Hungarian Helsinki Committee

Demystifying Justice: Training for justice actors on the use of plain language and developing clear and accessible Letters of Rights

Survey Document

The project is supported by the Justice Programme of the European Union.

Hungarian Helsinki Committee

Fair Trials

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Contents

1. Plain language and criminal procedure

1.1 Legal framework: Directive 2012/13/EU on the right to information in criminal proceedings

In 2012 the European Union adopted Directive 2012/13/EC on the **right to information in criminal proceedings** (hereinafter: the Directive).[1] Amongst other requirements, the Directive (Article 3) obliges Member States to ensure that all suspects and accused persons are promptly provided information, orally or in writing, concerning

a) the right of access to a lawyer;
b) any entitlement to free legal advice and the conditions for obtaining such advice;
c) the right to be informed of the accusation against them;
d) the right to interpretation and translation;
e) the right to remain silent.

Article 3 of the Directive further specifies that the information provided "shall be given orally or in writing, **in simple and accessible language**, taking into account any particular needs of vulnerable suspects or vulnerable accused persons".[2]

The Directive (Article 4) further obliges Member States to ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read a written Letter of Rights containing information on

a) the Article 3 rights,
b) on rights to access case materials,
c) have consular authorities and one additional person informed of the arrest or detention,
d) receive urgent medical assistance,
e) as well as on the maximum duration of deprivation of liberty before being brought before a judicial authority.

Article 4 of the Directive also obligates Member States to "ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand".

1.2 Project goals

This project's overall aim is to improve access to justice across the EU in line with the EU's access to justice legislation by **sparking a movement across the EU for an open and accessible European legal culture grounded in the use to use plain language.** Acknowledging the inaccessible nature of criminal procedures across EU countries, four European NGOs initiated this project for creating a pan-EU training programme of criminal justice stakeholders. As a practical component of the training programme, simple and accessible Letters of Rights are being created in at least 15 EU Justice Programme Member States.

As the first step of this project, the aim of **our expert survey was to assess the training needs of professionals** by asking for the opinion of European legal and plain language

[1] *Directive 2012/13 EU of the European Parliament and the Council on the Right to Information in Criminal Proceedings*, 22 May 2012, Directive 2012/13/EU. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013 .
[2] Article 3(1)(c)

experts regarding the actual **accessibility of their national Letters of Rights**. More widely, we wanted to uncover to what extent accessible language is being used in national criminal procedures of the respondents' countries as EU Member States. Accessible communication of the authorities and legal professionals has paramount significance within criminal procedure. Our previous research has pointed out that a wide spread old-fashioned style of legal communication in Europe still exists[3]. That results in the fact that **defendants often cannot participate actively in their own proceedings** due to elaborate legal jargons used in written and verbal communication, which is most often incomprehensible for a person not familiar with the law and legal terms. Making the procedure more accessible to defendants results in better understanding of their rights and obligations throughout the procedure they are under, therefore they can take a **more active part** in their case, **leading to the increased possibility of a fair trial during which defendants have a better chance to defend themselves.**

For instance, a defendant not understanding their rights during a hearing may unintentionally lead to the provision of false evidence which may cause a failure of justice. Furthermore, an inaccessible method of communication used during the trial period may render the defendants a passive role, and in a larger scale it may even cause mistrust in the criminal justice system. As The Clarity Journal stated: 'Language is a powerful way to make the law accessible. Language can include or exclude; it can advance or hold back progress. Lawyers have revelled in complex, hard-to-understand, old-fashioned language for far too long.'[4]

1.3 The basics of plain language

However, in order to understand the nature of issues arising with national Letters of Rights and the written and verbal communication in criminal procedure, it is essential to give a brief description on the principles of using plain language communication. According to the leading Hungarian website on the use of plain language (which was written by experts working closely on this project),[5] **a text is written in a clear and accessible way if the reader**:

- knows how to **find** the necessary information,
- **understand**s the information,
- can use the information to suit **their own needs**.

Nonetheless, every text may be communicated in various ways to achieve these goals, the experts point out **several other principles** that may be used. Although different scientific works emphasise various elements in plain communication tactics, making an exhaustive list that can be applied on every occasion seems almost impossible to create, a text in plain language should:

- start with the most important part,[6]
- keep it as short as possible,

[3] Our project Accessible Letters of Rights in Europe (2015-2017) provided extensive analysis of the situation: we have conducted an international desk review, a sociolinguistic testing and a comparative report. Available at: https://www.helsinki.hu/en/accessible-letters-of-rights-in-europe/

[4] Jagose, Una (2018): *Accessible Justice - Plain Language Points the Way*. The Clarity Journal (77): p. 8.

[5] *vilagosbeszed.hu* [Online]. Available at: https://vilagosbeszed.hu/ . Accessed: 06.12.2018.

[6] See, for example, the *Blog of Lenguaje Claro* [Online]. Available at: http://www.lenguajeclaro.net/2018/11/muchos-trabajadores-de-las.html#more . Accessed: 06.12.2018.

- use common, everyday words,
- prefer the active voice to the passive,[7]
- have a clear design,
- consider the document's audience.

1.4 A project on plain language in a multi-language environment

Firstly, we had to address the concern of the various languages of the European Union Justice Programme Member States. This is because there are several different languages (even from several different language families) with distinctive characteristics, such as differences in grammatical orders and inflections. Nonetheless, due to the differences of languages in the territory of Europe themselves and the delicateness of the legal professional jargon, the use of plain language undoubtedly has to be addressed with the highest understanding of each language concerned. We believe that in order to spark the plain language movement within the European criminal justice sector, English would be an ideal choice as a central language of communication because it is the most widely spoken in all Member States.

This decision was based on several comparative linguistic articles and essays that supported the claim that **the basics of plain communication are the same in every language**. A significant milestone will be the development of an international standard by The Plain Language Working Group.[8] Additionally, several plain language experts written journal articles strongly suggest that the same principles may work for every language.

For instance, Miguel Martinho lists four main suggestions in his article[9] which can be applied to each language. Although the limitations of this document restrict us from their complete description, the four main recommendations are the following:

1. Choose a meaningful piece of information
2. Help the reader pick their own way (e.g. by grouping the information)
3. Making reading easy (e.g. by short sentences)
4. Testing the text

Moreover, other texts provide additional possible standards from the structure of the sentences (such as writing in a subject-verb-object order) to design elements.[10]

Concluding this issue, we believe that English will serve as a convenient linguistic environment to develop the training module that aims to propose the importance and possible benefits of plain communication.

1.5 Plain language in criminal procedures

After the brief description using plain language, these basics can be applied to the criminal justice system based on our previous research findings and experiences. Although further

[7] Thatcher, Meredith (2018): *10 Rules to Writing Clear Legal Language*. The Clarity Journal (77): p. 33.
[8] This working group was formed by PLAIN, Clarity, and the Centre for Plain Language in 2008.
[9] Martinho, Miguel (2018): *International Standard for Clarity - We Bet This Works for All Languages*. The Clarity Journal (79): pp 17-20.
[10] Olmedo, Claudia (2018): *Proposal of International Plain Language Standards*. The Clarity Journal (79): pp 33-35.

concerns regarding the application of these principles will be discussed during the Regional Expert Meeting, we would like to disclose the most unambiguous aspects.

