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PROCAM INTERNATIONAL DESK REPORT

Audiovisual recordings during
interrogations

January 2018

Fair

Trials

ProCam
International desk report:
Audiovisual recordings during interrogations

January 2018



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About Fair Trials

Fair Trials is the global criminal justice watchdog. With offices in London, Brussels and Washington DC, we pursue our mission by helping people to understand and exercise their rights; addressing the root causes of injustice through our campaigns and legal and policy work; building networks of fair trial defenders across the globe. In Europe, we coordinate the Legal Experts Advisory Panel (LEAP), a network of over 150 law firms, academic institutions and civil society organizations dedicated to ensuring respect for human rights in criminal justice.

About the International Juvenile Justice Observatory

The International Juvenile Justice Observatory (IJJO) is a Belgian Foundation of Public Interest based in Brussels. Since 2002, the IJJO has worked for the rights of children and adolescents at risk of social exclusion, especially those in conflict with the law or caught in the cycles of violence and juvenile delinquency. The main objective of the IJJO is to advocate for a juvenile justice that is fair and without borders.

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Terminology

- a. "Accused person": an accused person is a person who has been charged with a crime.
- b. "Child": any minor as defined in the relevant jurisdiction.
- c. Police "interrogation" or "interview" refers to the formal interrogation or questioning in police stations in the context of a criminal investigation, whether the person has been deprived of liberty or not. However, police interrogations may take place in the course of other investigative acts outside the police station (e.g. dawn raids, arrests).
- d. "LEAP members" in this report refers to the Legal Experts Advisory Panel, a network of over 150 law firms, academic institutions and civil society organisations dedicated to ensuring respect for human rights in criminal justice.
- e. "ECJJ" stands for European Council for Juvenile Justice, a network of juvenile justice institutions and experts coming from Member States of the European Union, acting as a pool of experts providing inputs in the field of juvenile justice whether to assist the IJJO in developing initiatives and researches or to contribute to the work of European institutions.
- f. "Recommendation": the European Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable suspected or accused in criminal proceedings (C(2013) 8178 final).
- g. This report examines the "recording" practices of police interrogations. "Recordings" can be made in writing, by audio or by audiovisual means, which is also referred to as "electronic recording" in the US or "tape recording".
- h. "Suspect": a suspect is a person who is not yet charged.
- i. "Vulnerable person": all suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities. However, few legal systems have defined the concept of a "vulnerable person", which therefore varies widely across the examined jurisdictions.

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I. INTRODUCTION AND BACKGROUND

Growing recognition of the benefits of recordings

1. Interviewing suspects is characteristic of police work, and typically takes place in secretive, closed-door sessions. The earliest stages of criminal procedure frequently determine the overall fairness of proceedings. For example, during the pre-trial interrogation of suspects or accused persons, key evidence is often obtained and the admissibility of this evidence can determine the ultimate outcome of the case. Suspects and accused persons are exposed to the risk of torture and mistreatment during interrogations, due to the closed nature of this process and the desire to secure a confession or other evidence of guilt. Case law of the European Court of Human Rights (“**ECHR**”) demonstrates that this is a considerable problem, including in EU Member States.¹ When compliance with procedural or other human rights during interrogation is questioned, there are enormous challenges in determining what actually happened due to the fact that such interrogations take place behind closed doors. Even with a lawyer present (which is still not universally the case), disputes about what occurred frequently result in conflicting versions of events, with no objective record. This may result in delayed trials or failed prosecutions because authorities cannot establish whether basic rights were respected. It can also result in unfair convictions and serious human rights abuses remaining unexposed. Vulnerable persons in particular need to be accorded special safeguards at the interrogation stage.
2. Audiovisual recording of police interrogations can help prevent undue compulsion, torture and other ill-treatment during questioning, as well as provide protection to police officials against false allegations. Audiovisual recording can also help secure reliable evidence for criminal proceedings, offering a key protection against false confessions and wrongful convictions.² The US-based Innocence Project³ highlights the importance of audiovisual recording to prevent miscarriages of justice: “the entire interrogation – during the time in which a reasonable person in the subject’s position would consider himself to be in custody and a law enforcement officer’s questioning is likely to elicit incriminating responses – should be electronically recorded. This is simply the only way to create an objective record of what transpired during the course of the interrogation process”.⁴ Moreover, audiovisual recording can strengthen the procedural rights granted by Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (“**Access to Lawyer Directive**”). These general considerations are even more important for vulnerable persons, who are less able to understand and influence the procedure they are subjected of.⁵

¹ See, by way of example, in respect of Spain: *Etxebarria Caballero v. Spain*, Application No. 74016/2012; *Ataun Rojo v. Spain*, Application No. 3344/2013; *Martínez Sala and others v. Spain*, Application No. 58438/2000; *San Argimiro Isasa v. Spain*, Application No. 2507/2007; *Beristain Ukar v. Spain*, Application No. 40351/2005; and in respect of France: *Tomasi v. France*, Judgment of 27 August 1992, A series n°12850/87 and *Selmouni v. France* [GC], Judgment of 28 July 1999, A series n°25803/94.

