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WORKING PAPER

Right to Defence and Fair Legal Procedures in the Member States and the Candidate Countries

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11-2001

Executive Summary^{*}

Introduction

The purpose of this research is to examine whether there is common legislation and common policies in each Member State as well as in each of the candidate countries of the European Union to guarantee the right to defence and fair legal procedures. The study therefore analyses the domestic legislation, case law and practice of the different countries. It is based on the new powers and guidelines within the framework of Title VI TEU 'Provisions on police and judicial cooperation in criminal matters' as well as in Article 6 of the European Convention on Human Rights. Through the drafting of national reports, the study sheds light on the peculiarities of each system and on national attitudes and the prospect of potential harmonisation. The large number of different countries, and hence different legal systems, would require an enormous organisational and academic effort to produce a systematic comparative analysis. This study gives an overview of the current situation in the Member States as well as in the candidate countries and will give researchers and other interested readers an initial impression of national differences in the right to defence and fair legal procedures. It could also serve as the basis for further research in the field.

This final report presents an executive summary of the national reports. The comparative approach is based on the following aspects:

- conditions of access to justice
- implementation of the presumption of innocence
- right to defence
- information and assistance (in particular, conditions of use of mother tongue and translation of documents)
- protection of victims and witnesses (in particular protection of privacy)
- specific situation of some vulnerable social groups (women, children, migrants, minorities, etc)
- enforcement of court rulings.

This questionnaire was sent to academics working in the relevant field in all the Member States and candidate countries who undertook to draft a concise report on their domestic legal systems so that the total length of the report does not substantially exceed 60 pages of text in accordance with the original research remit. Because of the limited size, the reports and this summary seek to give an overview emphasising the most relevant issues instead of a comprehensive analysis of this complex topic.

The summary focuses on the points in common and the differences between the different countries. Due to the complexity of the topic and the vast variety of legal aspects potentially affecting the subject, there are often differences between the answers because of national reporters' focus and level of detail provided.

^{*} By Dr. Chiara Nataloni / Ass. Jur. Kay Weidner, Researchers at the European Public Law Centre, Athens, Greece.

The reports have produced information from all the Member States of the European Union: Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, the Grand Duchy of Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

Reports were also submitted from the candidate countries: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey.

Conditions of Access to Justice

In the majority of countries access to justice is recognised as a general principle, sometimes guaranteed by the constitution. Among the candidate countries only Hungary, Malta and Turkey do not mention the principle as being a constitutional law. The opposite is the case in the Member States, where only the German, Irish and Spanish reports refer to the constitution.

Nevertheless, the principle seems to be implemented in the legislation and practice of every Member State and there are in theory no legal restrictions on access of justice. Very few examples of possible limitations to the right of every party to initiate legal proceedings are cited. There are differences depending on the type of case: administrative or constitutional, civil or criminal.

In Ireland, for example, the courts have limited powers to stop proceedings coming to trial, if a particular civil claim discloses no cause of action or is doomed to failure. In France there is no access to the Constitutional Court for individuals. The Austrian and Estonian authors mention that the cost of litigation and the length of proceedings create difficulties. In Sweden the general rule that all matters can be brought before a court is restricted as there are no class actions and the state cannot be sued for damages because of legislative acts.

The same recognition of a generally not restricted right of access to justice exists in the candidate countries. In the case of Bulgaria, the Czech Republic, Hungary and Slovakia, the authors assert that public authorities' decisions may be submitted to the courts to review the legality of the decision.

In conclusion, in the candidate countries as well as in the Member States everyone has the right to a fair and public hearing of his or her case without undue delay, before a competent, impartial and independent court (as is affirmed in the text of the Polish Constitution).

Implementation of the Presumption of Innocence

In all Member States and in all candidate countries the principle of the presumption of innocence is self-evident and recognised by the criminal courts and investigation authorities. The legal burden of proving beyond doubt that the accused committed the offence in question always rests with the prosecution.

In all of the candidate countries except Lithuania (where the principle is implemented in the Code of Criminal Procedure) the principle is expressly stated in the national constitution. Among the Member States it is a constitutional principle only in Italy, Ireland and Spain. In France, in particular, the presumption of innocence is secured by the 1789 Declaration and is

considered today as forming part of the '*bloc de constitutionnalité*'. In the other countries, the principle is guaranteed through Art. 6(2) of the European Charter of Human Rights, which is also the case in the first group of countries in addition to the constitutional guarantee. In the United Kingdom Art. 6 of the Charter also has statutory protection through the Human Rights Act of 1998.

Despite the fact that the principle is guaranteed in the Constitution, the Turkish report specifies that proportional security measures in order to reach the truth are allowed, but the prosecution must obey the legally recognised methods of interrogation. The Estonian report points out that the burden of proof of the prosecution is unfortunately not set out in the code of criminal procedure and that hitherto the Supreme Court has not ruled on this issue. The Austrian and the Turkish reports focus on an interesting point: enforcement of rules to protect the accused from 'trial by media'.

Right to Defence

The general right is established in all countries under examination. It includes the right to be represented by a defending counsel, which appears to exist in every Member State as well as in every candidate country. The defendant has the right to choose his legal counsel, but is not obliged to do so. A lawyer can also be appointed by the court (in Germany, Sweden, Estonia, Hungary, Poland and Romania). In Turkey the bar association has to appoint a lawyer for the accused. However, the right to legal assistance may not be fully applied for crimes tried before national security courts. The Bulgarian report mentions that there are still serious problems with the powers of the prosecution and with laws still in force from the communist regime under which punishments can be imposed in the absence of a lawyer.

In the majority of states there are instances where it is obligatory to be represented by a legal counsel. In Italy the assistance of a lawyer is mandatory in any criminal procedure. In most of the other countries it depends on limited circumstances specified by criminal procedure legislation or case law. It depends in the first instance on the severity of the sentence, e.g. it is more than three years' imprisonment or referral to a psychiatric establishment in Austria, while in Finland the court must appoint counsel if the crime in question is punishable by no less than 4 (in Sweden 6) months of imprisonment.

The principle of the gravity of the possible sentence is also mentioned in the German report. Other reasons are cases in which the defendant is not capable of defending himself, is under 18 (Finland), or may not understand the proceedings (United Kingdom) or in general juvenile courts (Belgium).

Among the candidate countries, the Czech Republic, Hungary, Lithuania, Slovakia and Slovenia stress that there are cases where legal counsel is mandatory.

For those who cannot afford a lawyer, various countries provide assistance through legal aid schemes. Austria, Finland, France, Germany, Spain and the United Kingdom specify the existence of legal aid. The author of the Greek report writes that there is a lack of effective legal aid but that implementation of a new statutory provision may ameliorate the situation soon. In certain countries it seems to depend not only on whether the defendant can pay but also on whether it is obligatory or considered necessary to be represented.

Among the candidate countries, the reports of Cyprus, the Czech Republic, Lithuania, Malta and Poland affirm that the defendant can ask for free proceeding or public legal aid. In Slovakia there are free legal advice centres and in Hungary some human rights and charity organisations ensure free defence.

The right to defence also includes the right to information and the right to confront and cross-examine witnesses as part of the proceedings.

Information and Assistance in the Conditions of Use of Mother Tongue and the Translation of Documents

There is a certain homogeneity concerning the right of individuals involved in court proceedings to use their mother tongue. However, in many countries this right does not extend to the translation of written documents.

Most regulations, both in Member States and candidate countries, provide for the presence of an interpreter free of charge before courts of law.

Some countries provide for the interpreter to assist all parties (Estonia, Cyprus, Czech Republic, Lithuania, Hungary, Austria) in all matters (Sweden), at all levels (Belgium), before the police, the public prosecutor and the courts (Poland) in proceedings before any court of law or government or public authority (Slovakia).

In some reports, the authors appear to reserve this right to the accused (Belgium, Greece, Ireland, Italy, Malta) or persons held in custody (United Kingdom) or restrict its application to criminal proceedings (Hungary, Bulgaria).

Failure to provide an interpreter/translator in circumstances where a suspect does not speak English could lead to any confession resulting from the interview being ruled inadmissible by the court (United Kingdom). In Slovenia the parties, witnesses and other participants in the procedures have the right to use their own language in investigations, court proceedings and in the trial itself.

It is worth mentioning that in several instances the presence of more than one national language is taken into account and can lead to original solutions as in the case of Belgium where both the accused and the plaintiff who are fluent in one of the two national languages can request that the case be dealt with in the nearest jurisdiction which uses this language. In Estonia if the court and all parties understand and speak another language, the court may use that language, although documents must be filed in Estonian or accompanied by a translation. Italian regulations provide special guarantees for the many linguistic and ethnic minorities in that country and in Austria ethnic minorities can use their language before the courts of first instance. However, this is not guaranteed for appeals.

The only country which currently does not include any rule in this respect is Turkey where, however, the right to the assistance of a translator is implemented by the courts according to the judgement of the Supreme Court.

As mentioned above, the right to the use of one's mother tongue does not cover translation of documents although in some cases it can be authorised by the court if deemed necessary (Sweden) and in other cases it is specified that has to be paid by the parties (Finland,

Germany). More comprehensive in this respect is the approach of Lithuania, Poland and Slovenia which ensure translation of all documents and written material as well.

Protection of Victims and Witnesses; in Particular Protection of Privacy

In some countries there are no specific regulations for the protection of victims and witnesses, but there is almost a general tendency that in cases involving minors (or young people) and victims of sexual or violent crimes some measures are taken to protect them. These measures include: the possibility of presenting evidence by video (Austria, Sweden, Ireland); or of holding trials in camera in order to ensure privacy (Germany, Belgium, Greece, Finland, Ireland, Cyprus, Estonia, Poland).

A witness cannot remain anonymous except in Austria and in the United Kingdom if it is believed that family or associates of the accused may intimidate the witness; this possibility extends automatically to a complainant in a sexual offence matter (United Kingdom). However, personal data must be treated as classified for reason of safety or privacy (Czech Republic, Estonia, Lithuania, Hungary, Poland, Slovenia, Finland, Ireland, United Kingdom).

In France and Germany some professional categories have the right to maintain professional secrets when giving evidence.

Some regulations provide for the accused not being present when witnesses and the victim are questioned (France, Belgium).

In Hungary physical protection is guaranteed to witnesses, in special cases where their testimony concerns an essential circumstance of a case of outstanding importance, and to victims as well.

Special legal protection is provided in Italy to informants, and their immediate family, i.e. people who expose themselves to danger by revealing to police or magistrates information about organised crime. Witness protection programmes are also available for criminals who testify against their former associates. They are provided with changes of residence and identity as well as a considerable reduction in sentence. Special support is also given to victims of extortion or usury, though this programme is not very successful.

Specific acts regulate protection of witnesses and victims of violent crimes (Lithuania, Czech Republic, Slovakia) and sexual offences (Spain).

Legal assistance is provided to victims of sexual offences (United Kingdom), violence and offences against freedom (France, Denmark).

The only country where no specific legislation provides protection against violence to the witness or special security is Romania, while in Bulgaria, though the matter is regulated by a new article in the penal procedure code, in practice, according to the author, the anonymity of witnesses and victims still seems not to be guaranteed.

Specific Situations of Some Vulnerable Social Groups (Women, Children, etc)

In the majority of Member States and candidate countries minors accused of a criminal offence are tried in separate courts by separate judges (France, Greece, Spain, Italy, Belgium, Sweden, Romania, Turkey).

In cases concerning minors, whether victims or accused, the majority of Member States and candidate states focus on the protection of the rights of children by requesting that they be assisted by an adult of their choice or by experts (psychologists, social workers or teachers) during interrogation (Finland, Austria, Belgium, Sweden, Hungary, Bulgaria). The age threshold varies significantly with an average of 15 years.

All trials before juvenile courts are held in camera (Greece, Germany, Turkey); in the case of child victims of sexual harassment their evidence can be video-taped (Denmark, Ireland, United Kingdom).

A limited number of reports include among the vulnerable groups migrants or refugees, as in the case of Austria, where migrants have the right to translation and easier access to free legal counselling; Sweden, where the Foreigners Act regulates the right to legal counselling, but courts are not involved in the deportation order which is issued by a special agency. In Slovakia the Law on Refugees states the reasons for granting refugee status and in Italy the author refers to the suspicion of unconstitutionality of a recent legislative decree allowing expulsion by administrative provision.

A rather interesting reference to a vulnerable social group is found in the report from the United Kingdom in respect of the introduction of new provisions to protect women who allege they have been raped from being questioned in court about their sexual history.

Enforcement of court rulings

The issue is treated by a variety of ways. Some reports place emphasis on the administrative procedure for the enforcement of a court judgement, which varies very much from one country to another. For example, in the Czech Republic the enforcement of court judgements is regulated by Part Six of the newly re-codified Act on Civil Procedure and the Act on Criminal Procedure; in Estonia recent changes tend towards the development of a new system of private bailiffs responsible for civil courts judgements, while criminal court judgements are enforced by the Department of Correction. In France and in Romania the court ruling is enforced by the body that judged in the first instance, either directly by the President or through a judge appointed by the President.

Finally, the reports of Greece, Italy and Slovakia stress the deficiency of the enforcement process mainly with respect to the requirement in the European Convention of Human Rights of reasonable time. In general it has to be said that all European legal systems seem to attribute great significance to the application and implementation of the ECHR and of the judgments of the Court of Strasbourg. Clearly the influence of the Convention is immense and reveals a great dynamism since essentially it constitutes the most outstanding point of convergence in the field of access to justice in Europe.

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AUSTRIA*

Conditions of Access to the Law

The costs of litigation and the length of the proceedings present problems for those who need to avail themselves of the law. In Austrian civil proceedings, each party has to bear the costs incurred by him- or herself. Only when proceedings have concluded is the losing party required to refund to the other party all the costs incurred, such as legal fees, payments to lawyers and charges for expert reports. Persons unable to bear the costs of civil proceedings may apply for temporary financial aid. Should they lose the case they will nevertheless be required to bear the other party's costs. If the beneficiaries' financial situation improves whilst proceedings are under way, entitlement to financial aid is reduced. Should they lose the case, however, they will have to bear their opponents' costs.

The length of the proceedings depends on the court and the difficulty of the case. It is therefore possible to resort to arbitration. Indeed this often proves more practical for the parties concerned. The arbitrators' ruling is binding. This option improves access to justice for parties who need a quick decision. However, as arbitration proceedings are very expensive, they are usually only resorted to when large sums are at stake.

In principle, there are no legal restrictions on access to courts of first instance. It is worth noting, however, that the grounds for appeal have been reduced in recent years.

Access to justice is also of considerable importance in criminal proceedings. Hence a person cannot be detained in custody prior to trial for more than two months or for up to two years, depending on the reasons for his or her arrest or on the nature of the crime he or she is accused of.

Implementation of the Presumption of Innocence

Article 6(2) of the European Convention of Human Rights (ECHR) has been incorporated into Austrian constitutional law. Laws governing criminal procedure must therefore comply with this. With regard to the presumption of innocence, the provisions governing remand are particularly significant. Detention prior to trial is governed by section 183ff of the Code of Criminal Procedure (*StPO*). Section 184 states that persons detained must not be subject to any restrictions other than those essential to achieve the purpose of detention and to maintain order and security in the prison. They are to be treated with respect for their honour and human dignity. In addition, they are permitted to wear their own clothes and retain their personal belongings as long as security is not threatened. In addition, they are permitted to work but are not compelled to do so.

Presumption of innocence is also protected against violation by the media. A person merely suspected of a crime who is publicly portrayed as guilty prior to conviction is entitled to compensation of up to ATS 200 000 (EUR 14 535).

*By Professor Manfred Stelzer and Mona Konecny M.A., Faculty of Law, University of Vienna, Austria.

The Right to Defence

Anyone charged with a crime has the right to be defended by a lawyer. He or she may choose between the lawyers registered with a court of appeal. A lawyer must be engaged if the defendant faces a possible prison term of more than three years, if he or she is on remand or if he or she is likely to be sent to a psychiatric establishment.

If representation by a lawyer is mandatory or if it is deemed necessary because of the complexity of the case, for the purposes of appeal, or because the accused is unable to defend him- or herself, an accused person unable to bear the costs of legal representation is entitled to have them met by the State.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

Any person suspected of a crime has the right to be informed about enquiries concerning him or her undertaken by a court. He or she is also entitled to be informed of his or her procedural rights.

In criminal proceedings, a defendant whose knowledge of German is inadequate is entitled to a translation. If necessary, an interpreter should be provided. Alternatively, translations may be provided by court staff or by other trustworthy persons. This entitlement covers everything required to provide for the right to defence and for the proper administration of justice. It does not, however, include written translation of all documents. The cost of an interpreter is not borne by the accused. In addition, anyone who does not understand German and who is therefore unable to defend him- or herself is entitled to the services of a lawyer free of charge.

Protection of Victims and Witnesses, in particular Protection of Privacy

Victims and witnesses are protected in various ways but only to a certain extent.

Concern to ensure proper protection of these groups has increased during recent years and has become enshrined in the Code of Criminal Procedure.

This is particularly relevant to the alleged victims of sexual abuse. They are not required to give evidence in court, if the parties have had the opportunity of taking part in a hearing in advance. Victims of sexual abuse and other witnesses, especially children, may be questioned away from the public and the parties by audio-visual means. The parties have the opportunity of putting questions. However, the questions may be posed via an expert, in particular by a psychologist. Moreover, all witnesses have the right to be accompanied by a trusted person.

Individuals who are afraid of giving evidence against someone have the right to remain anonymous. This recent legal provision is aimed mainly at protecting police officers against threats by criminal organisations.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

The only special provisions apply to children, immigrants and minorities. In the latter two cases this is principally for linguistic reasons.

Minors under the age of fourteen are not required to give evidence concerning criminal offences against them if both parties have been able to participate in a hearing in advance. The purpose of this provision is to spare children from having to describe more than once the crime they were the victims of. Furthermore, audio-visual equipment may be used when questioning children. An expert must be in charge of questioning. This procedure must be followed in all cases of child sexual abuse. In other cases the examination should be conducted in this way if the child so requests or if the judge rules accordingly.

The same procedure should be followed for adult victims of sexual abuse. The protection of minors and traumatised victims is deemed to be paramount, notwithstanding the fact that full participation by the parties may not be possible.

There are no special regulations concerning immigrants. They are simply entitled to translation if their knowledge of German is inadequate. They are also more likely to obtain legal aid if they cannot afford lawyers' fees in cases where legal representation is not mandatory.

Under the 1919 Treaty of St Germain, Austria is bound to provide adequate facilities for the use of the language of officially recognised minorities in the courts. Consequently, in courts of first instance situated in regions with a linguistic minority, the language of that minority, Slovene or Croat for example, may be used in court. This right is not guaranteed in cases of appeal.

Implementation of Court Rulings

In civil cases, court rulings may only be enforced by the competent court upon a writ of enforcement. As the use of force is reserved for the State, no creditor may use force to compel the debtor to pay a debt due. The procedures are laid down in the Code of Enforcement (*Exekutionsordnung, EO*).

Enforcement proceedings are based on specific principles. A variety of legal remedies are available to the debtor and to third parties. For instance, enforcement proceedings may only be initiated at the creditor's request. Applications, however, may also be made *ex officio*, whereas enforcement itself may only be undertaken *ex officio*. In enforcement proceedings too, the right to a fair hearing may be deemed the most important principle of a fair trial. The right to a fair hearing applies to the debtor and also to any third party with a claim to what is at stake in the enforcement. The protection of the debtor is a very important consideration throughout enforcement proceedings. There are rules to limit enforcement proceedings so as to protect the debtor from disproportionate enforcement or enforcement threatening his or her very survival.

The enforcement of rulings by criminal courts is aimed at encouraging the prisoner to adopt socially responsible behaviour and dissuading him or her from re-offending after release. To this end, the prisoner's duties, rights and daily routine are regulated in detail. His or her human dignity must always be respected when regulations are implemented.

BELGIUM^{*}

Conditions of Access to the Law

The accused is entitled to have any charge brought against him or her referred to a judge for a ruling. He or she is not obliged to accept premature termination of proceedings subject to certain conditions imposed by the court (Articles 216a and 216b of the Code of Criminal Procedure). He or she has the right to object to a sentence delivered in his or her absence. In principle, he or she may appeal against all first instance sentences. No appeal is, however, possible against rulings by the Assize Court and by other courts concerning those who enjoy legal privileges, ministers or magistrates for example. An appeal may also be lodged against last-instance decisions. For many years, the Belgian Court of Cassation had adopted the practice of refusing to allow any appeals by defendants subject to an order for their immediate arrest but who had not yet been arrested. On the occasion of a ruling given on 9 March 1999, in plenary session, the Court of Cassation decided to align its jurisprudence to the ruling on *Poitrinol vs. France* given at the European Court on 23 November 1993. Since then the view of the Court of Cassation is that to require a convicted person wishing to lodge an appeal to submit to imprisonment, should he or she be the subject of an order for immediate arrest, amounts to imposing conditions which put him or her at an unfair disadvantage regarding access to the court, as guaranteed by Article 6(1) of the European Convention of Human Rights (ECHR).