On the one hand, the importance of nuances in similar legal words and expressions makes professional legal terminology hard to rewrite. For instance, the terms police custody and pre-trial detention may seem similar for a person not familiar with the legal field, legally speaking these two coercive measures are significantly different. On the other hand, the current procedural documents are usually hard to understand for the defendants in their entirety, thus further improvements are needed in this regard. Although their complete revision requires several dozen hours of work, a few basic principles can be laid down:

- Firstly, by reviewing the Letters of Rights we received via our survey, the **lack of editing is obvious in several cases**. For instance, the use of bullet-points, wordings, and subtitles are all practical solutions towards helping the audience (i.e. the defendant) in finding the necessary information.
- Secondly, **the audience needs to be addressed as well**. For instance, rather than saying 'the defendant/suspect/etc. has a right to […]', personally addressing the audience provides a better understanding (e.g. 'you have a right to […]').
- Additionally, by addressing the audience, **the possible special needs** have to be considered when rewriting documents. For instance, based on the statistics provided by the Hungarian National Penitentiary Institute for our previous research project, the average compound of the defendants by their gender, age and highest level of education were the following:

Table 1: Average compound of detainees by age, gender and highest level of education (based on statistical data provided by the National Penitentiary Headquarters).[11]

	Men		Women		**Total**
	18-39 years	**40+ years**	**18-39 years**	**40+ years**	
Elementary School	39%	18%	3%	2%	62%
Vocational or secondary school, without high-school graduation	12%	8%	1%	0%	21%
High-school graduation or higher education	8%	7%	1%	1%	17%
Total	59%	33%	5%	3%	100%

According to the table above, the experts will have to keep in mind the audience with a lower-than-average level education when rewriting the criminal procedure documents. Thus, the complicated legal terminology needs to be avoided; if the use of these is unavoidable a further description in common, everyday language is indispensable in all cases. By complicated terminology, we mean not only the terms in latin/non-mother tongue such as *mens rea* or

[11] Hungarian Helsinki Committee (2016): *Accessible Letters of Rights in Europe. Research Report on the Accessibility of Letters of Rights in Hungary*. Table 1, p. 13.

actus reus, but also every word and expression that is not commonly used, for instance *arrest warrant, police custody, pre-trial detention,* etc.

To give a short conclusion of the results, let us highlight the most important shortcomings on the use of plain language we have found. You will find the detailed description of the research method as well as our results on the following pages.

Letters of Rights

- The current Letters of Rights are only partially understandable, thus the rewriting of the majority of them is required. However, the quality of them is heterogenic as some of them does not render the reading more difficult by adding (unnecessary) indexes, or use clear and concise text editing.
- Additionally, the Letters of Rights are often hard to find, which limits their accessibility for the suspects who are not detained. Although the Directive rules specifically that these have to be provided in detention, we believe that providing them for a wider use would be beneficial.

The plain language used by the investigative authorities and the courts

- Although the members of the investigative authorities ask the defendant if they understood their rights, a further confirmation in this regard would be required by asking them to summarise the information.
- The respondents claimed that the courts pay minimum attention to the accessibility of the written communication during the trials, thus further trainings for the judicial stakeholders are necessary.
- Although the written communication received the worst results in the survey, the verbal had a much better rating, showing that the judiciary usually is not unaware of the issue and wishes to provide better accessibility.

Training needs

- Although various stakeholders would welcome such trainings, we found only a few available currently.
- Although approximately half of the respondents suggest that these trainings should be included in the curriculum of the legal universities, the majority of them provide these only for trainees or practicing attorneys.
- The stakeholders suggested that these trainings should be organised by the bar associations and the various judicial training academies.
- The Southern and Eastern Member States do not have any training that we are aware of, thus launching these would be highly beneficial.

2. Research method

Our aim was to survey the current status of the Letters of Rights (or LoRs) as well as the training needs in Member States of the European Union's Justice Programme.[12] We have developed a survey using the professional input of plain language experts, lawyers and our project partners to examine the needs for a training on how to communicate clearly as that is the final goal of the project.

The preparation started by reviewing the survey of the previous project regarding the Letter of Rights. However, the methodology was changed and its focus was expanded. This survey aims its attention at a wider scale of issues rather than solely at the Letter of Rights, and had a heavier focus on the practical elements.

The survey consists of **three major parts**, which addressed various issues and ideas:

- Firstly, it focuses on the **Letters of Rights** with questions regarding its comprehensibility (e.g. if it is understandable to a layman or it is only comprehensible to someone with legal education) and about the usual procedure of investigating authorities (e.g. whether or not they ascertain that the suspect understood the rights).
- Secondly, the survey was examining the **language used by investigative authorities and the court**, emphasising the importance of simple and accessible communication. As one of the aims of the project is to spark a plain language movement and to hold trainings for judicial actors, this part was crucial to reveal current issues.
- The third part was focusing on the **training needs** of the stakeholders. It contained questions regarding the existing trainings or courses on a university level or higher, and the ideas and needs for creating a training on this subject. As the previous part was focusing on the possible issues regarding this subject, we wanted to collect the various elements that the respondents would welcome in the trainings. Therefore, we can address these during the Regional Expert Meeting and also while we are developing the training material.

The survey was disseminated in various ways, **via online and personal interviews as well**. For the digital dissemination, it was shared through various networks and groups (such as LEAP,[13] the Clarity Network and PLAIN[14]). The majority of the responses were collected through the online survey panel. Furthermore, project partners translated the survey to their national language where it was deemed necessary, and interviewed several stakeholders. Afterwards, the responses given in national languages were translated back into English, so they could be added to the pool of responses. Along with the detailed examination of the Hungarian LoR (in the previous project), information on the accessibility of their national LoRs and the national criminal procedure was collected in ten Member States in total[15].

Moreover, our survey requested a copy of the Letter of Rights used in the state of the respondent, preferably in English (if available). Although some governments provide a digital

[12] The Member States excluding the UK and Denmark, plus Albania.
[13] Legal Experts Advisory Panel, Fair Trials' European Network
[14] Plain Language Association International
[15] In alphabetical order: Bulgaria, Croatia, France, Greece, Hungary, Italy, Portugal, Romania, Slovakia, Spain.

copy (e.g. on the website of the Ministry of Justice), the majority of them would not have been accessible otherwise.

Despite the fact that in certain cases, the Letter of Rights were unavailable in English and neither project partners could understand its language, several elements could still be considered anyway. For instance, it could be determined regardless of the knowledge of the language in question whether the letter is well structured or not, e.g. whether it uses bullet points or not, whether there are certain parts highlighted or not. Furthermore, it can be easily seen whether the LoR references certain paragraphs of the national Criminal Procedure Act or not. Additionally, having these documents will be useful along the project as it focuses on Europe-wide accessibility, the national LoRs can be shared with experts with a high command of those specific languages.

We have included figures to provide a better visual representation of the results where possible. However, as several questions were answered in writing by the respondents, we decided not to provide a certain percentage. We chose this approach because it would be difficult to categorise several answers as a clear support for a certain side as some answers gave pro and contra reasoning. Thus, we decided to abstain from categorising these as a clear support for one or another side, despite the fact that this would have resulted in better visual representability because the results themselves would have been distorted.

