

Institution: University of the West of England, Bristol
Unit of Assessment: 20 - Law
Title of case study: Suspects and Defendants: assessing rights in practice and influencing policy
<p>1. Summary of the impact</p> <p>The research:</p> <ul style="list-style-type: none"> 1.1 was used in EU negotiations on EU Directives on procedural rights for suspects and defendants as the 'leading study in the field' to address deficiencies in existing mechanisms; 1.2 informed the training of more than 250 judges, prosecutors and lawyers from at least 23 EU member states regarding respect for and implementation of procedural rights; 1.3 provided a template used by NGOs in other regions in their investigations of procedural rights in practice; these include a consortium of NGOs in six Latin America countries who are using it in order to produce positive changes in regulation and practice.
<p>2. Underpinning research</p> <p>Following a failed attempt by the European Union (EU) to achieve consensus on legislation to improve procedural rights for suspects and defendants in criminal proceedings in the early part of the 21st century the EU, under the Swedish presidency, adopted a 'roadmap of procedural rights' in 2009, which entailed a phased approach to introducing legislation.</p> <p>In preparation for the renewed attempt to introduce legislation, Ed Cape (Professor of Criminal Law and Practice at UWE), together with colleagues from the UK, Germany and the Netherlands, was commissioned by the European Commission (EC) to examine the legal protection of suspects in seven EU states (2005-2006) (see 3.1). This built on extensive prior research by Cape, including on criminal legal aid contracting and an evaluation of the pilot Public Defender Service in England and Wales (see 3.2 and 3.3). Conscious of the lack of empirical research on procedural rights across EU jurisdictions, and recognising the value of the first study, the EC commissioned a second piece of research which was designed to provide evidence of: (a) the level of formal compliance by Member States with ECHR standards and those to be considered for adoption by the EU; (b) the level of compliance in practice; (c) the legal, institutional and cultural factors critical in achieving compliance; and (d) the interrelationship between ECHR and EU standards. This research project (2007-2010) (see 3.4) broke new ground in conducting comparative research on access to effective criminal defence in nine European jurisdictions.</p> <p>The research established:</p> <ul style="list-style-type: none"> 2.1 that whilst the law of most (although not all) countries complied with ECHR standards regarding procedural rights, there was significant lack of compliance in practice, particularly at the investigative stage; 2.2 that the police in most countries adopt a range of rights-avoidance mechanisms, in respect of which enforcement mechanisms were inadequate; 2.3 the importance of detailed regulations and procedures, and effective enforcement mechanisms, in ensuring that procedural rights are complied with; 2.4 the significance of the cultural practices and attitudes of criminal justice professionals in ensuring that procedural rights are respected; 2.5 that EU legislation, enforced by the European Court of Justice, was likely to be more effective in establishing clear and appropriate standards, and in ensuring compliance, than the ECHR. <p>The findings were crucial in helping the EU to determine what approach should be adopted in the EU programme of reform, what reforms in Member States would be necessary in order to comply with the EU Directives resulting from the Roadmap, and what mechanisms would be necessary to ensure compliance with that legislation.</p>

Impact case study (REF3b)

In a further study, 'Effective defence rights in LARN member countries' (2010-2012), Cape was commissioned by the Open Society Justice Initiative (OSJI, an international NGO) to develop the research methodology used in the second study in order to examine access to effective criminal defence in five eastern European jurisdictions (**see 3.5**).

Cape played a central role in the research design, implementation and analysis in all of the studies, as well as in writing up the research.

3. References to the research

- 3.1 E Cape, J Hodgson, T Prakken and T Spronken *Suspects in Europe: Procedural Rights at the Investigative Stage of the Criminal Process in the European Union* (Intersentia, Antwerp 2007). ISBN 978-90-5095-627-
[http://www.intersentia.com/searchDetail.aspx?back=reeks&reeksCode=Procedural Rights at the Investigative Stage of the Criminal Process in the European Union&bookid=100178&author=Ed Cape \(ed.\), Jacqueline Hodgson \(ed.\), Ties Prakken \(ed.\), Taru Spronken \(e](http://www.intersentia.com/searchDetail.aspx?back=reeks&reeksCode=Procedural Rights at the Investigative Stage of the Criminal Process in the European Union&bookid=100178&author=Ed Cape (ed.), Jacqueline Hodgson (ed.), Ties Prakken (ed.), Taru Spronken (e)

Grant awarded to: Maastricht University (Professor Taru Spronken), with UWE (Professor Ed Cape) and Warwick University (Professor Jackie Hodgson) as project partners.

Grant title: Legal protection of persons suspected of crime at the investigative stage in the EU.