Implementation of the Presumption of Innocence

No specific statement on presumption of innocence appears in the Belgian Constitution or in the Code of Criminal Procedure. Nonetheless, the Court of Cassation regards it as a general legal principle. The principle in question implies that the onus is on the prosecution to provide evidence concerning the details of the offence and also to prove the inaccuracy of the justification or excuses put forward by the defendant, provided, of course, that his or her claim does not lack credibility.

Nevertheless, Belgian law does allow legal presumption of guilt in the case of driving offences. Accordingly, when such an offence has been committed and the traffic police have been unable to identify the driver of the vehicle, the offence is deemed to have been committed by the person in whose name the vehicle is registered. The latter may redress the situation through any legal means (Article 67(a) of the Traffic Police Act of 16 March 1968).

The Right to Defence

Except for the Assize Court (Article 294, Code of Criminal Procedure) and the juvenile courts (Article 54a of the Protection of Minors Act of 8 April 1965) where the services of a lawyer are mandatory, defendants before the Belgian courts may choose between conducting their own defence or availing themselves of the services of a lawyer, with legal aid when appropriate.

^{*} By Ms Marie-Aude Beernaert, Aspirante au Fonds National de la Recherche Scientifique, Faculty of Law, Catholic University of Louvain, Belgium.

In most cases, even if a lawyer is engaged, the defendant is required to appear in court in person (see in particular Articles 152 and 185 of the Code of Criminal Procedure). Nevertheless, following the ruling by the European Court of Human Rights in the *Van Geyseghem vs. Belgium* case on 21 January 1999, the Belgian Court of Cassation has repeatedly stated that Article 6 of the European Convention of Human Rights should take precedence over the less favourable provisions of national law. A defendant should therefore be permitted to be represented by a lawyer, despite the provisions of national legislation which in theory require a defendant to appear in person. (See the rulings by the Court of Cassation of 16 March and 8 June 1999 and 15 February 2000).

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

A defendant has the right to express him- or herself in the language of his or her choice at all stages of the proceedings. If necessary, a defendant may be assisted by a sworn translator paid for by the State (Article 31 of the Use of Languages in Legal Proceedings Act of 15 June 1935). A defendant who either does not know the language used in the court dealing with his or her case, or who finds it easier to use one of the other two national languages, may ask for the case to be referred to the nearest court of the same nature conducting proceedings in his or her preferred language (Articles 20 and 23 of the Act of 15 June 1935). Similarly, a defendant who only understands one of the national languages may ask for a translation into that language of all court reports, statements by witnesses or plaintiffs and experts' reports written in one of the other national languages to be included in the case file (Article 22 of the Act of 15 June 1935).

Protection of Victims and Witnesses, in particular Protection of Privacy

There is no provision in the Code of Criminal Procedure requiring the identity of people questioned during investigations or enquiries to be revealed at risk of nullity. If, however, a person appears in court, that person's identity must appear in the documents in the file. This is to allow either the Court of Appeal or Court of Cassation to establish whether the person is entitled to testify under oath. If necessary, victims or witnesses may be examined in camera (Article 148 of the Constitution). When appropriate, the examination may take place in the absence of the defendant, who may be asked to withdraw from the chamber, at least in the case of the Assize Court (Article 327 of the Code of Criminal Procedure).

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

Belgian law does not make special provision for such vulnerable social groups, except in the case of children. A minor who has been the victim of sexual abuse is entitled to be accompanied by an adult of his or her choice during any hearing conducted by the legal authorities. The only exception to this arrangement is when the examining magistrate gives a reasoned order concerning the adult in question, in the best interests of the child or to help reveal the truth. (Article 91a of the Code of Criminal Procedure). Quite a different procedure is, however, adopted when a minor is charged with an offence. Such cases are dealt with by special courts (Youth Protection Act of 8 April 1965).

Implementation of Court Rulings

In principle, rulings are only enforceable following expiry of the time allowed to lodge an appeal. If appropriate, they are only enforceable after the appeals have been heard. (Article 173(1), Article 203(3) and Article 373(4) of the Code of Criminal Procedure) Nonetheless, rulings on public actions, other than those involving conviction or acquittal, and rulings on civil actions may, following a special reasoned decision, be deemed immediately enforceable notwithstanding the right to appeal (Articles 173(2) and Article 203(3) of the Code of Criminal Procedure). Furthermore, a criminal court may, at the Public Prosecutor's request, order the immediate arrest of a convicted person, when that person has been sentenced to a year's imprisonment, or to a more severe punishment. This is to prevent the convicted person from taking advantage of the time allowed to lodge an appeal in order to try and evade the execution of the sentence (Article 32(2) of the Preventive Custody Act of 20 July 1990).

Rulings on civil actions are enforced on the initiative of the civil party, according to civil procedural law (Articles 165 and 197, Code of Criminal Procedure). Those on public actions are enforced by the Public Prosecutor (Articles 165, 197 and 376 of the Code of Criminal Procedure). An enforcement office is therefore attached to all Public Prosecutors' offices.

BULGARIA*

Conditions of Access to the Law

Access to justice in the Republic of Bulgaria is guaranteed by the Constitution and the codes of procedure and also by Article 6 of the European Convention of Human Rights (ECHR), ratified in 1992. Pursuant to Article 5(4) of the Constitution, the ECHR takes precedence over national legislation.

The Constitution recognises the constitutional right to appeal against administrative actions, the right to defence throughout a trial, the right to a fair trial and the right to complaints and petitions.

The Civil Procedure Code and the Criminal Procedure Code offer considerable scope both to exercise the right to lodge a claim and for the parties concerned to be involved in the case. The body of administrative procedural legislation grants similar rights to appeal against administrative sanctions and unlawful administrative acts.

The extensive powers of the State apparatus still pose a serious problem since it acts as an independent body. By exercising general legal oversight it can have a significant impact on civil relations through administrative actions which are not subject to appeal.

A number of other problems exist, too. One of these is the fact that it is impossible to refer orders for the extradition of aliens who allegedly represent a threat to national security to a court of appeal.

Other issues yet to be resolved concern the provision of an official defence counsel in civil cases for those with very limited financial means and not awarding costs in some types of administrative cases.

Implementation of the Presumption of Innocence

Presumption of innocence is guaranteed by Article 31(3) of the Constitution. The presumption of innocence is deemed to be an essential principle of a trial, and is protected by the provisions of the Code and the ECHR as ratified.

In this regard, the provision requiring the bodies involved in a preliminary investigation to impose bail as a matter of course is open to criticism. It has been carried over from the previous wording of the Code of Criminal Procedure. The imposition of even minimal bail, such as a fine imposed on all those charged with committing a common crime, directly contravenes the principle of presumption of innocence. The situation must be rectified in the course of the final adjustment of Bulgarian legislation to European legislation.

The Right to Defence

The right to defence is set out explicitly in Article 56 of the Constitution. Its guarantees are enshrined as fundamental principles in the Code of Criminal Procedure and the ECHR.

* By Mr. Nikolay Rounevsky, Lawyer, Sofia, Bulgaria.

Despite a number of legislative measures taken to provide for this right, several Acts dating back to the Communist era remain in force. One example is the Antisocial Activities of Miners Act. This Act allows for procedures similar to the procedures in the Code of Criminal Procedure concerning the imposition of sentences by administrative tribunals in the absence of legal representation.

The situation regarding the Decree on Petty Hooliganism is similar. This provides for administrative sanctions approaching imprisonment where the court decision is not subject to appeal.

A number of valid criticisms have also been voiced concerning the aforementioned cases. Such criticisms relate to the fact that it is not possible to recover the costs involved in certain administrative cases, that there is no provision for the appointment of an official counsel in civil cases. Concern has also been expressed about the fact that it is not possible to apply to a court of appeal against extradition orders alleging a threat to national security.

Information and Assistance, in Particular Conditions of Use of the Mother Tongue and Translation of Documents

Article 6 of the Constitution states that all individuals are equal before the law. To this end, the codes of procedure have adopted a number of provisions in line with the Constitution and Article 6 of the ECHR. Provision has therefore been made for the right of individuals with an inadequate command of Bulgarian to avail themselves of interpreters and to be notified about the charges against them in a language they do understand.

Accordingly, a list of guarantees has been drawn up. One of these is Article 70 of the Code of Criminal Procedure, which states that the appointment of a defence lawyer in legal proceedings against a person who does not have an adequate command of Bulgarian is mandatory. Another is Article 5 of the Code of Civil Procedure, which states that an interpreter must be appointed for all trials involving individuals who are not fluent in Bulgarian.

Protection of Witnesses and Victims, in particular Protection of Privacy

The right to protection against illegal intrusion into privacy and family life is guaranteed under Article 32 of the Constitution. Legal provision for the protection of witnesses has been made in the new Article 97a of the Code of Criminal Procedure. This Article has already been implemented, which is a step forward as regards the protection of vulnerable participants in legal proceedings.

Nonetheless, the fact that the court, the prosecution, the police and the investigating bodies may retain the files containing key information on individuals who have received protection and remained anonymous as witnesses and victims is still giving rise to concern.

Protection of the right to privacy is not yet fully guaranteed. This is particularly so given the present wording of the Special Means of Intelligence Act which excludes the possibility of obtaining information on and appealing against permits granted for telephone tapping, photography and so on.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

The rights of pregnant women and children are guaranteed under the Constitution. The latter also prohibits discrimination on racial, religious or ethnic grounds. In addition, it recognises foreigners' right to asylum and residence, based on legal grounds.

A number of Acts have been adopted, such as the Child Protection Act, the Refugee Act and the Foreign Investment Act together with several conventions.

There is a wide range of provisions in the codes of procedure to ensure support for specific categories of citizens. Some examples are provision for the appointment of official counsel exemption from public costs in the conduct of civil cases and compulsory protection and the involvement of a psychologist in criminal cases against minors.

Implementation of Court Rulings

The enforcement of court decisions is adequately regulated under Bulgarian legislation. Enforcement is dealt with by judge-executors at regional court level. The recovery of tax and other State debts is dealt with by the State Recovery Agency. The latter is answerable to the Council of Ministers. The most recent amendments to Code of Criminal Procedure and the Code of Civil Procedure involved the adoption of a number of provisions, and also of accelerated proceedings under Chapter 20, Section 3 of the Code of Criminal Procedure and Chapter 12, Section A of the Code of Civil Procedure. These are aimed at speeding up the proceedings and their implementation.

A major problem has yet to be resolved, however: the considerable financial and social implications of legal proceedings on their implementation. In consequence, the European principle of drawing a case to a conclusion within a reasonable time is often not adhered to.

CYPRUS^{*}

Cyprus became a member of the Council of Europe on 24 May 1961 and adopted the European Convention of Human Rights (ECHR) on 16 December 1961. It should be noted that the fundamental rights and liberties itemised in the second section (Articles 6-35) of the Constitution were based on the European Convention of Human Rights. The latter's case law has been invoked on several occasions by Cypriot courts, and in particular by the Supreme Court. According to Article 169 of the Constitution, all treaties, conventions and agreements concluded in accordance with the provisions of the Constitution, will prevail over national law, as from their publication in the Official Gazette of the Republic, on condition that they are also applied by other parties thereto. A relatively efficient system for the protection of fundamental rights is in place in Cyprus. Development of the case law of the Supreme Court in the field of fundamental rights¹ and liberties guaranteed by the Constitution is ongoing, in the sense that in cases of doubt the aforementioned provisions must be interpreted according to a well-established principle, in favour of those rights and liberties². The Supreme Court also recognises that the constitutional provisions ensuring the protection of fundamental rights can be opposed by third parties³.

Conditions of Access to the Law

Article 30(1) of the Constitution provides that:

'No person shall be denied access to the court assigned to him by or under this Constitution. The establishment of judicial committees or special courts under any name whatsoever is prohibited.'

Legal representation remains optional in theory. Nonetheless, instituting proceedings is a somewhat complex procedure, so availing oneself of a lawyer's services is strongly recommended. It should be noted that with regard to administrative court cases, the onus is on the plaintiff to prove the existence of his or her actual, legitimate and direct interest.

Following the ruling in *Attorney General vs. M. Ibrahim* (1964) CLR 195, a different system for *a posteriori* review of the constitutionality of laws was put into place in Cyprus. This is now no longer centred on the Supreme Court but involves courts at all levels. All issues relating to unconstitutionality are dealt with as legal issues by all lower courts, and are subject to appeal before the Supreme Court.

The cost of access to justice is not exorbitant.

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¹ See the decision on *Fina and The Republic*, 4 RSCC, p. 26: The relevant provisions of CAP. 272 and of the Petroleum Regulations are legislation involving interference with fundamental rights and liberties safeguarded under the Constitution, and under Article 25 in particular, and their content is governed by the established principle that in case of doubt such provisions should be construed in favour of the said rights and liberties.

² See Savvas S. Papasavvas, *Constitutional justice in Cyprus*, Economica, 1998.

³ *Police vs. Georgiades* (1983) 2 CLR, p.33.

Implementation of the Presumption of Innocence

Presumption of innocence is guaranteed by Article 12(4) of the Constitution, which provides that:

‘Every person charged with an offence shall be presumed innocent until proven guilty according to law.’

The onus is on the Public Prosecutor bringing the case to prove both that the offence has been committed and that the defendant is guilty of it. The Chief Prosecutor of the Republic is entitled, in the public interest, to drop charges concerning any crime or offence committed against any person within the Republic of Cyprus.

The Right to Defence

Article 30(2) of the Constitution provides that:

‘In determining his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law. Judgement shall be reasoned and pronounced in public session but the press and the public may be excluded from all or any part of the trial upon a decision of the court where it is in the interest of the security of the Republic, the constitutional order, public order, public safety or public morals or where the interests of juveniles or the protection of the private life of the parties so require, or in special circumstances where, in the opinion of the court, publicity would influence the interests of justice.’

Proceedings must be conducted according to the adversarial principle.

The right of appeal exists even for judgements of the Assize Court.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

Article 30(3) of the Constitution provides that:

‘Every person has the right:

- a) to be informed of the reasons why he is required to appear before court;*
- b) to present his case in court and to have sufficient time necessary for its preparation;*
- c) to adduce or cause to be adduced his evidence and to examine witnesses according to law;*
- d) to have a lawyer of his own choice and to have free legal assistance where the interests of justice so require and as provided by law;*
- e) to have free assistance of an interpreter if he cannot understand or speak the language used in court.’*

Protection of Victims and Witnesses, in particular Protection of Privacy

The Domestic Violence and Protection of Victims Act 119(I)/2000 provides for a victim to supply recorded evidence in court. Act 32(I)/2001 strengthened the protection of privacy

inasmuch as there is now a ban on photographing or putting questions to persons under investigation or in temporary custody in the course of criminal procedures.

Specific Situation of some Vulnerable Social Groups (Women, Children, Minorities, Migrants, etc.)

Article 28 of the Constitution provides that:

1. *'1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.*
2. *Every person shall enjoy all the rights and liberties provided by this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is a provision to the contrary in this Constitution ...'.*

According to the interpretation of the Supreme Court, Cypriot law recognises a particular legal status in cases where its beneficiaries are in materially different legal situations.

Implementation of Court Rulings

The decisions of the courts are widely respected.

The system's main weakness is within the administrative court system. This is due to the Commission on Public Administration, whose five members are appointed by the President of the Republic. It has responsibility for appointments, promotions, transfers and retirements as well as for the exercise of disciplinary control of public servants, but often fails to implement decisions on annulment taken by the Supreme Court which fall within its competence.

CZECH REPUBLIC*

In the Czech Republic, respect for human rights and fundamental freedoms is guaranteed at constitutional level by the Charter of Fundamental Rights and Freedoms which implements the European Convention for the Protection of Human Rights and Fundamental Freedoms, hereinafter ECHR, and by the 1993 Constitution. International treaties ratified and promulgated by the Czech Republic are implemented automatically and take precedence over other laws as provided for in Article 10 of the Constitution, on Human Rights and Fundamental Freedoms.

Conditions of Access to the Law

Access to justice and the right to a fair trial in civil and criminal cases (Article 6(1) and Article 13 of the ECHR) are guaranteed at constitutional level by Chapter 5 of the Charter of Fundamental Rights and Freedoms (hereinafter the Charter) on the right to legal protection.

‘Everyone may assert his or her right in independent and impartial proceedings and in special cases with another body’.

Nobody may be denied his or her statutory judge. A court alone must decide on guilt and the enforcement of punishments for criminal offences. Any person who claims that his or her rights have been violated by a decision taken by a public service may request a judicial review of the legality of the decision. The law provides for the protection of rights in court. Judicial monitoring of administrative decisions is the responsibility of special chambers of common courts (Chapter 5 of the Civil Procedure Act).

Implementation of the Presumption of Innocence

The presumption of innocence is guaranteed under Article 40(2) of the Charter:

‘Everyone who is accused of a crime in penal proceedings shall be considered innocent until proven guilty in a final verdict issued by a court.’

This general principle is implemented through Article 2(2) of the Criminal Procedure Act and guaranteed throughout the trial.

The Right to Defence

The accused is guaranteed the right to defence not only constitutionally, but also by the Criminal Procedure Act for the duration of the proceedings.

According to Article 40(3) of the Charter:

‘The accused has the right to be given the time and the opportunity to prepare his or her defence and to defend him- or herself or to be defended by a lawyer. If he or she does not

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choose a lawyer even though he or she is required by law to have one, a lawyer shall be appointed for him or her by the court’.

The Criminal Procedure Act specifies the cases in which the accused is entitled to the services of a lawyer free of charge. Everyone is entitled to have his or her case heard in court without unnecessary delay and in his or her presence. Everyone is also entitled to give an opinion on all the evidence submitted (Article 38 of the Charter).

Information and Assistance, in particular Conditions of Use of Mother Tongue and Translation of Documents

Under Article 37(2) and (3) of the Charter:

‘Everyone has the right to legal assistance from the start of any proceedings held before courts, other State bodies, or public administration bodies [...]. Anyone stating that he or she does not understand the language in which the proceedings are conducted is entitled to the services of an interpreter.’

The right to use of the mother tongue is enshrined in all Acts governing procedures in court and in a number of other Acts. The right of access to the file is guaranteed by the Criminal Procedure Act and by the Civil Procedure Act. The right to legal assistance in civil cases is regulated by Article 30 of the Civil Procedure Act. Legal assistance in criminal proceeding is guaranteed by the Constitution as detailed above.

Protection of Victims and Witnesses, in particular Protection of Privacy

Protection for the victims of crime is regulated by the Protection of Victims of Violent Crimes Act No 209/1997. Current legislation provides for witnesses involved in criminal proceedings to request protection of their life and property by virtue of Article 43 of the Police Act No 283/1991. By virtue of Article 55 of the Criminal Procedure Act, they may also request that their identity be withheld. Given the need to combat organised crime, a bill on the protection of witnesses is now before the Parliament. This bill will provide for special protection including change of identity. The Charter provides for the protection of privacy within the system for protection of fundamental rights (Articles 7 and 10 of the Charter). These general principles are developed in greater detail in the Civil Code (Article 11 *et seq.*) and are protected by courts on the basis of personal action. The recently adopted Personal Data Protection Act No 101/2000 should protect privacy in the electronic processing of personal data.

Specific Situation of some Vulnerable Social Groups (Women, Children, Migrants, Minorities, etc.)

There is a constitutional guarantee of the principle of non-discrimination by virtue of Article 1 of the Charter, which states that:

‘All persons are free and equal as regards their dignity and rights.’

Article 3(1) stipulates that:

'Everyone is guaranteed fundamental human rights and freedoms irrespective of sex, race, skin colour, language, faith, religion, political or other conviction, ethnic or social origin, membership of a national or ethnic minority, property, birth, or other status.'

Women, young people, and the disabled are entitled to additional health protection at work and to special working conditions (Article 29 of the Charter). The Labour Code makes specific reference to the equality of men and women as regards remuneration, access to employment and further education. Adequate legal protection against discrimination including regulations on the burden of proof is incorporated into the Civil Procedure Act. The Charter guarantees special protection for children and young people. Children born in and out of wedlock enjoy equal rights. Parents are responsible for the care of their children and for their upbringing. Parental rights may only be restricted and children removed from their parents' care against their will following a judicial decision on the basis of the law. Parents bringing up children are entitled to assistance from the State. Detailed provisions for this are laid down in law, notably the Family Act, and in social and fiscal legislation. The interest of the child is paramount in all action taken by public authorities or private bodies relating to children. The Czech Republic is a signatory to the International Convention on the Protection of the Rights of the Child. This has been implemented by statutory legislation. Chapter 3 of the Charter guarantees the rights of national and ethnic minorities. The national or ethnic identity of an individual may not be used to his or her disadvantage. Citizens who constitute national or ethnic minorities are guaranteed the right to develop their own culture in conjunction with other members of the minority. They are also guaranteed the right to distribute and receive information in their language, and the right to form ethnic associations.

Under the conditions laid down by law, the following additional guarantees exist:

- (a) the right to education through their own language,
- (b) the right to use their own language for official purposes,
- (c) the right to be involved in resolving problems concerning national and ethnic minorities (Article 25 of the Charter).

These rights are implemented by legislative actions. A new bill should ensure compliance with Council Directive 2000/45/EC and the Council of Europe Framework Convention for the Protection of National Minorities to which the Czech Republic is a signatory⁴.