² The Innocence Project, October 2015, *Implementing Electronic Recording of Custodial Interviews – A Primer for Law Enforcement*, page 2.

³ The Innocence Project was founded in the US in 1992 by Peter Neufeld and Barry Scheck at Cardozo School of Law, with the aim to exonerate the wrongly convicted through DNA testing and reforms the criminal justice system to prevent future injustice.

⁴ See: <https://www.innocenceproject.org/false-confessions-recording-interrogations/>.

⁵ The European Commission defines “vulnerable persons” as: “persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities” (Recital 1, Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, 2013/C 378/02 available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H1224\(02\)&from=en](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H1224(02)&from=en)).

3. There is growing recognition of the advantages of audiovisual recording of interrogations not only for defendants, but also for law enforcement officials.⁶ Juan E. Méndez, the former UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated in his interim report from 2016 that the “recording of interviews is a fundamental safeguard against torture, ill-treatment and coercion and ought to apply in the criminal justice system and in connection to any form of detention. Every reasonable effort must be made to record interviews, by audio or video, in their entirety.”⁷ The Innocence Project describes electronic recording of interrogations as a “boon to both the innocent and to law enforcement”: “the mandated electronic recording of the entire interrogation process protects the innocent, ensures the admissibility of legitimate confessions, and helps law enforcement defend against allegations of coercion. Electronic recording of Interrogations helps the innocent by: (i) creating a record of the entire interrogation, including the interaction leading up to the confession; (ii) ensuring that the suspect’s rights are protected in the interrogation process; and (iii) creating a deterrent against improper or coercive techniques that might be employed absent the presence of a recording device. Electronic recording of interrogations assists law enforcement by: (i) preventing disputes about how an officer conducted himself or treated a suspect; (ii) creating a record of statements made by the suspect, making it difficult for a defendant to change an account of events originally provided to law enforcement; (iii) permitting officers to concentrate on the interview, rather than being distracted by copious note-taking during the course of the interrogation; (iv) capturing subtle details that may be lost if unrecorded, which help law enforcement better investigate the crime; and (v) enhancing public confidence in law enforcement, while reducing the number of citizen complaints against the police.”⁸

The purpose, the structure and methodology of this report

4. The purpose of this report is to give an overview of the legislation and practices pertaining to audiovisual recording across the EU and beyond, in order to assist the partners in the “Procedural rights observed by the Camera – Audiovisual recording of interrogations” (“**ProCam project**”) to understand the international context when carrying out their local in-depth researches in Croatia, Czech Republic, France, Hungary and Italy respectively. In particular, the report compiles information on the legislation and practice in the EU countries not covered by the upcoming domestic research. We adopted the following methodology to compile this report:
- Fair Trials gathered information on legislation and practice in the EU Member States by way of a survey of LEAP members⁹ who were asked to provide information in respect of the legislation and practice in their respective jurisdictions, share their perceptions on the issue of audiovisual recording, identify good practices and difficulties.
 - Fair Trials also surveyed publicly available information on legal sources, recommendations of international organisations, academic literature and other relevant materials on audiovisual recording practices across the globe.

⁶ See, for instance, Chalmers, J., 2014, “Recording of police interviews”, in: Chalmers, J., Leverick, F. and Shaw, A. (eds.), *Post-Corroborator Safeguards Review Report of the Academic Expert Group*, The Scottish Government, Edinburgh, p. 120: “recording of interviews is a practice which can potentially be of benefit to all parties in the criminal justice system”.

⁷ *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2016, A/71/298, para 84, available online at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/298.

⁸ See: <https://www.innocenceproject.org/false-confessions-recording-interrogations/>.

⁹ The survey questions are included in Annex 1. It was circulated to LEAP members online via Survey Monkey.

- The IJJO sent a questionnaire¹⁰ about audiovisual recording of children’s interrogations to various relevant stakeholders in the matter of juvenile justice, members of the European Council for Juvenile Justice (ECJJ), a network of juvenile justice institutions and experts from the twenty-eight Member States of the EU.
5. However, we did not, as part of this stage of the project, conduct any qualitative research, follow-up on the responses to the survey by way of interviews with respondents or obtain information from law enforcement or judicial authorities.
 6. In this report, we first describe existing international and regional standards. In the next section, we detail the national law and practice in each of the jurisdictions for which information was obtained by way of the LEAP survey, desk research and IJJO questionnaire, before setting out our preliminary findings and conclusions to help inform the in-depth domestic research that will be carried out as part of this project in Croatia, the Czech Republic, France, Hungary and Italy.

¹⁰ The questionnaire is included in Annex 2.

