



Co-funded by the
European Union



Maastricht University *Leading in Learning!*



REPORT ON THE SUPRALAT PROJECT

SUPRALAT (“Strengthening the procedural rights of suspect in pre-trial proceedings through practice-oriented training for lawyers”) was a two-year project implemented by Maastricht University together with the University of Antwerp, Dublin City University, Hungarian Helsinki Committee and PLOT from 1 October 2015 to 30 September 2017, in which the European Criminal Bar Association was an associate partner.

The SUPRALAT project developed and successfully implemented what was described by Professor Ed Cape, a world-renown expert in this area, as “the best existing training program” for lawyers on effectuating suspects’ rights at the police detention stage” the program. The training program was adopted by three national lawyer training organisations (Irish Law Society, Flemish Bar Association, Dutch Association of Criminal Defense Counsel), and it will be further replicated (subject to funding) in six other EU jurisdictions, as well as in Scotland.

The overall project's goal was to contribute to the effective implementation of the Directives 2010/64/EU on the right to interpretation and translation, 2012/13/EU on the right to information, 2013/48/EU on the right of access to a lawyer through the development of a training program for lawyers on the day-to-day facilitation of suspects' procedural rights. The program consisted of practitioner training modules and a "train the trainer" (TTT) guide.

The project contributed to the development of a common EU legal culture of protection of suspects' procedural rights and of “active defence” at the pre-trial stages of the criminal proceedings. On the level of **training** and **lawyers’ professional cultures**, the project has developed a highly innovative and practical/skills-oriented training program for criminal defence lawyers supported by high-quality interdisciplinary content, and trained about 50 lawyer-trainers to deliver the training program. The pilot SUPRALAT trainings, and results of evaluation have

shown that lawyer-trainers trained in train-the-trainer sessions were sufficiently prepared to deliver SUPRALAT-type training on a broader scale. All trained lawyers were enthusiastic and ready to deliver SUPRALAT training in the future, and some have already incorporated its elements in their own courses. Three national training organisations have pledged to continue providing SUPRALAT training. It became clear from the project's dissemination events/demonstration trainings delivered EU-wide that the training program is highly relevant and appreciated by lawyers in other European countries due to its thematic orientation, its highly practical content and innovative training methods. As a testimony of this interest, lawyers from 6 European countries joined efforts to plan replication of SUPRALAT (with additional training modules) in their own jurisdictions. Additionally, the Scottish organisations responsible for training lawyers (Law Society and Public Defender Solicitors' Office) decided to model their own training on safeguarding suspects' rights in pre-trial proceedings directly on the SUPRALAT training.

Secondly, the project has had an impact (somewhat less predictably) on the **level of policy on effectuating suspects' procedural rights**. In Ireland, the project was seen, and often referred to, as a "locomotive" of promoting the need for legislative and policy reforms to ensure better protection of suspects' right of access to a lawyer at the investigative stage, and other related right (such as the right to information). In Ireland the project led to a high-level conference (which was NOT one of the project's activities) bringing together key figures and policy-makers from the Irish Bar, Department of Justice, Attorney General's Office, Policing Authority, etc., which has resulted in important legislative and policy recommendations (as well as a statement addressed to the Department of Justice), and enjoyed extensive coverage in national media (which has brought public attention to the existing problems around ensuring right of access to a lawyer in police interviews). SUPRALAT project was extensively mentioned and highly praised at the conference. Likewise, in the Netherlands and Belgium, the project advocated for broader interpretation of EU procedural rights, and particularly, the right of access to a lawyer at the pre-trial stages and during suspect interview, than what is provided in the current legislation. Like in Ireland, many of the lawyers trained by, or otherwise involved in SUPRALAT are very active in lawyers' professional organisations and on the policy level. The need for "active defence" at the investigative stage – which would include a broader role of a lawyer than what is currently provided by national regulations – was repeatedly highlighted in SUPRALAT trainings and at project meetings. In both the Netherlands and Belgium (just like in Ireland) SUPRALAT training coincided with the ongoing debates and legislative developments around the lawyer's role at the police detention stage of the proceedings. The project has further highlighted the need for legislative reforms to ensure full compliance with EU procedural rights' Directives, and provided an additional impetus for lawyers to advocate more vocally on these issues.