Implementation of Court Rulings

The implementation of court rulings is regulated by a new Executors and Enforcement Procedure Act (No 120/2001). This establishes an independent profession of court executors, namely bailiffs, and makes provision for more effective implementation of rulings. Article 87 of the Constitution stipulates that the Constitutional Court must ensure the implementation of all rulings by international courts binding on the Czech Republic. The judgements of the European Court of Human Rights are implemented according to the provisions of Article 117 *et seq.* of the Constitutional Court Act. The government is responsible for compensation (ECHR Article 51).

⁴ There are several special governmental bodies monitoring the situation of vulnerable social groups, with a view to providing solutions and provide assistance (The Ombudsman, the Governmental Committee for Human Rights, the Governmental Committee for National Minorities, the Committee of the Republic for Children, Young People and the Family, the Governmental Committee for the Disabled, the Inter-ministerial Committee for the Roma Community, etc.).

DENMARK*

Given the restrictions on its length, this paper cannot represent an exhaustive study of the subject. It should rather be taken as an overview highlighting issues of particular relevance to conditions in Denmark.

Conditions of Access to the Law

In civil cases, each of the two parties may appeal once against rulings by a municipal court, unless the claim involved amounts to less than DKR 10 000 (approximately EUR 1 340). In the latter case, permission may be granted if fundamental issues are involved. Appeal to a higher authority is also possible. When the High Court is the court of first instance, it is generally possible to appeal against judgements, except for situations where statutory limitation applies.

As a general rule, judgements in criminal cases may be appealed against once. However, when the High Court sitting with a jury delivers a verdict, the question as to whether or not an individual is guilty may not be reviewed by the Supreme Court. However, this limitation of the right to appeal does not apply when a municipal court is the court of first instance. On the other hand, an appeal to the High Court is not possible if the penalty is a fine of less than DKR 3 000, or daily fines amounting to less than 20.

Implementation of the Presumption of Innocence

The principle of presumption of innocence is not laid down in the Danish Criminal Code or the Danish Administration of Justice Act but is considered to be a fundamental unwritten rule recognised by case law. In 1992 however, the principle became statutorily regulated as the European Convention of Human Rights was incorporated into Danish law.

In recent years case law has taken Article 6(2) of the European Convention of Human Rights into consideration in criminal cases concerning strict liability. Two examples are the regulations on limited driving time for a lorry driver, and the Public Prosecutor's right to read aloud parts of previous convictions. Nevertheless, the national legal authorities failed to detect contravention of the spirit of Article 6(2) in either of these cases.

The Right to Defence

The right to defence is covered by many specific regulations in the Danish Administration of Justice Act. Some examples are the right to opt for legal assistance, the right to cross-examine witnesses, and the rights of the defence regarding access to material evidence obtained in the course of criminal investigations conducted by the police.

Two problems relating to the right to defence have been aired in Denmark recently. Firstly, the fact that an accused person may choose a defence lawyer from amongst a small group of lawyers who are well known to the public because of their frequent appearances in the media has become a problem. This is because sometimes these defence lawyers are not able to take

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the case on within a reasonable time, whereas this is obviously a factor the national courts also have to take into account.

Secondly, the principle of equality of arms has been invoked by the defence in a serious murder case. The outcome of the case was a court ruling setting aside a reprimand by the police of a defence lawyer. It was agreed that a lawyer may put additional questions to the Medical Officer of Health provided that this did not run counter to the police investigation. However, a defence lawyer is not in general allowed to examine a witness out of court.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

Danish is the language used in courts in Denmark. Written and oral translation is therefore necessary, before or during the court hearing, as appropriate, in both criminal and civil cases. There are however a number of possible exceptions to this rule. Special regulations on translation apply to deaf and dumb persons.

Judgements in criminal cases have had to take account of the requirements in Article 6(3)(e). As a result some sentences have been set aside and referred back to a lower court. There was for example the case when the translator summoned to attend the hearing spoke the wrong language and a new one was contacted by telephone during the hearing. The translation was therefore done over the telephone.

Protection of Victims and Witnesses, in particular Protection of Privacy

The Danish Administration Act includes a number of exceptions to the basic rule that anyone may be required to testify in court. These concern witnesses, close relatives of the accused or other persons closely connected to him or her. In principle the victims of a crime may also be relieved of the duty to testify. Nonetheless, case law did not for instance allow a witness to a violent confrontation between two rival rock groups to be excused from giving evidence. There are no statutory provisions allowing the use of anonymous witnesses in Denmark, and it is not permitted to call on anonymous witnesses in court.

The victims of certain types of crime, mainly violent crimes, sexual offences, and offences against personal liberty, may appoint a lawyer at the investigation stage. This lawyer will, for instance, support the victim during questioning and handle claims for damages and other claims.

Specific Situation of some Vulnerable Social Groups (Women, Children, Migrants, Minorities, etc.)

Previously, it was accepted in case law that children who had been the victims of sexual abuse could be questioned by a police officer prior to the hearing. The interview was videotaped and then used at the hearing. In this way, the child was never confronted with the accused. This legal practice has now been amended in order to protect the rights of the defence. Videotapes may now only be adduced as evidence if the accused and his or her lawyer were present in a room adjacent to that occupied by the child when the questioning took place and had the opportunity of asking questions via the investigating police officer.

Implementation of Court Rulings

In order for Danish law to conform to the case law of the European Court of Human Rights, Court rulings are taken into consideration during preliminary work on legislation. When potential discrepancies emerge, the Court's rulings are used in case law by way of interpretation. Alternatively, legislative changes are made if necessary. The national courts and the legislature are obliged to follow all decisions made by the Court, regardless of the State involved in the case. A similar situation must, however, exist in Denmark.

Another issue concerns the various ways in which national rulings are enforced. In Denmark, the police authorities must be present when criminal convictions are enforced. This may include the arrest of the convicted person. Fines or expenses may be recovered through the court's bailiff. If enforcement measures prove necessary in a civil case, bailiffs may be employed. All the various possibilities are provided for in great detail in the Danish Administration of Justice Act. If a ruling entails claims for damages or other claims, the normal procedure consists of a stay of execution and a subsequent sale. In the case of claims of a non-pecuniary nature, such as the surrender of moveable assets, the bailiff may search the premises or the persons, if this is considered necessary, and may ask for police assistance. If enforcement is not possible, the bailiff may assess the advantages of bringing a claim for damages. The Danish Administration of Justice Act contains special provisions for particular cases, such as the right of access to a child.

ESTONIA*

An overview of the historical context is useful in understanding legal developments in Estonia with respect to the right to defence and a fair trial. Up to 1991, Estonia came under the Soviet legal system. The new Estonian Constitution was only adopted in 1991. It contains an extensive list of fundamental rights for individuals. Estonia has subsequently ratified many international conventions, notably the European Convention of Human Rights (ECHR). It has also adopted laws relating to access to courts and to criminal justice. However, too short a time has elapsed for practice to become established and the protection provided by law to be consolidated. This applies to all the areas referred to below.

Conditions of Access to the Law

Access to the law is guaranteed by the Constitution, and this is generally borne out in practice. Article 15 of the Constitution guarantees access to the law. This includes the right to challenge the constitutionality of any law, legal action or proceedings. Article 9 states that this right may be exercised both by Estonian nationals and by non-nationals.

With regard to civil matters, the main areas of concern are the cost of filing cases and obtaining evidence, and legal expenses. Charges are made relating to filing cases and obtaining evidence, but either of the parties involved may apply for these to be reduced or waived by the court. It is not yet possible to assess whether the courts have exercised this power in an appropriate manner, as insufficient data is available. The court may also appoint a defence lawyer for a person with inadequate financial resources. Individuals may conduct their own defence during a trial. However, the law allows the court the discretion to order the loser to pay the costs of the winning party, including part of the lawyer's fees.

This principle of 'the loser pays' deters access to the courts. Finally, court officials do not provide advice on the procedure for filing a case. Instead, they usually refer the matter to a lawyer. Access to reliable information on civil matters remains a widespread problem.

Implementation of the Presumption of Innocence

In criminal matters, the issues are somewhat different. Firstly, with respect to the presumption of innocence, Article 22 of the Constitution states that no person may be deemed guilty of a criminal offence before a conviction by a court of law enters into force. In addition, no one may be compelled to prove their innocence, or to testify against him- or herself, or against family members. The Code of Criminal Procedure establishes that the Public Prosecutor, or the plaintiff, bears the burden of proof. Unfortunately, the Code of Criminal Procedure does not lay down the criteria for assessing whether the Public Prosecutor has met the conditions pertaining to the burden of proof. There is no Supreme Court case law on this issue either. An additional problem arises in some courts, though not in all: a defendant may have his or her movements restricted. This could be perceived as indicating guilt. Finally, evidence of prior criminal offences may be adduced at a trial, and this may influence the decision of the court.

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The Right to Defence

The various rights of defence arise from the Constitution and the Code of Criminal Procedure. Article 21 of the Constitution states that a person under arrest must be informed immediately, in a language and manner that the person understands, of the reasons for the arrest, and of his or her rights. He or she is also entitled to notify family members of the arrest. Article 21 further provides the right to choose and consult a lawyer. This right applies from the moment the person is declared a suspect by police, or is charged with a crime. Article 21 sets a constitutional limit of forty-eight hours for detention without a specific court order. This Article also requires that the person detained be informed of the court's decision in a language he or she understands.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

The Code of Criminal Procedure lays down criteria for the appointment of a lawyer. It should be noted that in Estonia membership of a professional legal association is not required in order to appear in court in a legal capacity. The appeal courts have the discretion to allow this. Consequently, anyone may represent him- or herself at these levels. Moreover, questions have arisen in some cases concerning the standard of lawyers appointed by the courts. Finally, if convicted, the accused person may be directed to pay the lawyer's fees.

Access to information at the pre-trial stage is an area of concern. The Code of Criminal Procedure restricts the right of the defence to present written statements and expert witnesses at the preliminary proceedings. The Prosecutor is not restricted in this way, and must approve access to the scene of the crime. In the case of other offences, the procedure is more informal. Police Commissioners may take the initial decision, and this can lead to procedural irregularities.

All court proceedings are usually conducted in the Estonian language. The exception is when the court and all parties understand and speak another language. If so, the court may use that language. When Estonian is used, the court provides translation free of charge for participants who cannot speak Estonian. No information is available concerning the quality of the translation, nor on whether language issues present problems for the lawyers engaged. Documents must be filed in Estonian, or accompanied by a translation. In court, documents are also in Estonian. However, either party may obtain translations.

Protection of Victims and Witnesses, in particular Protection of Privacy

Protection is available to victims and witnesses in certain cases. The court may order the identity of victims and witnesses to be withheld for reasons of safety or privacy. The court may sit in camera for reasons of national security, the protection of trade secrets, when minors or the confidentiality of adoption are involved, and in cases involving personal correspondence or public morality. In these circumstances, the parties are required not to disclose the matters discussed, and the record is sealed.

Specific Situation of some Vulnerable Social Groups (Women, Children, Migrants, Minorities, etc.)

There is no general protection for vulnerable groups, such as women or minorities. In criminal cases involving minors, the criminal court may require a lawyer to be appointed for the minor. A court also may take precautions when dealing with sensitive issues involving minors, though this is not current practice. This presents a problem given that Estonia has ratified the International Convention on the Protection of the Rights of the Child.

Implementation of Court Rulings

Civil court rulings used to be enforced by a department of the court itself. This was recently changed. Now, a new system of private bailiffs has been set up, regulated by the Ministry of Justice. Criminal court rulings are enforced by the Penal Department.

FINLAND*

Conditions of Access to the Law

Charges relating to an offence may be brought either by the Public Prosecutor or by the victim (injured party). The right of the victim to prosecute extends to all categories of offences. This right was limited in the procedural reform of 1 October 1997. A plaintiff now no longer has an independent right to prosecute. A victim may now bring a charge for both a Public Prosecution offence and for a plaintiff offence after the Public Prosecutor has decided not to bring charges⁵. A plaintiff may take over the role of the prosecutor if the latter decides to withdraw charges during a trial. The Public Prosecutor is obliged to present the possible civil claims by the victim on behalf of the injured party.

Implementation of the Presumption of Innocence

Section 7 of the Pre-Trial Investigation Act states that everyone must be treated as innocent during pre-trial investigations (in accordance with Article 6(2) of the ECHR). A suspect or an accused person has the right to remain silent, and cannot be compelled to participate with a view to establishing his or her guilt in some way. The police must investigate all cases objectively. This means that they must take into consideration both the aggravating circumstances as well as facts that are to the advantage of the suspect. The same applies to the Public Prosecutor. The suspect shall be treated in an appropriate manner and no inappropriate or inhuman methods of investigation are permitted. A party also has the right to know the results of the investigations as soon as is possible without detriment to the investigations. The police must also carry out reasonable and justifiable hearings and investigations as requested by the suspect. The prosecutor bears the burden of proof and must demonstrate beyond reasonable doubt that the accused is guilty. As a rule, an acquitted defendant is entitled to claim compensation for reasonable expenses incurred by the proceedings. The same applies to any other person unnecessarily deprived of his or her freedom during the trial.

The Right to Defence

Before a suspect is questioned, he or she must be informed of the offence in question and of his or her right to legal assistance during the investigation. Both the suspect and the victim have the right to be present during police questioning of the other parties, unless there are special reasons pertaining to the investigation for excluding them⁶. However, it is not mandatory for the accused or the victim to be represented by a lawyer. They may decide to present their case themselves if they so wish. The court must appoint a public defence lawyer for the accused in certain cases. Some examples of these are if the defendant is not capable of defending him- or herself, the defendant is under the age of eighteen, the lawyer chosen by

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⁵ However, everyone has the right to prosecute (independently of any decision by the Public Prosecutor) any government official who has violated his or her rights or caused him or her damage by an action or by neglect of official duties.

⁶ Only rarely is pre-trial questioning of a suspect recorded on video or audio tape. This is an unfortunate aspect that remains from the past and was noted by the committee of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1992.

the defendant is unable to defend his or her client effectively, or for other important reasons. The court must also appoint a lawyer on the defendant's request, if the crime in question is punishable by at least four months' imprisonment or if the accused is under arrest or on remand.

Finland has a system of state legal aid that covers the whole country. Public legal aid includes totally or partially free legal advice before and during the trial. If a party to a case cannot afford the services of a lawyer, he or she can request cost-free proceedings. This right also extends to foreign nationals.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

The languages used in court proceedings are either Finnish or Swedish. The State is required to make translation services available free of charge to anyone in need of them, that is to say when the person is not able to communicate in Finnish or Swedish (Language Act, paragraph 4, and Language Regulations, paragraph 6). Documents written in a foreign language will be translated into Finnish or Swedish by the court at the sender's expense (Language Act, paragraph 3.2).

Protection of Victims and Witnesses, in particular Protection of Privacy

The injured party may obtain legal aid for pre-trial enquiries as well as for court proceedings in cases concerning certain violent or sexual crimes. This applies if the injured party wishes to present his or her own claims at trial in addition to those presented by the Public Prosecutor. In cases with a bearing on a victim's private life, information on the victim's identity may be withheld from the public for the duration of the trial. This constitutes an exception to the rule of transparency of trials (Transparency of Trials Act, paragraph 2). Documents containing the above-mentioned information are also classified as confidential (Transparency Act, paragraph 24, subsection 26). The Finnish criminal system does not allow anonymous witnesses to give evidence against a suspect because of the '*audiatur et altera pars*' rule. Witnesses must give their evidence in person at a trial in the presence of the accused. The police may, however, question a witness who has expressed fears in the absence of the suspect. If a witness has reasons to suspect a threat to his or her health or safety or to that of his or her family, his or her address, telephone number or other information may not be revealed during the trial or in subsequent documents.

Finland has adopted a Victim Compensation Act (1973/935), according to which victims of crime have the right to receive compensation from the State, if an offender is unable to pay compensation to the victim. The Finnish Victim Compensation Act covers all personal injuries arising from an offence and also damage to property up to a certain value.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

A new Constitution came into force in Finland on 1 March 2000. Section 21 of the Constitution guarantees a fair trial for everyone. Even the victim or the injured party has this right to a fair trial, which means that in some respects the Finnish Constitution goes even further than the ECHR (which only provides for the accused). The fairness of a trial extends beyond court proceedings to other arrangements and includes the fairness of pre-trial

investigations. Minority groups are further protected by section 6 of the Constitution, which states that all persons are equal before the law.

Pursuant to the Pre-Trial Investigation Act, suspects under the age of eighteen may not be questioned without a qualified witness present. If the person to be heard in police investigations is under the age of fifteen, his or her legal guardian and social workers must be informed in advance of their right to attend the court proceedings. A child, i.e. a person under the age of eighteen, must always be dealt with as appropriate to his or her age and level of development. Special precautions must be taken in order to avoid any damaging consequences for the child's school, workplace or other relevant environment.

Implementation of Court Rulings

In Finland, the range of sentences includes reprimands, fines, community service and imprisonment. Juvenile sentences are being carried out on a trial basis in certain regions of the country. If an offender is found guilty of more than one offence, a joint sentence is handed down. This is usually less than the sum of the separate sentences for the offences. The maximum duration of joint sentences is fifteen years. Sentences of less than two years may be imposed conditionally with or without additional fines and with a suspension period of one to three years. An offender cannot be imprisoned before the final verdict has been given. The court may, however, order an offender to be remanded in custody, if the sentence is for two years or less, or if there are special reasons justifying the offender being remanded in custody, such as the risk of the offender escaping.

Finland has closed prisons and also open institutions. In addition there is a juvenile prison and a penal psychiatric institution. Domestic arrangements for prisoners are such that they correspond as closely as possible to general living conditions in society. Prisoners shall be treated fairly and their human rights respected (Enforcement of Sentences Act, paragraphs 3 and 4). The enforcement of sentences is subject to supervision by the Parliamentary Ombudsman and the Chancellor of Justice.

FRANCE*

Conditions of Access to the Law

Access to justice is widely recognised in France. The law is in fact a public service, based on the fundamental principles of equality, cost-free access and continuity. As its officers, lawyers tend to control access to the law. Representation by a lawyer is generally mandatory. In principle this includes appearances before administrative courts, despite numerous exceptions.

Little formality is involved in bringing a charge, particularly before an administrative judge, or in courts where representation by a lawyer is optional. The claimant must show that he or she has a current valid interest in the matter.

Any European Union national and any foreigner regularly resident in France who is deterred from going to court for financial reasons may benefit from legal aid. This is provided for by Act No 91-647 of 10 July 1991, supplemented by Act No 98-1163 of 18 December 1998 and No 99-515 of 23 June 1999 strengthening the efficiency of the criminal procedure. There were in excess of 700 000 cases allowed in 2000, 290 000 of which were before criminal courts.

It should also be noted that access to constitutional justice is still denied to private individuals.

Implementation of the Presumption of Innocence

In France, presumption of innocence is guaranteed by Article 9 of the Declaration of Human and Citizens' Rights. This has constitutional value. Presumption of innocence is also guaranteed by Article 6(2) of the European Convention of Human Rights. There is an explicit statement on presumption of innocence in criminal matters, but the principle is also included in Article 9(1) of the Civil Code. In compliance with the principle of *actori incumbit probatio*, the onus is on the Public Prosecutor bringing the charges to prove that the offence was committed and that the defendant is guilty. A further principle of criminal proceedings is to interpret any doubts in favour of the accused.

Act No 2000-516 of 15 June 2000 reinforced the protection of the presumption of innocence and of victims' rights. It was therefore welcomed by many defenders of human rights despite the limited financial resources made available. In particular, under the Act a suspect is entitled to consult a lawyer from the time he or she is first taken into custody. Previously, a suspect could not consult a lawyer until at least twenty hours had elapsed.

Furthermore, decisions on committal orders have been taken out of the hands of examining magistrates. These have now been assigned to a judge of liberties. The latter is, furthermore, responsible for setting in advance the time allowed for the information procedure. Should the deadline be exceeded the parties may resort to the criminal division of the Court of Criminal Appeal.

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The Right to Defence

Any individual who has gone to court or been summoned to attend court is entitled to be heard by an independent court. This is based on Article 6(1) of the European Convention of Human Rights. Further to a number of notorious cases, the Constitutional Act of 27 July 1993 reinforced the power of the High Council for the Judiciary concerning matters related to the career of judges with tenure. The situation remains unresolved as far as Public Prosecutors are concerned.

Proceedings are conducted according to the adversarial principle. (Article 16 of the new Code of Civil Procedure). This is also recognised as a fundamental principle in administrative law. In principle, the judge's scope of action is restricted by the requests made by the parties.

A person under examination is also entitled to be heard and represented. In addition, searches, seizures and phone tapping are regulated by the Code of Penal Procedure.

Following the Act of 15 June 2000 it is now possible to appeal against rulings at the Assize Court.

The previous Act of 31 December 1987 established Administrative Courts of Appeal in order to reduce the number of cases before the State Council and the delays in obtaining a ruling.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

In recent years, a considerable effort has been made to bring the law closer to the people.

