent translators and have established confidentiality as a legal requirement in their national laws.

A conclusion that can be drawn for all four countries, is the observed variance regarding the quality of the translation provided to PSACs. Accordingly, decisive factors include the translator's skills and professional experience, the particular stage of the proceedings (pre-trial/trial), the lack of qualified translators for less common languages (or specific dialects) as well as a lack of education programmes and certification procedures for translators working in the field of criminal justice. For example, Austrian and Hungarian interviewees recommended trainings on basic legal terminology for translators. Moreover, the fact that there are no official procedures for the assessment of the quality of translation is a challenge in Austria, Hungary and Greece. According to Bulgarian interviewees, lacking quality of the provided translation is an exception, due to the fact that official translators who are members of the judicial translation registry are consulted.

2.2.7 WRITTEN TRANSLATION OF CASE DOCUMENTS

PSACs are provided with a written translation of all essential case documents in all four countries, including decisions on the deprivation of liberty, as well as any charges, indictments or judgments relating to the case within a reasonable period of time. Nonetheless, it was reported that in Hungary 'reasonable period of time'

might be a few-month in practice. Furthermore, competent authorities in all four countries can make decisions regarding whether other documents qualify as essential. Only Hungary states that there is no specific provision granting PSACs or their legal representatives the possibility to submit a reasoned request for the translation of other documents. However, such a request may be possible under the general provision that provides the defence with the right to put forth motions. In Austria, Bulgaria and Greece it is ensured that PSACs have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof. In Hungary, this is not possible, because there is no such decision of the court, the prosecution or the investigation authority in the first place.

2.2.8 ORAL TRANSLATION

Only in Hungary an oral translation or an oral summary does not substitute a written translation. Austrian, Bulgarian and Greek interviewees stated that the written translation may be replaced by an oral translation provided that such oral translation does not prejudice the fairness of the proceedings.

2.2.9 WAIVING THE RIGHT TO TRANSLATION

In Austria and Hungary, it is not required that PSACs have received prior legal advice and have full knowledge of the consequences of waiving their right to translation. However, the Austrian Code of Criminal Procedure stipulates that a waiver is only admissible if the PSAC has been informed beforehand of his/her rights.

2.2.10 RECORD-KEEPING

All four countries ensure adequate recording procedures for police interrogations or during hearings with the assistance of a translator, when an oral translation or oral summary of essential documents has been provided (not in Hungary where the oral translation cannot substitute the written one), or when a person has waived the right to translation.

2.2.11 CHALLENGES

Interviewees from Austria, Greece and Bulgaria reported that the lack of qualified translators is one of the main challenges in practice. Moreover, experts from Hungary and Greece reported, about the process of selecting relevant documents that need to be translated and the time necessary for the authorities to provide official translations of selected documents. Further to this, the difficulty to assess the quality of the then provided translated documents as well as of oral translations was addressed as another challenge in Austria and Bulgaria. Accordingly, Austrian and Bulgarian interviewees suggested that translators should be acquainted with routine procedures of the police and that training programmes focussing on basic legal

terminology should be made available to enhance the quality of translation. Lastly, low remuneration of translators, which deteriorates their overall motivation, as well as a lack of certified translators for less-common languages (or regional dialects) are challenging for the right to translation in all four countries.

2.3 DIRECTIVE (EU) 2016/1919 ON LEGAL AID FOR SUSPECTS AND ACCUSED PERSONS IN CRIMINAL PROCEEDINGS AND FOR REQUESTED PERSONS IN EUROPEAN ARREST WARRANT PROCEEDINGS

2.3.1 TRANSPOSITION

The evaluation of legislation took place before the deadline (25 May 2019) for the transposition of Directive (EU) 2016/1919 has elapsed. Until then, Austria, Bulgaria and Greece have not implemented Directive (EU) 2016/1919 into their legal framework. Only Hungary has incorporated the Directive partially. However, all four countries have established a legal aid system which is, to a large extent, in accordance with the Directive.

2.3.2 LEGAL AID

All four countries ensure that PSACs who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require. Moreover, all four countries apply a means test to determine whether legal aid has to be granted. With respect to a merits test, only Bulgaria does not apply a test on the merits of the case to determine whether legal aid has to be granted. The merits test in Bulgaria is substitute by a legal provision stating when the participation of a lawyer defending the accused is mandatory.

2.3.3 MEANS TEST

In Austria the income, the capital and family situation of the PSAC as well as the state's standard of living are taken into account, whereas the costs of the assistance of a lawyer are not taken into account. The same applies for Bulgaria and Hungary with the only difference that the state's standard of living is not take into consideration, but the costs of the assistance of a lawyer. In Greece the income and the capital situation of the PSAC, the costs of the assistance of a lawyer and the state's standard of living are taken into account, but not the family situation of the PSAC.

2.3.4 MERITS TEST

In Austria the seriousness of the criminal offence and the complexity of the case are considered in a merits test, but not the severity of the sanction at stake. Although there is no applicable merits test in the Bulgarian

legislation, in practice the seriousness of the criminal offence and the severity of the sanction at stake (but not the complexity of the case) are taken into account. In cases where PSACs are litigated for a serious crime for which the law prescribes more than 10 years of imprisonment, it is mandatory to be represented by a lawyer and in such cases the lawyer is often appointed under the procedure established in the Bulgarian Legal Aid Act. Greece takes into account the seriousness of the criminal offence and the severity of the sanction at stake but not the complexity of the case. In Hungary the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake are considered. The merits test shall be deemed to have been met in all four countries, where a PSAC is brought before a competent court or judge in order to decide on detention at any stage of the proceedings as well as during detention.

2.3.5 GRANTING LEGAL AID IN CRIMINAL PROCEEDINGS

Whereas all four countries ensure that legal aid is available to PSACs, there are ongoing discussions in Austria regarding the need to reform the current legal aid system with respect to timely access to a lawyer during pre-trial proceedings. The latest point in time for granting legal aid in Austria is before a PSAC is questioned by a judicial authority. In Bulgaria the latest point in time for granting legal aid is before questionings by the police or a judicial authority and before investigative or evidence-gathering acts are conducted.