Our analysis of the survey results are detailed in the following chapters. The survey itself can be found in the Annex section.

3. The current status of the Letters of Rights

As indicated above, the prior research addressed the accessibility of Letters of Rights. Although the current survey also contained the question of the Letters of Rights' accessibility, the previous results need to be addressed as it lead us to design the current project.

3.1 Prior research

A study in 2010[16] showed that in EU Member States the Letters of Rights are vastly different in their accessibility and their level of detail, and many of them use an inaccessible, technical language. Hungarian Helsinki Committee's (HHC) 2017 international comparative research report[17] suggests similar findings.

In 2016, the HHC conducted another research project that was focusing on testing and statistically measuring the accessibility of the existing Hungarian Letter of Rights compared with a more ideal, alternative one that was created by plain language experts, sociologists and criminal justice professionals. A sample of research subjects was created by weighing the most important socio-economic status variables (such as age, education, etc.). This project found

[16] Spronken, Taru (2010): *EU–Wide Letter of Rights in Criminal Proceedings: Towards Best Practice.* Maastricht University. Available at: http://www.ecba.org/extdocserv/projects/ps/EU_LoR_Spronken.pdf
[17] Hungarian Helsinki Committee (2017): *Accessible Letters of Rights in Europe. Comparative study.* Available at: https://www.helsinki.hu/wp-content/uploads/Comparative-Report_FINAL_ENG.pdf

that "the overall level of understanding of the existing letter of rights was 38.5 %, whereas it was 62% in the second wave of the survey, aimed at testing the alternative letter of rights"[18].

3.2 Availability of Letters of Rights in Europe

Our current research shows that most of EU Member States meet the criteria of availability as Article 4 of the Directive prescribes: the majority of responding countries have a written Letter of Rights. However, availability does not necessarily come with accessibility as researchers report that most of the LoRs were **not at all or not easily available,** usually not accessible online.[19] Therefore, to be able to analyse Letters of Rights across Europe, we had to use anonymised versions of actual LoRs that were provided to suspects in detention.

Despite the fact that it is not the main objective of the project, we believe that the Letters of Rights are necessary to be available online in an easy-to-access format in order to people facing criminal charges can prepare for procedural actions and to understand their basic procedural rights.

3.3 The overall comprehensibility and structure of the Letters of Rights

As indicated in the first chapter, plain and accessible communication goes beyond the specific expressions and the grammatical order used. A text is easier to understand to a reader (especially for a non-lawyer) if the text uses a **coherent as well as comprehensible structure and wording**. For instance, a plain and accessible text should use **various editing tools** to separate the different types of information, rather than using dense paragraphs which make it easy to lose or skip through the relevant parts. Furthermore, **bold** fonts are recommended as they can highlight the most important elements for the reader.

The current Letters of Rights are usually written by lawyers for lawyers, which means that they are not entirely understandable for someone without a legal training. LoRs usually use complicated legal terminology, and the tone is rather formal as well. However, various experts on plain writing usually highlight that it is more beneficial to address the reader personally, and the text should prefer the active voice (see Chapter 1).

Moreover, another common issue is **the use of indexes to certain paragraphs**. Although it is an important element of the legal profession to provide every detail of the framework to support one's claim and legal argument, someone without a legal background can get easily confused or lose focus entirely by excessive legal referencing. For non-professional readers, extensive legal referencing do not necessarily represent added value as the information provided can often be redundant. In these cases, indexes lengthen the text needlessly.

The first chart (Figure no. 1) below shows that the examined states tend to have Letters of Rights that are comprehensible to some extent for a non-lawyer. Based on the responses we

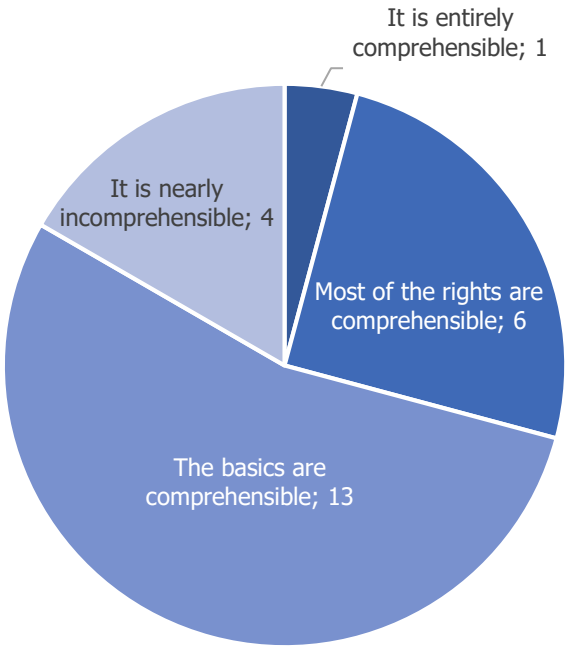
[18] Hungarian Helsinki Committee (2016): *Accessible Letters of Rights in Europe. Research Report on the Accessibility of Letters of Rights in Hungary*. Available at: https://www.helsinki.hu/wp-content/uploads/Accessible_LoRs_sociolinguistic-testing_HHC.pdf

[19] Although not a Justice Programme Member State, a good practice exists in Scotland: the Scottish Letter of Rights is easily accessible online in 44 different languages, even in an easy-read format is available in English at the government's webpage. Available at: https://www.gov.scot/publications/letter-rights-people-police-custody-scotland/pages/3/

got (26 responding professionals from 9 countries[20]), only one national LoR was deemed "entirely comprehensible" (after viewing it in multiple languages, it can truly be claimed as a good practice), and one fourth of the respondents stated that their LoRs at hand were mostly comprehensible. A little more than half of the respondents claimed that their countries' LoRs were understandable on a basic level. On the other hand, 4 respondents from 3 countries stated that their national LoRs were nearly incomprehensible for non-lawyers. None of the respondents thought their national LoRs were incomprehensible even for a person with legal education. Calculating a weighted average, the examined Letters of Rights receive 3 as an average (on a scale of 1 to 5 where 5 is entirely comprehensible and 1 is incomprehensible even for a layperson).

It has to be noted that several responses came from two states that marked different types of responses. Where it was possible, we eliminated the responses less likely to reflect the situation in the given country based on responses to the qualitative questions and other sources. However, as the survey was focusing on the assessment of the respondents (mostly criminal defence lawyers), these do not distort the results as the purpose of the survey was examining the problem of incomprehensible Letters of Rights rather than producing statistical analysis.