The Act on Access to the Law and the Amicable Settlement of Disputes, No 98–1163, reinforced the provisions of the Act of 8 February 1995 by establishing 'justice and law centres'. The main aim of the latter is to assist victims, suggest amicable settlements of disputes and take responsibility for certain types of alternative punishments. Furthermore, each bar provides a duty service to receive and counsel victims.

Regarding the language which may be used before a judge, the Constitutional Council has ruled in its decision No 99-412DC of 15 June 1999 on the European Charter for Minority and Regional Languages, that:

'Individuals cannot insist on the right to use a language other than French in dealings with the administration and public services, nor can they be obliged to do so.'

The Council added that Article 2 of the Constitution, according to which the language of the Republic is French does not prohibit the use of translations.

Protection of Victims and Witnesses, in particular Protection of Privacy

Witnesses benefit from special legal protection.

In criminal cases a witness is therefore heard in private, away from the person under examination (Article 102 of the Code of Penal Procedure). Witnesses may also protect their professional secrecy.

The Act of June 2000 improved the procedure concerning assisted witnesses. These are persons named in a case bringing independent action for damages or in a Public Prosecutor's introductory speech. This person is assisted by a lawyer and is also entitled to consult the criminal record.

Protection of privacy is also guaranteed by Article 9 of the Civil Code. This is, however, restricted by the right to information and press rights. The judges can call for relevant measures to be taken, such as sequestration or seizure.

Article 435 of the new Code of Civil Procedure authorises judges to restrict the openness of proceedings, especially when there is a risk of intrusion into privacy.

Any kind of publicity identifying a person involved in a criminal procedure, wearing handcuffs or under temporary arrest, without his or her authorisation, is now punishable with a fine of FRF 100 000 (Article 92 of the Act of 15 June 2000 amending Article 35a of the 1881 Act).

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

French law does not recognise any special legal status except when the beneficiaries are in an objectively different legal situation. This accounts for the debate on male-female parity on the occasion of the adoption of Constitutional Act No 99-569 of 9 July 1999 as well as for Act No 2000-493 of 6 June 2000 promoting equality of access for men and women to elected office and positions.

As from 1992, under Article 222-33 of the Criminal Code, anyone who abuses the authority conferred on him or her by his or her position to harass another person by means of orders, threats or pressure, with a view to obtaining sexual favours, may be fined FRF 100 000. In the same spirit, the Act on Sexual Crimes of 17 June 1998 has improved the protection of victims, especially minors. Special procedural arrangements are in place for minors. For instance, there are special children's judges and juvenile Assize Courts in addition to dedicated institutions.

Furthermore, there are no residence requirements for granting legal aid to certain groups such as minors, assisted witnesses, persons who are under investigation, accused or convicted, or civil parties. This does not, however, apply to foreigners putting their case to an appeals commission as refugees. They must be normally resident in France and have entered the country legally or hold a residence permit valid for at least one year.

Implementation of Court Rulings

Act No 91–651 of 9 July 1991 established the position of Enforcement Judge for civil cases. These duties are undertaken by the President of the Regional Court. A number of difficulties have arisen concerning implementation orders and challenges in the context of implementation by force. This has occurred even when the legal basis has been involved, unless the question has been within the competence of courts issuing the legal order.

Pursuant to the Act of 15 June 2000, the judge responsible for implementing the sentence is jointly responsible with the probation officer for deciding the practical details of the sentence imposed on each convicted person, in accordance with the provisions of Article 722 of the Code of Criminal Procedure.

The Act of 16 July 1980 was a landmark in the administrative procedure for implementation. The State Council was empowered to impose a daily penalty on a public servant for delaying the enforcement of a legal order. The Act of 8 February 1995 supplemented the existing provisions by delegating the implementation of legal decisions to the administrative court or the administrative court of appeal which gave the ruling in question.

GERMANY*

Conditions of Access to the Law

Pursuant to Article 19(4) of the Basic Law of the Federal Republic of Germany (*Grundgesetz (GG)*), recourse to the courts is open to anyone claiming that his or her rights have been violated by a public authority. This fundamental principle of a state based on a democratic and liberal constitution is enshrined in paragraph 40 of the regulations governing the administrative courts (*Verwaltungsgerichtsordnung VwGO*). In addition, anyone may appeal to the Federal Constitutional Court if his or her fundamental rights are violated by a public authority (Article 93, paragraph I, No 4a GG).

Access to the Ordinary Courts (*Ordentliche Gerichte*), which deal with civil and criminal matters, is open to all. There are four levels of courts at present:

- Local Courts (*Amtsgerichte*), which deal with civil matters involving up to DM 10 000 and crimes which are unlikely to lead to a sentence of more than four years in prison.
- Regional Courts (*Landgerichte*), which deal with all other civil cases and most of the remaining criminal cases. The regional courts also serve as courts of appeal for the local courts.
- Higher Regional Courts (*Oberlandesgerichte*), which deal with serious crimes like high treason and some political crimes. In addition, they serve as courts of appeal for the regional courts.
- The Federal Court of Justice (*Bundesgerichtshof*) is the court of appeal for the higher regional courts.

Plans to reorganise the judicial system to retain only three levels of courts are under consideration. At the time of writing, it is unclear whether these reforms will actually be implemented and, if so, when.

Victims of crimes or their close relatives may file a private prosecution (*Nebenklage*). In this case the legal status of the private party is similar to that of the prosecutor. The private party may file motions, deliver statements and so on. If necessary, the private party may receive financial aid towards lawyers' fees, for example.

Implementation of the Presumption of Innocence

Although there is no explicit reference to presumption of innocence in the Constitution, it is quite clear that this presumption underpins the entire German judicial system. As long as a person has not been convicted by a court of law, he or she must be considered innocent. According to Article 103, GG, everyone is entitled to a hearing in the courts in accordance with the law. Furthermore, an action may only be punished if it constituted a criminal offence under the law prior to being committed, and no one may be punished for the same action more than once under general criminal legislation.

Clearly, the police and the Public Prosecutor can and must investigate crimes. Nonetheless, they are bound to comply with specific rules, laid out in the Code of Criminal Procedure

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(*Strafprozessordnung*). If they fail to do so, evidence gathered illegally may not be used in court.

Should a person be arrested without sufficient evidence of his or her involvement in a crime that person may be entitled to compensation. The Federal Records (*Bundeszentralregister*) only contain actual convictions. If for any reason the Public Prosecutor decides to stop criminal proceedings, no entry will be made in the records and the accused must be considered innocent.

Most of the convictions may not be included in the certificate of good behaviour (*Führungszeugnis*) if between three to five years have elapsed since conviction, discharge from prison or the end of probation. In some cases this period extends to 10 years. Once a period of between five and twenty years has elapsed, most of the entries must be deleted from the Federal Records. However, this does not apply if the defendant has been sentenced to life imprisonment or to preventive custody.

The Right to Defence

Everyone has the right to defence. The court appoints a counsel (*Pflichtverteidiger*) for those who cannot afford a lawyer. The accused does not have to pay for this service. If the accused chooses a lawyer for him- or herself, and that lawyer is not appointed by the court, the accused may apply for legal aid.

Everyone has the right to conduct their own defence. However, a defendant may choose to remain silent because no one is obliged to incriminate him- or herself. If a defendant remains silent this must not be regarded as an admission of guilt.

In cases dealt with by civil and administrative courts, the parties may apply to have a lawyer appointed by the court. They may also receive legal aid, which might have to be repaid.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

In addition to the legal aid system, the administrative offices of the courts are bound to assist plaintiffs and defendants in the preparation of their cases. However, they are not allowed to offer legal advice.

The official language used in court is German. All documents must therefore be translated into German. If one of the participants, in particular the accused, is unable to understand German, he or she is entitled to an interpreter who must translate all the court proceedings. The state must provide this service free of charge. In certain cases, the accused might have to bear the cost of any additional expenditure he or she incurs.

Anyone claiming a right has to bear the burden of proof. He or she must therefore be responsible for providing all the relevant documents and other evidence. In civil cases, all the costs involved in obtaining such information must be borne by the parties. The losing party must pay all the costs of the proceedings.

Protection of Victims and Witnesses, in particular Protection of Privacy

In general, court proceedings are public. Nevertheless the court may rule that they should be held in camera if this seems necessary to protect witnesses or if there is a particular need for privacy. In some cases even the courts do not know the real names and identities of witnesses (especially undercover agents or contact persons). If at least one of the accused is under the age of eighteen or twenty-one in some cases, court proceedings are held in camera.

Certain groups may choose or even be required to refrain from giving evidence. These might include the wife, children and other relatives of the accused, lawyers, doctors, psychologists, Members of Parliament and journalists.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

Men and women are treated equally so there is no need for special rules.

Children under the age of fourteen may not be prosecuted. According to the Juvenile Courts Act (*Jugendgerichtsgesetz*), young people between the ages of fourteen and eighteen, and in some cases twenty-one, may not be sentenced to more than 10 years in prison. Proceedings are not public but are held in camera.

There appears to be no need for special rules for minorities given that Article 3(3), GG, states that no one should be disadvantaged or favoured for reasons of gender, descent, race, language, country of origin, faith, and religious or political opinions. It also states that no one should be disadvantaged because of a disability. There is one exception to this rule, however. Article 16a, paragraph 4, GG, states that refugees may be deported prior to the conclusion of proceedings to grant them the status of political refugees if their application is clearly unfounded or is deemed such by the courts.

Implementation of Court Rulings

Civil and administrative cases: In general, court rulings are enforced by bailiffs. If there are still grounds for appeal, the creditor may have to deposit a security. If this is not necessary, the losing party may obtain a stay of enforcement by depositing a security.

Criminal cases: If a fine is imposed on the accused, it is in principle enforced according to the same rules. If a defendant is unable to pay, he or she may be imprisoned instead. If the accused receives a prison sentence, he or she may be arrested forthwith. In fact this only happens if the person concerned is considered a danger to the public or to him- or herself. In most cases, there is a delay until a prison cell becomes available. There are different types of prisons, ranging from low security prisons, where inmates are even allowed to work outside the prison, to high security establishments. Inmates may be released on parole on the grounds of good behaviour. There are also special courts dealing with all cases involving the enforcement of prison sentences.

GREECE*

The present report only deals with certain aspects of the subject, in the context of criminal law.

Conditions of Access to the Law

In principle there are no legal restrictions regarding access to justice in criminal cases. It is possible to appeal against a first instance sentence, even if it was handed down by the Assize Court. One current problem concerns the situation of an accused person who cannot afford to pay for a lawyer. No appropriate mechanism is in place in the Greek criminal system to ensure the provision of effective legal aid. Implementation of the relevant new statutory provision (Article 96a of the Code of Criminal Procedure) may ameliorate the current unsatisfactory situation.

Implementation of the Presumption of Innocence

The principle of presumption of innocence does not appear in the Greek Code of Criminal Procedure. Nevertheless, presumption of innocence is part of Greek law, since Article 6(2) of the European Convention of Human Rights (ECHR) is directly applicable. It should be noted that the ECHR has been ratified by Legislative Decree 53/1974 and that pursuant to Article 28 of the Greek Constitution, it takes precedence over all conflicting national statutory provisions. Pursuant to Article 273(2) of the Code of Criminal Procedure, the accused has the right to remain silent. During the last two years the case law of the Greek Supreme Court (*Areios Pagos*) has taken Article 6(2) ECHR into consideration when justifying decisions on acquittal.

The Right to Defence

The accused person is entitled to be accompanied by two lawyers at the pre-trial investigation stage and by three lawyers at the public trial (Article 96 of the Code of Criminal Procedure). The accused may never be deprived of the right to communicate with his or her lawyer (Article 100(4) of the Code of Criminal Procedure). The lawyer for the defence may even be present whilst the accused is questioned. When the accused appears before the examining judge, he or she is entitled to have the charges brought against him or her explained. In addition, the accused is entitled to be informed of his or her rights, to consult the file and to obtain copies of the documents. During the trial, the accused is entitled to be heard (Article 20 of the Constitution). He or she also has the right to put questions to witnesses and experts, to submit applications and to raise objections. After the examination of each witness, the accused is entitled to comment on the credibility of the evidence, to make statements and to give explanations concerning the evidence (Article 358 of the Code of Criminal Procedure). The accused also has the right to be the last to speak (Article 369(3) of the Code of Criminal Procedure).

* By Dr Hippokratis Mylonas, Lawyer, Athens, Greece.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

The court language is Greek. Any person accused or any witness who claims not to know Greek is entitled to an interpreter, according to Articles 233 to 238 of the Code of Criminal Procedure. Specific rules on translation apply to deaf and dumb persons (Article 227 of the Code of Criminal Procedure). The accused is not required to pay for the interpreter appointed. The right to interpretation does not include written translation of every single document.

Protection of Victims and Witnesses, in particular Protection of Privacy

In Greece the victim of an offence has the right to become a party to a criminal trial by declaring him- or herself a civil party (Article 82 of the Code of Criminal Procedure). In such a case, the victim is represented by a lawyer. Although concern for the protection of victims and witnesses has increased during recent years, no specific statutory provisions have yet been introduced. The use of anonymous witnesses is not permitted in Greece. It should also be noted that there is no provision for victims of sexual abuse to be questioned in camera using audio-visual equipment. The public may only be excluded in cases of rape, if the court deems that the presence of the public may result in violation of the victim's privacy (Article 93(2) of the Constitution and Article 330 of the Code of Criminal Procedure). Juvenile court proceedings are held in camera.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

There are no specific provisions for the protection of immigrants or minorities during legal proceedings. Juvenile courts are competent to try the offences committed by minors. As stated above, proceedings in these courts are held in camera.

Implementation of Court Rulings

A serious problem relating to the implementation of court rulings is the duration of the criminal proceedings. They often last more than five years. In many cases the European Court of Human Rights has declared a breach of Article 6(1) of the ECHR, because of failure to comply with the requirement to conclude proceedings within a reasonable period of time.

HUNGARY*

Conditions of Access to the Law

Under civil law, any person who considers he has a claim against another natural person or legal entity may initiate proceedings. Under criminal law and especially under administrative law, procedures are *ex officio*. Consequently, if the conditions detailed in the law arise, the authorities are bound to initiate proceedings.

Victims may make their wishes known by reporting the offence to the authorities or by lodging a private complaint. The latter is only required to initiate proceedings concerning certain offences.

Regarding the costs of the proceedings: in civil cases the plaintiff is required to meet the costs in advance. On completion of the proceedings the losing party is required by the court to bear the costs and any other expenses incurred by the successful party. Only in criminal cases does a private prosecutor have to meet very moderate costs. All proposals and legal remedies, that is, all appeals and court decisions are free for the accused and other participants.

Implementation of the Presumption of Innocence

The principle of presumption of innocence is recognised in the Hungarian Constitution and in the Code of Criminal Procedure. No person may be deemed guilty until his or her guilt has been established by a legally valid court decision. This means that the burden of proof lies upon the authorities acting in the case. The accused is not required to prove his or her innocence. Should the relevant authorities be unable to prove guilt, and depending on the stage the process has reached, the accused must either be acquitted or the case dropped, according to the principle *in dubio pro reo*.

The Right to Defence

In the Republic of Hungary the accused has the right to defence at every stage of the trial. The Code of Criminal Procedure therefore makes provision for a defendant to conduct his or her own defence or to be defended by a lawyer of his or her choice, or by an appointed lawyer. A defendant may therefore choose to entrust his or her defence to a lawyer. In cases where a lawyer's involvement is mandatory, the court appoints one for the accused.

There are a number of human rights and charitable organisations that meet the costs of defence and representation in criminal, civil and administrative cases.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

The accused must be informed of his or her rights, in particular of the right to be represented by a lawyer, the right to request legal aid and the right to appeal and apply for release if held in custody.

* By Aladar Nagy, Professor of International Relations, University of Miskolc, Hungary.

The Constitution and the Code of Criminal Procedure contain the following provisions concerning the use of mother tongue:

'Any person is entitled to speak or write his or her mother tongue during a trial. If a person whose mother tongue is not Hungarian wishes to use that mother tongue during the trial, an interpreter shall be appointed.'

These provisions are contained in the Code of Civil and Administrative Procedure.

Protection of Victims and Witnesses, in particular Protection of Privacy

Act No 110 of 1999 seeks to provide better protection for witnesses. In criminal cases different kinds of protection are offered to witnesses depending on the circumstances:

- personal details are withheld,
- a witness may be declared in need of special protection,
- personal physical protection.

As from 1 March 1999 a witness may be deemed to require special protection if:

- the witness' evidence relates to a key circumstance in a particularly important case ,
- evidence obtained by his or her testimony cannot be gained in any other way,
- the accused or defence lawyer are unaware of the identity and address of the witness, or of the fact that the investigating authority wishes to examine the witness,
- revealing the identity of the witness would endanger the life, health or freedom of the witness or close family members.

In this connection, it is worth referring to the rule in the Code of Criminal Procedure allowing a witness a choice between giving evidence orally or in writing, subject to consent by the authority.

Victims may be protected as witnesses and may be afforded personal physical protection by virtue of being victims. No specific victim protection programme exists in Hungary. However there are some organisations which assist the victims of crime advising them on possible courses of action.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

In Hungary there is no special provision within criminal procedure for most of the aforementioned special groups.

Children are the only group receiving special treatment as witnesses. Children are subject to different regulations on criminal procedure. Young people between the ages of fourteen and eighteen are also deemed to be children.

Children may be examined as witnesses if their testimony is likely to contain evidence of a nature that could not, as far as can be anticipated, be obtained otherwise.

At the discretion of the authority, the guardian or teacher of a minor or juvenile may be present when he or she is questioned as a witness.

The Code on Criminal Procedure contains some special procedural regulations for cases involving minors. They relate among other issues to special authorities, the role of the legal representative and detention.

Implementation of Court Rulings

There are several areas of the European legal system where the law allows judges the latitude to establish their own rules.

However, broad interpretation is not possible in Hungary. The case law of the Supreme Court is binding for lower courts.

Published Supreme Court decisions play an important role in judicial practice.

If a judge finds a relevant Supreme Court decision taken in a similar case, the judge may follow this decision. It is becoming increasingly common for lawyers to refer to earlier decisions by the Supreme Court. This can have an influence on judges, particularly in cases which do not involve guidelines or principles established by the Supreme Court.

The Constitutional Court has the power to examine whether a law or a part of a law is constitutional or not. Should it be shown to be unconstitutional, the Court may repeal it. The decisions of the European Court of Human Rights play a significant role in the development of national law and national judicial practice.

IRELAND*

Conditions of Access to the Law

Article 34 of the Irish Constitution guarantees the right of access to the courts. Except in a number of specific matters where the prior leave of the court is required before proceedings can be initiated, there are no restrictions on the right of any party to initiate legal proceedings. However, where the courts are satisfied that a particular claim discloses no cause of action or is doomed to failure, then the proceedings may be struck prior to trial. At present, court fees are fixed at a low level and there are exemptions for certain types of proceedings, including family law proceedings and applications dealing with personal liberty.

Implementation of the Presumption of Innocence

The right to trial in due course of law in Article 38 of the Constitution means that in criminal cases the legal burden of proving beyond doubt that the accused committed the offences in question will always rest with the prosecution. However, the Supreme Court has also accepted that legislation which allows for a shifting evidential burden during the course of a criminal trial is not unconstitutional provided that at all times the legal burden of proof remains with the prosecution.

The Right to Defence

The right to fair procedures in civil and criminal proceedings is protected by Article 40, paragraph 3.1 of the Constitution. The number of cases where the courts have insisted that individual criminal convictions or administrative decisions must be set aside by reason of departures from these rules are far too numerous to mention and a full treatment of this voluminous case law would run to hundreds of pages.

Where the individual's good name or other constitutional rights are at stake, then fair procedures will normally require the right to be represented by a lawyer and to confront and cross-examine witnesses.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

Article 8 of the Constitution grants each party involved in legal proceedings the right to use either of the two official languages, English and Irish. Beyond this, the courts have held that the guarantee of fair proceedings means that the accused is entitled to the benefit of a translator where he or she does not understand the language in which the proceedings are being transacted.

Protection of Victims and Witnesses, in particular Protection of Privacy

Article 34(1) of the Constitution requires that all proceedings be heard in public '*save in such special and limited cases as may be prescribed by law*'. There are, however, a variety of such special and limited cases as have been provided by statute. Thus, family law proceedings must be heard in camera and rape trials are generally closed to the public, except that the

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family and friends of both the alleged victim and the accused may be present, as well, of course, as representatives of the media. The name of the complainant may never be revealed, save with her consent, while the name of the accused is likewise withheld, unless he is convicted.

Special Situations of Vulnerable Social Groups (Women, Children, Migrants, Minorities, etc.)

There are, in general, no specific rules catering for the needs of vulnerable social groups. However, in cases involving sexual offences and violence, the court may (and generally will) permit witnesses who are under the age of seventeen to give evidence by video-link.

Implementation of Court Rulings

By virtue of the strict separation of powers prescribed by the Irish Constitution, the imposition of a sentence in criminal cases is entirely a matter for the judiciary and a number of statutes, which sought to allow the prosecution to elect between certain types of punishments, have been found to be unconstitutional on this ground. Nevertheless, it would appear open to the Oireachtas (Parliament) to prescribe mandatory sentences for specified crimes and this has been done in the case of murder (life imprisonment). Conscious of possible constitutional difficulties with a rigid mandatory sentence, recent legislation has stipulated that certain drugs and firearms offences should generally carry a ten-year sentence, save where the court considers that there are exceptional circumstances which merit the imposition of a lesser sentence.