More specifically, the results of the project were:

- In Belgium, the Flemish Bar Association will implement SUPRALAT training as part of mandatory training for all lawyers who wish to provide legal assistance at police stations. The implementation will begin with 3 train-the-trainer sessions co-delivered by the SUPRALAT team. From 2018, SUPRALAT trainings will be organised by each regional Bar-member of the Flemish Bar Association. There is also a plan to incorporate

SUPRALAT training in the new professional training scheme for lawyers-apprentices (criminal law specialisation).

- In the Netherlands, the Dutch Association of Defence Counsel (NVSA), an accredited specialised lawyer training institution (non-for-profit) that reaches out to 1000+ criminal defence lawyers in the Netherlands, has pledged to take over further implementation of SUPRALAT trainings. To this purpose, 2-3 regional trainings will be organised in 2018. Additionally, two trainers trained by SUPRALAT incorporated elements of SUPRALAT in their ongoing training.
- In Ireland, the Irish Law Society will bring SUPRALAT trainings under the SkillsNET training program. They will deliver one training before end of 2017, and will seek additional funding to continue providing it in 2018 (at half-price for lawyers compared to the actual organisational costs, given the particular importance of training on these issues.)
- On the EU level, a number of EU jurisdictions became interested in replicating SUPRALAT training (mostly thanks to the demonstration SUPRALAT trainings provided by the project team). As a result, several partners-Bar Associations and NGOs from 6 EU countries – Czech Republic, Poland, Estonia, Lithuania, Spain and Portugal – have decided to submit a follow-up funding proposal (for an Action Grant under the Judicial Training Programme) for a EU network of lawyer training providers, which would incorporate SUPRALAT training, as well as develop new training modules on suspects’ procedural rights.
- In Scotland, thanks to a demonstration training organised by SUPRALAT and the efforts of JUSTICE (our former partner on other EU projects) there is a definite interest to incorporate SUPRALAT as the training model for solicitors attending suspects at police stations.

Applicability in other EU jurisdictions

SUPRALAT results are directly transferable to other EU Member States, as the example of the three SUPRALAT demonstration trainings conducted outside of the SUPRALAT target countries has shown. The “baseline” interpretation and understanding of procedural rights is (or should be) identical in all EU Member States. Likewise, tactics, strategies and “best practices” used by defence lawyers or police have proven to be universally applicable. The exchange of such best practices between lawyers from different jurisdictions was found to be a particularly valuable add-on element of the project. (In fact, one of the project outcomes/recommendations is that cross-border/EU-wide training on the issues surrounding effective implementation of suspects’ procedural rights should be stimulated as much as possible). The problems that lawyers face in the different jurisdictions are also very similar, and therefore cross-border exchanges help to overcome the feeling of professional isolation/boost lawyers’ confidence when assisting suspects at the early stages of criminal proceedings and enforcing their clients’ procedural rights

(particularly because an active lawyer's approach may sometimes cause resistance from the "opposing" parties, e.g. police or the prosecution).

Another proof of direct transferability of SUPRALAT results to other jurisdictions is the new EU networking project initiative described above, aiming inter alia, to replicate SUPRALAT training beyond the initial 4 project countries.

The training modules developed by the SUPRALAT project can also be used to train other judicial actors (e.g. police, prosecutors or judges) as well as law students on the issues around suspects' procedural rights at the early procedural stages in the EU in law and in practice. In fact, in Belgium and the Netherlands, relevant SUPRALAT modules have already been used by the police to develop their own training on working with lawyers assisting suspects in police detention/during interviews and at other investigative actions.

SUPRALAT evaluation results

The evaluation consisted of written evaluation forms and evaluation interviews with the participants and trainers who delivered SUPRALAT (individual or joint interviews with trainers and group interviews with participants). In Ireland, the participants were additionally surveyed before and after undergoing the training course.