Figure no. 1 – How understandable is the Letter of Rights of your country for a layperson according to your assessment? (No. of responses)



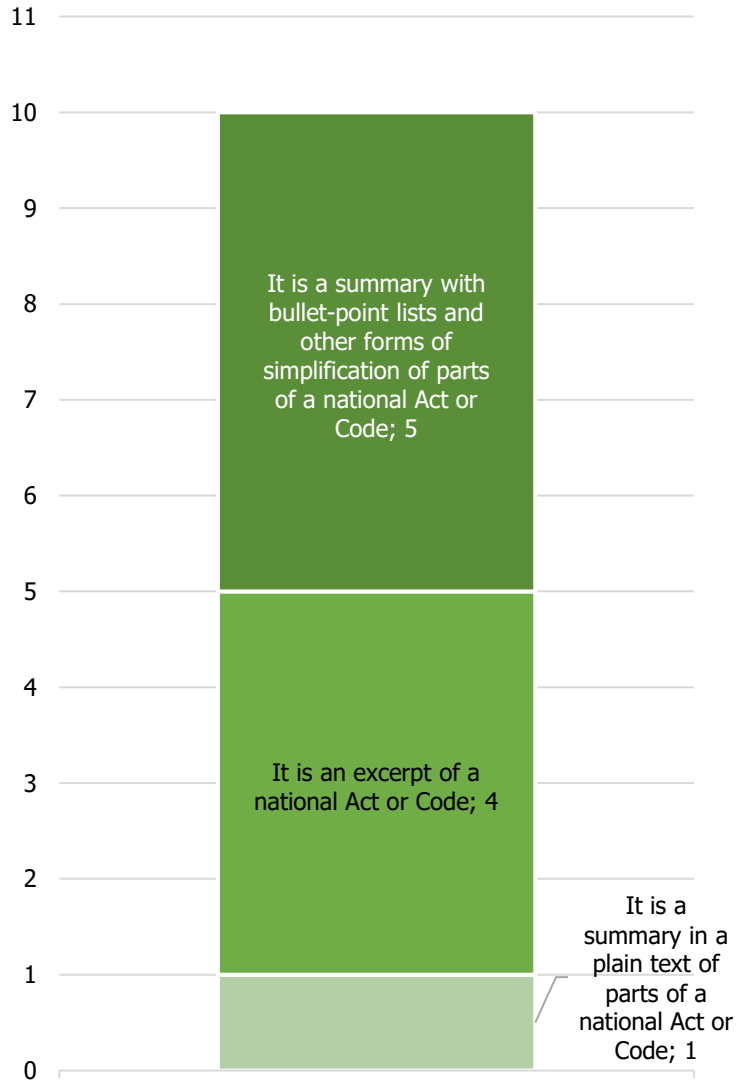
The second chart (Figure no. 2) shows the answers addressing the main structure of the Letters of Rights. A little more than the third of the examined LoRs are only a summary with simplifications (usually a bullet-point style list), which can enhance the comprehensibility of the text. 28% of the Letters are summaries in a plain text, however, a summary can still be

[20] Bulgaria, Croatia, France, Greece, Italy, Portugal, Romania, Slovakia, Spain

helpful (e.g. if it explains the meaning of an elaborate legal term). On the other hand, 36% of the Letters are merely an excerpt of the legal text, which is hardly understandable.

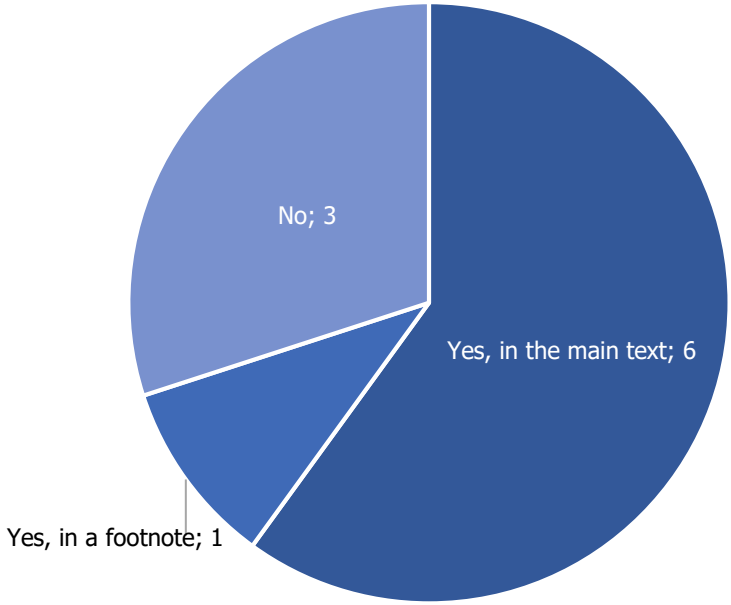
It has to be noted that some participants from the same country gave differing answers due to their LoR being on the margin of two possible answers. In these cases, the choice which received the majority votes was taken into consideration.

Figure no. 2 – Does the Letter of Rights contain excerpts of the relevant national procedural acts or codes, or do they contain simplified summaries of certain aspects? (No. of responses)



The third chart (Figure no. 3) addresses the references to exact articles of the legal texts. Although several articles on plain legal writing highlight the need to abolish these references from the main text (and to include it in a footnote if it is paramount), 60% of the Letter of Rights contained references in the main text, and only one provides the annexes in a footnote. Additionally, one Letter of Right contains them in a footnote, and only three of them managed to simplify the text in this aspect.

Figure no. 3 – Does the Letter of Rights contain references for certain paragraphs of a national Act or Code? (No. of responses)



3.4 Summarising the perceived quality of the Letters of Rights

As a conclusion about the status of the Letters of Rights, it can be stated that despite the fact that several good and bad practices could be perceived, our research did not shed light on a 'golden standard' that could be used as a leading example for the other documents. Thus, there are several possibilities for the plain language movement to achieve its goals.

Based on the responses (and the personal interviews), the French LoR proved to be the best along with the Scottish.[21]

4. The use of plain language

We wanted to examine the status of both the communication style of the Letters of Rights and the communication during the trial phase of criminal proceedings. Although evidence is collected and the defendant is heard in the investigative phase, various evidences are evaluated in the trial phase of the proceeding. Furthermore, the defendant is usually heard again, thus clear comprehension of the various rights bear utmost significance within the trial phase of the criminal procedure as well.

Moreover, as verbal communication is usually more dominant in the trial phase than in the investigative phase, we decided to dedicate part of the questions to the quality of verbal communication within the criminal procedure. However, from the viewpoint of the project, a training in the comprehensible verbal communication would require applying an extended

[21] However, as the Scottish LoR is not a part of the Justice Programme of the European Union, this document falls out of the scope of the project. Nonetheless, its solutions can be still examined for the work of the project as good practice.

training methodology. As it proved to be an area of interest to Hungarian professionals, we decided that we need to include plain verbal communication in our training programme on a smaller scale then written communication as an extra topic.

4.1 Plain communication by the investigative authorities

This part of the survey was focusing on the attitude of the authorities towards the suspect or person in detention after they received the Letter(s) of Rights. Despite the fact that the answers showed a varied practice (even on a national level in certain countries), the set of answers need to be taken into account, because if defendants cannot understand their rights, the Letter of Rights fails to achieve its goal.

The examined responses show that **the usual practice in all respondent countries regarding warnings about suspects' procedural rights is that the member of the investigative authority reads them a text determined by a law or policy** (usually the so-called 'Miranda-rights'). However, certain respondents claimed that in certain cases, the member of the investigative authorities summarises the text in their own words, although this usually depends on their personal habit rather than a prescribed norm.

