

Remedies for Violation of the Right to Counsel in National Legal Systems

Anneli Soo, PhD
Maastricht University
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About the Project

- *Title:* Towards Guaranteeing the Right to Effective Assistance of Defence Counsel in Member States in Trans-border Criminal Cases
- *Supervisor:* Prof. Taru Spronken
- *Scheme:* Marie Skłodowska-Curie IEF
- *Period:* 1st of January 2016 until 31st of December 2017
- *Main result:* Report



Scope of the Study

- Article 12 (1) of the Directive 2013/48/EU which provides:

Member States shall ensure that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive.

- What is the effective remedy for violation of the right to counsel?

Implementation of the right to A2L (Oct 2016)

Changes to national law on the right to access to a lawyer

Not decided - 1

No changes - 3

Changes - 18

No changes:

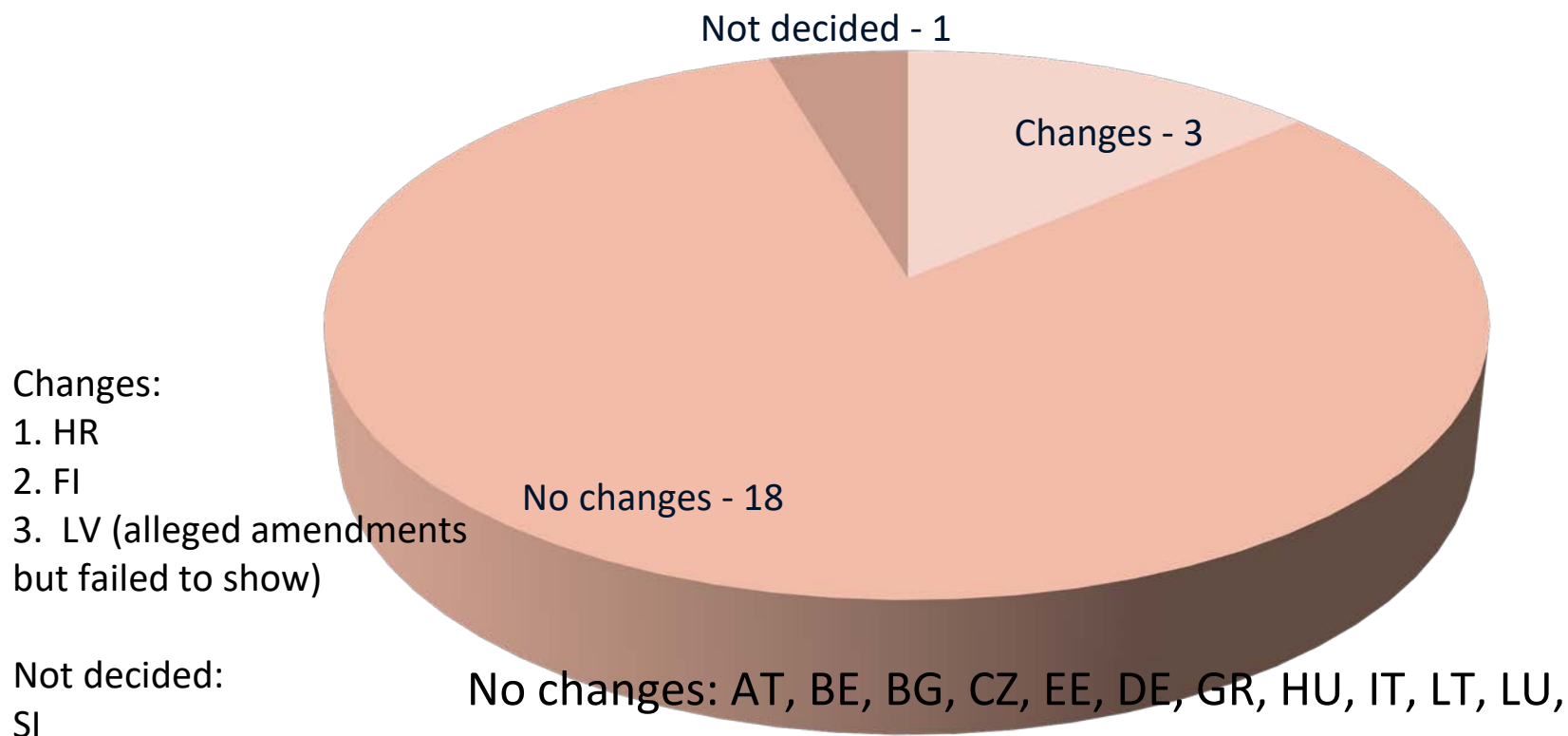
1. EE
2. HU
3. PT

Not decided:

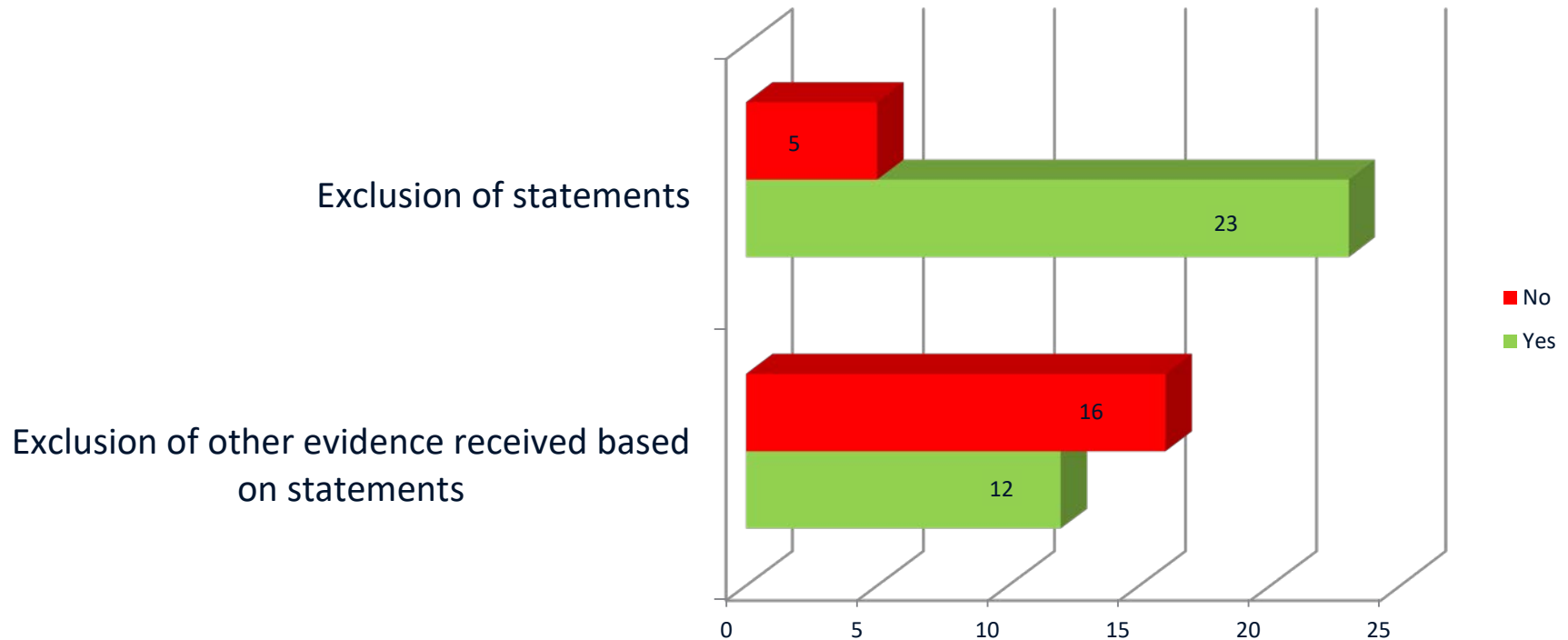
Changes: AT, BE, BG, HR, CZ, FI, DE, GR, IT, LV, LT, LU,

Implementation of Article 12 (Oct 2016)

Changes to national law on the remedies for violation of the right to access to a lawyer



Remedies for violation of the right to A2L (1)



Remedies for violation of the right to A2L (2)

- No exclusion of statements: AT, CY, DK, PL, SE
- Exclusion of statements: BE, BG, HR, CZ, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, NL, PT, RO, SK, SI, ES, UK
- No exclusion of any other evidence gathered based on statements: AT, BE, BG, CY, CZ, DK, EE, DE, HU, IE, IT, LV, LT, PL, SE, UK
- Exclusion of any other evidence gathered based on statements: HR, FI, FR, EL, LU, MT, NL, PT, RO, SK, SI, ES



Remedies for violation of the right to A2L (3)

- If the exclusionary rule is applied, will statements be still brought to the eyes of the court deciding the case?
- Depending on a case: BE (occasionally), FR (most serious charges - no, less serious charges - yes), IE (jury trial - no, trial before a panel of judges - yes), MT (occasionally)
- No: HR, IT, SI (official statements), UK
- Yes: BG, CZ, EE, FI, DE, EL, HU, LV, LT, LU, NL, PT, SK, RO, ES



Additional reading

- **Soo, Anneli** (2017). How Are the Member States Progressing on Transposition of Directive 2013/48/EU on the Right of Access to a Lawyer? An Inquiry Conducted among the Member States with the Special Focus on How Article 12 is Transposed. *New Journal of European Criminal Law*, 8 (1) 2017, 1-13.
- **Soo, Anneli** (2017). Article 12 of the Directive 2013/48/EU: A Starting Point for Discussion on a Common Understanding of the Criteria for Effective Remedies of Violation of the Right to Counsel. *European Journal of Crime, Criminal Law and Criminal Justice*, 25 (1), 31–51.
- **Soo, Anneli** (2016). Potential Remedies for Violation of the Right to Counsel in Criminal Proceedings: Article 12 of the Directive 2013/48/EU (22 October 2013) and its Output in National Legislation. *European Criminal Law Review*, 6, 284–307.



Thank you for your attention!

Questions, remarks:
anneli.soo@maastrichtuniversity.nl