The evaluation results were overwhelmingly positive with an average of 8,4 points out of 10 in Belgium and in the Netherlands (very high result, also as confirmed by NVSA/Flemish Bar Association, and given the traditionally critical culture in these two countries). In Ireland and Hungary, ALL questions on the evaluation questionnaire (which included mostly qualitative statements such as "The training made me feel more confident in assisting clients at police stations", "During SUPRALAT training I learned a lot" have received average scores of higher than 4 on a 5-point scale (and many of them were assessed at 4.8-4.9 on average).

Participants valued the most (in the order of popularity of the respective responses): the emphasis on reflection and self-awareness; possibilities for real exchange ("interviewing") among the fellow practitioners; training crucial communication skills such as how to intervene effectively during a suspect interview; learning about police tactics and techniques, and encounters with police officers. Some points for improvement were: provide more structure in the e-learning materials; give more guidance on the content of e-learning materials to enable participants to decide which are relevant to them; ensure more coherence between the e-learning and the face-to-face elements. All these points were addressed in the final project phase when finalising the SUPRALAT training program.

In addition, the evaluation report provided recommendations relevant to further implementation of SUPRALAT trainings, e.g. the amount of time/type of preparation required from future trainers; support from other experienced SUPRALAT trainers and communication/psychology experts; more follow up/refresher trainings to ensure sustainability of training results, and incorporating an evaluation program and trainers' interviewing when rolling out SUPRALAT trainings on a larger/national scale.

RECOMMENDATIONS ON TRAINING AND POLICY:

SUPRALAT project resulted in a number of recommendations concerning lawyers' professional training and policy/legislation on suspects' procedural rights.

With respect to training (general methodologies, lawyers' professional training, training on EU law and relevant aspects (e.g. its practical implementation)...):

- Practical, skills-oriented training courses are still very rarely provided within the lawyers' professional training curricula; one reason why SUPRALAT training was so well-accepted is that it provides a model for such innovative training, which responds directly to lawyers' practical needs. EU should invest more into promoting this type of training, particularly as far as implementation of EU procedural rights' Directives is concerned (which is mostly about practical skills, and not only about the knowledge of the Directives' content);
- EU should invest into bottom-up training initiatives (e.g. from regional Bars...), which may better define the needs of practitioners on the ground and can better demonstrate the relevance of training to their members;
- EU law issues (particularly as far as EU procedural rights' Directives are concerned) should be embedded within the existing practical training; training programs need to demonstrate relevance of EU law standards and provisions to the daily practice of lawyers, as well as include content which on the first sight may not be connected with EU law but is necessary to ensure its proper understanding/effective implementation (e.g. on the relevant police interview models/tactics and communication skills);
- Successful skills training courses should include several follow up/refresher sessions spread over time to ensure that skills learned are applied by participants (long) after having received the relevant training;
- Blended learning is a suitable and appropriate training format for legal practitioners given the time constraints, etc., however online training should be used for a limited purpose (e.g. initial introductions, distribute theory...), but the main emphasis as far as skills/practical training is concerned should be on face-to-face sessions (which however, should not provide lengthy lectures on the theory – this should be done via e-learning). Focus on skills-building still requires considerable time investment. For instance, SUPRALAT training lasted for 3 days in total (excluding e-learning preparation time), but this was NOT considered excessive by the participants, and some wished the training to be even longer – which demonstrates that the time investment as such may not be critical, as long as the training content is perceived as highly relevant;
- SUPRALAT training is another testimony of the fact that joint cross-professional training is seen as very beneficial (in SUPRALAT the joint training element was experienced

positively by both lawyers and police), however there are also obstacles/challenges to joint training, as well as certain factors to be taken into account, for instance:

- Perceived ethical and practical boundaries across the professional groups should not be discounted. For example, in Belgium some judges told us informally that they considered it “unethical” to undertake joint training with lawyers, because they should keep strict separation boundaries between the two professions (e.g. they would consider it improper/unethical to learn about lawyers’ own “professional strategies and tactics.”) In Ireland, lawyers raised a genuine concern that the group dynamics in the training would be different if police, prosecutors or judges were present throughout (i.e. trust would not have been developed in the same way). Cultural factors like these should be considered when planning joint training activities. Furthermore, there is a need for more training aimed at familiarising one profession with the roles/practices of the other profession (short of fully joint training). SUPRALAT has contributed to this, e.g. by facilitating contacts between the Dutch Police Academy and the Dutch Bar and the Irish Policing Authority and the Irish Law Society, so that lawyers would for example deliver training on their own role in effectuating suspects’ rights to the police, and vice versa.
- Institutional constraints on the (type of) training to be undertaken by members of certain professions (e.g. judges, prosecutors or police) may become unsurmountable obstacles to cross-professional training, as the experience of SUPRALAT has shown. These include e.g. requirements to undergo all training within the same institution, inability to obtain accreditation points for “external” training, necessity to obtain superiors’ consent to undergo training, competing needs to undergo other “mandatory” institutional training vis-à-vis limited time available to be “off-duty”, etc. It appears that these should be addressed first to ensure sustainability of cross-professional training involving these professions, particularly on the national level.

With respect to legislation and policy-making on suspects’ procedural rights (and particularly right of access to a lawyer):

- Investment into practical training programmes for judicial actors is one of the most, if not THE most, effective way of ensuring that EU procedural rights’ Directives are coherently and properly applied in practice in various MS. Investing into training for lawyers has an additional advantage as far as EU action in this area is concerned, in that lawyers are an important constituency in advocating for better compliance of national laws, regulations and policies with EU laws and recommendations on suspects’ procedural rights. As SUPRALAT experience has shown, participating in such training may motivate lawyers to become more active in demanding respective reforms. In SUPRALAT, lawyers who participated in trainings saw themselves as being in the forefront of promoting an active role and demanding more rights for themselves and their clients at the early procedural stages. They also were more confident in assuming this role, as they felt support from their colleagues (including in other EU countries).

- In Ireland, legislative reforms are critically needed to ensure effective access to legal assistance at early procedural stages (as required by ECtHR case law, since Ireland is not a signatory of the Directive on the right of access to a lawyer). The right to have a lawyer present at suspect interviews by police should become recognised at legislative level. Currently, the right is provided by a circular of the Public Prosecutor's Office, and only 7% of suspects are assisted by a lawyer during an interview. There is an urgent need to introduce a duty lawyer appointment system ensuring that lawyers attending suspects at police stations are appointed by an independent authority, and not by police, as it is the case now.
- Likewise, in Hungary, the existing lawyer appointment system to assist suspects detained and interrogated by police (designation of lawyers by police officers) should be revised. There is furthermore no mandatory system of continuous lawyers' professional training, which would make it difficult e.g. to introduce any training on the application of EU legislation or suspects' procedural rights in a sustainable way. Further action is needed in this area.
- In Belgium and in the Netherlands, the legislative provisions concerning the role of a lawyer during suspect interview, if they were applied to the letter, would limit lawyers in the exercise of their legitimate tasks, as formulated, inter alia, in EU law and ECtHR case law. Nor do they reflect the reality of exchanges during an interview (it is difficult if not impossible to formulate in law when the parties should or should not be allowed to speak during an interrogation, since a suspect interview is essentially a conversation with its natural flow, and regulating it too strictly in law may be counter-productive for the police as well). These provisions also reflect mistrust towards lawyers, assuming that they would consider it their task to disturb the interrogation (although most lawyers are likely to realise that that such behaviour is not productive, and in extreme cases may even be considered unethical).
- Access to case-related information is crucial for the effectiveness of lawyer's advice and assistance before and during an interview; however it is not being systematically provided in most EU MS (and definitely not in the countries involved in SUPRALAT). Even the information that is "essential for the determination of the lawfulness of deprivation of liberty" is not being provided as early as the police custody stage. It may be argued that access to case-related information enabling lawyers and their clients to adequately prepare to the interrogation is implied in Article 7 of the Directive on the right to information. An interrogation is a crucial investigative act, which is likely to have determinative consequences for the entire proceedings, which therefore requires a strategic approach from the defence. It is difficult to imagine how the defence may strategically prepare to the interrogation without access to the essential evidence. It may therefore be argued that access to essential evidence must be provided to lawyers and their clients already at the outset of police custody to enable them to effectively prepare for the exercise of the defence, as required by the Directive on the right to information, Article 7 (3).