In Greece, PSACs shall receive legal aid before questionings by a law enforcement or judicial authority, but, in the latter case, only as regards felonies at the stage of interrogation. In Hungary there are no such requirements. The only existing requirement is that the application for legal aid may be submitted to the legal aid service in criminal proceedings the latest before the court's decision on the merits is delivered. In all four countries legal aid is granted only for the purposes of the criminal proceedings in which the PSAC is suspected or accused of having committed a criminal offence. In Bulgaria, the Legal Aid Act and the Code of Criminal Procedure provide an opportunity for granting legal aid to all parties in the proceedings.

2.3.6 EUROPEAN ARREST WARRANT PROCEEDINGS

As regards legal aid in EAW proceedings, where the state is the executing member state, only Greece does not ensure that requested PSACs have the right to legal aid upon arrest pursuant to an EAW until they are surrendered, or until the decision not to surrender becomes final. Similarly, with regards to legal aid in EAW proceedings where the state is the issuing member state, only Greece does not ensure that requested PSACs subjected to EAW proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing member state to assist the lawyer in the executing member state, have the right to legal aid in the issuing member state for the purpose of such proceedings in the executing member state. In EAW proceedings in Hungary, the right to legal aid is subject to a means test. This is not the case in Bulgaria and Greece. Austria did not find any relevant information on that issue.

2.3.7 THE QUALITY OF LEGAL AID

All four countries have taken measures to ensure that the competent authority takes its decisions diligently and with respect for the right to a fair trial. Moreover, all four countries indicated that measures have been taken to ensure that PSACs and requested persons are informed in writing if their request for legal aid is refused in full or in part. In Austria there are ongoing discussions about the need to reform the current legal aid system regarding quality assurances in connection with the current system of remuneration. Bulgaria and Greece stated that they have taken measures to ensure that legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession. This is not the case in Hungary (and Austria) where the quality of the work done by appointed defence counsels was assessed to be usually poor. In Austria for example allocated legal aid lawyers are not required to have specific expertise in criminal law.

2.3.8 TRAINING

Only Bulgaria ensures measures in order to promote the provision of adequate training for lawyers who provide legal aid services. Such measures have not been taken in Greece and Hungary. Austria did not find any relevant information.

2.3.9 REPLACEMENT OF LEGAL AID LAWYERS

In Austria and Hungary, PSACs have the right to request the replacement of the allocated legal aid lawyer, where the specific circumstances so justify. No such right is given to PSACs and requested persons according to the Bulgarian and the Greek legislation.

2.3.10 REMEDIES

Only Hungary ensures that PSACs have an effective remedy under national law in the event of a breach of their rights under this Directive. Austria, Bulgaria and Greece did not find any relevant information.

2.3.11 CHALLENGES

The main common issues that emerge regarding legal aid could be divided into categories according to the ground on which these issues arise. Hence, legal issues arise in Austria and Hungary, financial issues arise in Austria, Bulgaria and Hungary, and, last, issues regarding the quality of the provided legal aid in all countries. In practice, PSACs have to overcome certain barriers to exercise their right, such as the lack of

legal aid during pre-trial proceedings (e.g. Austria) or even the coverage of the expenses for the appointment of a lawyer through the system of legal aid.

2.4 DIRECTIVE (EU) 2013/48 ON THE RIGHT OF ACCESS TO A LAWYER IN CRIMINAL PROCEEDINGS AND IN EUROPEAN ARREST WARRANT PROCEEDINGS, AND ON THE RIGHT TO HAVE A THIRD PARTY INFORMED UPON DEPRIVATION OF LIBERTY AND TO COMMUNICATE WITH THIRD PERSONS AND WITH CONSULAR AUTHORITIES WHILE DEPRIVED OF LIBERTY

2.4.1 TRANSPOSITION

All countries participating in the project FAIR have incorporated Directive (EU) 2013/48 in their legal framework (Austria and Bulgaria fully, while Greece and Hungary partially).

2.4.2 ACCESS TO A LAWYER

PSACs have the right to access to a lawyer in all four countries. In line with the Directive it is ensured to have access to a lawyer before questionings by the police or the judicial authorities, after deprivation of liberty and where they have been summoned to appear before a court having jurisdiction in criminal matters, before they appear before the court. General information for PSACs regarding the right to access to a lawyer is provided in all four countries.

2.4.3 CONFIDENTIALITY

Confidentiality of the communication between PSACs and their lawyer is respected in all four-member states according to their national legislations. Moreover, it is ensured that PSACs have the right to meet and communicate with their lawyer in private, including prior to questioning by the police or judicial authorities.

2.4.4 THE LAWYER'S PRESENCE DURING THE INTERROGATION

PSACs have the right for their lawyer to be present during the interrogation and to participate effectively, which is ensured in all four countries. However, Austrian interviewees expressed some doubts with respect to the level of conformity of the national law with the Directive, as lawyers in Austria may not actively participate in the interrogation, as they are merely allowed to be present and ask for thematic blocks. Additionally, PSACs may not consult with their lawyer for answering individual questions in Austria. All participating countries ensure as a minimum, that PSACs have the right for their lawyer to attend identity parades, confrontations and reconstructions of the scene of a crime.



2.4.5 TEMPORARY DEROGATIONS

In cases where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person and where there is an urgent need to prevent a situation where the criminal proceedings could be substantially jeopardized, temporary derogations from the application of the aforementioned rights can be made in all four countries. These specific prerequisites are not explicitly mentioned in the Austrian legislation, yet derogations might take place “for valid reasons” which is a rather generic term.

Where there is a temporary derogation from the application of the rights of a children PSAC to inform the holder of parental responsibility or another appropriate adult, it is ensured in Austria, Bulgaria and Greece that an authority responsible for the protection of children is informed without undue delay of the deprivation of liberty of the concerned child PSAC. Furthermore, temporary derogations from the application of the PSACs’ right to have their lawyer present during investigative or evidence-gathering acts can be made in Austria, but only insofar as specific circumstances make immediate interrogation or other immediate investigative acts absolutely necessary in order to avert a significant impairment of the investigation or of the evidence. According to the Austrian legislation, derogations might occur not only at the pre-trial stage, as established in the Directive. In addition, there are temporary derogations in Austria from the application of a) the PSACs’ right to meet and communicate with their lawyer in private and b) the PSAC’s right for their lawyer to be present and participate effectively during questioning, where immediate action by the investigating authorities is imperative to prevent substantial jeopardy of the criminal proceedings.