II. INTERNATIONAL AND REGIONAL LEGAL STANDARDS

United Nations

7. International standards¹¹ set out safeguards with respect to the arrest of persons, but do not expressly provide for the audiovisual recording of interrogations. The UN Special Rapporteur on Torture stated back in 2003 that: “all interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings”.¹² More recently, the audiovisual recording recommendation was reiterated in 2016 in the proposed universal protocol for interviews during criminal investigations:¹³

84. *The recording of interviews is a fundamental safeguard against torture, ill-treatment and coercion and ought to apply in the criminal justice system and in connection to any form of detention. Every reasonable effort must be made to record interviews, by audio or video, in their entirety. Where circumstances preclude or when the interviewee objects to electronic recording, the reasons should be stated in writing and a comprehensive written record of questioning must be kept. Accurate records of all interviews must be kept and safely stored, and evidence from non-recorded interviews should be excluded from court proceedings (see A/56/156).*

85. *Suspect interviews must be at least audio, and preferably video, recorded (see A/HRC/4/33/Add.3 and A/68/295). Video recorders should capture the entire interview room, including all persons present. Video recording discourages torture while providing an authentic and complete record that can be reviewed during the investigation and used for training purposes. It cannot, however, be used as an alternative to the presence of counsel (see CAT/C/AUT/CO/3 and A/HRC/25/60/Add.1). The Special Rapporteur acknowledges the financial implications associated with the use of video-recording equipment. The protocol may explore alternative solutions, such as limiting the mandatory use of audiovisual recording to interviews of suspects, vulnerable victims or witnesses.*

86. *Recording should not be limited to confessions or other incriminating statements. Whatever the format, several elements must be recorded during an interview, including: its place, date, time and duration; the intervals between sessions; the identity of the interviewers and any other persons present and any changes in individuals present during questioning (see Human Rights Council resolution 31/31); confirmation that the interviewee was informed of his or her rights and availed himself or herself of the opportunity to exercise them and confirmation of any voluntary waiver; the substance and content of questions asked and answers, in addition to any other information, provided by the interviewer or interviewers or the suspect (see the Luanda Guidelines, guideline 9 (e)); and the time and reasons for any interruption and time of resumption of the interview (rules of procedure and evidence of the International Criminal Court, rule 112 (1)).*

87. *The records should be made available to the interviewee and his or her counsel. The interviewee should have the opportunity to verify that the written record, if used, accurately reflects his or her statements. As a matter of good practice, all persons present during questioning may be asked to sign the written record to attest to their presence and its accuracy. Audiovisual recordings*

¹¹ In particular, the International Covenant on Civil and Political Rights and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

¹² UN Special Rapporteur on Torture, 23 December 2003, Report to the General Assembly of the UN and to the Commission on Human Rights, E/CN.4/2004/56, paragraph 34.

¹³ United Nations, 5 August 2016, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/71.298. Available at: <http://undocs.org/A/71/298>.

must be clearly identified, properly labelled, safely stored and preserved. Destroying or tampering with records establishing proof of mistreatment should be criminalized under national law.

8. However, the recommendation has not, to date, been embodied formally into an international legal standard.

Council of Europe

9. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) recommends that clear rules or guidelines should exist on the manner in which interrogations are to be conducted.¹⁴ The CPT also recommends that there should be a complete custody record for each detainee which should record “all aspects of custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injuries, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc). Further, the detainee's lawyers should have access to such a custody record”. In this respect, the CPT has stressed on several occasions the importance of electronic recording of police interviews.¹⁵ In the CPT's 2nd General Report published in 1992, the CPT stated that: “that the electronic recording of police interviews is another useful safeguard against the ill-treatment of detainees (as well as having significant advantages for the police). The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.)”.¹⁶
10. A decade later, in its 12th Annual Report of 3 September 2002, the CPT called for the development of standards in respect of police custody, which include the audiovisual recording of police interrogations, as stated in paragraph 36: “the electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic

¹⁴ CPT, 1992, “Police custody”, *Extract from the 2nd General Report of the CPT*, CPT/Inf(92)3, paragraph 39, available at: <https://rm.coe.int/16806cea2f>. In particular, detainees should be informed of the identity of all those present at the interview. There should also be clear rules covering the permissible length of the interview, rest periods and breaks, places in which interviews may take place, whether the detainee will be required to remain standing when questioned, and the questioning of persons under the influence of drugs and alcohol. It should also be required that a record be kept of the time at which interviews start and end, of requests made by detainees during interviews and of persons present during interviews. The CPT also recommends that there should be a complete custody record for each detainee which should record “all aspects of custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injuries, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc). Further, the detainee's lawyers should have access to such a custody record”.

¹⁵ Birtles, A., 2001, “The European Committee for the Prevention of Torture and the electronic recording of police interviews with suspects”, *HRLR*.