Funder: European Commission under its AGIS 2005 programme.

Period of grant: 2005 – 2007. Value of grant: 80,304 Euros

- 3.2 L Bridges, E Cape, A Abubaker and C Bennett, *Quality in Criminal Defence Services: A Report on the Evaluation of the Legal Service Commission's Pilot Project on Contracting Criminal Legal Advice and Assistance* (Legal Service Commission, London 2000). (Copy available from UWE)

Grant awarded to: Warwick University (Professor Lee Bridges), with UWE (Professor Ed Cape) as project partner.

Grant title: 'Criminal Legal Advice and Assistance Contracting'

Funder: Legal Services Commission.

Period of grant: 1997 – 2000. Value of grant: £400,000

- 3.3 L Bridges, E Cape, P Fenn, A Mitchell, R Moorhead and A Sherr, *Evaluation of the Public Defender Service in England and Wales* (The Stationery Office, London 2007). ISBN-10: 0117037311 and ISBN-13: 978-0117037311
http://www.legalservices.gov.uk/docs/pds/Public_Defenders_Report_PDFVersion6.pdf

Grant awarded to: Warwick University (Professor Lee Bridges) and IALS (Professor Avrom Sherr), with UWE (Professor Ed Cape) as project partner.

Grant title: The Salaried Defence Service.

Funder: Legal Services Commission.

Period of grant: 2000 – 2005. Value of grant: £836,450

- 3.4 E Cape, Z Namoradze, R Smith and T Spronken *Effective Criminal Defence in Europe* (Intersentia, Antwerp 2010). Also published in Chinese in 2013. ISBN 978-94-000-0093-3
<http://www.intersentia.com/SearchDetail.aspx?bookid=101633>

Grant awarded to: Maastricht University (Professor Taru Spronken), with UWE (Professor Ed Cape), JUSTICE (Roger Smith) and OSJI (Zaza Namoradze) as project partners.

Grant title: Effective defence rights in the EU and access to justice: investigating and promoting best practice.

Funder: European Commission (Justice, Freedom and Security Directorate action

grant), and OSJI.

Period of grant: 2007 – 2010. Value of grant: 500,000 Euros

- 3.5** E Cape and Z Namoradze *Effective Criminal Defence in Eastern Europe* (Soros Foundation – Moldova, 2012). Also published in Ukrainian, Georgian and Romanian (Moldova) in 2013

Grant awarded to: UWE (Professor Ed Cape).

Grant title: Effective defence rights in LARN member countries: Bulgaria, Georgia, Lithuania, Moldova and Ukraine.

Funder: Soros Foundation – Moldova and national Soros foundations.

Period of grant: 2010 – 2012. Value of grant: £16,625

4. Details of the impact

4. 1. *Shaping and influencing EU policy and legislation*

In developing the roadmap on procedural rights the EC accepted the findings in **3.1** that existing European Convention on Human Rights (ECHR) standards were not met in practice. The interim results of **3.4** were presented at an EU Experts Meeting in March 2009, attended by delegates from most EU Member States as well as senior EU civil servants, and were critical at this stage in promoting the need for the Roadmap. Following adoption of the roadmap, an Impact Assessment was commissioned in preparation for issuing each proposed Directive under the Roadmap, and the research in **3.1** and/or **3.4** was cited as a major source of information in each of the three impact assessments published to date (**5.2**, **5.3**, and **5.4**). Further, as a result of the research, Ed Cape was retained as an expert for the impact assessment of the proposed Directive on Safeguards for Children and other Vulnerable Persons in Criminal Proceedings. The lead EU civil servant responsible for major aspects of the legislative programme, and who represented the Commission in the negotiations, said that she 'routinely used both *Suspects in Europe* and *Effective Criminal Defence in Europe*'. She said of the latter that it was the "bible" for the negotiations, and certainly when it was cited, that tended to be the end of the argument as it was recognised as being the leading study in the field, and wholly reliable' (**5.1**). The influence of the research studies is also evidenced by the fact that the EU commissioned further research from Cape and others, 'Procedural Rights for Suspects in Police Detention in the EU: Empirical investigation and promoting best practice' (2011 – 2013, 332,934 Euros), to develop knowledge and understanding of how the procedural rights governed by the Directives work in practice

4. 2. *Improving policy-makers' understanding of deficiencies in national laws, policies and practices*