Pursuant to Article 13(6) of the Constitution, the power to commute or review sentences is vested in the executive. The Supreme Court has recently ruled that only the Government has the power to review a lawful sentence and the courts have no jurisdiction to reconsider such a sentence on grounds such as that the prisoner has responded well in prison life.

ITALY^{*}

Conditions of Access to the Law

Pursuant to Article 24 of the Italian Constitution (*Costituzione della Repubblica Italiana*), everyone is entitled to appear before a judge to claim any right or legitimate interest guaranteed by law. Two separate court systems exist: the ordinary civil and criminal system and an administrative one. There are also special courts dealing for example with tax or military issues. In criminal matters, the function of Prosecutor for the Republic is entrusted to a special body of magistrates who enjoy the rank and privileges of being judges. They are known as *Procura*, or *Procura Generale, della Repubblica*. This prosecution office must bring charges whenever the outcome of preliminary proceedings suggests that the trial will result in a guilty verdict (Article 50 of the Code of Criminal Procedure). The victim may lodge a complaint and take part in the trial, on behalf of the Prosecutor for the Republic. For some crimes, the victim is required to make a complaint and express his or her desire for enquiries to commence, before the Prosecutor for the Republic can start work.

Implementation of the Presumption of Innocence

Until a ruling becomes final, the accused is not considered guilty, and the ruling cannot therefore be implemented (Article 27(2) of the Constitution). This happens when there is no appeal to a higher court against the ruling or when all the grounds for appeal have been exhausted. There are two levels of ruling, one by the local court and one by the Court of Appeal. There is a third level, the Court of Cassation. The latter may only review the ruling and, if necessary, overthrow it if it emerges that there were errors in the interpretation of the law. It may not re-examine the facts. When a law is deemed in conflict with the Constitution, an appeal to the Constitutional Court is possible. Procedures remain very lengthy, and a ruling generally only becomes final when it has been through the second level of courts. The opinion is therefore gaining ground that it should be possible to enforce a ruling once it has been through the first or perhaps the second level of courts. In fact, the Constitution guarantees the process at first instance and also appeal to the Court of Cassation (Article 111 of the Constitution).

Temporary measures may be taken to restrict a defendant's personal freedom for a limited time. Such measures are only permitted when there is evidence of guilt (Article 273 of the Code of Criminal Procedure), when investigations might otherwise be hindered or when it is likely that the defendant might abscond or commit further crimes (Article 274 of the Code of Criminal Procedure). These measures are regularly invoked, however, in view of the duration of the procedures. A judge may call for them to be imposed following a brief investigation, in which the defendant is heard by the judge. The judge then decides whether the defendant should remain in custody or not. Nonetheless, procedures are sometimes so very lengthy that it is necessary to release individuals strongly suspected of being guilty, so as not to exceed the time limits set for the provisional measures (Article 303 of the Code of Criminal Procedure).

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The Right to Defence

The new Code of Criminal Procedure, approved in 1988 (Presidential Decree No 447/1988), represents a significant step towards parity between prosecution and defence before the judge.

Constitutional Act No 2/1999 added four new paragraphs to Article 111 of the Constitution, in order to state the principles of the so-called *giusto processo* or fair trial. This heralded a remarkable evolution of the trial system towards the accusatory model. It follows from these new principles that in criminal trials the law is bound to ensure that any person charged with a crime is informed of the nature and reasons for the charge at the earliest possible opportunity. The accused is then in a position to prepare an effective defence. The accused is entitled to cross-examine those who give evidence against him or her before a judge. The accused may also call on witnesses, or adduce any kind of proofs of innocence, on the same conditions as the Prosecutor for the Republic.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

The assistance of a lawyer is mandatory in any type of trial. All law graduates can become lawyers following two years' experience if they pass an official examination conducted jointly by the Ministry of Justice and the Law Society. If no lawyer is designated, the court appoints one (Article 97 of the Code of Criminal Procedure). The State bears the defence costs of those who cannot afford to do so. This is guaranteed in Article 98 of the Code of Criminal Procedure and by virtue of Act No 217 of 30 July 1990.

An interpreter is allocated to any person accused who does not speak or understand Italian, which is the official language of the courts (Article 111 of the Constitution new text).

Protection of Victims and Witnesses, in particular Protection of Privacy

The Criminal Police are a department of the Ministry of the Interior. They are entrusted with the protection of the so-called 'collaborators with justice', people who expose themselves to danger by revealing to the police or magistrates secret information on crime, mostly on organised crime (Act No 82 of 15 March 1991). The protection may also be extended to close relatives. Particularly close protection is afforded to criminals who turn State's evidence. This has given rise to considerable controversy. Such people benefit from substantial reductions in their sentences if they give evidence against their former associates. In these cases, the law also provides far-reaching protection programmes, including changes of residence and identity and a sum of money.

There are also programmes aimed at supporting victims of extortion and usury. The most recent example is contained in Act No 414 of 12 November 1999. Additional relevant legislation is found in Act No 172 of 18 February 1992, for extortion, and Act No 108 of 7 March 1996, for usury.

Specific Situation of some Vulnerable Social Groups (Women, Children, Migrants, Minorities, etc.)

A separate procedural system and special judicial offices are devoted to the prosecution of juvenile delinquency (Presidential Decree No 488 of 22 September 1988). This was adopted immediately after the new Code of Criminal Procedure, of which it is an integral part. Besides ordinary magistrates, these offices include psychologists and educational experts. A legal pardon may be granted for minor crimes, to prevent serious damage to a young person's development. Indeed, juvenile criminal law contains many exceptions to ordinary law, in the interests of the wellbeing of minors.

The recent Act No 216 of 27 July 1998 (*decreto legislativo, d.lgs.*) allows the deportation of illegal non-European Union nationals. They are to be taken to the border by force under police escort following an administrative order. This law has been recently challenged on the grounds of unconstitutionality, since it permits action against personal freedom in the absence of any judicial provision, contrary to the provisions in Article 13 of the Constitution. The Constitutional Court will rule on the matter in the next few months. In fact, most constitutional guarantees, such as personal freedom and the right to defence, are guaranteed both for Italian nationals and non-nationals.

Implementation of Court Rulings

The Italian penal system remains based on imprisonment. This is not at all in line with the objective of rehabilitation which sentences should be promoting (Article 27(3) of the Constitution). Financial penalties are often minimal. Probation exists and an offender may be placed under the supervision of social workers. However, there is no efficient administrative support for these institutions. Furthermore, delays within the system mean that the accused have to be released when the temporary measures expire or they simply abscond. Because of this, and the fact that most short sentences are suspended, only very few sentences are actually enforced. This situation has given rise to considerable concern in society.

Despite the above comments, Italian prisons, which are few in number and mainly old, are overcrowded, mostly with non-European Union nationals and drug addicts. There is a chronic lack of resources such as buildings, magistrates, police, civil servants and ancillary staff. Consequently, custodial sentences do not result in any significant degree of rehabilitation. Indeed, they often foster crime.

Recent reforms are reducing the scope of prison sentences in favour of administrative sanctions (Legislative Decree No 507 of 29 December 1999). New alternative measures are being put in place. New, more humane and flexible regulations for penitential establishments have recently been approved (Presidential Decree No 230 of 30 June 2000).

Italian law prohibits the use of the death penalty (Article 27(4) of the Constitution). The Constitutional Court does not deem life imprisonment unconstitutional, despite the apparent contradiction with the prison system's aim of rehabilitation. This is because current laws stipulate a maximum term, namely twenty-eight years in prison.

LATVIA^{*}

Conditions of Access to the Law

Article 92 of the Latvian Constitution stipulates that every person may defend his or her rights and legal interests in court.

In civil cases, each person may bring charges to protect his or her legal interests. The only precondition is that State fees must be paid before proceedings can be instigated. At the end of the proceedings, the court requires the losing party to pay all court costs.

The situation is different in the field of criminal law: criminal procedures may only be instigated by a decision of an appropriate authority based on the conditions laid down in the Latvian Code of Criminal Procedure. A victim or any other person has the right to file a report on an offence committed against them. There is no category of offences for which proceedings may be instigated following a specific request by the victim. All appeals and other legal remedies are free for the accused and for others participants in criminal proceedings.

Implementation of the Presumption of Innocence

Article 92 of the Latvian Constitution and Article 19 of the Code of Criminal Procedure establish the principle of the presumption of innocence, which means that the accused is innocent until found guilty by a binding court judgement. The prosecution carries the entire burden of proof. The accused cannot be compelled to prove his or her innocence. Any doubts must be construed in favour of the accused. The principle *in dubio pro reo* ensures that failure to provide sufficient evidence in a case will result in acquittal of the accused.

Anyone suffering damage because authorities such as a prosecutor, investigator or court acted unlawfully or without legal basis has the right to demand appropriate compensation. An Act was adopted on 28 May 1998 to ensure implementation of this principle.

The Right to Defence

Pursuant to Article 92 of the Latvian Constitution, everyone has a general right to defence, which includes the right to be informed of the details of the charge, the right to remain silent and the right to a lawyer.

In criminal proceedings, the Code of Criminal Procedure stipulates that both the suspect and the victim have the right to the services of a lawyer. Usually, they prefer to defend themselves or nominate a sworn lawyer⁷. Mandatory representation is required only in cases where the defendant is unable to conduct his or her own defence. This might be because the defendant is under the age of eighteen, because he or she does not speak the language used in the proceedings or because he or she is disabled. If anyone in the aforementioned categories of persons is unable to pay for the sworn lawyer's services, the court will appoint a lawyer and the state will pay the costs.

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⁷ Only a sworn lawyer can be an authorised representative in criminal proceedings in the Republic of Latvia. Foreign lawyers can represent a person only if this is provided for by an international agreement.

The system of public legal aid in Latvia is still not fully developed. Ordinary citizens have little awareness or knowledge of legal issues. As a result of the current economic situation, many Latvian citizens cannot afford the services of a lawyer in legal proceedings. There are a few mostly non-governmental organisations providing a limited number of consultations and representation in criminal, civil and administrative cases. The University of Latvia, for example, has recently established a legal centre where students give free legal aid to those below the poverty line in cases concerning employment and housing.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

Legal proceedings in Latvia are held in Latvian, which is the official language in the country. The court may allow proceedings to be conducted in another language, usually Russian, if all the participants agree.

Everyone is entitled to use a language he or she is familiar with in all criminal proceedings. The State must therefore provide free translation for anyone at any stage of investigation and of the trial if necessary. A similar rule applies to civil proceedings but the Civil Procedures Act requires any documentation not in Latvian to be accompanied by a certified translation.

Protection of Victims and Witnesses, in particular Protection of Privacy

The Code of Criminal Procedure lays down the basic provisions for the protection of victims and witnesses. If it is necessary to protect information about the intimate details of a victim's private life, the court may rule that proceedings be held in camera. This constitutes an exception from the general rule that all proceedings are public. This same ruling may be given in the interests of the safety of victims and witnesses and in cases concerning sexual crimes.

The special procedures for the protection for victims and witnesses dated 12 June 1997 have been incorporated into the Code of Criminal Procedure. These measures may be invoked if the health and safety of victims or their close relatives is at risk, or if the case in question concerns a serious crime. If these special procedures are invoked, information such as the personal details, identity or address of the victim or witness becomes confidential. They can give evidence without being present in a courtroom, using appropriate technical equipment, or may be excused from giving evidence altogether. They may even be granted personal physical protection. The main difficulty is that these special measures are expensive and are therefore rarely invoked.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

No group is specifically defined in the Code of Criminal Procedure. The Latvian Constitution guarantees that everyone has the right to defend his or her rights and legal interests in a fair trial. Article 91 of the Latvian Constitution provides equal protection for all:

'All human beings in Latvia are equal before the law and the courts. Human rights shall be recognised without discrimination of any kind.'

However, some positive discrimination rules do appear in the Code of Criminal Procedure. These concern children, that is, persons under eighteen years of age, be they the accused, victims of a crime or witnesses in criminal proceedings. For example, there are special conditions pertaining to possible pre-trial detention of juvenile defendants. If the accused is under sixteen years of age, he or she can only be examined in the presence of his or her parents or guardian, a teacher or a psychologist.

Implementation of Court Rulings

All court judgements in criminal cases can be appealed against at a higher court, until they become final. Once a sentence has come into force, it is implemented according to the Code on the Enforcement of Sentences.

Prison reform is currently under way in Latvia. However, lengthy pre-trial periods, excessively long prison sentences and the conditions in several prisons still represent serious problems. Furthermore, prisoners only have limited opportunities for social rehabilitation.

LITHUANIA *

Conditions of Access to the Law

Anyone who believes his or her rights or freedoms have been infringed has the right to take legal action (Article 30 of the Constitution of the Republic of Lithuania, Article 4 of the Courts Act and Article 4 of the Code of Civil Procedure).

Any person charged with an offence is entitled to a fair hearing by an independent and impartial court (Article 29 of the Constitution of the Republic of Lithuania).

No one shall be considered guilty of a crime and punished without a court judgement (Article 11, Part 2 of the Code of the Criminal Procedure).

The courts have the exclusive right to administer justice (Article 109 of the Constitution, Article 6 of the Code of Civil Procedure, Article 11 of the Code of Criminal Procedure).

Everyone is to be treated equally before the law, the courts, and other institutions of the state and by officers of the state. No one may have their rights restricted in any way, or be granted any privileges, on the basis of sex, race, nationality, language, origin or similar reasons. (Article 29 of the Constitution, Article 12 of the Code of Criminal Procedure, Article 6 of the Code of Civil Procedure).

Implementation of the Presumption of Innocence

There is no mention of presumption of innocence in the Code of Criminal Procedure. However, this principle is stated in the Constitution of the Republic of Lithuania (Article 31, Part 1), which is the supreme and directly applicable legal act in the Lithuanian legal system. Article 18 of the Code of Criminal Procedure states that the court, Public Prosecutor, investigator and investigating bodies shall take all necessary measures to ascertain the facts of a crime. These institutions have no right to delegate the burden of proof to the accused. (Article 18, Part 2).

The Right to Defence

Article 17 of the Code of Criminal Procedure states that every accused person has the right to defence. Article 54 states that only a lawyer may be a defender. The lawyer may be involved in the case from the moment the accused requests the presence of a lawyer, at the time of arrest or during the first examination (Article 53). The judge or court must provide a lawyer for persons who cannot afford one (Article 55, Part 2). Legal aid for the accused is therefore guaranteed by the state. The suspect has the right to refuse to appoint a lawyer (Article 57). However, the involvement of a lawyer is mandatory in certain cases (Article 56).

Cases are heard in the court of first instance in the presence of the defendant. The latter's presence is mandatory. No case may be taken to court in the absence of the defendant unless the defendant is not present in the territory of the Republic of Lithuania and wants to avoid appearing in court (Article 266 of the Code of Criminal Procedure). Article 266 of the Code

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of Criminal Procedure lays down special rules for people accused of having committed several crimes but who are unable to attend the court because of their physical condition. If the accused is not present in court, the hearing must be suspended or in certain cases set aside (Article 283).

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

The Code of Criminal Procedure contains a number of articles guaranteeing the right to use the mother tongue in criminal proceedings. Article 15 lays down the general rule that the right to make statements, to testify, to petition and to speak in court in one's own language is guaranteed for all participants in criminal procedures who are not familiar with the Lithuanian language. To this end, they are entitled to avail themselves of the services of a translator or interpreter free of charge. All procedural documents are translated into their native language or into any other language they are familiar with.

Protection of Victims and Witnesses, in particular Protection of Privacy

The Code of Criminal Procedure only provides one kind of protection for witnesses and victims in criminal cases. This is afforded by classifying information, which identifies the witness or the victim (Article 156(1)). To this end, special arrangements for their examination and for other enquiries are set out in Article 156(1) and in Article 317(1). Specific information concerning the content of the enquiry protocols and court proceedings is provided in Article 118 paragraph 1. There is also a Government Legislative Act on the Protection of the Witnesses and Victims from Criminal Influence. This contains detailed rules for the protection of very important witnesses only and, in some cases, also of victims.

Specific Situation for Vulnerable Social Groups (Women, Children, Migrants, Minorities, etc.)

The Lithuanian Code of Criminal Procedure contains no special rules concerning the protection of vulnerable social groups such as women, children, immigrants or minorities. The law does not make special provision for their legal protection if offences are committed against them. Reference may however be made to certain special Acts such as the Basic Protection of Children's Rights Act or the Status of Refugees within the Republic of Lithuania Act. For example, in cases of child abuse, it is possible to apply to the relevant State and municipal institutions charged with ensuring the protection of children's rights. The official responsible for monitoring children's rights must investigate the applications made by a child or by other persons or institutions working in the field of children's rights. However, there are hardly any special legal provisions on the protection of women.

Implementation of Court Rulings

Civil cases – Chapter 5 of the Code of Civil Procedure 'Enforcement Proceedings' (Articles 372–476) deals exclusively with the regulations on this matter. The main document in enforcement proceedings is a writ of execution issued by a court and stating that a judgement is enforceable. In general, enforcement proceedings begin with an injunction issued by the court bailiff and served on the debtor. In this way, the debtor is provided with the opportunity of meeting his obligations to the creditor of his or her own free will. Alongside the injunction, the court bailiff has the right to invoke special measures concerning the debtor

and his property. These might include the seizure of personal property, and the seizure of real estate (Article 390). If the debtor fails to fulfil his obligations within the prescribed period, the court bailiff resorts to the enforcement procedure (Article 391).

Criminal cases – The court of first instance which handed down the sentence forwards it to the institution charged by law with implementing it. The Code of Criminal Procedure does not stipulate how sentences should be implemented. This is regulated by the Code of Sentence Implementation under penal law. The Code of Criminal Procedure requires the court and the Prosecutor for the Republic to monitor the implementation of the sentence and its legality. In order to ensure payment of a fine or confiscation of a property, the Code of Criminal Procedure provides for temporary restrictions on ownership (Article 194(1)) or levies on the property (Article 195).

GRAND DUCHY OF LUXEMBOURG*

Conditions of Access to the Law

Fundamental rights and public freedoms are contained in Chapter II of the Constitution of Luxembourg, entitled 'The citizens of Luxembourg and their rights'. It should also be noted that most legal texts do not contain any specific reference to the citizens of Luxembourg. They therefore apply to any person who needs to protect his or her rights. Consequently, the Act of 27 July 1993 states that:

Discrimination against any individual, group of people or community on the grounds of the race, colour, descent, ethnic or national origin of all or some of the members of the group or community is prohibited.

In practice, all citizens of Luxembourg may refer to international laws before administrative and civil courts in order to ensure their rights are respected. However, certain limitations exist concerning the right of foreigners to access the law. Article 16 of the Civil Code requires the *cautio judicatum solvi*. Such bail can be requested for all matters and in every court, except for commercial courts, if the foreigner cannot prove that his ownership of real estate in the country is sufficient to cover the possible fees.

Implementation of the Presumption of Innocence

Article 6(2) of the European Convention on Human Rights (ECHR) is part of the constitutional law of Luxembourg. All laws on criminal procedure must therefore conform to it. Rules regulating provisional detention and those on presumption of innocence are fundamental. The Constitution forbids arbitrary arrest or detention without an acceptable cause. It requires proper legal guarantees to be given for every detention. Consequently, the law of Luxembourg states that in the twenty-four hours following an individual's arrest, the police must specify the charges that led to the arrest and present them to a judge. Furthermore, detainees must not be subject to any restrictions other than those necessary for their detention and in order to maintain order and security in the prison. They must be treated with respect for their honour and human dignity. According to the principle '*actori incumbit probatio*', the onus is on the Public Prosecutor bringing the charges to provide evidence of the offence and of the offender's guilt. Another principle of criminal proceedings is that doubts must be construed in favour of the accused. The person charged therefore continues to benefit from presumption of innocence and is entitled to the assistance of a lawyer. The judge in the case may request additional information concerning the arrest of the person and order his or her release or the extension of detention for reasons of security.

The Right to Defence

The Constitution of Luxembourg stipulates that the judiciary is independent of the executive and establishes a number of guarantees to ensure a fair and efficient trial. In addition to this, legal aid is free of charge for European Union citizens and foreign residents whose income is below a specified level. In addition the Grand-Ducal Regulation of 31 May 1999 determines the criteria and the procedures of criminal arbitration and the arbitrators' remuneration.

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Arbitration can provide a satisfactory solution for all parties to criminal cases. It makes it possible to avoid overburdening the courts with cases concerning petty and minor offences, and ensures rapid compensation for the victims. It is characterised by a consensual approach, and promotes solutions based on dialogue and the free involvement of the parties. Arbitrators are appointed by the State Prosecutor and are charged with negotiating a solution acceptable to both parties to the dispute.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

All suspects have the right to be informed of the enquiries ordered by a court concerning them. Furthermore, they have the right to be informed of their procedural rights. The Act of 7 November 1996, concerning the organisation of the administrative courts introduced a new procedure in administrative courts and repealed the temporary regulation upholding the Royal Grand Ducal Decree of 26 August 1866. The latter, which regulated the procedure before the Council of State, was previously still in force. Although the new procedure continues in the spirit of the 1866 procedural regulations, it introduces certain changes such as a foreclosure period to accelerate the administrative procedure, a special procedure for suspension, and an administrative appeal in case of claims concerning regulatory administrative acts. The Central Authority of Luxembourg has consulted the Hague Conference on International Access to Justice. As a result, requests for evidence as provided for in the Convention must be submitted in duplicate and translated into French and German.