¹⁶ CPT, 1992, “Police custody”, *Extract from the 2nd General Report of the CPT*, CPT/Inf(92)3, paragraphs 39 and 40, available at: <https://rm.coe.int/16806cea2f>.

recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.”¹⁷

European Union

11. At EU level, the European Commission issued a Recommendation of 27 November 2013 on procedural safeguards for vulnerable suspected or accused persons in criminal proceedings (C(2013) 8178 final) (the “**Recommendation**”), according to which: “vulnerable persons are not always able to understand the content of police interviews to which they are subject. In order to avoid any contestation of the content of an interview and thereby undue repetition of questioning, these interviews should be audio-visually recorded”. The Recommendation is based on the fact that “vulnerable persons are not always able to understand the content of police interviews to which they are subject”.
12. However, audiovisual recording is not integrated into formally binding EU law. Interestingly, we note that in the adoption process of the Directive on the strengthening on certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings¹⁸ (POI Directive), the use of modern technologies to support procedural rights was not considered.¹⁹

OSCE

13. The Document of the Moscow Meeting of the Conference on the Human Rights Dimension of the CSCE from 1990 sets out that the participating states will ensure that “effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise to incriminate himself, or to force him to testify against any other person”; and that “the duration of any interrogation and the intervals between them will be recorded and certified, consistent with domestic law”.²⁰
14. In addition, a torture prevention checklist of the OSCE suggests the following: “Video/audio records are to be kept of interrogations, including who was present, length of questioning, etc.”²¹

Specific child-related standards

15. With respect to children, the international framework provides many standards both regarding the importance of protecting the fundamental rights of children suspected or accused in criminal proceedings, in particular the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing rules)²² and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)²³ and the United Nations Rules for the Protection of Juveniles

¹⁷ CPT, 3 September 2002, 12th General Report on the CPT’s activities, CPT/Inf(2002)15, available at: <https://rm.coe.int/1680696a76>.

¹⁸ Directive 2016/343/EU on the strengthening on certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

¹⁹ The Commission Impact Assessment dated 27 November 2013 SWD(2013)478 final does not address the recording of interrogations.

²⁰ *Document of the Moscow Meeting of the Conference on the Human Rights Dimension of the CSCE*, 1991, para (23.1) (vii)-(viii), available online at: <https://www.osce.org/odihr/elections/14310?download=true>.

²¹ *The Fight against Torture: The OSCE Experience*. OSCE/ODIHR, 2009, p. 27, available online at: <https://www.osce.org/odihr/37968?download=true>.

²² UN General Assembly of 29/11/1985 (resolution 40/33), available online at: <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>.

²³ UN General Assembly of 14/12/1990 (resolution 45/112), available online at: <http://www.un.org/documents/ga/res/45/a45r112.htm>.

Deprived of their Liberty (Havana rules).²⁴ The International Convention on the Rights of the Child of 20 November 1989 (CRC) also stresses the necessity to protect the rights of children suspected or accused in criminal proceedings.

16. At EU-level, it is more widely recognised that in the pre-trial interrogation phase, children are particularly vulnerable, and therefore need to be accorded special safeguards at the interrogation stage to ensure their fair treatment and effective participation, as expressed by the Recommendation (at §13). The EU Children Directive,²⁵ which is due to be transposed by 11 June 2019, requires Member States to ensure that the questioning of children is audio-visually recorded, where this is “proportionate in the circumstances of the case”, and it is in the best interests of the child. Decisions on the proportionality of audio-visual recording in a specific case should take into account, inter alia, whether a lawyer is present or not and whether the child is deprived of liberty or not. If no recording is made, the questioning should be recorded in another appropriate manner, such as by written minutes that are duly verified. Audio-visual recording can not only be an effective safeguard against, for example, ill-treatment or coercive interrogation techniques, it can also provide evidence of the level of the child’s effective participation. The recording could also protect police officers from unjustified accusations of poor treatment, enabling them to demonstrate to have treated a child fairly. It is not an absolute obligation, however, as authorities have discretion under the EU Children Directive to decide whether a recording is proportionate.
17. With respect to minors who are victims of crimes, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007 (Lanzarote Convention), in Article 35, states that interviews with the child take place in premises designed or adapted for this purpose and that the number of interviews is as limited as possible and that each party shall take the necessary legislative or other measures to ensure that all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal laws. At the EU-level, Article 20 of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating sexual abuse and sexual exploitation of children, and child pornography, expresses concerns about adapted interrogation rooms and promotes the use of videorecording.

²⁴ UN General Assembly of 14/12/1990 (resolution 45/113), available online at: <http://www.refworld.org/docid/3b00f18628.html>.

²⁵ Article 9 of the EU Children’s Directive (Directive 2016/800) requires that: “the questioning of a child is subject to audio-visual recording when proportionate in the circumstances of the case, taking into account circumstances such as the presence of a lawyer or whether the child is deprived of liberty, always keeping in mind the best interests of the child.”

III. COUNTRIES OVERVIEW

19. This report covers 27 jurisdictions for which it was possible to obtain information from publicly available sources, responses to the LEAP survey in respect of EU countries, as well as results responses from the survey conducted by IJJO with members of the European Council on Juvenile Justice. In total, we received 48 responses covering 22 EU Member States.²⁶ In view of the differences in law and practices across the examined jurisdictions, we have organised the countries overview by reference to five categories set out in the table below and, to the extent that the information is available, we have indicated, in respect of each jurisdiction: (i) the applicable legal framework, including any relevant special rules with respect to children or other categories of persons; (ii) any practical issues reported by the survey respondents. With further information, in particular in respect of jurisdictions for which the information obtained was limited or inconsistent, these categories may be subject to changes.