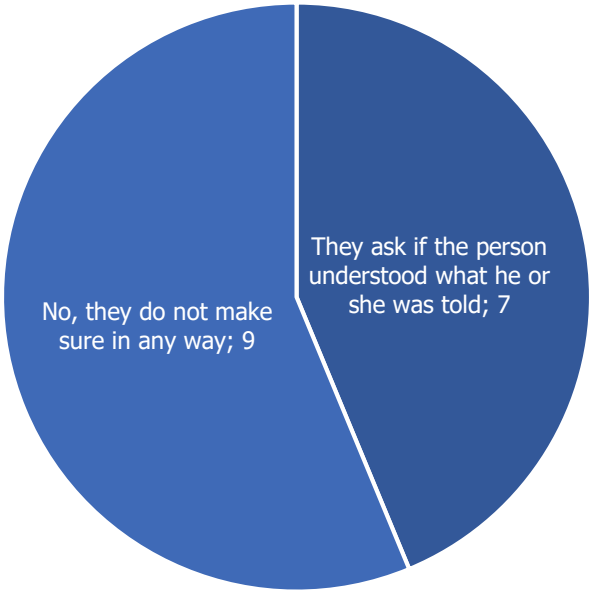
Our previous research addressed this issue through a more detailed approach. However, interestingly the observation was that even though we believed that the way of conveying the information (i.e. whether the summary of rights is read out according to the respondent or whether suspects can read it themselves) would have a significant impact on the level of comprehension, this was not actually the case.[22]

Furthermore, it is important to address whether the defendant understood their rights or not, that is, whether they actually grasp the meaning of what they are allowed to do during the procedure. To ensure this, as underlined by the plain language expert working with us, it would be good to ask the recipient (the defendant in this case) to summarise the information in their own words as a person may often claim that they understood everything even if they did not. That is why we asked the responding criminal justice stakeholders in this survey whether they have experienced investigative authorities making sure whether the defendant understood the warnings about their rights by asking them to repeat the main contents of the Letters of Rights.

The following figure shows that in little more than half of the cases, the members of the investigative authorities do not make sure if the defendant understood their rights. On the other hand, even if they want to ascertain this, **the defendant is never asked to summarise their rights**.

[22] Hungarian Helsinki Committee (2016): *Accessible Letters of Rights in Europe - Research Report on the Accessibility of Letters of Rights in Hungary*. P. 20.

Figure no. 4 – Do the members of the investigative authorities make sure that the suspect or accused persons understood their rights? (No. of responses)

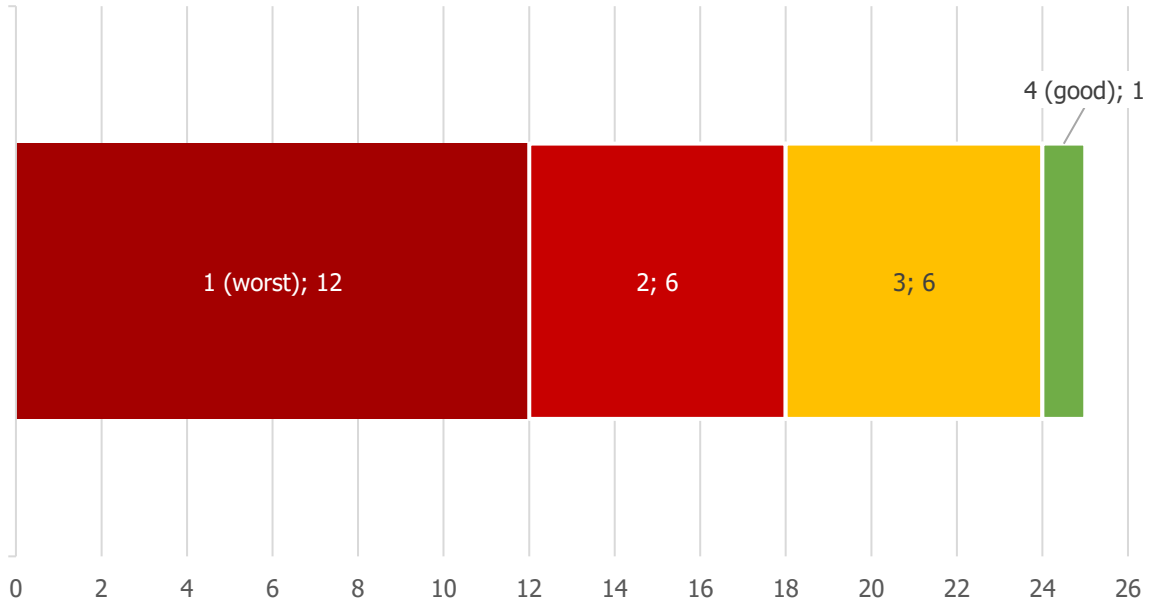


Additionally, a Greek respondent claimed that the practice is rather varied. They said that "[t]here is no standard law or policy on that, it depends on the situation and the officer involved. There is no obligation in law to make sure the suspect or accused person has understood their rights." On the other hand, usually these rights are prescribed by a law or policy (for instance, Article 386 of the Italian Criminal Code).

4.2 Plain communication by the court

The accessibility of written communication during the trial phase received devastating points from the responding criminal justice stakeholders. Almost half of the respondents rated their national courts' accessibility in written communication the lowest possible on a scale of 1 to 5 (where 5 was the best possible and 1 is the worst), and the remaining other half mostly gave points of either 2 or 3, the average score being 1.28. Trial phase written communication includes not only the final sentence, but every written document issued by the court as well (e.g. a trial summon).

Figure no. 5 – During the trial phase, to what extent do the courts seek to communicate in writing in a clear and accessible way with the laypersons involved in the trial? (Scale of 1-5; 1 is worst and 5 is best; no. of responses)



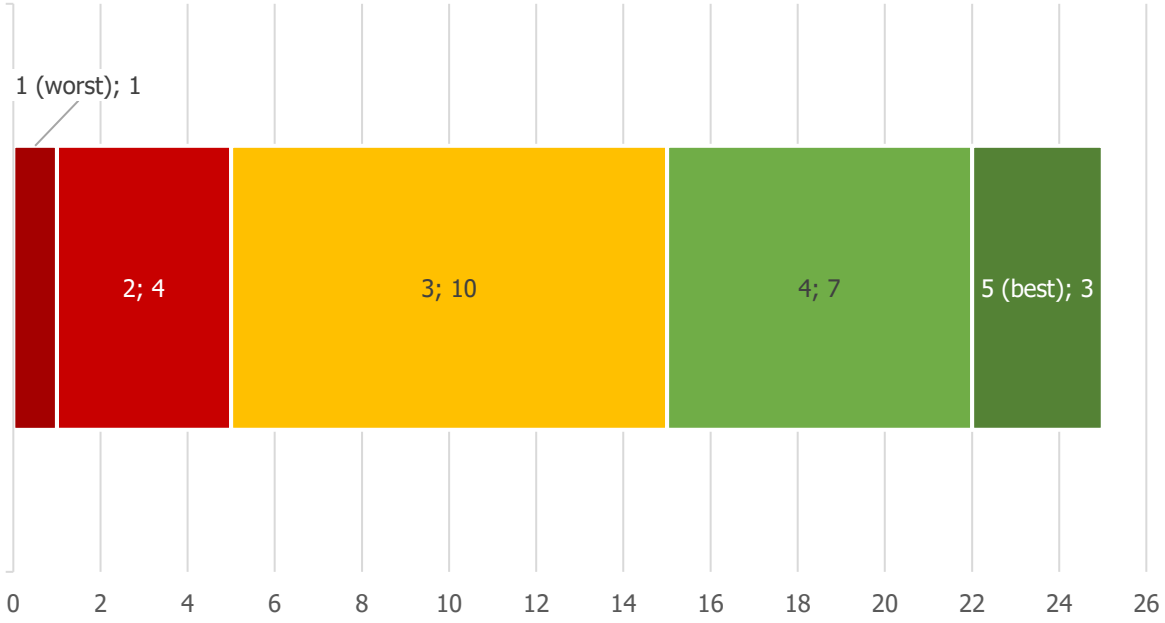
This sheds light on the issue that the courts tend to severely neglect to pay attention make their written communication accessible. This suggests a grave underlying problem as the actual practice of many national courts may result in most defendants not being able to participate in the criminal procedure they are subjected to in any meaningful way. Even more importantly, the complete incomprehensibility of criminal proceedings may hinder the procedural rights of numerous defendants. Furthermore, as the criminal liability of the defendant is decided during the trial phase, for defendants to understand their rights and obligations bear a paramount significance, especially if a defence counsel is not present during the procedure.