Protection of Victims and Witnesses, in particular Protection of Privacy

Article 112 of the Constitution of Luxembourg states that:

'Any foreigner who finds him- or herself on the territory of Luxembourg enjoys the protection granted to persons and groups with the exceptions provided for by the law⁸.'

Furthermore, the Grand-Ducal Decree of 11 February 1999 regulates the recruitment, appointment and promotion of prison service staff⁹. Following the new Act of 27 July 1997 reorganising prison administration and the many amendments made to the general provisions regulating careers in the civil service, it was decided to draw up a new version, taking account of the various regulations concerning recruitment, appointment and promotion within the prison service.

⁸ This article is an exact copy of Art. 128 of the Belgian Constitution of 1831 and it was not the object of a Parliamentary debate in 1868 because it was so obvious. Luxemburg is a signatory of the ECHR, signed in Rome on 4 November 1950. The latter states, in Article 14, that the enjoyment of the rights and liberties recognized by the Convention must be guaranteed without any distinction based on race. Furthermore, Luxembourg has ratified the Fourth Protocol of the Convention which, in Article 4, prohibits the collective expulsion of foreigners, as well as the Seventh Protocol, which determines certain guarantees for the right to defence in the case of expulsion of foreigners who are legal residents of the country. However, the positive measures in favour of foreigners and ethnic minorities must not favour them over the citizens of the country. This is why the Council of State insisted that the support granted to foreigners must not lead to reverse discrimination.

⁹ This Grand Ducal Decree replaces the Grand Ducal Decrees of 10 September 1984 determining the conditions of admission, nomination and the career of the staff of penitentiary and correctional institutions, as well as the Decree of 3 July 1995.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

The Act of 31 May 1999 was aimed at strengthening measures against trafficking in human beings and the sexual exploitation of children. It amends the Criminal Code and the Penal Procedure Code, and focuses on enhancing the protection of minors and adapting national legislation to the provisions of the Common Action to combating trafficking in human beings and the sexual exploitation of children¹⁰. The relevant articles of the Criminal Code have been adapted and extended where required. It has been deemed necessary to criminalise the possession of pornographic material involving minors. This Act covers all sexual crimes committed abroad by citizens of Luxembourg or persons residing in the territory of the Grand Duchy. It should help to deter all forms of sexual tourism¹¹.

Implementation of Court Rulings

It has been noted that any citizen can quote international provisions before a court in Luxembourg in order to guarantee his or her rights. A recent ruling by the Council of State is in line with this position. A refugee, recognised as such under the Geneva Convention, brought a claim against a decision by the National Solidarity Fund denying him the benefit of the guaranteed minimum income because he had not met the ten-year residence condition required by law. However, the non-compliance of Luxembourg law with Article 23 of the Geneva Convention calls for equal treatment in matters of public assistance and support. Consequently, the Court of Cassation upheld the claim in its ruling of 19 April 1994. Henceforth, a refugee recognised as such under the Geneva Convention enjoys the guarantees provided under national law regardless of the length of his or her residence in the country.

¹⁰ This Common Action has been adopted by the Council of Ministers on the basis of Article K.3 of the Treaty on European Union of 24 February 1997.

¹¹ The bill modifying Chapter VIII of the Criminal Code and the Act of 26 May 1988 concerning the placing of mentally ill persons in psychiatric clinics intends to establish the concept of lack of responsibility and to abandon the expression 'there is no crime' as used until now in Article 71 of the Criminal Code. The same could also be envisaged in cases of persons suffering from a mental illness that merely alters their judgement or hinders their control of their acts without a total loss of judgement. The consequence is that from now on the Court which ruled on mental illness can order the admission of mentally ill criminals to a special hospital.

MALTA^{*}

Conditions of Access to the Law

Among other things, the legal system in Malta aims to ensure a fair hearing for all before an independent and impartial court in criminal as well as in civil actions. In this respect, the ordinary law of the land provides effective protection for individuals independently of constitutional and conventional arrangements to protect such rights.

In the criminal field, trials are conducted according to the accusatorial system before a court presided over by a magistrate for less serious offences, and before the Criminal Court presided over by a judge and jury for more serious crimes. Magistrates and judges are appointed by the President of the Republic on the advice of the Prime Minister. This guarantees their impartiality and independence. They may only be removed from office by the House of Representatives, if the latter finds them guilty of misconduct or incapable of discharging their duties by a two-thirds majority vote

In criminal cases, an appeal may be brought to the Court of Criminal Appeal. This is presided over by one judge in the case of appeals originating from magistrates' courts. It is presided over by three judges in the case of appeals originating from jury trials. The accused has a general right of appeal while the right of the prosecution is, in the main with certain specific exceptions contained in the law, limited to appeals on points of law. In civil proceedings, as distinct from criminal proceedings, rules exist to ensure that both parties receive a fair hearing before an independent and impartial court. Proceedings are mainly oral.

Implementation of the Presumption of Innocence

The conduct of both civil and criminal proceedings is laid down in the Constitution. Section 39 of the Constitution provides guarantees against proceedings which could be deemed to violate an individual's right to a fair trial. Section 39 of the Constitution of Malta contains the following provisions:

1. *'Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.'*
2. *Any court or other adjudicating authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.*
3. *Except with the agreement of all the parties thereto, all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.*

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4. *Every person who is charged with a criminal offence*
 - (a) *shall be informed in writing, in a language which he understands and in detail, of the nature of the offence charged;*
 - (b) *shall be given adequate time and facilities for the preparation of his defence.*
5. *No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.*
6. *No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence [...].’*

Right to Defence

Trial proceedings are *viva voce* and accusatorial. Witnesses must appear and be heard in court. The parties have the right to cross-examine witnesses. The accused is a competent but not compellable witness.

In jury trials, the jury is drawn from lists established up by the magistrates of persons who meet the legal requirements to serve on a jury. A guilty verdict may only be given if at least seven members of the jury of nine persons agree to it. The jury is apprised of the facts and evidence of the case and charged with delivering the verdict. The judge addresses the jury to direct it before the jury retires to deliberate on its decision. The jury deliberates in the absence of the judge.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

If a defendant does not understand the language of the trial, an interpreter is made available. If a defendant is unable to find a lawyer of his or her choice to assist in the proceedings, legal aid is provided.

Moreover, according to Section 39, paragraph 6 of the Constitution of Malta:

‘Every person who is charged with a criminal offence (a) shall be informed in writing, in a language which he understands and in detail, of the nature of the offence with which he is charged.’

Implementation of Court Rulings

It should be noted that the provisions of the European Convention of Human Rights and Fundamental Freedoms have been incorporated into Maltese Law by Act XIV of 1987. Further, in compliance with the Constitution of Malta and the Convention, Maltese courts will refer to Strasbourg case law when determining whether an individual's basic rights have been violated.

Lastly, it is important to note that Malta recognises the right of individual petition under the European Convention. An individual who does not obtain satisfaction through the Maltese Courts may take the case to Strasbourg and apply for a ruling by the European Court of Human Rights.

THE NETHERLANDS*

Conditions of Access to the Law

Access to justice is, in principle, unconditional. For private law and administrative law cases, every natural person or legal entity has the choice either to sue (private law) or to bring an action (administrative law). In criminal law, however, the right to initiate proceedings is limited to the Public Prosecutor; individuals cannot demand that another individual be prosecuted.

Implementation of the Presumption of Innocence

The implementation of the presumption of innocence is clear in criminal trials. The accused cannot be compelled to cooperate in the trial proceedings or to answer questions. Moreover, the accused may make false statements. This follows from the principle that the accused cannot be compelled to testify against him- or herself. In general, guilt must be proven starting from presumption of innocence.

The Right to Defence

Everyone has the right to defence, in all types of trial. This right is enshrined in the Constitution and the European Convention of Human Rights (ECHR). A legal aid lawyer paid by the state is appointed for those who cannot afford a lawyer. The parties do not need to be represented by a lawyer in a number of administrative cases. They may conduct their own defence instead. The presence of a lawyer is mandatory in criminal and private law cases.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

Regarding conditions of use of the mother tongue, it should be noted that Frisian is the only official minority language in the Netherlands. There is a special Frisian Language Act, allowing Frisians to deal with their municipal authorities in their mother tongue. Special legislation for criminal cases allows cases to be conducted in the Frisian language in the province of Friesland.

Another issue involving languages other than Dutch concerns immigrant minorities, such as the Turkish and Moroccan minorities. Currently, the files and official documents relating to these minority groups are not translated and are all in Dutch. Nonetheless, there are plans to introduce changes in order to comply with ECHR requirements.

In court, however, members of these groups are entitled to an interpreter paid for by the State.

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Protection of Victims and Witnesses, in particular Protection of Privacy

Special protection is afforded for the privacy of witnesses during a trial. Increasingly, courts are accepting anonymous witnesses, even as chief witnesses. This is becoming more and more controversial.

In special cases, victims may be protected by a court decision to hold the trial in camera. The accused and victims may also be protected in many different ways. For instance, their names may be withheld or photography in court banned.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

No specific provision is made for special protection for certain vulnerable groups over and above the aforementioned the general provisions. Courts are more likely to decide to proceed in camera when trying children than in other cases.

Implementation of Court Rulings

Court rulings are implemented as soon as possible, especially when a payment is concerned. Long prison sentences are implemented immediately. However, shorter prison sentences are often only implemented when space in a prison becomes available.

In cases of an appeal against a ruling, the court hearing the appeal determines whether implementation of the initial ruling should be delayed until the decision on the appeal is known or not.

Implementation is dependent on the nature of the ruling. The Public Prosecutor is jointly responsible with the police for the implementation of prison sentences. Responsibility for collection of fines rests with a bailiff (*gerechtsdeurwaarder*) or with the Central Bureau for Collection (*Centraal Incassobureau*), depending on the nature of the ruling.

POLAND*

Conditions of Access to the Law

Article 45(1) of the 1997 Constitution of the Republic of Poland, hereinafter referred to as the Constitution, provides that:

‘Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court’.

By virtue of Article 8(2) of the Constitution, this is a directly applicable rule.

Implementation of the Presumption of Innocence

Article 42(3) of the Constitution states that:

‘Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court’.

This rule is implemented in Article 5 of the Code of Criminal Procedure. The same Article establishes the rule *‘in dubio pro reo’* whereby any doubts arising during the proceedings must be construed in favour of the accused.

The Right to Defence

Pursuant to Article 42(2) of the Constitution:

‘Anyone against whom proceedings have been brought shall have the right to defence at all stages of such proceedings. In particular, he or she may choose a lawyer or, in accordance with principles specified by statute, avail him- or herself of the services of a lawyer appointed by the court’.

This rule is repeated in Article 6 of the Code of Criminal Procedure.

Article 78(1) of the Code of Criminal Procedure provides that a defendant who has not chosen a lawyer for him- or herself may, if he or she is unable pay the lawyer’s fees, request the court to appoint one. That lawyer’s fees would then be paid by the State.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

Article 8 of the Act on the Legal Arrangements for Ordinary Courts states that:

‘Anyone who does not speak Polish is entitled to use his or her mother tongue in court. He or she is also entitled to the services of an interpreter free of charge’.

This also covers translation of the minutes taken in court.

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In addition, Article 204 of the Code of Criminal Procedure states that an interpreter must be present if the person who does not speak Polish is to be examined by the police, the prosecutor or the court. The same applies when official documents have to be translated into Polish or into another language, and if evidence is to be presented to a foreign accused person.

Protection of Victims and Witnesses, in particular Protection of Privacy

In principle, everyone is entitled to legal protection of his or her private and family life, honour and good reputation and also to take decisions concerning their private life (Article 47 of the Constitution). Consequently, no one shall be compelled to disclose his or her personal details, except if required to do so by law (Article 51(1)). A number of rights have been established relating to criminal procedure. Article 183(1) of the Code of Criminal Procedure states that victims and witnesses are entitled to refuse to give evidence, if by doing so they might incriminate themselves or close relatives. The Code of Criminal Procedure provides for anonymous witnesses. The personal details of such witnesses may be withheld, if disclosing them would endanger the health, life or freedom of the witnesses or their close relatives.

Article 45 of the Constitution states that exceptions to the public nature of court proceedings may be made to protect the privacy of an individual or to protect some other important private interest. Article 183 of the Code of Criminal Procedure provides for such exceptions to be made if a public hearing would embarrass the witness or someone close to him or her.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

Article 32 of the Constitution states that:

‘All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever.’

This is a directly applicable rule.

Implementation of Court Rulings

Pursuant to paragraph 9 of the 1997 Criminal Enforcement Procedure Code (*Kodeks Karny Wykonawczy*) implementation takes place as soon as the final ruling comes into force. The following institutions are charged with implementing final rulings: the court of first instance, the penal court, the director of the penal institution and the regional administration (paragraph 2). Punishment and the penal regime shall be enforced in a humane manner. The person sentenced enjoys all constitutional rights and freedoms, unless otherwise stated in a particular statute or ruling made pursuant to it. Any judgements in criminal proceedings may be reviewed by a higher court. There is however a general rule according to which courts of appeal may not impose more severe sentences than lower courts.

PORTUGAL*

Conditions of Access to the Law

Access to the law is guaranteed under the Constitution together with the right to effective legal protection (Article 20 of the Portuguese Constitution (PC)).

Access to the law is deemed to include the right of access to the courts, the right to information and legal advice, the right to legal assistance and to be accompanied by a lawyer before any legal authority. All these are understood as essential elements of the right to legal protection. This in itself is a key feature of the concept of the rule of law. The principle that access to the law may not be withheld from those with inadequate financial resources should also be noted. This is a feature of the democratisation of the law and follows from the principle of equality in material terms. Following the fifth revision of the Constitution in 1997, it is now clear that efficient legal protection also includes obtaining a court ruling following a fair trial within a reasonable period of time. Much concern has been expressed over the length of proceedings. In 1997 the PC therefore also added a clause stating that whenever the protection of personal rights, freedoms and guarantees is at stake, legal proceedings should be swift, and appropriate priorities set to ensure effective legal protection. Proceedings should be concluded within the specified time period.

New regulations concerning legal aid were adopted recently (Act No 30-E/2000 of 20 December). They are intended to simplify its provision. In particular, they provide for tacit consent if no reply to a request for legal aid is received within 30 days (paragraph 26).

Changes have been made recently at Civil Procedure level also (Decree-Law No 183/2000 of 10 August). These changes aim to simplify and accelerate all case files. With a view to simplifying procedures and rendering them less ponderous, the Code of Criminal Procedure was also amended (Decree-Law No 320-C/2000 of December 15) in line with criminal law and Article 32(2) of the PC which states that:

'All defendants are to be tried as quickly as possible, provided basic guarantees are not threatened thereby'

Implementation of the Presumption of Innocence

In criminal proceedings, the accused is protected by the presumption of innocence, as stated in Article 32(2) of the PC:

'every defendant is presumed innocent until convicted by a criminal court in rem judicatam'

This principle is also articulated in the *in dubio pro reo* principle, which requires acquittal of the accused if the judge is not fully convinced that the facts prove guilt. For this reason the PC also lays down very strict and specific conditions which must be met before a person is deprived of their liberty, arrest *in flagrante delicto* for example. Even then, precise time limits are specified (Article 27(3)). The only exception is when a person is deprived of their liberty following a conviction.

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The Right to Defence

Pursuant to Article 32(1) of the PC, criminal procedure provides for all defence guarantees, including the right to appeal. Together with the principle of allowing all parties to be heard (paragraph 5), this is one of the key elements of the criminal procedure underpinning it throughout. In order for these guarantees to be more effective, it is also stated that the defendant has the right to choose a defence lawyer who will assist him or her throughout the various stages of the procedure. Should a defence lawyer not fulfil his or her obligations, the State will officially appoint another lawyer to replace him or her. (Article 62 of the Code of Criminal Procedure). A defendant in financial difficulties may avail him- or herself of the new simplified legal aid system.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

Oral and written legal proceedings are in the Portuguese language. However, anyone who does not have sufficient command of Portuguese and who needs to participate in the proceedings, may use a foreign language. An interpreter shall be appointed for this purpose. This service is free to any foreigner who requires it during criminal proceedings (Article 92(2) of the Code of Criminal Procedure).

Regarding documents written in a foreign language used during proceedings, the judge must rule whether the translation should be provided by the party submitting the document, whether the translation should be undertaken by a notary public, or whether it must be authenticated by a consular official of the relevant country (Article 140(2), Code of Civil Procedure). In criminal proceedings an interpreter shall be appointed if it proves necessary to translate a document written in a foreign language for which no certified translation has been attached (Article 92(3) of the Code of Criminal Procedure). Nevertheless, the Portuguese language is mandatory for all procedural actions.

Protection of Victims and Witnesses, in particular Protection of Privacy

Act No 93/99 came into force on 14 July 1999. This Act regulates the application of measures for the protection of witnesses. One of its measures relates to preserving the anonymity of witnesses through the use of teleconferencing systems with image and or voice distortion. Other security measures are also provided for and may be extended to close relatives of the witness, regardless of whether these measures are part of a special security arrangements or not.

In order to protect victims during criminal proceedings, the Code of Criminal Procedure includes a number of coercive measures. Examples of these are a ban on approaching the site of the crime, the victim's home or the homes of the victim's relatives (Article 200, paragraph 1a). Remand is another option (Article 202).

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

Act No 147/99 of 1 September 1999 authorises action aimed at promoting and protecting the rights of children and young people in dangerous situations. Dangerous situations arise when

the parents or guardian with custody of the child put the child's safety, health, development, training or education at risk. Dangerous situations may also arise as a result of an action or neglect by a third party or as a consequence of the behaviour of the child or young person going unchecked by the parents or guardian who have custody of him or her. This Act therefore provides for committees for the protection of children and young people to be set up. The committees are represented by official and non-judicial institutions and are authorised to intervene in the situations described above. The committees do more than simply take legal action. Measures aimed at caring for and protecting children and young people at risk also involve supporting the parents or other relatives, placing the child in the custody of a third person, awarding benefits to allow independence and finding foster families and care institutions.

Regarding women who are the victims of domestic violence, a network of women's refuges (Act No 107/99 of 3 August 1999 and Decree-Law No 323/2000 of 19 December 2000) has been set up to assist women who have to leave their homes for their personal safety. These women's refuges offer temporary shelter for female victims of domestic violence and their children, of any age, for a limited period of time. In addition, Act No 129/99 of 20 August 1999 provides for a system of State benefits to assist women who find themselves in financial difficulties as the result of an offence.

Implementation of Court Rulings

Portuguese implementation procedure is generally recognised as being inefficient and out of date. However, a study and a public debate on the implementation of court rulings are currently in progress, with a view to reforming implementation procedure as a whole. One of the issues under discussion is the appointment of bailiffs or other implementation officials in order to streamline the procedure and make it more efficient. Another suggestion has been to set up swift and efficient mechanisms for the seizure of accounts, and to improve coordination between civil and fiscal enforcement procedures in order to avoid duplication of execution on the same assets.

In the field of administrative law, the implementation of court rulings had already been the subject of public debate as part of the discussion concerning reform of administrative litigation. The latter is now being finalised. The major changes concern the introduction of a mechanism to replace the court by the public administration in cases when a ruling requires execution of a mandatory administrative action or payment of a specific sum. In this last case, if the public administration does not fulfil its obligation to pay the specified sum, the creditor can resort to the Higher Council of the Court of Auditors. This will override the administration at fault and authorise payment by way of execution.

ROMANIA^{*}

Conditions of Access to the Law

Article 21(1) of the Romanian Constitution guarantees free access to the law. It states that:

'Every person is entitled to bring cases before the courts for the defence of their legitimate rights, liberties and interests.'

The same Article states in paragraph 2 that:

'The exercise of this right shall not be restricted by any law.'

In Article 48, the Constitution lays down the right for persons who have suffered damages at the hands of a public authority to go to court:

'A person whose rights have been violated through an illegal administrative action by a public authority or whose claim has not been solved in legal terms is entitled to recognition of their right, the cancellation of the administrative action or compensation for the damage'.

This principle is developed in the Act on Administrative Litigation over Rulings in the Domain of Administrative Courts No 29/1990. A review of the Act is needed, however, as it has been amended many times and some of the provisions it contains have been declared unconstitutional.

Pursuant to Article 11 of the Constitution:

'The Romanian State is pledged to fulfil, in all their detail and in good faith, the obligations deriving from treaties concluded. Treaties ratified by Parliament are incorporated into national law'.

Given that Romania has ratified the European Convention of Human Rights, its provisions are now part of national law. Further, Article 6 of European Convention of Human Rights states that:

'Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'.