A.	General obligation to audiovisually (or audio) record interrogations of suspects and accused persons	Croatia, England & Wales, France, Ireland, NSW, Portugal, Romania, Scotland, Taiwan, USA.
B.	Limited obligation to audiovisually (or audio) record interrogations of specified suspects and accused persons	Estonia, Germany, Hungary, Italy, Japan, the Netherlands.
C.	Limited obligation to audiovisually (or audio) record interrogations of certain victims, children and/or witnesses (but not suspects and accused persons)	Belgium, Cyprus, Denmark, Poland, Slovakia.
D.	Discretionary audiovisual (or audio) recording of interrogations of suspects and accused persons	Czech Republic, Finland, Lithuania, Spain.
E.	No audiovisual or audio recording possible	Bulgaria, Greece.

A. Countries where there is a general obligation to audiovisually or audio record interrogations of suspects or accused persons is required

Croatia

20. **Legal framework** – the Criminal Procedure Act (CPA) was revised in 2017 in order to comply with the Recommendation in respect of police interrogations, and makes the police interrogations of suspects in general compulsory.²⁷ Note that police officers may only engage in conversations with citizens for information-gathering purposes, but as soon as a person becomes a suspect, that person may only be interrogated formally²⁸ and the questioning must be audiovisually recorded.²⁹ The audiovisual recording obligation covers minors,³⁰ accused persons (i.e. persons charged with an offence) and suspects (i.e.

²⁶ For Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, England & Wales, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Poland, Portugal, Romania, Scotland, Slovakia, Spain, The Netherlands.

²⁷ Article 208.a(6) of the CPA.

²⁸ Article 208(5) CPA.

²⁹ Article 208.a CPA.

³⁰ Minors of up to 16 years of age must be questioned as witnesses through audio-video conference and the questioning must be audio-video recorded (Art. 292. CPA and Art. 115(2) Law on Juvenile Courts). Questioning of a minor witness older than 16 but younger than 18 years may be audio-video recorded (Art. 292(2) CPA).

before being charged with an offence). The category of "vulnerable persons"³¹ applies to children under the age of 14, the elderly, the sick, persons with disabilities and victims of crime.

21. The audiovisual recording requirement extends to interrogations by the State attorney or the investigator³² and constitutes a condition for the lawfulness of the interrogation.³³ Any statement of the suspect/defendant that was made during an interrogation that was not audio-video recorded, as well as all any evidence obtained from that statement, are inadmissible in the proceedings.³⁴ The recording must include the notice of rights,³⁵ including the right to a lawyer and the warning that the interrogation will be recorded and that the recording may be used as evidence in proceedings.³⁶ The officer conducting the interrogation may not question a suspect/defendant before starting the recording and must state the beginning, recess, continuance and the termination of the interrogation, as well as other circumstances relevant to the course of interrogation.³⁷ As such, there is no option to switch off the audio-video recording during the questioning. At trial, audio or audiovisual recordings are not mandatory. The president of the panel may decide that the whole trial, or particular parts of the trial (including questioning of the accused) shall be audio recorded or audio-video recorded.³⁸
22. Regarding the preservation of recordings, the CPA prescribes that three recordings of the interrogation must be made, one of which must be sealed and handed over to the judge in charge of the investigation for safekeeping. A sealed envelope must be signed by the person who conducted the interrogation, the defendant, the defence counsel if present and the expert who made the recording. One recording is immediately handed over to the State Attorney and to the defendant.³⁹ The defendant is not required to pay a fee to obtain the recording (the recording is usually on CD). According to the ordinance on the recording of evidence or other actions in the pre-trial and criminal proceedings, all copies of the audio-video recording are sealed in an envelope and safeguarded in the storage as long as the case file is ongoing. There are no special rules regulating the destruction of recordings of interrogations.
23. **Practical issues** – respondents to the LEAP survey have reported positive experiences with audiovisual recording since it provides a good quality recording of the interrogation and guarantees respect for defence rights. In particular, one LEAP survey respondent noted that since the recording is mandatory at police stations for most interrogations, lawyers can effectively participate during an interrogation. In practice, recording of police interrogations is limited to police stations and other police premises, in the absence of mobile cameras that would permit the audio-video recording of interrogations which take place outside of police premises. Since audio-video recording of any interrogation of the suspect/accused during pre-trial proceedings is mandatory, all interrogation rooms at police stations and state attorney's offices must be equipped with adequate recording devices. One LEAP survey respondent indicated that the Croatian police used EU funds to purchase new audiovisual recording equipment for all police stations.

³¹ According to one LEAP survey respondent, the concept of vulnerability is used in respect of witnesses who may be questioned through audiovisual conference and then the questioning will be audiovisually recorded (Art. 292(3) CPA). Victims of criminal offences against sexual freedom, victims of trafficking and victims of criminal offences committed in a family, they will be questioned through audiovisual conference at their request. The questioning is audiovisually recorded (Art. 292(4) CPA).

³² Article 275 CPA.

³³ Article 281 CPA.

³⁴ Article 208.a(8) CPA.

³⁵ Article 208.a(6) CPA and Article 275 CPA.

³⁶ Article 208.a(6) CPA.