In Hungary such derogations can occur not only for the prevention of substantial jeopardy of the proceedings, but also where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person. In Bulgaria such derogations are not being made and in Greece no relevant information could be found on this matter. There are no provisions in the national legislations of the participating countries for temporary derogations from the exercise of the right of access to a lawyer in criminal proceedings a) to be proportional and not going beyond what is necessary, b) to be strictly limited in time, c) not to be based exclusively on the type or the seriousness of the alleged offence and d) not to prejudice the overall fairness of the proceedings. In particular, Austria states that temporary derogations may be authorised only by a decision taken on a case-by-case basis either by a judicial authority or by another competent authority. No relevant information could be found with respect to whether the decision should be duly reasoned and whether it should be taken on condition that it can be submitted to judicial review.

2.4.6 THE RIGHT TO COMMUNICATE WITH A THIRD PERSON WHILE DEPRIVED OF LIBERTY

All participating countries ensure that PSACs who are deprived of liberty have the right to have at least one person nominated by them, informed of their deprivation of liberty without undue delay. In cases involving children PSACs, all four countries ensure that the holder of parental responsibility is informed as soon as possible of the deprivation of liberty and of the reasons thereof. Moreover, it is also ensured that, when informing the holder of parental responsibility is contrary to the best interests of the child, another

appropriate adult can be informed. Lastly, the aforementioned right to communication may be limited or deferred in view of imperative requirements or proportionate operational requirements.

2.4.7 COMMUNICATION WITH CONSULAR AUTHORITIES WHILE DEPRIVED OF LIBERTY

It is ensured in all four countries that PSACs who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their state of nationality informed of the deprivation of liberty and to communicate with them. In case PSACs have two or more nationalities, they can choose which consular authorities are to be informed and with whom they wish to communicate. Moreover, according to the national legislations of all four countries, PSACs have the right to be visited by their consular authorities and to converse and correspond with them. Lastly, PSACs have the right to have legal representation arranged by their consular authorities, subject to the agreement of those authorities and the wishes of the PSACs concerned in all four countries.

2.4.8 WAIVING THE RIGHT TO A LAWYER

Only in Hungary it is not ensured that PSACs are provided, orally or in writing, with information about the content of the right concerned and the possible consequences of waiving it. All four countries ensure that any waiver was given voluntarily and unequivocally. Moreover, the waiver as well as the circumstances under which the waiver is given are noted using the recording procedure in accordance with the national law of the respective country. Furthermore, PSACs may revoke the waiver subsequently at any point during the proceedings. To this end, they get informed about the possibility to revoke the waiver. The revocation of a waiver is effective from the moment it is made.

2.4.9 EUROPEAN ARREST WARRANT PROCEEDINGS

The right to have access to a lawyer in the executing member state upon arrest pursuant to an EAW is safeguarded in all four countries. Regarding the content of the right to access to a lawyer in the executing member state, it is also ensured by all countries that requested persons have a) the right to access to a lawyer in such time and in such a manner as to allow the requested PSAC to exercise his/her rights effectively and in any event without undue delay from deprivation of liberty, b) the right to meet and communicate with the lawyer representing him/her and c) the right for their lawyer to be present and to participate during hearings. Only interviewees from Austria have expressed doubts on the level of conformity with the Directive regarding this matter. Furthermore, in cases where a lawyer participates during the hearing of a requested PSAC by the executing judicial authority, this participation is noted using the recording procedure in accordance with the law of the member states concerned. The rights provided for in Articles 4, 5, 6, 7, 9 and, where a temporary derogation is applied, in Article 8, apply *mutatis mutandis* to EAW proceedings. Where the state is the executing member state, it is ensured by all four countries that the competent authority, will inform requested PSACs that they have the right to appoint a lawyer in the issuing member state after the deprivation of liberty.

Moreover, apart from Greece where no relevant information could be found, in cases where the state is the executing member state, the competent authority will promptly inform the competent authority of the issuing member state that the requested PSAC wishes to exercise his/her right to appoint a lawyer in the issuing member state. Bulgaria and Hungary ensure that the right of a requested PSAC to appoint a lawyer in the issuing member state is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation of the executing judicial authority to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered. Austria and Greece could not find any relevant information on this issue. Further to this, participating countries guarantee that PSACs in criminal proceedings, as well as requested PSACs in EAW proceedings, have an effective remedy under national law in the event of a breach of the rights stipulated under this Directive. Only in Greece it is not ensured that in the assessment of statements made by PSACs or of evidence obtained in breach of their right to have access to a lawyer or in cases where a derogation to this right was authorised, the rights of the defence and the fairness of the proceedings are respected, because the corresponding Article 12 of the Directive has not been incorporated in the Greek legal framework.

2.4.10 CHALLENGES

All four countries have set forth legal provisions to safeguard the right to access to a lawyer. Notwithstanding, common issues can be identified among the examined countries. Correspondingly, an example from Greece pertains to the right to privacy in meetings and the confidential communication between detained PSACs and their mandated lawyer. In Austria and Hungary, according to the interviewees, PSACs face issues regarding the lack of quality of appointed defence lawyers within legal aid.

2.5 DIRECTIVE 2012/13 ON THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

2.5.1 TRANSPOSITION

Austria has fully implemented the Directive, while Bulgaria, Greece and Hungary have partially implemented the Directive (EU) 2012/13.

2.5.2 INFORMATION ABOUT PROCEDURAL RIGHTS

The majority of the interviewed criminal justice experts stressed the importance of adequately informing PSACs about their rights already before first interrogations by the police. Whereas divergences were detected in the examined countries regarding the practice of informing PSACs about their rights, most of the interviewed experts confirmed that oral as well as written information is provided to PSACs by the investigative authorities. Different opinions were expressed by legal practitioners in Bulgaria and by two interviewed experts in Greece, who suggested that omissions have occurred with regard to providing PSACs

with information about their procedural rights. Regarding Article 3 of the Directive which enshrines the provision of prompt information about the right to have access to a lawyer, all four countries have implemented the provision.