Implementation of the Presumption of Innocence

Article 23(8) of the Constitution states that:

'A person shall be presumed innocent until a final court ruling has been given.'

This principle is enshrined in the Code of Criminal Procedure. Article 66(1) states that:

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'A defendant is not compelled to prove his or her innocence. He or she is entitled to demonstrate that any evidence submitted is not acceptable'.

It is not clear from this wording whether the defendant bears the burden of proof or not.

With regard to presumption of innocence, the principles of the European Convention of Human Rights Article 6(2) and the principles of the Universal Declaration of Human Rights, Article 10, Article 11 and Article 14 apply.

Concerning the provisions of Article 66(1) of the Code of Criminal Procedure, presumption of innocence must be written in as one of the fundamental principles of criminal procedure. Sanctions should be introduced for failure to comply with the presumption and the notion of good reason clarified. It is also necessary to define the circumstances in which a person on remand is required to wear uniform.

The Right to Defence

Article 24 of the Constitution guarantees the right to defence and also states that:

'During the trial, the parties are entitled to the assistance of a lawyer of their choice or one appointed for them.'

The provisions of Article 123 also guarantee the right to defence:

'Judges are independent and subject only to the law'.

The right to defence is set out in Act No 32/1990. This regulates the obligations of the judicial bodies towards defendants and plaintiffs. Article 250 and Article 294 of the Code of Criminal Procedure lay down the requirements for initiating criminal proceedings. Article 362 refers to how charges may be brought.

A number of legal provisions guarantee the right to defence:

- legal assistance, regulated by Act No 51/1995, concerning a lawyer's status,
- the defendant's appearance in court (Article 150 Code of Criminal Procedure),
- setting the case aside as a sanction for failing to provide for the right to legal aid (Article 197, Code of Criminal Procedure).

The provisions of the European Convention of Human Rights and those of the International Pact on Civil and Political Rights apply.

Article 191 of the Code of Criminal Procedure states that in the case of a conviction, legal costs are to be reimbursed to the State. This contravenes the principle laid down in the European Convention of Human Rights, according to which the right to defence is free of charge.

Information and Assistance, in particular Conditions of Use of Mother Tongue and Translation of Documents

The Constitution guarantees the right to the services of an interpreter free of charge in Article 127, Chapter VI – Judicial Authority. This right should appear under Title I – General Principles.

Article 8 of the Code of Criminal Procedure states that the services of an interpreter must be provided. The principles of Article 6(3) of the European Convention on Human Rights also apply.

Protection of Victims and Witnesses, in particular Protection of Privacy

Article 22 of the Constitution guarantees the right to life, and the right to physical and moral integrity. Article 26 provides for the protection of privacy and of family and private life.

At the present time, there is no law to guarantee that witnesses are protected against violence, and specifying methods of ensuring their safety. Further, it is necessary to criminalise the interception of conversations or images, the theft of written material and the release of documents containing details on the private life of a person without his or her consent. In addition, the meaning of the terms privacy and private life requires clarification.

The European Court has recommended improvements to Romanian legislation. In particular, the revision of Article 98 of the Code of Criminal Procedure concerning seizure and monitoring of correspondence, and the regulations on the correspondence of those under arrest.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

The Constitution protects foreigners and stateless persons resident in Romanian territory (Article 18), the family (Article 44), children and young persons (Article 45), the involvement of young people in public life (Article 127) and also guarantees the right to education (Article 32). Further, disabled persons enjoy special protection.

The Constitution states that:

‘Romania is the common and indivisible country of all its citizens, regardless of their race, nationality, ethnic origin, language, religion, sex, opinion, political allegiance, means or social origin.’

The Labour Code comprises special provisions for women and young people in the workplace. They fall into two main categories:

- General provisions concerning working women. Women are guaranteed the right to hold any post appropriate to their education and skills (Article 151(1)), general provisions for young people at work (Article 161), apprenticeship contracts (Article 159), free education for young people.

Provisions concerning working mothers (Article 151(2) and Articles 152 to 158).

The legal provisions include:

- special measures to provide appropriate conditions for care and education of children,
- a ban on employing pregnant or nursing mothers in difficult or dangerous conditions,
- the entitlement of women to paid maternity leave (51 days before the birth and 2 years after), the right to be absent from the workplace or to adjust working hours to care for a sick child under three years of age. Such absences shall not be deducted from the annual statutory leave entitlement.

The Code of Criminal Procedure contains special arrangements for children (Article 480, Article 493 and Article 586). The Family Code contains provisions concerning the safety of children, the rights and obligations of parents, custody and custodial authority.

The safety of children is guaranteed by a number of regulatory instruments concerning the State allowances for children, organisation of local authorities charged with ensuring child safety, the safety of children in difficult circumstances, and the rehabilitation of street children.

Regarding immigrants, who constitute another vulnerable social group, current legislation focuses on the status of refugees and foreigners and arrangements for them. The provisions of the International Pact on Civil and Political Rights and those of the Universal Declaration of Human Rights also apply.

Additional draft legislation concerning the protection of vulnerable social groups is aimed at strengthening the Custody Authority Services and demilitarising young offenders' institutions. There are also proposals for the prevention of child and juvenile delinquency, establishing special permanent courts for children with problems, a single Act on child safety, reducing discrimination in the labour market, preventing and combating domestic violence and regulations to deal with the problem of sexual harassment.

Romania also needs to implement the provisions of international agreements it has entered into concerning the protection of religious, ethnic and sexual minorities.

Implementation of Court Rulings

Article 125 of the Constitution states that: 'Judicial powers and procedures are defined by law', and Article 130 states that: 'The Public Prosecutor represents the general interest and defends the rule of law and citizens' rights and freedoms.'

These principles are developed in Act No 92/1992 on judicial organisation and in the Code of Criminal Procedure. Articles 420 to 425 of Chapter II of the Code of Criminal Procedure, entitled Enforcement of Sentences, regulate the enforcement of the main sentences, namely a prison term or life imprisonment. This involves issuing a writ for the enforcement of the sentence, passing it on, and requesting enforcement by the police, prison governor or military prison should the prisoner be a member of the armed forces.

Articles 426 and 427 of the Code provide for the enforcement of additional punishments such as a ban on the exercise of certain rights and loss of military privileges. Articles 429 to 439 deal with the enforcement of safety measures, for example, compulsory medical treatment in the interests of the health and safety of prisoners. Article 440 contains provisions for taking over so-called criminal accounts. Article 441(1) regulates the enforcement of sanctions. Articles 442 and 443 provide for the collection of fines and legal expenses payable by the state. Articles 444 to 446 regulate the enforcement of civil provisions in a ruling, for example property restitution, false statements, civil claims and legal expenses. Articles 447 to 459 of Chapter III entitled Further Arrangements for the Enforcement of Rulings regulate lifting the suspension of a sentence, commutation of a life sentence, parole, delays in the enforcement of a sentence, appeals and changes to a sentence following changes to the law, amnesties or pardons.

According to the current Romanian legislation, court rulings are implemented by the legal body who gave the ruling at first instance, through a judge appointed by the President of the court. The judge supervises the clerks and is in turn monitored by the Public Prosecutor.

SLOVAKIA*

Conditions of Access to the Law

Pursuant to part two of Article 46 of the Slovak Constitution, anyone may exercise his or her right to access to the law in accordance with the procedures established by law and before an independent and impartial court of law or other public authority of the Slovak Republic. This principle is incorporated into the arrangements for civil procedure. In criminal matters not everyone may exercise his or her right of access to a court, because criminal procedures can only be initiated by a complaint filed with a public authority¹². Any person who claims to have been denied his or her rights through a decision made by a public authority may apply to a court of law to have the legality of the decision reviewed, unless otherwise provided for by law. The review of decisions in matters of fundamental rights and freedoms may not be excluded from the jurisdiction of courts of law¹³. The Slovak Republic has not signed or ratified the 1980 Hague Convention on International Access to Justice or the 1977 European Convention on the Transmission of Applications for Legal Aid. At present, the system for the provision of legal aid in the Slovak Republic is not in line with the system in force in the Member States of the European Union.

Implementation of the Presumption of Innocence

Pursuant to Article 50(2) of the Slovak Constitution, any person charged with an offence must be presumed innocent until proven guilty by a judgement in court. The presumption of innocence is also one of the basic principles of the regulations for criminal procedure. However, after the 1998 elections, a number of several highly politically sensitive cases were brought against individuals linked with parties in previous governing coalitions. The Slovak media often publish information on these cases and the suspects in contravention of presumption of innocence and in advance of a court decision.

The Right to Defence

Pursuant to Article 50(3) of the Slovak Constitution, any person charged with an offence is entitled to prepare his or her defence during such time as he or she may deem necessary and is entitled to defend him- or herself or to be defended by a lawyer. The conditions under which the authorities must guarantee the right to defence by providing a counsel when the presence of a lawyer is mandatory are laid down in the regulations on criminal procedure. The Ministry of Justice has also set up free legal counselling offices for the public. These offer advice on matters concerning family and civil law and aim to raise citizens' awareness and offer professional support in cases of violation of individual rights.

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¹² Article 175a, Article 180 of the Criminal Procedure Act.

¹³ In 1998 the European Court of Human Rights ruled that there had been a violation of Article 6(1) of Convention of Human Rights on two occasions. According to the Transgression Act, fines of under SKK 2000 imposed by public authorities, cannot be subject to court review. See *Kadubec vs. Slovakia* (5/1998/908/1120).

Information and Assistance, in particular Conditions of Use of Mother Tongue and Translation of Documents

Pursuant to Article 47, paragraphs 2, 3, 4 of the Slovak Constitution, everyone is entitled to the services of a lawyer from the outset of proceedings before any court of law or government or public authority, as provided by law. Under Section 2 of this Article, all parties to any proceedings must be treated equally under the law. Further, under section 2 of this Article a person who claims not to know the language used in the proceedings is entitled to an interpreter. The Slovak Constitution interprets the right to use the mother tongue in a broader sense than the Convention, because it does not restrict it only to criminal proceedings. The right to use the mother tongue is guaranteed for every person claiming not to know the language used in proceedings before any court of law, government or public authority.

Protection of Victims and Witnesses, in particular Protection of Privacy

The protection of victims and witnesses is mainly provided by non-governmental organisations. However, the Centre for Victims of Criminal Acts was established under the Ministry of the Interior in 1999. It monitors the legal position of persons affected by criminal actions. Also, the European Community resolution on the protection of witnesses in the fight against international organised crime of 23 November 1995 (OJ C 327 7.12.1995) was transposed into national law through the Witness Protection Act No. 256/1998 Coll and amendments to the Code of Criminal Procedure Nos 272/1999 Coll and 173/2000 Coll.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

Immigrants: The basic principle of the Slovak immigration policy is the duty of the State to protect fundamental human rights and freedoms. The Refugee Act No 283/1995 Coll. laid down the conditions for granting refugee status to an alien on the basis of well-founded fear of persecution on the grounds of race, nationality, religion, political affiliation or membership of a particular social group. The amendment to the Refugee Act which came into force on 1 November 2000 introduced unrestricted access for aliens to the asylum procedures by abolishing the previous twenty-four hour time limit.

Roma: According to the Slovak Helsinki Committee (SHC) report and the Global Report on the State of Slovakia 2000, the Roma population in Slovakia is the most common target of racially motivated crimes. Even though the victims believe crimes are racially motivated, the police and investigators refuse to examine the racial motivation aspect of the crime. They classify these crimes as deliberate physical attacks in the absence of evidence to prove racial motivation.

Women and children: According to the report of the SHC, the rights of women and children remain a serious problem in Slovakia despite the many relevant international obligations Slovakia has entered into. One of the most serious problems concerns the domestic violence directed at women and children. Appropriate legislation for this area¹⁴ has yet to be introduced.

¹⁴ Based on the report of Slovak Helsinki Committee: *The Developments of Human Rights in Slovakia in 1999*.

Implementation of Court Rulings

Any person entitled to do so by a valid ruling may apply to a court for enforcement according to the Civil Code or request the services of a private judicial executor according to the Code of Execution Procedure.

The law states that the following are instruments of enforcement in Slovakia: enforceable rulings by courts and other law enforcement bodies, rulings by conciliation committees, decisions at inheritance proceedings, notary records containing a legal obligation for implementation at a specific time and place, rulings by State administrative bodies and local municipalities, decisions and reports on the health insurance system and the shortcomings of the national insurance system, together with all other enforceable decisions recognised as such by the law.

The following methods of enforcement exist in Slovakia: wage deductions, distraint, auction of fixed and moveable assets by court order, eviction, seizure of assets, splitting up of co-ownership, completion of unfinished work through a contract for example.

SLOVENIA*

Conditions of Access to the Law

Article 23 of the Constitution of the Republic of Slovenia states that:

'Everyone is entitled to have all issues relating to his or her rights and obligations and any criminal charges laid against them decided without undue delay by an independent and impartial court of law.'

Implementation of the Presumption of Innocence

Presumption of innocence is one of the basic principles of Slovenian law. Paragraph 3 of the Criminal Procedure Act stipulates that anyone charged with a criminal offence is presumed to be innocent until proven otherwise.

The Right to Defence

The accused has the right to defence. Paragraph 5 of the Criminal Procedure Act states that at his or her first court appearance the accused must be informed of the charges against him or her and of the grounds on which they are based. The accused must be given the opportunity of discussing the facts and the evidence against him or her and of presenting facts and evidence in his or her favour. The accused shall not be compelled to defend him- or herself or reply to questions. If the accused decides to conduct his or her own defence, he or she is not obliged to testify against him- or herself or against close relatives or to plead guilty. Paragraph 12 states that the accused has the right either to conduct his or her own defence or to appoint a lawyer for the purpose. If the accused does not appoint his or her own lawyer, the court shall appoint a defence lawyer as stipulated in the Criminal Procedure Act.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

The parties, witnesses and other participants in the proceedings have the right to use their own language in investigations, court procedures and during the trial. Paragraph 8 of the Criminal Procedure Act guarantees interpretation for those who do not speak the language of the court. Provision must also be made for translation of all documents and written material. Everyone must be informed of their right to an interpreter, but may choose not to avail him- or herself of the service offered if they can understand the language used. This decision must be entered on the record.

Protection of Victims and Witnesses, in particular Protection of Privacy

There are no special witness protection programmes in Slovenia. Section 5 of paragraph 240 forbids the disclosure of a witness' identity if doing so would endanger the witness' life or that of his or her relatives. In these circumstances, personal details recorded before the case goes to court are extracted from the file and kept secret.

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Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

Criminal legislation is based on the principle of equality. All individuals are therefore treated equally in similar situations.

Implementation of Court Rulings

Slovene law is based on the continental legal system, and Slovene courts tend to base their rulings on statute law rather than on case law. Only the final judgements of the Constitutional Court are binding for other courts, public administration and administrative bodies.

Article 160 of the Constitution of the Republic of Slovenia states that it is for the Constitutional Court to rule on appeals concerning the violation of human rights and fundamental freedoms through specific actions. Article 1(3) of the Constitutional Court Act stipulates that Constitutional Court rulings are binding. These rulings therefore have an *erga omnes* in addition to *inter partes* effect. This principle also applies to issues concerning the violation of human rights and fundamental freedoms through specific acts. In order to prepare for membership of the European Union, Slovene public servants and judges have taken part in various training programmes organised by the courts and the Ministry of Justice. Once Slovenia becomes a full member of the European Union, Slovene courts will comply with the rulings of the European Court of Human Rights.

SPAIN*

Conditions of Access to the Law

Access to justice is a fundamental right recognised by Article 24 of the Spanish Constitution, which states that:

1. *'Everyone has the right to effective legal protection in the exercise of his rights and legitimate interests, and in no case shall anyone be deprived of the right to defence.'*
2. *'Everyone is also entitled to have a judge appointed by law, to defence through the assistance of a lawyer, to be informed of the charges brought against him or her, to a public trial without delay and, with all necessary guarantees, to the use of all relevant means to prove their innocence, to refrain from self-incrimination, to refrain from pleading guilty and to the presumption of innocence'.*

Article 24 of the Spanish Constitution therefore contains a main clause providing general safeguards, and access to the law, in addition to general conditions concerning access to the law and to a fair trial. Consequently the phrase *'everyone has the right to effective protection'* must be interpreted as meaning that everyone¹⁵ has the right to defence in a public trial if he or she is fit to be party to the proceedings and meets all the other conditions established by law¹⁶.

Moreover, Article 10(2) of the Spanish Constitution provides that every provision concerning fundamental rights recognised by the Constitution is to be interpreted in accordance with the European Convention of Human Rights (ECHR). Article 6 of the ECHR therefore has a direct impact on the system of judicial protection.

The content of Article 24 of the Spanish Constitution has been developed by Judiciary Act 6/1985 of 1 July 1985 (*Ley Orgánica del Poder Judicial*). Article 7(3) states that:

'Judges and Courts shall protect individual and collective rights and legitimate interests, and in no case may defence be withheld. Corporations, associations and groups affected or lawfully authorised shall be recognised in matters concerning the defence of collective rights and interests'.

Generally speaking, in order to have access to the law¹⁷, it is necessary to demonstrate legal standing, that is, entitlement rights, and to have a legitimate case, either a subjective right or legitimate interest, which includes collective rights. Furthermore, the assistance of a lawyer who will also represent the defendant is required, although there are certain exceptions. There are some cases in which there is no requirement to have a legitimate interest¹⁸ because access to the law is open to all, and no right or legitimate interest is required. This is known

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¹⁵ Not only natural persons, but also corporations under private law and another entities with legal personality.

¹⁶ Although a fundamental right recognised by the Constitution, the right to effective protection needs to be developed by law, and the specific conditions to exercise it laid down (Article 53 of the Spanish Constitution).

¹⁷ Act 1/2000 of 7 January on civil proceedings.

¹⁸ Article 19(1) of the Judiciary Act restricts this possibility to Spaniards.

as public action (*acción popular*). It is invoked in criminal proceedings in connection with charges of public crimes¹⁹, and sometimes in the administrative field, but only rarely.

Implementation of the Presumption of Innocence

Pursuant to Article 24 of the Spanish Constitution, presumption of innocence is guaranteed to all. This means, as is widely recognised, that no one may be considered guilty prior to a fair trial before a court of law²⁰. This principle has been interpreted in its broadest sense within the Spanish system. Any action by a public body to the detriment of the interests of an individual must be proved beyond doubt. In other words, before a party can be convicted or punished, guilt must be established beyond reasonable doubt. The burden of proof rests with the plaintiff, never with the accused. Only a judge may rule on the evidence.

The Right to Defence

General reference to the right to defence is made in Article 24 of the Constitution. This Article contains a number of provisions such as the right to a fair trial and the right to be heard. Each participant in a trial must be heard at every stage of the proceedings which could affect his or her rights or interests. There is also provision for the right to conduct one's own defence, or to be defended by a lawyer, and the right of access to court free of all charges if a party has limited financial resources. This is in accordance with Article 119 of the Spanish Constitution²¹. Lastly, there is provision for equal treatment throughout the proceedings (*igualdad de armas*) in consequence of which no means of defence giving an unfair advantage to one of the parties or detrimental to the defence shall be employed.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

In every area of the legal system, civil, criminal, labour, administrative and military, a defendant must be informed of the grounds for the charges against him or her. In particular, Article 520(2) of the Royal Decree of 14 September 1882 states that in the case of criminal proceedings an individual must be informed of their rights when they are arrested or when an order is issued. He or she must be informed of the right to remain silent and to refuse to answer questions, the right to refrain from self-incrimination, the right to choose and be assisted by a lawyer and the right to inform family members or others of his or her arrest. He or she also has the right to the services of an interpreter free of charge if necessary²², and the right to be examined by a forensic surgeon.

Protection of Victims and Witnesses, in particular Protection of Privacy

There are two specific provisions regulating the protection of witnesses and legal experts in criminal proceedings and the protection of victims of violent crimes and sexual offences²³.

¹⁹ Article 101 of the Royal Decree (*Real Decreto*) of 14 September 1882 (Criminal Proceedings Act).

²⁰ Act 5/1995 of 22 May on the Popular Jury (*Tribunal del Jurado*) allows citizens to participate in justice by being members of a jury. It applies mainly to criminal proceedings.

²¹ This article is based Act 1/1996 of 10 July on free legal assistance, to include corporations and foreigners.

²² There is no special provision about conditions of use of the mother tongue or translation of documents. The only provision concerns assistance by a translator during the trial.

²³ Act 19/1994 of 23 December (*Ley Orgánica*) on protection of witnesses and legal experts in criminal proceedings and Act 35/1995 of 11 December on help for victims of violent crimes and sexual offences.

In principle, it is for the judge to determine the need for protection and to take the measures necessary for the protection of witnesses and legal experts. The most usual measures are withholding their personal details such as their name and address, covering their faces, and police protection. In addition, Spanish law provides a special system of state aid for victims of violent crimes and sexual offences. Should the victims be deceased, aid is also provided for their relatives.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

The provisions for vulnerable groups mostly concern legal aid and free access to the law. In particular there are:

- special provisions for foreigners²⁴. In Spain there is a special Act²⁵ regulating the rights of foreigners, including the right to effective judicial protection, legal aid and the services of translators.
- special provisions for minors. Two Acts²⁶ regulate assistance for minors: one concerns criminal proceedings where the accused is a minor, and the other relates to civil proceedings and general protection of the rights of minors²⁷.