³⁷ Article 275(4) CPA.

³⁸ Article 409(2) CPA.

³⁹ Article 275(6) CPA.

24. However, respondents have indicated that a person in pre-trial detention is not offered the technical means to access the recording. Moreover, some courts are not equipped with audiovisual recording equipment, such that minors under the age of 14 who must be questioned using an audio-video recording device are interviewed instead at a police station, typically better equipped than some courts, but highly stressful for the child.

England and Wales

25. **Legal framework** - Code E of the Police and Criminal Evidence Act 1984⁴⁰ requires audio (but not audiovisual) recording of interviews at police stations in respect of interrogations with persons cautioned in respect of an indictable offence, including an offence triable either way.⁴¹ The part of the interrogation where suspects are informed about their rights is, in principle, also recorded. The recording must be made available to the person concerned upon request. The limitation of the requirement of audio recording to offences which are indictable or triable either ways means, broadly speaking, that interviewing is not required in respect of offences for which the maximum sentence is six months' imprisonment or less, that being the maximum sentence which can be imposed by a magistrates' court.⁴²
26. The exceptions to the requirement are limited to two circumstances: (i) where equipment failed or is unavailable; and (ii) if it is clear from the outset there will not be a prosecution. Failure to record an interrogation, is, in practice, rare and would depend upon a malfunction. However, there is a clear provision for questions asked outside the formal interview context. If the police officer is effectively questioning a person on the substance of the offence, it is an interview and should be done at the police station; failure to do this can lead to the exclusion of any evidence derived from the interrogation. If there is just basic conversation and the accused person volunteers comments, these have to be noted, given to him to sign and put to him in the interview afterwards as a safeguard. Failure to do this again may lead to their exclusion.
27. **Practical issues** – a respondent to the LEAP survey indicated that in practice, body-worn video cameras are increasingly used at the scene.

France

28. **Legal framework** – in 2007, a legislative measure was adopted to extend the audiovisual recording obligation, which existed since 2000 in respect of children held in detention as suspects,⁴³ to both suspects and charged persons.⁴⁴ This extension to adults was foreseen by the Parliament, on the basis that the restriction of the obligation to children was questionable.⁴⁵ However, the audiovisual recording requirement applicable to adults is limited in scope for “organisational reasons”.⁴⁶ First, Article 64-1 of

⁴⁰ PACE Code E paragraph 3.1.

⁴¹ An offence triable either way in England and Wales is an offence which can be tried either with a jury in the Crown Court or without a jury in the magistrates' court. See: Chalmers, J., *Recording of police interviews*, in: Chalmers, J., Leverick, F. and Shaw, A. (eds.), *Post-Corroborator Safeguards Review Report of the Academic Expert Group*, The Scottish Government, Edinburgh, p. 119.

⁴² Chalmers, J., *Recording of police interviews*, in: Chalmers, J., Leverick, F. and Shaw, A. (eds.), *Post-Corroborator Safeguards Review Report of the Academic Expert Group*, The Scottish Government, Edinburgh, p. 119.

⁴³ Law of 15 June 2000, Article 14.

⁴⁴ Law of 5 March 2007, as implemented by the circular of 26 May 2008 relative to the application of provisions relating to the audiovisual recording of interrogations of persons placed in detention or charged in connection with an offence.

⁴⁵ Ingrain, C., Pasternak, J. and Lorrain, R., “Pour une généralisation de l'enregistrement audiovisuel des gardes à vue et des interrogatoires en matière correctionnelle”, *La Semaine Juridique*, n. 37, 7 September 2015, 941.

⁴⁶ Ingrain, C., Pasternak, J. and Lorrain, R., “Pour une généralisation de l'enregistrement audiovisuel des gardes à vue et des interrogatoires en matière correctionnelle”, *La Semaine Juridique*, n. 37, 7 September 2015, 941.

the Code de procédure pénale requires the audiovisual recording of interrogations of persons placed in police custody for offences which qualify as “crimes”, with the exception of certain offences such as organised crime and terrorism. Moreover, the requirement does not apply where interrogations are conducted outside police stations equipped with the necessary equipment or if recording is impossible due to technical reasons. Second, Article 116-1 of the Code de procédure pénale⁴⁷ also requires the audiovisual recording of interrogations conducted by instructing judges in relation to (i) the most serious types of offences categorised as “crimes” in France⁴⁸ and; (ii) when the accused is under 18 years old.⁴⁹