Similarly, all of the examined member states ensure that PSACs receive information about the right to free legal advice and the conditions for obtaining such advice as well as information on the accusation in accordance with Article 6. Austria, Bulgaria and Greece provide information on the right to interpretation and translation. Hungary provides such information only partially, since the Hungarian Criminal Code of Procedure takes it for granted that PSACs wishing to use another language are provided with translation.

2.5.3 THE LETTER OF RIGHTS

Article 4, which contains the provision that PSACs shall be promptly provided with a letter of rights, with time to read it and to keep it in their possession during all stages of the proceedings, has been implemented in all four countries. Whereas the letter of rights contains information regarding access to the materials of the case according to the Greek and Hungarian legislation, this is not the case in Austria and Bulgaria. Information on the right to inform the consular authorities is provided in all four countries. Moreover, the letter of rights in Austria, Bulgaria and Greece contains information about the right to urgent medical assistance. In Hungary, the law does not expressly stipulate the right to be informed about the right to access to medical assistance.

Whereas information on the maximum hours of detention before being brought to a judicial authority, is provided in the letter of rights in Austria, Greece and Hungary, Bulgarian authorities do not provide such information. Furthermore, information about the review of detention is only provided in Greece and Hungary. Information about challenging the lawfulness of the arrest is not part of the Bulgarian letter of rights. Information about the request for provisional release is not available in the Austrian and Bulgarian letter of rights. Despite the fact, that the letter of rights is available in 47 different languages, the provision to draft the letter of rights in plain legal and accessible language, is not fulfilled in Austria due to the use of complex legal terminology. In Bulgaria the letter of rights is only available in Bulgarian, whereas in Greece and Hungary other languages are available as well.

In case the letter of rights is not available in an appropriate language, oral information about rights is provided in all four-member states by the respective authorities. Against this background, interviewed experts from all four countries agreed, that PSACs oftentimes do not understand their rights based on the provided letter of rights. Considering this observation, an important factor which predetermines PSACs lack of understanding, is the use of complex legal language and terminology (see Austria). Therefore, the need for plain explanations and clear instructions regarding procedural rights can be considered as a common finding from all four countries.

2.5.4 EUROPEAN ARREST WARRANT PROCEEDINGS

Concerning Article 5 of the Directive and the provision to promptly provide PSACs with an appropriate letter of rights in case of an EAW, Austria, Bulgaria, Greece and Hungary comply with the Directive. The same applies for Article 6 which comprises the right to receive information about the accusation, the reasons for the arrest or detention and information regarding any changes of the information.

2.5.5 THE RIGHT TO ACCESS TO THE MATERIALS OF THE CASE

All four-member states ensure that arrested or detained PSACs and their lawyers receive documents related to the specific case which are in possession of the competent authorities and essential for challenging the lawfulness of the arrest or detention. This means that access to the materials of the case should be ensured in the majority of cases. Regarding the provision to refuse access to the materials of the case, if such access may lead to a serious threat to the life or the fundamental rights of another person, Austria, Greece and Hungary are compliant with the respective provision of the Directive. Access to the materials of the case is provided free of charge in Bulgaria and Hungary.

2.5.6 REMEDIES

When information is provided to PSACs all member states have a recording procedure to note that such information has been provided. Whereas Austria, Greece and Hungary safeguard that PSACs or their mandated lawyers have the right to challenge, in accordance with the procedures of national law, possible failure or refusal of the competent authorities to provide information in accordance with the Directive, Bulgaria only partially complies with the Directive as there is no explicit provision.

2.5.7 TRAINING

Training programmes for judges, prosecutors, police officers and judicial staff, as required under Article 9 of the Directive are only available in Greece.

2.6 DIRECTIVE 2016/800 ON PROCEDURAL SAFEGUARDS FOR CHILDREN WHO ARE SUSPECTS OR ACCUSED PERSONS IN CRIMINAL PROCEEDINGS

2.6.1 TRANSPOSITION

Member states had to bring their national legislation in line with Directive (EU) 2016/800 until 11 June 2019.

2.6.2 THE AGE OF CRIMINAL LIABILITY

According to the conducted research, the age of criminal responsibility is 14 years of age in Austria and Hungary, and 16 years in Bulgaria 18 years and Greece.



2.6.3 THE RIGHT TO INFORMATION

PSACs who are children are provided with information about their rights, the general conduct of the criminal proceedings, the right to be assisted by a lawyer, and the right to legal aid in all four-member states. Moreover, information about the limitation of the deprivation of liberty and the use of alternative measures, including the right to periodic review of detention is made available to PSACs in Austria, Bulgaria and Greece. None of the four countries provide information regarding the specific treatment of children PSACs during the deprivation of liberty.

2.6.4 THE RIGHT OF ACCESS TO A LAWYER

The right to have access to a lawyer in accordance with Directive 2013/48/EU is ensured in all four countries as well as the right to exercise the right to defence effectively. Similarly, it is ensured that children have the right to meet and communicate with their lawyer in private, including prior to questionings by the police or by another law enforcement or judicial authority. Furthermore, the assistance of a lawyer in identity parades, confrontations, reconstruction of crime scenes, is ensured in all four countries.

2.6.5 INDIVIDUAL ASSESSMENT

The right to individual assessments enshrined in Article 7 of the Directive, and the specific needs of children concerning their protection, education and social integration are considered in all four-member states. Besides, the child's personality, maturity, economic, social and family background as well as specific vulnerabilities are taken into account in Austria, Hungary and Greece.

2.6.6 MEDICAL EXAMINATION

In the case of deprivation of liberty all four countries indicated that children have the right to medical examination. Such medical examination is carried out by qualified personnel in Austria, Hungary and Greece. Apart from Hungary, where there is no such regulation, the results of the medical examination are taken into account when conducting investigative or evidence-gathering acts or when measures are taken or envisaged against the child. For example, in Bulgaria the health status of the PSAC is taken into consideration when determining restraining measures and a medical document is issued by the examining physician. A copy of the medical document is made available to the detained PSAC or to his/her authorised lawyer.



2.6.7 DEPRIVATION OF LIBERTY

Limitations of the deprivation of liberty for children at any stage of the proceedings to the shortest period is ensured in Austria, Greece and Hungary. Generally, the deprivation of liberty is taken as a measure of last resort and is based on a reasoned decision in all four countries. Moreover, judicial and periodic review of the detention by the court is ensured. In the case of deprivation of liberty, all four countries indicated that children are separately detained from adults and that it is not possible to detain them together with adults. However, it is possible to detain children together with young adults in all four countries. In the case of police custody, it cannot be guaranteed to keep children separately from adults in Austria and Greece.