Concluding this shortcoming, we believe that if the trainings should be introduced to the various courts of the Justice Programme Member States, it would significantly enhance the aims of our project as this area clearly needs improvements to make trials fairer.

Verbal communication bears most significance during the trial phase; for instance, both the witnesses and the defendant are heard by the prosecutor or the judge (depending on the code of criminal procedure), but the judge rules over the procedure, including the communication as well. Fortunately, the verbal communication received better points in our survey, however, the results could still be better.

40 per cent of the answers gave 3 points on a 1-5 scale similar to the communication of the courts, while 28% gave 4. Approximately, the same amount of the responding experts deemed the oral communication as the best possible as only 2 out of 5, and only 4% gave the worst possible score. This clearly shows that although the courts do not mean to pay nearly enough attention to their written communication, they tend to communicate in an accessible way verbally. The average shows this as well as it is 3.28, which is 1.5 points higher than the average for the written communication.

Figure no. 6 – During the trial phase, to what extent do the courts seek to communicate verbally in a clear and accessible way with the laypersons involved in the trial? (Scale of 1-5; 1 is worst and 5 is best; no. of responses)



4.3 Vulnerable suspects

Finally, the questionnaire addressed the special needs of vulnerable suspects in the field of accessible communication. The legislator usually acknowledges special needs of certain groups by providing additional safeguards or elements to the procedure (usually, people suspected of committing minor offences fall under such special rules). Furthermore, defendants with audial or visual disabilities require their special needs taken care of as well.

Firstly, if the defendant is a minor, the participation of a defence counsel is mandatory in the majority of the proceedings, which can greatly enhance their ability to participate in the procedure because the defence counsel may provide the sufficient explanation of the various procedural roles and acts, as well as the defendant's rights and obligations. Moreover, other experts may provide help for a juvenile defendant; for instance, social workers in Greece, or child development/education experts or child psychologists in Bulgaria. In Hungary, according to the new CCP, if the defendant is a minor, pedagogues or child psychologists should act as associate judges along with the professional judge. However, as these norms do not pertain to the requirement of plain communication by the court, some codes require that the communication should take into consideration the cognitive capabilities of the minor defendants.

Secondly, if the defendant has a disability that affects their communicational abilities, they have a right to a sign interpreter, and the presence of a defence counsel is mandatory.[23] Clear

[23] E. g. Art. 199 of the Italian CCP.

written communication is even more important in these cases (especially if the defendant is mute or has a type of hearing impairment), and as it is shown in Figure no. 5 of this document, the written communication component is in need of considerable improvements within most of the reviewed criminal procedures, in order to make it more accessible for vulnerable defendants.

4.4 Plain language used in criminal procedures – summary

This section of the survey strongly suggests that there is a serious need for an attitude change of the investigative authorities in almost every participating state, as we have not seen even a single example where the authority made sure that the defendant understood their rights by asking them to summarise them. Nonetheless, this proves that the real understanding of the rights, thus the importance of this task, needs to be indeed emphasised.

However, the most serious shortcoming we have found is the accessibility of the written communication, therefore we deem the planned writing-focused plain language trainings highly beneficial as there is a lot to be improved. Verbal communication during the trial phase received better results than written communication, which suggest that the judges are more aware of the need for an accessible communication.

Additionally, it seems that courts usually take into consideration the comprehensive abilities of vulnerable suspects along with other safeguards. Nonetheless, this survey shows there is also room for improvement in the case of verbal communication of the authorities and courts in most countries, which the project partners will keep in mind when developing the mainly writing based training programme to find ways to improve some of the verbal clarity skills of criminal justice professionals.

Defendants with disabilities limiting their communication skills receive additional help (e.g. interpreters), however, the role of written communication is paramount in these cases (and thus, another example shows why it needs certain improvements).

5. Existing trainings and training needs

As the aim of the project is to enhance the accessibility of communication during criminal procedures, this survey serves as a fundamental base for developing a training programme that we will introduce in 2019. Although the prior parts showed the various shortcomings of the criminal procedures in this regard, this survey also mapped the training needs along with experiences of already existing trainings.

5.1 Existing trainings

The first two questions were inquiring about the current trainings in the curriculum at Law Schools. Although the respondents did not know about any existing modules in this field, a lecture at Sorbonne was brought to our attention, the topic of which was the plain legal language. Therefore, as we could map only one currently existing module on plain legal communication, we strongly believe that it is rather important to develop the subject further and spreading it to more countries at the same time.

It has to be noted that several universities have mandatory or non-mandatory courses on legal rhetoric. However, these do not emphasise plain communication as such, only the elements of the argumentation in verbal communication during a trial.

Furthermore, this survey shows that **there is only a handful of examples for trainings available** for practicing attorneys and judges as well. For instance, there was only one responding expert informing us that Italian judges can attend a training for plain communication (however, other Italian respondents were not aware of this training).

Some judicial institutions pay more and more attention to the subject of plain communication. One example is a series of conferences that was organised by the Hungarian National Judicial Office called 'Judiciary and Communication', during which several national judges and other legal experts were present.

To conclude, our study was only able to find a few examples for trainings in plain legal language. In the few cases where there were some training available regarding accessible legal communication, they were either non-mandatory or only available for practicing lawyers for a training fee (for an expert to train them in plain language or other services such as rewriting legal documents).

5.2 Training needs

As there are only a few available training programmes for the majority of the law students and practicing lawyers (and no available at all trainings at all in several countries), we wanted to map the existing trainings to be able to plan what to highlight when creating our training methodology. This is because we would like to closely develop these trainings with the help of their future participants.