29. Any evidence obtained without a recording will not be admissible later on. The French highest Court (Cour de cassation) has been very strict in respect of the failure to audiovisually record interrogations. In a 2015 case, it expressly stated that the absence of such a recording undoubtedly harms the interests of the concerned person⁵⁰, and, moreover, generates the nullity of the official report. In this way, the French Court de cassation makes of the audiovisual recording an essential formality. Suspects may, however, expressly waive the right to audiovisual recording of the interrogation. Access to the recording is made available to defence lawyers at no cost, but only in the event of a dispute with respect to the contents of the interrogation. However, if the person wants to access the recording, he or she must apply for access to the instructing judge or the tribunal. Hence, one LEAP respondent indicated that judicial authorities can pretty easily deny the right for the accused person to have access to any recording. Recordings are destroyed after the expiry of a 5-year period from the start of the proceedings within a period of one month. LEAP survey respondents have indicated that this is unfortunate since if it is a criminal case and there is an appeal, it usually takes place more than 5 years after the facts.
30. The Recommendation has not been implemented and there are no specific measures in respect of vulnerable persons. However, there are special rules in relation to minors. Article 706-52⁵¹ of the Code of Criminal Procedure and Circular letter of 20th of April 1999 (Law 2007-297 (5/3/2007)) offers the most relevant provisions. For interviews with the child who is a victim of certain criminal facts (murder, torture, rape, sexual aggression), an audiovisual recording is needed. However, the situation for children accused of a crime is somewhat different.⁵² When a child has reached the age of 13, an audiovisual recording is required when placed in detention. Under the age of 13, police officers have a discretion to decide whether to do so. For suspected children, the nature of the crime is not a distinctive feature.
31. **Practical issues** – in general, police stations have one or two offices equipped with the required audiovisual recording materials. They generally use a webcam placed over the monitor to record the interviewed person. Every instructing judge can ask for his office to be equipped with any type of recording device (and in general they also use a webcam). Courtrooms are equipped to audio record the discussions during proceedings. However, the LEAP survey responses have highlighted practical concerns. The limitation of the audiovisual recording requirement to certain types of offences has been criticised by practitioners on the grounds that only an audiovisual recording guarantees the reliability of a transcript and that there should be an equality between citizens before the law, regardless of the

⁴⁷ Available at:

https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=B0E6336529D554679DOC9F2E57E5FE01.tplgfr34s_2?idArticle=LEGIARTI000025713165&cidTexte=LEGITEXT000006071154&dateTexte=20180108.

⁴⁸ Article 64-1 of the French Code of Criminal Procedure.

⁴⁹ Article 4, VI of the 2 February 1945 Order.

⁵⁰ The original text : « Le défaut de l'enregistrement audiovisuel porte nécessairement atteinte aux intérêts de la personne concernée » (*Cass. Crim.*, 13 mai 2015, numéro 14-87/534).

⁵¹ Based on the law of 17/6/1998 dealing with the protection of minors and modified by the law of 5/3/2007 on strengthening the equilibrium in criminal matters.

⁵² Law 15/06/2000 on the presumption of innocence.

categorisation as a “crime” of the offence committed.⁵³ The Parliament has requested an evaluation of the existing legislation. A respondent to our survey indicated that having the possibility to watch the interrogation would be a great tool for the defense, especially in France which has implemented the so-called “comparution immédiate” whereby the accused person is presented within three days of arrest to the court for sentencing in respect of offences carrying a prison sentence of at least two years.⁵⁴ However, although the part of the interrogation where suspects are informed about their rights is, in principle, recorded, in practice, suspects are usually informed of their rights before starting the recording. Audiovisual recording also supports the right to interpretation. A respondent indicated that in one case involving a Pakistani national, it was obvious during the interrogation by the police that the interpreter was inadequate and without the recording, the judge would not have taken into consideration such an argument.

Ireland

32. **Legal framework** - as a general rule, the audiovisual recording of interrogations is mandatory (subject to exceptions) by virtue of the Criminal Justice Act 1984 and 1997 Regulations. Police officers are required to record audiovisually interrogations of suspects (before being charged).⁵⁵ All police stations where interviews are conducted have dedicated interview rooms with cameras and DVD-recording equipment, but bodyworn cameras do not qualify under the applicable regulations for the purposes of the audiovisual recording obligation. Courtrooms also have audiovisual equipment as needed. However, the initial advice, at the point of detention in the police station, including the reading of the person’s rights, is not recorded. The consequences of a failure to record an interrogation are very complex. If there is an outright failure by the police to record the interview, it is unlikely to be admitted. But if for example at the point of arrest a suspect is said to have made a “spontaneous confession”, this may be admitted.
33. Recordings are only made available by court order (in practice, a respondent has indicated that permission is always granted) and no fee is payable. However, access to the recording is not possible during police custody. The law does not address privacy or data protection considerations.
34. **Practical issues** – a respondent to the LEAP survey indicated that audiovisual recording is helpful as evidence of what was discussed during the interrogation, and in particular to show that the police has misrepresented the contents of the interrogation at trial.⁵⁶ However, another practitioner noted that there are many limitations to the requirement, especially communications with the suspect before the interrogation by the police - deals, promises, threats, for instance – that are not recorded. Although recordings are useful in themselves, “too much happens during interactions between the police and the suspect that is not recorded” as stated by a LEAP survey respondent.

New South Wales (Australia)

35. **Legal framework** - in New South Wales, in order for an accused person’s statements to be admissible in criminal proceedings, section 281 of the Criminal Procedure Act 1986 (NSW) generally requires those statements to have been electronically recorded by the investigating official, and for a copy of the recording to be made available to the court.⁵⁷ Investigating officials (including police officers), who suspected or could have reasonably suspected that an accused person committed an indictable offence

⁵³ Ingrain, C., Pasternak, J., Lorrain, R., 7 September 2015, “Pour une généralisation de l’enregistrement audiovisuel des gardes à vue et des interrogatoires en matière correctionnelle”, *La Semaine Juridique*.