In Bulgaria detained children are accommodated separately from detained adults in special premises. In Hungary, according to Article 427 (1) of the Penitentiary Code, the rules of pre-trial detention shall apply concerning the custody of children. Therefore, according to Article 391 (2) of the Hungarian Penitentiary Code, children in custody shall be separated from adults in detention facilities. The custody shall be carried out in a police jail according to Article 427 (2) of the Hungarian Penitentiary Code. Whereas children shall be held separately from adults in police custody in Greece, incidents where children and adults are held together due to a lack of space were reported to occur in practice. In Bulgaria, children are detained in reformatories primarily for their re-education and for preparing them for a life of freedom.

2.6.8 TIMELY AND DILIGENT TREATMENT OF CASES

Regarding the implementation of appropriate measures to ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence (Article 13), there is no information available for Austria. In Bulgaria this is partially ensured. In Hungary criminal proceedings are treated as a matter of urgency in cases involving PSACs who are children and the time limit for the investigating authority to conclude with the investigation is shorter than for cases involving adult PSACs. For Article 14 and the provision to ensure the privacy of children during criminal proceedings, Austria, Bulgaria and Hungary comply with the Directive, in Greece there is limited protection regarding the privacy of children according to the interviewees' estimations.

2.6.9 ACCOMPANYING HOLDER OF PARENTAL RESPONSIBILITY

The right of the child to be accompanied by the holder of parental responsibility during court hearings is guaranteed in Austria, Bulgaria and Hungary. With regards to the right of the child to nominate another appropriate adult, there are no provisions in the examined member states.

2.6.10 THE RIGHT TO BE PRESENT AND TO PARTICIPATE AT TRIAL

Article 16, which enshrines the right of children to appear in person at and to participate in trial is guaranteed by all four countries. However, no specific measures regarding the effective participation of children including the opportunity to be heard and to express their views are taken by the four countries so far, as the general rules apply.

2.6.11 ALTERNATIVE MEASURES

Regarding the application of alternative measures to the deprivation of liberty in the case of children PSACs, interviewees mentioned that such measures exist, for example with regards to the transfer of children to facilities with specialised staff or criminal supervision including house arrest (with the obligation to report to the police). In this context it is worthwhile to highlight the Austrian practice of the so called “social network conference”, which involves all respective parties and which is oriented towards the social reintegration of children and the avoidance of the deprivation of liberty.

2.6.12 AUDIO-VISUAL RECORDING

Audio-visual recordings of questionings, pursuant to Article 9 of the Directive are only provided in Hungary. Other recording procedures are ensured in all four countries. Furthermore, audio-visual recordings of the questioning of children are, according to the interviewees from Austria, Hungary and Greece, established as a policy but not prescribed by law (with the exception of children under the age of 14 in Hungary). Moreover, practical challenges that were reported by interviewees from Bulgaria and Hungary concern technical and spatial difficulties for law enforcement authorities regarding audio-visual recordings. In Greece the non-consistent application of the policy was highlighted as challenging.

2.6.13 TRAINING

In Hungary there are no systematic training programmes for police officers or officers of detention facilities regarding specific methods for dealing with children PSACs. Whereas there are no mandatory training programmes in Greece in this regard, some steps have been taken by organising educational seminars for this purpose. In Bulgaria police officers receive specific training in order to qualify to work with children PSACs. Correspondingly, promising practices were identified in Austria regarding such measures. According to the Austrian findings, judges and prosecutors who are entrusted with juvenile justice matters shall have necessary pedagogical understanding as well as specific knowledge in the fields of (child) psychology and social work. Similarly, in Hungary, there are training programmes designed for judges who are appointed to hear cases involving children PSACs. However, there is no readily available public data regarding trainings for prosecutors. In Greece, such measures are limited and in Bulgaria there are voluntary training programmes, but no measures taken by the state.

With regards to programmes for lawyers, there is a draft law in Bulgaria, which involves an opportunity to pass a training on the rights of the child and rules for working with children. In Austria and Greece, there

are no appropriate measures to promote the provision of specific training programmes for lawyers who deal with criminal proceedings involving children. In Hungary, there are no training programmes available at the moment, however, mandatory training for lawyers will be introduced in 2020. Notwithstanding, it is not clear whether this will touch upon criminal proceedings involving children PSACs. Additionally, there is another draft law in Bulgaria, which provides that all judges, prosecutors and investigative authorities shall pass a training on the rights of the child and rules for working with children. Specialisation standards are accepted by the Supreme Judicial Council, jointly with the Ministry of Justice, the Ministry of the Interior and the Chairperson of the State Agency for Child Protection.

2.6.14 COSTS

In Austria and Bulgaria, the state bears the costs for the medical examination under Article 22 of the Directive irrespective of the outcome of the proceedings. In Hungary the general rules apply and the responsibility for the costs depends on the outcome from the criminal proceedings. In Greece Article 22 is not implemented and there is no information what rules apply to the costs in the cases listed in the Directive.

2.6.15 CHALLENGES

The issues that usually emerge, regarding procedural rights of children who are suspected or accused of crime are plenty and, in some cases, common for all of the examined countries. A common issue that was identified, is for example the difficulty for children PSACs to understand the procedure that is followed in case of having committed a criminal offence or regarding the illegal nature of an act which results in the deprivation of liberty. Another common issue is the lack of training programmes for criminal justice practitioners who deal on a daily basis with cases involving children PSACs. Interviewed experts from all four countries commented that the authorities aim to achieve specialized ways and procedures to handle criminal cases where children PSACs are involved. To this end, practical challenges can be identified especially in Greece and Hungary, for example the possibility to detain children in adult facilities, due to a lack of space and specific facilities where only children are accommodated.

The following section contains recommendations for selected criminal justice practitioners regarding the appropriate adoption of the identified best practices. The recommendations are listed according to the respective group of practitioners, namely police officers, prosecutors, judges and lawyers and are divided along the particular stage of the criminal proceedings.