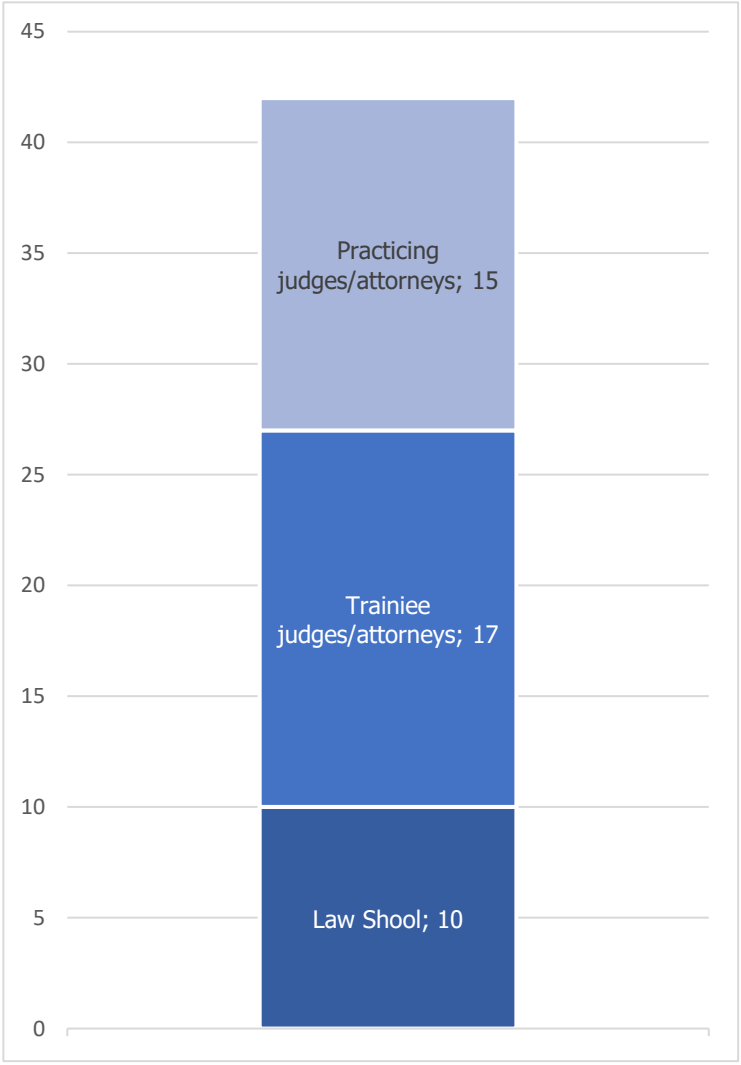
Firstly, we asked the respondents about the target audience of the trainings: on which level of the legal practice do they think these trainings would be the most beneficial? Bearing in mind that a university course is rather different from a training for a practicing attorney, the idea and principle of plain communication may be taught on various levels. For instance, if these trainings were included in the legal curriculum, the attendants may be unfamiliar with the various elements of written and verbal legal communication. Yet, if principles of plain language were taught sooner, students had a better chance to acquire the habit of writing and speaking in an accessible way. If the target audience for these trainings were trainee attorneys instead, they would have a safe grasp on the legal terminology already, but they could still benefit from these trainings as well in order to enhance the principles of using plain language afterwards. Again we would have to use some different methodological solutions were target group of our training module practicing lawyers, as it might prove to be more difficult to change their ways of communication for many reasons (for example, "curse of knowledge", or a more conservative approach in general).

In the survey, the respondents could choose from three different categories which signals different levels of practice. Although, it was a multiple response type of question. The options were:

a) It [a type of training on the use of plain language] should be included in the curriculum of the legal university studies

b) It should be included in trainings for trainee judges/attorneys
c) It should be included in the training of practicing judges/attorneys

Figure no. 7 – Who should get trained in plain communication if there is no training available in your country right now? (No. of responses, multiple choice)



As the chart above show, the results were rather scattered among the three choices. Out of 23 responses (a few did not even answer this question or chose to give a detailed answer in the 'other:' opportunity instead), 15 would welcome these trainings for practicing attorneys and judges, and 17 for trainees.

Additionally, 10 of the respondents answered that this subject could be introduced to the legal practitioners earlier, during their university studies.

A respondent added that these courses should be 'refresher lectures' for practicing lawyers who wish to use plain communication and plain language as 'usually some lawyers are cultural linguistic mediators in these cases'. We agree with this statement as these trainings would be more beneficial to lawyers practicing in a certain field, and will pay attention to this observation while developing the module in the future.

Yet, some (although the minority) of the answers suggested that trainings in this field should be compulsory. However, according to our knowledge, currently most of the Member States of the Justice Programme do not have enough experts in this field who would be able to host these trainings, were they compulsory.

When asked about the field of plain language trainings, the answers show a bigger difference. When inquiring into which areas these trainings should cover exactly, most of the respondents would like these to focus on the criminal procedures. One respondent claimed that both the civil and criminal fields should be addressed. Although it is a useful information, it is currently rather beyond the scope of the project, this idea needs to be considered nevertheless.

Moreover, several answers suggested that the importance of plain language should be emphasised so the legal experts can see the importance of employing it in the future as well. For instance, one answer was the following:

> *'Mainly plain written speech and plain explanation of main procedures (especially in criminal procedures) and the rights of the persons thereof.'*

Additionally, one of the respondents suggested to expand the scope of these trainings to every legal expert taking part in the criminal procedure as well as the translators:

> *'Ideally, the training should cover all areas of law, since any legal professional should be able to convey to the person before them their rights and obligations as well as what is at stake for them in terms of the legal process they are involved in. In particular when deprivation of liberty is at stake, both judges/prosecutors and lawyers should be specifically trained to ensure that they are able to explain procedural rights and criminal process to suspects and accused persons. It is also very important to provide adequate training to legal interpreters.'*

Finally, one of the respondents advised to focus these trainings on the communication with minors and defendants with disabilities. As much as the importance of this issue is unambiguous, we believe this to bypass the general aims of the current project.

Our question did not directly address the **methodology** of the training, some responses did so. The majority of these suggested that the trainings should use **practice exercises** such as rewriting legal documents in order to show the participants the goal and idea of plain communication.

The next question addressed the **best possible way** to offer these trainings. Most of the answers suggested to use the help of the **bar associations** for the lawyers and the various **judicial training institutions** for the judges such as the Centre of Judiciary Studies in Portugal or the Legal Academia in Croatia.

The **suggested form** of these trainings differed as well; although most of the answers recommended traditional seminars, a few answers suggested conference-like trainings. However, we believe that if these trainings included exercises (such as rewriting legal documents), a conference-like form might not carry as good results as small-group activity enabling seminars.

One of the respondents suggested a unique approach to these trainings where laypersons would be included as a possible form of an evaluation opportunity, therefore the participants would have an immediate feedback to their work prior and/or after the training. We find that a really good approach even though it would require additional laypersons to be involved (where some of them could represent the usual factors of the defendants, such as the age, education, literacy, etc.), this would be achievable with the right method of organisation.