Implementation of Court Rulings

The Spanish Constitutional Court has ruled that the right to effective legal protection includes the right to have rulings enforced. Otherwise, there can be no genuine legal protection. Consequently, Articles 117 and 118 of the Spanish Constitution, and every specific Act regulating proceedings, state that judicial power consists not only in giving a ruling but also in enforcing it. Compliance with all legal decisions and cooperation with the courts in order to enforce their rulings is a constitutional duty. This is a duty not only for individuals and corporations, but also for public authorities. All rulings must be enforced according to their terms. In some cases the enforcement may be not possible. If so, the party concerned is entitled to compensation.

Should a ruling not be complied with, the court may resort to a wide range of measures in order to enforce it. For example, it is possible to order the seizure of goods, the replacement of the judge responsible, or to impose a prison sentence.

For rulings in criminal cases there is a special body, named *Juzgados de Vigilancia Penitenciaria*, which monitors the enforcement of judicial decisions in criminal procedures, especially prison sentences²⁸.

²⁴ This does not include European citizens, provided for under European Community Law.

²⁵ Act 4/2000 of 11 January (*Ley Orgánica*), amended by Act 8/2000, (*Ley Orgánica*) concerning the rights and freedoms of foreigners in Spain.

²⁶ Act 4/1992 of 5 June (*Ley Orgánica*) on proceedings and powers in youth courts, amending the Order of 11 June 1948, and Act 1/1996 of 15 January (*Ley Orgánica*) on the legal protection of minors.

²⁷ Moreover, there is one article in the Civil Code providing free justice for women in divorce or separation proceedings. This is in order to avoid the situation which often arises when husbands, who control the family's financial resources, refuse to make funds available to their wives to finance the proceedings.

²⁸ Articles 76 to 78 of Act 1/1979 of 26 September (*Ley Orgánica*).

SWEDEN*

Conditions of Access to the Law

In Sweden there are two types of courts: ordinary courts and administrative courts. As a general rule, all matters may be brought before a court, but there are of course exceptions. The influence of the European Convention of Human Rights (ECHR) has been very significant in the last ten years or so. This has been especially true in the area of administrative law, where decisions by legal authorities could previously only be appealed against before a supervisory authority or the government.

As to general rules two points can be made. First, group actions are not allowed under Swedish procedural law. In the field of administrative law, this shortcoming has been compensated for in part by a very generous policy of general regulations. Consequently the problem is felt particularly in fields such as consumer protection. Secondly, under Swedish tort law, the State cannot be sued for damages because of legislative acts or the absence of such (SkL 3:7). This reflects the general principle of the sovereignty of the state. No one can force a reluctant state to act. The influence of European Union law, and particularly the doctrine of Member State liability for violation of European Union law, has brought about a change.

Implementation of the Presumption of Innocence

In the Swedish Code of Criminal Procedure, presumption of innocence is manifested in the fact that the burden of proof rests with the Public Prosecutor and in the general principle of sentencing, namely *in dubio pro reo*. Together these make for a strong presumption of innocence.

As administrative cases can sometimes have just as serious consequences for an individual as criminal ones, and sanctions can be similar to criminal sanctions, the question arises as to whether presumption of innocence is applicable in that field also. In this connection there is some uncertainty concerning whether Article 6 of the ECHR allows administrative law sanctions of a criminal law nature without an inquiry into individual guilt. These sanctions are quite usual in fiscal law procedures. The position of Swedish law seems to be that the Conventions allows such an interpretation in the field of administrative law.

The Right to Defence

There is a general right to defence in the Swedish Code of Criminal Procedure in addition to the right to be assisted by a lawyer. The courts will provide suspects with a lawyer if one is requested. In cases concerning crimes of a more 'normal' or serious nature, a legal adviser is provided by the State. In cases of petty crimes of the sort that can result in a maximum sentence of six months' imprisonment, there is no general right to such support. In special circumstances, such as a particularly difficult investigation, for example, the court has the discretion to appoint a lawyer.

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In administrative law matters, there is a similar right to legal advice in many cases. However, this right is not general, but is explicitly provided for in each legislative action. Typically, assistance will be provided in matters concerning personal freedom or fairly important financial matters. The courts will provide individuals with such assistance if it is deemed useful.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

In Sweden, everyone is entitled to the services of an interpreter for all types of proceedings before courts of law. This right is further protected by the transposition of the ECHR into Swedish law. A less binding arrangement is in place for proceedings before official authorities, stating that the authorities should, but not must, provide interpretation if this is deemed necessary (Administrative Act, Section 8). There is no general right to translations of public documents. However, the courts may provide translations if appropriate. The Ombudsman has accepted that a legal body need not provide translations when the applicant's knowledge of Swedish can reasonably be presumed to be adequate (OJ 1999/2000, page 216).

Protection of Victims and Witnesses, in particular Protection of Privacy

No general witness protection programme exists in Sweden. A person can always change his or her name in accordance with the Names Act (1982:670) and the identity of the old name is protected under the Secrecy Act (1980:100) 7:28. In certain circumstances the identity of minors and young persons is withheld in court decisions. Postal addresses and telephone numbers may also be withheld.

Pursuant to the Restricted Movements Act (1988:688), a person may also be protected by preventing certain individuals, who pose a serious risk of violent or other criminal behaviour, from approaching the protected person's home ground. Such a restriction may also be imposed in relation to workplaces, for example. The restriction never lasts more than one year. It must then be reviewed by a prosecutor and either extended or lifted. The person on whom it is imposed may appeal to a court.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

There is special legislation on criminal proceedings against children (1964:167) with regulations on questioning and the duration of the trial, for instance. Stricter rules on privacy apply when minors are involved in cases before courts and social authorities.

Pursuant to the Care of Young Persons Special Provisions Act, which allows children to be taken from their parents in cases of grave danger for the child (1990:52), a child has a right to legal counsel from the age of fifteen. There is a right to an oral proceeding if so requested or deemed necessary.

The Foreigners' Act (1989:329) contains special rules for proceedings concerning immigration and other issues relating to foreigners. The most significant feature is that no court is involved in cases of deportation and similar cases. Generally speaking, there is an entitlement to legal aid and to interpreters for these proceedings.

There is a general right to legal assistance in certain criminal cases such as sexual crimes and other violent crimes (1988:609). This entitlement can be particularly important in cases where the victims are vulnerable during the legal process, for example women and children who have suffered sexual abuse.

Audio-visual equipment may be used to present evidence in court (1999:613). In this way victims of crimes or witnesses do not have to attend court in person.

Implementation of Court Rulings

In civil matters, a court ruling can be used as grounds for enforcement in an application to a special public authority (*Kronofogdemyndigheten*). This authority acts according to the law on enforcement (*Utsökningsbalken*), which gives it certain powers. A court ruling to pay may, for example, be enforced by ordering the employer of the person in question to withhold a certain proportion of his or her salary. Alternatively, property may be seized from the person's home and sold on behalf of the person to whom the payment is due. The police can assist in such actions, if necessary. The first method is the most efficient in most cases and is therefore preferred. In criminal cases, enforcement is entrusted to the police and to an authority responsible for criminal cases (*Kriminalvårdsverket*). In administrative matters, enforcement may be handled by many kinds of public authorities, local municipalities or health care institutions for example. Some difficulties have been experienced in Sweden concerning the enforcement of court rulings against local municipalities. Problems have arisen because the municipalities enjoy a certain degree of independence under the Constitution and sometimes regard court rulings as a violation of that autonomy. The police may be called in to assist with enforcement in all other areas. However, this is not an option in the case of municipalities refusing to recognise the law.

TURKEY*

Conditions of Access to the Law

As a general rule, a prosecutor launches an investigation as soon as he or she is informed that a crime has been committed. If the prosecutor is reasonably satisfied, he or she must initiate proceedings without further consideration. However, a prosecutor may not take action on certain crimes until specific conditions have been met. These might for example involve a decision by a public authority, concerning the trial of a civil servant, authorisation from the Department of Justice for the trial of lawyers or a complaint by the victim of the crime. In all types of cases, the victim or victims of the crime may appeal against the prosecutor's decision not to launch an investigation. In the case of some petty crimes, if a prosecutor considers that the case would not be in the public interest, the prosecutor may withdraw from the investigation, leaving the victim to lead the case. These cases are known as personal cases. The victim must then decide whether to pursue the case or not.

Implementation of the Presumption of Innocence

Presumption of innocence is regulated under Article 38(4) of the Turkish Constitution. This states that no one may be considered guilty until his or her crime has been finally proven. As a direct result of this rule, a defendant may not be punished until convicted by a court. This does not include security measures taken during criminal proceedings in order to ascertain the truth. However, these measures may not exceed the limits set and must be proportional to their goals. Another consequence of this principle is that the Public Prosecutor must comply with officially permitted methods of questioning (Article 135a of the Criminal Procedure Act, CPA). If he or she fails to do so, his or her actions will be punishable according to the Criminal Code. In addition, the evidence obtained during questioning will not be admitted by the court (Article 254(2) of the CPA).

In order to protect the accused from the community, conditions are also imposed on the press. Pursuant to Article 30 of the Press Act, no document concerning criminal proceedings may be published until it has been submitted to a public hearing. Further, no opinions may be given about a trial in progress until the final ruling has been given. In addition, the Radio and Television Broadcasting Act states that programmes broadcast must respect the principle of the presumption of innocence (Article 4/n).

The Right to Defence

Every person has the right to defend him- or herself or to be defended by a lawyer. With the exception of protected groups, the presence of a professional lawyer is not mandatory in the Turkish system. However, the Bar Association must appoint a lawyer for the defendant if one is requested (Article 138 of the CPA). The right to a lawyer may be exercised from the beginning of the investigation (Article 136 of the CPA) and lasts throughout the trial. This right includes the right to assistance by a lawyer during questioning by a prosecutor as well as the right for the lawyer to have access to a person under arrest at any time. This right may not be denied or restricted (Article 136 of the CPA). However, this rule does not apply in full for crimes tried before national security courts. A suspect must be informed of the charges against him or her, and must be given enough time to prepare a defence. Pursuant to Article

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210 of the CPA, there must be a gap of at least a week between the summons to court and the date of the trial. The right to defence also includes the right of the accused to be present at the trial, the right to produce evidence, call witnesses and give opinions, the right to remain silent and the right to take legal action. The accused may not be treated as a witness. Indeed, the accused shall not be compelled to give a statement under oath if he or she has chosen not to exercise the right to remain silent.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

The accused shall be informed of the charges and of his or her rights at the beginning of questioning by the police or the prosecutor. From then on, the accused has the right to be assisted by a lawyer of his or her choice. Alternatively, the accused may request the Bar to appoint a lawyer for him or her. No regulations are currently in force concerning the use of the mother tongue and the translation of documents. However, this right has been recognised in Article 6(3)(c) of the European Convention of Human Rights. It is therefore being implemented in the courts following a ruling by the Supreme Court. Anyone who does not speak Turkish is entitled to have the procedures and documents translated into a language he or she understands, and the right to have his or her statements translated into Turkish.

Protection of Victims and Witnesses, in particular Protection of Privacy

The Turkish system contains a number of regulations aimed at the protection of victims. Some examples are given below:

The Turkish Press Code (Article 33) prohibits the publication of:

- news or articles about sexual intercourse between persons whose marriage is prohibited by law,
- information or photographs identifying victims of crimes against public morality and family life,
- information or photographs of offenders or victims under the age of eighteen.

In addition, Article 32 of the Code contains provisions restricting the publication of news items on suicide.

Further, the Turkish criminal procedure provides for the protection of witnesses. For example, under the Turkish system for criminal proceedings, anyone may be called as a witness except in the circumstances referred to in Article 47(1) of the Code. This Article entitles close relatives and friends of the defendant to refuse to testify.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

There is specific provision for vulnerable social groups in the Turkish legal system. Firstly, there are regulations concerning children, notably in criminal proceedings. The basic regulations for the trial of minors are contained in the Act of Establishment, Duties and Trial Process of Children's Courts. This lays down the legal provision for children with regard to criminal law and criminal procedure.

Children under the age of fifteen are tried before special courts by specially trained judges. The trial is closed to the public and no information on the proceedings may be released. Special sentences are applied to children and no punishment may be imposed on children under the age of eleven.

Immigrants constitute another vulnerable social group. There are no specific regulations for immigrants in the Turkish criminal procedure system. However, pursuant to Article 252 of CPA, in common with all other foreigners who cannot speak Turkish, immigrants are entitled to the services of a translator in criminal proceedings

Implementation of Court Rulings

In the Turkish criminal procedure system, the Public Prosecutor is responsible for the procedure between the final ruling by the court and the beginning of the implementation. The court forwards the final verdict to the prosecutor so that he or she can initiate the procedure. Obviously, implementation is not possible until the final verdict has been given.

UNITED KINGDOM*

Conditions of Access to the Law

In England the issue of access to justice is concerned with the ability of a suspect to receive legal advice when arrested and during any subsequent criminal proceedings. Provision of such advice is governed by the Legal Aid Act 1988 (ss. 21–22). Criminal legal aid is mandatory in limited circumstances and predominantly any award is discretionary. The clerk to the justices in the Magistrate's Court applies a financial means test and a merits test, which is based on the interests of justice in deciding whether to award legal aid. There are also the so-called 'Widgery criteria' now contained in s. 22 of the Legal Aid Act 1988 which provide guidance to magistrates in deciding whether an award is in the interests of justice. These include, *inter alia*, that the offence is such that the defendant may lose his liberty or suffer loss to his reputation; the case involves substantial questions of law; and, the accused may not understand the proceedings because of inadequate knowledge of English or mental or physical disability. If a defendant is refused criminal legal aid by magistrates then he may apply to the local Legal Aid Board for a review of the decision. This is only possible if the offence is triable by indictment (i.e. triable in the Magistrate's or the Crown Court).

A suspect at a police station is also entitled to limited assistance under the Green Form Scheme (so called because of the form's colour). This enables a solicitor to provide a suspect, with initial information of his rights and some pre-trial assistance. This does not, however, cover representation in court. Such assistance is means-tested but not merits-tested, and initially is only for a maximum of two hours. The solicitor present will carry out the means test. A Duty Solicitor scheme operates in England and Wales (governed by The Legal Services Duty Solicitors Arrangements 2000) whereby a suspect at a police station will ask the 'on-call' solicitor to come to the police station and provide the initial Green Form advice. The arrangements outlined above do no more than provide the bare minimum. Legal aid is continually under pressure from the Lord Chancellor's Department with a move towards franchising of legal aid (introducing license requirements to the legal aid provided) in April 2001, which could mean the number of solicitors carrying out legal aid work being restricted to save costs.

Implementation of the Presumption of Innocence

The fundamental principle of English criminal law is that a person should be presumed innocent unless and until proved guilty. This is often referred to as the *Woollington* principle, following the declaration by Lord Sankey in *Woollington vs. DPP* (1935) that the presumption of innocence is 'the golden thread throughout the web of English criminal law'. This principle is also enshrined in Article 6(2) of the European Convention of Human Rights (ECHR) and so now receives statutory protection in the UK through the Human Rights Act 1998. Furthermore, under s.1 Criminal Justice Act 1998, an accused person cannot be compelled to give evidence at his trial. The presumption of innocence is based upon the principle of 'he who asserts must prove'. It is up to the prosecution to prove the case against the defendant beyond reasonable doubt. However, in recent years statutory provisions, for example, s. 28 (3) Misuse of Drugs Act 1971 or s. 21 Food Safety Act 1990, operate to shift the burden on to the defendant to prove his innocence. These statutory provisions which shift

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the burden to the defendant represent a change in policy and practice within English criminal law. They mark a move away from strict liability offences (where guilt is established without the need to prove intent) to statutory exceptions based upon the defence of due diligence (i.e. appropriate carefulness). In these circumstances, a defendant must demonstrate that he in fact did not believe he was committing a crime by carrying out the act, once the prosecution have factually established that the act took place.

The Right to Defence

The ability of suspects to be adequately defended is dependent primarily on their being able to receive effective legal advice. The provisions relating to legal aid outlined above are relevant, as financial considerations are central to whether a suspect receives legal advice. The right to a defence is, in part at least, dependent upon the ability to be able to pay for the necessary assistance. The right to a defence also requires that a suspect have a right of access to legal assistance and the necessary information that is relevant to allow him to prepare his defence. Section 58, paragraph 1, Police and Criminal Evidence Act 1984 (PACE) provides a statutory right that anyone arrested can consult privately with a solicitor at any time, and as soon as it is practicable. The related Code of Practice Covering Detention, Treatment and Questioning of Persons by Police Officers, supplements the general statutory provisions with detailed procedural requirements. Under s. 58, paragraph 8, this right may be delayed by the police if they have:

‘Reasonable grounds that the exercise of the right will interfere with evidence or lead to serious injury to other persons, or it will alert other persons suspected of having committed the same offence but not yet arrested for it, or it will hinder the recovery of property’.

This delay is not absolute and must be ended once the reason for the delay no longer applies. However, the right does give a measure of discretion to the police and has on occasion been abused. Reasons for the delay must be noted on the custody records of the suspect. To prepare a defence an accused is allowed access to information of the prosecution’s case through the rules on Advanced Disclosure. If an offence is triable by summary proceedings or an either way offence (magistrates’ court or indictment) the Magistrates’ Courts (Advance Information) Rules 1985 permit certain information being given to the suspect to prepare his defence. The 1985 Rules are reinforced by Part I of the Criminal Procedure and Investigations Act 1996 which governs disclosure by both the defence and prosecution in preparation for Crown Court trials.

Information and Assistance, in particular Conditions of Use of the Mother Tongue and Translation of Documents

PACE Code of Practice C, paragraph 13, covers the provision of suitably qualified interpreters or translators being available for persons held in custody who do not understand English. Failure to provide an interpreter or translator in circumstances where a suspect does not speak English could lead to any confession resulting from the interview being ruled inadmissible by the court under s. 78 PACE 1984 as it may have an adverse effect on the fairness of the proceedings.

Protection of Victims and Witnesses, in particular Protection of Privacy

Provisions relating to the protection of witnesses are covered by the Youth Justice and Criminal Evidence Act (YJCE) 1999. The Act provides specific protection for children and complainants in sexual offences (see below). Under s. 17, protection and assistance may be given to witnesses who have a fear or are distressed about testifying. The court will allow the anonymity of a witness to be maintained if it is believed that family or associates of the accused may intimidate the witness. Section 46, YJCE Act 1999 is a general provision that will restrict the reporting of details of an adult witness depending upon the nature of the offence. Section 46 contains factors for the Court to consider when deciding whether to impose reporting restrictions. Under s. 17(4), complainants in sexual offences matters will automatically be given assistance and have their anonymity protected unless they themselves choose not to.

Specific Provisions for Vulnerable Social Groups (Women, Children, Immigrants, Minorities, etc.)

The anonymity of minors (whether victims or the accused) is always protected by s. 45, YJCE 1999. This Act also provides for alternative means of a child's evidence being given in court, for example through the witness being shielded behind a screen (s. 23); via a television video link (s. 24) or the witness may give evidence in private (s. 25). It is also possible that evidence in chief by a child may be pre-recorded and played back to the court (s. 27) and cross-examination evidence may be pre-recorded also (s. 28).

An interesting development in the YJCE 1999 related to the new provision of ss. 41–42 which has replaced s. 2 Sexual Offences (Amendment) Act 1976. These provisions restrict questioning by an accused of a complainant in a sexual offences case. Specifically they were introduced to protect women who allege they have been raped from being questioned in court about their sexual history.

However, in the case of *R v Y* (2000), the provisions of ss. 41–42 were challenged on the basis that they are incompatible with Article 6 of the ECHR. At the trial in December 2000 the judge stayed the proceedings and fast tracked the question to the Court of Appeal of whether ss. 41–42 are compatible with Article 6 ECHR. In its judgement of 15 January 2001 the Court of Appeal held that in a case such as the present one, where the woman alleging rape had already had intercourse with the defendant shortly before the alleged rape, he could be permitted to ask questions of past sexual history, as this was relevant to his defence. In this case the defence put forward by the accused was that he honestly believed that the woman had given her consent. Failure to permit such questioning would, in the view of the Court of Appeal, amount to a breach of Article 6 of the ECHR as the defendant would otherwise not be able to establish what is a legitimate defence. However, the Court of Appeal stated that the evidence was only admissible in relation to the defendant's belief and not in relation to whether the complainant consented. The Home Secretary has now appealed against this decision to the House of Lords whose judgement is expected in April 2001 (not yet available).

Implementation of Court Rulings

The implementation of a court's ruling will be dependent upon what sanction has been decided by the court. There are several options available ranging from fines, probation and suspended sentences to the imposition of a custodial sentence. Sentencing is covered by statute, for example the Criminal Justice Act 1991 and the Crime Sentences Act 1997, which will lay down minimum sentencing requirements depending upon the offence. In some cases, for example murder, the judiciary have no discretion and life imprisonment is the mandatory sentence. An agency, such as the Prisons Service or Probation Service, will be charged with implementing the court's ruling.

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