3.1 POLICE OFFICERS

While police officers can have a potential role as victims or witnesses of crimes in court proceedings, the following recommendations focus on the pre-trial stage, particularly on the initial assessment of a crime and the interrogation of PSACs through police officers. Therefore, the “trial” and “remedy” columns are left out in the following table. A general recommendation for the trial and remedy stage of the proceedings is that police officer and penal service staff alike shall not wear special uniforms or masks, unless absolutely necessary, when bringing PSACs from custody to court, as this would impede the presumption of innocence.

| Pre-Trial |
|---|
| <ul style="list-style-type: none"> • Police officers should insist on the legal duty for the presumption of innocence to be respected when arresting PSACs. • Police officers shall provide PSACs with a letter of rights at the time of the arrest. • Police officers shall always give information on procedural rights in a fully accessible and understandable manner. • In addition to the letter of rights, police officers should provide PSACs with oral information about their rights. • Police officers should place particular importance on the collection of adequate evidence, which must be interpreted and translated properly. • During the initial assessment and in cases where PSACs do not speak the country’s official language, police officers should try to communicate in a common language (e.g. English) until a professional translator arrives. • In case of children PSACs, police officers should promptly inform the public prosecutor and the legal guardians of the child. • Police officers shall refrain from using measures of physical restraint such as handcuffing, unless it is absolutely necessary. • Pieces of information given by the PSAC before he/she was informed about his/her procedural rights shall not even informally be used. Such information shall not be recorded in any form, including police reports on arrest or other internal documents. • Police officers shall take the psychological characteristics of PSACs into account and immediately provide relevant assistance if needed. • Police officers shall not take PSACs into custody unless it is necessary. • Police officers should particularly take care to provide PSACs who have visual impairments with understandable information regarding their rights. |

- An illustrated version of the letter of rights should be available for illiterate PSACs or PSACs with reading difficulties in order to facilitate them with a better understanding of all necessary rights concerned.
- A list of all available lawyers that could be appointed as defence lawyers should be posted up in every police station.
- Police officers should provide PSACs with access to a public line and with a list containing the contact details of the consular authorities.
- PSACs' communication with their lawyers should be facilitated by allowing them to receive phone calls on the police station's number (as the use of mobile phones is allowed only for limited hours).
- Training for law enforcement officials should be implemented in order to change the police's organisational culture regarding the use of restraining measures. Such training should be aimed at creating an understanding regarding the relationship between the presumption of innocence and the use of restraining measures.
- Internal regulations should be adopted to prescribe that for certain vulnerable groups of PSACs (children, elderly people, pregnant women) the default option is that they are not restrained. The use of measures of physical restraint with regard to members of these groups should only be allowed if absolutely necessary and inevitable.
- Police officers should always maintain an environment (particularly during interrogations) where PSACs dare to ask questions. At the same time police officers should provide PSACs with clear and understandable answers.
- Police officers should monitor (e.g. by asking certain questions) whether PSACs understand the information they are given.
- If the PSAC's mother tongue is a less common language and he/she speaks some English, police officers should not try to persuade the PSAC to accept English translation.
- Using means of telecommunication for communication purposes during the initial assessment stage (before an official interrogation) shall be common practice applied by police officers.
- Upon deprivation of liberty PSACs should be immediately allowed to inform a third party about the deprivation of liberty themselves (e.g. making a phone call).
- When PSACs get informed about the suspicion against them (facts and legal classification), police officers use simple and easily understandable language.
- Since children do have even more difficulties in understanding the procedure and the legal language as compared to adults, police officers shall give explanation about the the procedure and procedural rights in a language which is specifically adapted to the respective child.
- Based on the concept of "child-friendly" justice, police officers shall receive specific training on handling cases involving PSACs who are children.
- If the PSAC is a child, police officers should conduct shorter interrogations, which, for privacy reasons, should be held after school.
- Since PSACs are often not adequately aware of the possibility to request legal aid, despite the fact that they are informed about it when they are given the oral warnings or the letter of rights, police officers should make extra efforts to draw PSACs' attention to this possibility. For this purpose, special information materials should be prepared and provided by police officers to PSACs who are children.
- Police officers should adequately inform PSACs about their right to appoint a defence counsel upon their request, in cases where defence is not mandatory.

- Police officers should conduct interrogations during regular office hours, in order to better ensure the presence of a lawyer.
- Police officers shall not use the concept of substitute defence counsel abusively. They shall make genuine efforts to reach the appointed defence counsel selected by the competent bar association (e.g. practices such as trying to call the defence counsel only once, from a phone number that is impossible to call back should be abandoned).
- Police officers should only conduct interrogations of PSACs in the presence of their defence counsel, unless the counsel cannot be reached and there is a genuine and pressing need to proceed with the interrogation immediately.
- Police officers shall not pose questions whether the PSAC is willing to answer certain questions if the PSAC previously expressed their willingness to remain silent.
- Police officers should not put pressure on PSACs by suggesting that in the case of a confession or at least agreeing to testify, the interrogation will be concluded earlier, or no pre-trial detention or other coercive measure will be applied.
- Police officers should use audio-visual recordings for interrogations, especially when PSACs are vulnerable in any respect (children, persons with disability, foreigners not speaking the official local language).
- Police officers shall inform non-national PSACs of the consequences of waiving their right to translation of documents in the investigation phase and record this process in a manner which duly and sufficiently guarantees that the waiver is based on an informed decision.
- Police officers should provide PSACs with sufficient time to get acquainted with the contents of the letter of rights before the interrogation starts.
- Besides or instead of giving the warnings or the letter of rights in a way that the language of the legislation is reproduced, PSACs (foreign PSACs as well) shall be provided with warnings and a written letter of rights in a simple and accessible language.