The final question inquired about the possible use of a **'webinar'** format, and other solutions rather than a traditional seminar. Several respondents believed that his could be a feasible way; for instance, one of the respondents claimed that:

> *'Participants can also be offered and informed about the training using different communication channels like websites, media, email etc. […]'*

However, the **majority** (although not by an overwhelming margin) **still prefers the traditional approach** rather than an online webinar. Most of the answers in favour of an online course argued that it could save time, however, those arguing against it had reasons that have to be considered before developing an online webinar. Evidently, it is easier to practice a communication skill in a more personal format, however, an e-learning platform will be a great opportunity to scale up the effect of a well built-up training methodology. We will have to pay special attention to re-make some of the personal training situations for the web-based training platform as much as possible.

Several of those respondents who were not fond of the webinar claimed that this way the approachability of the whole project would suffer as the practicing judges and attorneys who are limited in the computing skills would be barred from these trainings. Another argumentation was that in this format, the participants who had occasional questions or further inquiries would be unable to ask them. That highlights the necessity of us having to build an easy-to-use web platform within the project.

Finally, some of the respondents claimed that although the online trainings would be feasible, they would only have a complementary role with comparison to the face-to-face trainings. Therefore, we believe that an online platform may have a lot of advantages in upscaling our training efforts and multiplying our outcomes, and might provide some refreshing experiences for trainees if proper additional examples and exercises are used, the survey showed that the method of a traditional training is still preferred by most professionals. This shows us that we still need to invest into personal training efforts and build an e-learning platform, which is as personal and easy-to-use as possible.

5.3 Summary of the training needs

Concluding this part of the questionnaire, we found that currently there are close to no options available for the law students and the practicing professionals, especially in Southern and Eastern Europe (where most of the respondents are practicing). However, the majority of them would welcome these kinds of trainings without a doubt, and would even envision them as part of the work of the national bar associations.

When addressing the possible methodology, the responses highlighted the exercises in rewriting legal texts as well as practicing various techniques on plain communication with the

defendants. However, they would prefer a traditional approach where a webinar or other online-based platform is complementary rather than a standalone format for the trainings.

Finally, we have mapped the existing trainings along with the research results, and found that some are in existence in Western Europe (e.g. France, Belgium), however, we did not find any existing (or past) trainings in the Southern and Eastern Member States. Thus, we believe that piloting such events in these countries would be highly beneficial.

Annex – The survey

Personal data

1. Name (optional):
2. Email address/contact details (optional):
3. Country:

Letter of Rights

1. Are **suspects** or **accused persons** who are **arrested** or **detained** provided promptly with a **written Letter of Rights** in accordance with Article 4 of Directive 2012/13/EU?
2. If yes, how comprehensible is it for a layperson according to your assessment?
    a. It is nearly incomprehensible, even for those with legal education
    b. It is nearly incomprehensible for a layperson
    c. The basics are comprehensible for a layperson
    d. Most of the rights are comprehensible for a layperson
    e. It is entirely comprehensible for a layperson
3. Does the Letter of Rights contain **excerpts of the relevant national procedural acts or codes**, or **does it contain simplified summaries** of certain aspects? (e.g. a bullet-point list of the elements of a particular right?)
    a. It contains an excerpt of a national Act or Code
    b. It contains a summary in a plain text of parts of a national Act or Code
    c. It contains a summary with bullet-point lists and other forms of simplification of parts of a national Act or Code
    d. other:
4. Does the Letter of Rights contain **references to certain paragraphs** of a national Act or Code?
    a. Yes, in the main text
    b. Yes, in a reference list
    c. Yes, in a footnote
    d. No
    e. other:
5. Is the **specific form, content and language** of the Letter of Rights determined by law/policy? If yes, please provide details. If not, how is consistency ensured across the jurisdiction, if at all?

Could you send a **copy of a written Letter of Rights** to mate.hodula@helsinki.hu (in English, if available)?

Plain language

1. During the investigative phase, are **suspects** or **accused persons** who are arrested or detained **informed verbally** about their rights? If yes, what is the common practice?
    a. No, they are not given verbal information
    b. Yes, the member of the investigative authorities reads them a text that is determined by a law or policy
    c. Yes, the member of the investigative authorities summarises their rights in their own words
    d. Yes, the member of the investigative authorities reads them a text determined by a law or policy, then summarises its content in their own words
    e. other:

2. Do the members of the investigative authorities **make sure** that the suspect or accused persons **understood their rights**?
    a. No, they do not make sure in any way
    b. They ask if the person understood what they were told
    c. They ask the person to summarise the meaning in his or her own words
    d. other:

3. **During the trial phase**, how much do the courts seek to **communicate in writing** in a clear and accessible way with the laypersons involved in the trial?
    a. The courts do not pay any attention to communicating clearly in writing
    b. The courts pay a little attention
    c. The courts pay an average amount of attention
    d. The courts pay a lot of attention
    e. The courts make sure that every written communication is clear and accessible
4. **During the trial phase**, how much do the courts seek to **communicate verbally** in a clear and accessible way with the laypersons involved in the trial?
    a. The courts do not pay any attention to communicating clearly when in verbal communications
    b. The courts pay a little attention
    c. The courts pay an average amount of attention
    d. The courts pay a lot of attention
    e. The courts make sure they are always clear and accessible when communicating verbally

5. Are there any specific safeguards for **vulnerable suspects** (e.g. people with disabilities, children) set out in law/policy to ensure that they fully understand the criminal procedure, and more specifically, their rights?

Existing trainings and training needs

1. Are there **any mandatory courses** on plain language in the **curriculum of the legal education at a university level**? If yes, do they include any of the following? (MULTIPLE CHOICES POSSIBLE)
    a. There are no mandatory courses on plain language that I am aware of
    b. The significance of the use of plain language
    c. The main principles of using plain language
    d. How to write in a comprehensible way
    e. How to talk in a comprehensible way
    f. other:

2. Are there any **trainings** on plain language available in your **national judicial training institution**? If yes, do they include the following?
    a. There is no training available on plain language that I am aware of
    b. The significance of plain language
    c. The main principles of plain language
    d. How to write in a comprehensible way
    e. How to talk in a comprehensible way
    f. other:

3. Are there any **trainings** on plain language available for practicing **attorneys**? If yes, do they include the following?
    a. There is no training available on plain language that I am aware of
    b. The significance of plain language

c. The main principles of plain language
d. How to write in a comprehensible way
e. How to talk in a comprehensible way
f. other:

4. If no or limited training is available on the use of plain language, what do you think about the need to provide such trainings? (MULTIPLE CHOICES POSSIBLE)
    a. It should be included in the curriculum of the legal university studies
    b. It should be included in trainings for trainee judges/attorneys
    c. It should be included in the training of practicing judges/attorneys
    d. It is not necessary, because:
5. What **areas** do you think the training should cover?
6. What do you think would be the best way to offer trainings for practicing judges/attorneys?
7. What do you think about the feasibility of using online training platforms for training practicing judges/attorneys?

Improvements

1. Are you aware of any **initiatives or legal developments** which aim to **implement plain language** in **criminal proceedings,** or in the **text of the Letter of Rights?**
2. Are you familiar with **any national experts or organisations** that are involved in the implementation of **plain language** in legal proceedings or the **comprehensibility of the legal language**? If yes, please provide a name, e-mail address or any other contact details, if possible.
3. Would you like to be in touch with us and receive the outcomes of this survey?
4. Would you like to be a part of the emerging plain language movement and work together on how to implement the use of plain language in criminal procedures?