Professor Cape, and other members of the research teams, has been invited to present the findings of the research at a large number of conferences and similar events organised by the EU and government ministries, promoting debate and influencing the implementation of European standards concerning procedural rights amongst politicians, policy-makers and civil servants. These include conferences organised by the German Ministry of Justice (Berlin, 6 September 2010), the Helsinki Foundation for Human Rights in Poland (Warsaw, 4 April 2011), the Polish Presidency of the EU (Warsaw, 5-6 December 2011), and the Ministry of Justice of Ukraine/US Department of Justice (Kiev, 13 December 2012)

The Carloway Review, established by the Scottish Executive to examine the implications of the Supreme Court decision in *Cadder v HMA* for Scots law and procedure, made explicit reference to the findings of the research (**3.4**) in informing its understanding of defence rights in EU Member States (**5.5**)

4. 3. *Informing the training of judges, prosecutors and lawyers regarding respect for and implementation of procedural rights*

The body of research has been used to inform the training of judges, prosecutors and lawyers across the European Union. Events at which Professor Cape has been invited to present papers based on the research include the Academy of European Law (ERA) conference *Guaranteeing Procedural Safeguards in the EU – A First Step Taken* (Trier,

Germany, November 2010); the *Academy for Young Judges and Prosecutors: European Criminal Justice* (ERA, Trier, Germany, January and February 2011); and the *Summer Course on European Criminal Justice* (ERA, Trier, Germany, June/July 2011, July 2012 and June 2013 (attended by a total of 272 judges, prosecutors, civil servants and lawyers from at least 23 European jurisdictions). The Chinese translation of 3.4 has been distributed to rural legal aid lawyers in China to provide an information resource on best practice

4.4. *Influencing the work and policy of NGOs in Europe and other regions*

The research findings have also been used by the Justicia consortium of international NGOs in seeking to influence EU discussion on the proposed EU Directive on the Right of Access to a Lawyer and to Communicate Upon Arrest (5.6), and by the European Criminal Bar Association to influence EU discussion on the proposed EU Directive on the right to legal aid (5.7 and 5.8). The research methodology developed in the *Effective Criminal Defence in Europe* study (3.4), which was designed to be used where academic and financial resources are limited, was employed for the further study in five eastern European countries. This was commissioned by an NGO (Soros Foundation – Moldova) and largely implemented by NGO employees (3.5), and used by those NGOs in their strategic approaches to improving procedural rights. The research has inspired, and the methodology adapted for, research by NGOs on the procedural rights of suspects and accused persons in six Latin American countries – Brazil, Argentina, Peru, Columbia, Guatemala and Mexico – during 2012 to 2013. Dejusticia, the Colombian NGO that is managing the project, has said of the two European studies (3.4 and 3.5) that ‘without those publications, this regional project would not have ensued’ (5.9)

5. Sources to corroborate the impact

- 5.1 **A testimonial** from a former legislative officer, European Commission, Brussels, dated 10 October 2012 (refers to 4.1)
- 5.2 *Proposal for a Framework Decision on the right to interpretation and to translation in criminal proceedings*, Brussels 8.7.2009, SEC (2009) 0915, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:0915:FIN:EN:PDF>, at paragraph 23(5) (refers to 4.1)
- 5.3 *Impact Assessment accompanying the Proposal for a Directive on the right to information in criminal proceedings*, Brussels 20.7.2010, SEC (2010) 907, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:0907:FIN:EN:PDF>, at paragraph 2.2.2 (refers to 4.1)
- 5.4 *Impact Assessment accompanying the Proposal for a Directive on the rights of access to a lawyer and of notification of custody to a third person in criminal proceedings*, Brussels 8.6.2011, SEC (2011) 686, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:0686:FIN:EN:PDF>, at para 2.2.2 (refers to 4.1)
- 5.5 *The Carloway Review: Report and Recommendations* (Carloway Review, 2011), available at <http://www.scotland.gov.uk/Resource/Doc/925/0122808.pdf>, at page 145 (refers to 4.2)
- 5.6 Joint Statement on the Directive on the Right of Access to a Lawyer and to Communicate Upon Arrest, 15 November 2012, footnotes 4 and 20, available at http://www.ejusticia.net/proceduralrights/swedish_roadmap#access-to-a-lawyer-measure-c1 (refers to 4.4)
- 5.7 **5.7 ECBA Touchstones - Minimum Standards for the right to Legal Aid (Measure C part 2)**, available at http://www.ecba.org/extdocserv/projects/legalaid/20130625_ECBA TouchstonesLegalAid.pdf, at paragraphs 1.3, 2.2 and 3 (refers to 4.4)
- 5.8 **A testimonial** from European Criminal Bar Association (refers to 4.4)
- 5.9 **A testimonial** from Dejusticia, Columbia (refers to 4.4)