3.2 PROSECUTORS

The following list of recommendations pertains to the prosecution as the leading authority of a criminal investigation. However, some of the listed recommendations overlap with those provided for police officers.

| Pre-Trial | Trial | Remedies |
|---|---|---|
| <ul style="list-style-type: none"> • The prosecution shall refrain from proposing pre-trial detention for PSACs unless it deems it absolutely necessary. This principle shall be followed in the case of non-nationals and homeless persons too, in the case of whom the overuse of pre-trial detention is especially present. | <ul style="list-style-type: none"> • The prosecution shall ensure that no evidence obtained through the violation of the procedural rights of PSACs is presented to the court. • Media statements regarding the guilt of PSACs during on-going criminal proceedings, or other circumstances that might shift public opinion to consider the | <ul style="list-style-type: none"> • In their capacity of monitoring the lawfulness of the investigation, prosecutors shall place extra emphasis on compliance with the procedural safeguards prescribed by the directives. They should oblige police officers to repeat |

| | | |
|--|---|---|
| <ul style="list-style-type: none"> • If a motion for pre-trial detention (or the prolongation thereof) is submitted by the prosecutor to the court, the PSAC and his/her defence counsel shall be provided with those materials of the case that the motion relies on. • The case materials shall be provided at a time and in a manner that enable the defence to prepare but at least one hour before the hearing on pre-trial detention starts (as the law stipulates), not only right before the hearing, or by the court at the beginning of the hearing. As even the legally prescribed one hour may be insufficient for the defence to prepare, efforts should be made to provide the case materials to the defence with as much time before the hearing as possible. • The prosecutor shall ensure that children's psychological and physical health and well-being is safeguarded through the deployment of expert help. • The prosecutor shall ensure that the notification of a third person or the consular authorities should be carried out without undue delay. • The prosecutor shall ensure the participation of psychologists or pedagogues during the interrogation of children PSACs. | <p>PSAC guilty shall be avoided, as this would infringe on the right to fair trial and the correlating presumption of innocence.</p> <ul style="list-style-type: none"> • Prosecutors shall not pose questions whether the PSAC is willing to answer certain questions if the PSAC previously expressed their willingness to remain silent. • Prosecutors should not put pressure on PSACs, suggesting that in the case of a confession or at least agreeing to testify, the interrogation will be concluded earlier, or no pre-trial detention or other coercive measure will be applied. • Prosecutors should use audio-visual recording of the interrogations more often, especially when the PSAC is vulnerable in any respect (children, persons with disability, foreigners not speaking the official local language). • Even if the PSAC's mother tongue is a less common language and he/she speaks some English, prosecutors should not try to persuade the PSAC to accept an English translator. • The use of audio-visual recording is a possible solution for the assessment of the quality of translation, therefore, it should be applied every time that translation is required. • Pieces of information given by the PSAC before he/she was informed about procedural rights shall not even informally be used by the prosecution. | <p>procedural acts (e.g. interrogations) where the legal requirements have been violated.</p> |
|--|---|---|

| | | |
|--|---|--|
| | <ul style="list-style-type: none"> • The fact that children are different from adults has to be acknowledged and taken into consideration by the prosecution. The prosecution shall ensure that the concept of “child-friendly” justice is applied in cases involving children PSACs, not only to children who are witnesses or victims of crimes. • If the prosecutor finds the performance of the appointed defence counsel insufficient and ineffective, he/she shall take the necessary steps for the appointment of a new defence counsel. | |
|--|---|--|

3.3 JUDGES

The following recommendations are tailored to judges, who, in their capacity as objective decision-makers in criminal proceedings, should always apply due-diligence for safeguarding the fairness of the proceedings.

| Pre-Trial | Trial | Remedies |
|--|---|---|
| <ul style="list-style-type: none"> • Judges should always insist on the legal duty for the respect of the presumption of innocence. • Judges should pay particular attention to the psychological characteristics of PSACs and provide relevant help if needed. • The courts shall refrain from ordering pre-trial detention for PSACs unless they deem it necessary. This principle shall be followed in the case of non-nationals and homeless people too, in the case of whom the overuse of pre-trial detention is especially present. • Judges who know from the case files that a translator is necessary, | <ul style="list-style-type: none"> • The court shall give information on procedural rights in a fully accessible and understandable manner. • Judges have the responsibility to establish and maintain an environment where PSACs dare to ask questions concerning their rights and their questions are adequately answered. • Judges shall not pose questions whether the PSAC is willing to answer certain questions if the PSAC previously expressed their willingness to remain silent. • Pieces of information given by the PSAC before he/she was informed about the procedural | <ul style="list-style-type: none"> • Judges should have an increased responsibility in excluding all evidence that was acquired in violation of the procedural safeguards set by the directives. |

| | | |
|---|--|--|
| <p>should seek, find and appoint one well in advance, so that the appointed translator is able to be present at trial.</p> <ul style="list-style-type: none"> • If a motion for pre-trial detention (or the prolongation thereof) is submitted by the prosecutor to the court, the PSAC and the defence counsel shall be provided with those materials of the case that the motion relies on. • The case materials shall be provided at a time and in a manner that enables the defence to prepare but at least one hour before the hearing on pre-trial detention starts (as the law stipulates), not only right before the hearing, or by the court at the beginning of the hearing. • If the judge becomes aware of the fact that the materials were presented to the defence at a time that does not allow for appropriate preparation, he/she should postpone the hearing or refuse to comply with the prosecution's motion. • If a children PSAC's detention in a penitentiary institution is not absolutely necessary, judges should refrain from decisions placing the child in such institution. | <p>rights shall not even informally be used by the judge.</p> <ul style="list-style-type: none"> • Besides or instead of giving the warnings or the letter of rights in a way that the language of the legislation is reproduced, judges shall provide warnings and instructions about procedural rights in a simple and accessible language to PSACs. • When PSACs are informed about the accusation (facts and legal classification), the legal classification shall be explained in a simple language. • Since children do have even more difficulties in understanding the procedure and the legal language compared to adults, it is crucial that judges explain the procedure and the rights in a simple and specifically targeted language. • Judges have to consider the fact that children are different from adults and shall ensure that the concept of "child-friendly" justice is applied to children PSACs, not only to children who are witnesses or victims of crimes. • If the PSAC is a child, for privacy reasons trials should be scheduled in the afternoon (after school). • In the case of a criminal procedure that is conducted into a minor offence, where the expenses of a forensic expert opinion are high, or in cases where the mental status of the PSAC has to be established upon an expert opinion, judges should rule that these costs are born by the state upon equity considerations. | |
|---|--|--|

| | | |
|--|---|--|
| | <ul style="list-style-type: none"> • If the judge assessed the performance of the appointed defence counsel as insufficient and ineffective, he/she shall take the necessary steps for the appointment of a new defence counsel. | |
|--|---|--|

3.4 LAWYERS

The following recommendations are dedicated to lawyers, who represent PSACs in criminal proceedings.

| Pre-Trial | Trial | Remedies |
|---|---|--|
| <ul style="list-style-type: none"> • Since experience shows that PSACs do not fully understand the content and nature of their procedural rights, defence counsels have an additional responsibility of giving information on and explaining in detail the procedural rights of the PSACs in a fully understandable manner. • Even if the PSAC's mother tongue is a less common language and he/she speaks some English, police officers often try to persuade the PSAC to accept an English translator. The defence counsel should not let this happen. • Lawyers should ensure the presence of an officially appointed translator for police interrogations. | <ul style="list-style-type: none"> • Defence counsels shall use the possibility of being an authorized person to accept the serving of case documents so that the PSAC may legally be absent from the trial. • Defence counsels are required by professional ethics to be present at court hearings and also to consult with the PSAC before the hearing at all times when it is not made impossible by pressing external circumstances. • Since children do have even more difficulties in understanding the procedure and the legal language as compared to adults, it is crucial that the defence counsel explains the procedure and the rights in a simple and specifically targeted language prior and during the court hearing. • It is recommended that in the geographical area of competence of a bar association, attorneys develop and join a computer-based system of attorneys for substituting one another. | <ul style="list-style-type: none"> • Defence counsels should seek judicial review more often in cases of unnecessary use of physical restraint, especially handcuffing. • If access to the materials of the case was denied by the authorities, defence counsels shall use the complaint procedure. • Defence counsel shall use all available remedies in cases where the authorities violated procedural safeguards prescribed by the directives even if this may not have a significant impact on the actual case in the short run, as the consistent and concerted efforts of counsels can go a long way in changing the practices and general attitudes of the authorities. |

| | | |
|--|---|--|
| | <ul style="list-style-type: none">• Lawyers who are members of the national bar association shall elaborate a system that solves the problem of weekend, bank holiday or late-night appointments and selection of defence counsels. | |
|--|---|--|

All four countries participating in the project FAIR have provided extensive data and information about the transposition of the Directives into their national legal systems. Based on a detailed analysis of the provided data, the national legislation of Austria, Bulgaria, Greece and Hungary are to a great extent compliant with the provisions of the Directives concerned. Although not all of the examined Directives have been fully implemented by the time of conducting the research, basic principles are anchored in the legal systems of all four countries and procedural rights of PSACs are generally respected. However, legal and practical challenges persist, as some of the rights enshrined in the Directives are either not stipulated by the national laws or local practices of the authorities appear to be not in compliance with the provisions of the Directives.

For example, regarding the legal framework in Bulgaria and Hungary, PSACs are not adequately informed about the possibility to challenge the court's decision and of the right to a new trial or to another legal remedy. In Hungary it is not ensured that PSACs have the right to challenge a decision finding that there is no need for interpretation or complaining about the quality of the interpretation or the translation provided to them.

In Austria there are discussions regarding the need to reform the current legal aid system with respect to timely access to a lawyer and quality assurances in connection with the current system of remuneration. Moreover, despite the possibility for lawyers to be present during police interrogations, they are not allowed to actively participate in the interrogation since they may only ask questions related to thematic blocks.

An example from Greece pertains to the fact that it is not ensured that requested persons have the right to legal aid upon arrest pursuant to a European Arrest Warrant until they are surrendered or until the decision not to surrender becomes final.

On the other hand, some rights are not fully respected in practice, albeit stipulated by law. For example, as regards the necessity for measures to avoid public references of guilt made by public authorities before a final judgment is held by the court, findings from Bulgaria outline that preventive measures and the remedies in case of breach are ineffective in practice. Furthermore, regarding quality assurances for interpretation and translation services, measures taken in Austria and Hungary are not considered to be sufficient.

In the first case, where the rights are not stipulated and protected by the national laws, amendment of the national legislations is suggested, in order to safeguard compliance with the Directives and the highest possible protection of PSACs' right to a fair trial. In the second case, where the rights are not respected in practice, it is recommended that PSACs whose rights have been violated shall bring the matter before the CJEU and start an infringement procedure against the state.

Regarding the adoption of identified best practices, the current handbook provides concrete recommendations for selected criminal justice practitioner groups.

For example, it is recommended to implement trainings for police officers in order to change the police's organisational culture regarding the use of restraining measures during all stages of the criminal proceedings. Such training programmes should be aimed at creating awareness for and a better understanding of the relationship between the presumption of innocence and the use of restraining measures.

Moreover, regarding the pre-trial stage, it is recommended that police officers refrain from putting pressure on PSACs by suggesting that in the case of a confession or at least agreeing to testify, the interrogation will be concluded earlier, or no pre-trial detention or other coercive measure will be applied.

For prosecutors it is recommended that media statements regarding the guilt of PSACs during on-going criminal proceedings, or other circumstances that might shift public opinion to consider the PSAC guilty shall be avoided, as this would infringe on the right to a fair trial and the correlating presumption of innocence. Furthermore, in their capacity of monitoring the lawfulness of the investigation, prosecutors shall place extra emphasis on compliance with procedural safeguards prescribed by the directives and should therefore oblige police officers to repeat procedural acts such as interrogations where legal requirements have been violated.

An example of a recommendation for judges relates to the application of “child-friendly” justice and the avoidance of putting children PSACs in detention in penitentiary institutions unless absolutely necessary.

For PSACs’ legal representatives it is recommended to use all available remedies in cases where the authorities violated procedural safeguards prescribed by the directives even if this may not have a significant impact on the actual case in the short run, as the consistent and concerted efforts of counsels can go a long way in changing the practices and general attitudes of the authorities.

A common recommendation for the selected practitioner groups which should be adopted during all stages of the proceedings concerns the deployment of ICT tools and the application of easy to understand language regarding the notification of PSACs about their rights, as well as the authority’s general obligation to providing them with timely access to information about their right to a fair trial.

Ultimately, the FAIR Best Practices Handbook seeks to inspire exchange among partner countries, to transfer knowledge regarding procedural safeguards for PSACs enshrined in the Directives and to address the need to improve knowledge of criminal justice practitioners with regards to new European standards.