⁵⁴ Code de procédure pénale : articles 393 à 397-7.

⁵⁵ However, one of the LEAP survey responses indicated that there are exceptions to the requirement. At this stage, we do not have any further information on the scope of the exception.

⁵⁶ One LEAP survey respondent indicated that: “the recording provides an undeniable record of things said by the police to the suspect - they often are demonstrated to be lying during the trial”.

⁵⁷ <http://www.odpp.nsw.gov.au/docs/default-source/speeches-by-lloyd-babb/inaccurate-recording-of-accused-person's-statements.pdf?sfvrsn=4>.

(or an indictable offence which can be dealt with summarily), are required to make a video and/or audio recording of any admission by the accused person, if the admission was made during questioning in connection with the investigation of the commission or possible commission of an offence, and the admission is to be tendered as evidence in subsequent proceedings.

36. If an admission is not recorded in the prescribed manner, the admission will, in principle, be inadmissible. Statements made by the accused during a break in an interview are also inadmissible.⁵⁸ Where the accused person was not aware of the fact that he was still taped after a formal interview, the information obtained was nevertheless admitted in court.⁵⁹ A reasonable excuse can be invoked for failure to record⁶⁰ on one of the following grounds: (i) mechanical failure of the tape-recording device; (ii) the refusal of a person being questioned to have the questioning electronically recorded; (iii) the lack of availability of recording equipment within a period in which it would be reasonable to detain the person.

Portugal

37. **Legal framework** - the audiovisual or audio recording of interrogations of suspects and accused persons by police officers or judicial authorities is mandatory, except if the technical equipment is not available.⁶¹ The part of the interrogation where suspects are informed about their rights is also recorded. The recording is made available to the persons and no fees are payable. There are no special measures implementing the Recommendation. In Portugal, there is no explicit definition of a “vulnerable suspect”, but the law provides that mandatory legal assistance must be made to a person who cannot speak Portuguese, who suffers from intellectual disabilities or who is under the age of 21.⁶²
38. **Practical issues** - although by law audio or audiovisual recording is mandatory, except when not possible due to lack of means, one LEAP survey respondent reported that: “in the overwhelming majority of cases, interrogations by the police and public prosecutor during investigations are not recorded in practice due to lack of means”. Judicial interrogations are generally audio recorded, since audio recording is available in all courtrooms, but it is rare for police stations to be equipped with the necessary technology. In practice, one of the LEAP survey respondents indicated that police confessions are not admissible in court as a confession in Portugal, but for other interviews, there has to be a record, which is generally “only a written summary of the interrogation since there is no means to record, except for judicial interrogations. If there no recording at all (audio, video, summary in writing) has been made, there is no evidence that can be admitted (the police cannot make such statements and the prosecutor or investigating judges cannot be heard as witnesses).”

Romania

39. **Legal framework** - as a general rule, the audio or audiovisual recording of interrogations of suspects and accused persons by police officers and judicial authorities is mandatory⁶³ subject to the exception where recording is impossible. However, there are no consequences in the event of a failure to record an interrogation. The requirement is also subject to the exception of urgency as well as in the event of the lack of technical equipment. The Criminal Procedure Code does not specify that the part of the interrogation where suspects are informed about their rights must also recorded, but refers only to the statement itself, so in practice the recorded part is different depending on the person that makes it. Further, the person conducting the interrogation has the ability to question a person before starting the recording, or the option to switch on/off the audiovisual/audio equipment during questioning.

⁵⁸ As established in the case of *Nicholls v. Coates*, 2005.

⁵⁹ *Carr v Western Australia*, 2007.

⁶⁰ Criminal Procedure Act 1986, section 281(4).

⁶¹ By virtue of Articles 141(7), 143(2), 144(1) and 144(2) of the Code of Criminal Procedure.

⁶² Article 64(1)(d) of the Code of Criminal Procedure.

⁶³ By virtue of Article 110 of the Romanian Criminal Procedural Code.

40. In pre-trial detention, the technical means of accessing the recording are not available, but a request in this respect may be made to the judge. The Criminal Procedure Code does not refer to data protection or confidentiality of the recordings, but refers to Law no. 677/2001 for the protection of individuals with regard to the processing of personal data and the free movement of such data which applies in general to data protection issues.
41. **Practical issues** – one of the LEAP survey respondents noted that in practice, the accused person “feels safe” when the interrogation is audiovisually recorded, which offers a guarantee that his rights are respected and there is a record of everything that he said. However, it was also noted in the LEAP responses that we received that there is no implementing measures policy due to lack of funding. Almost all courtrooms are equipped with audio recording equipment. However, only some police services and specialised prosecutor's offices (namely in anticorruption and anti-organised crime) have the necessary recording technical equipment.

Scotland

42. **Legal framework** - as a general rule, the audiovisual recording of interrogations is mandatory (subject to exceptions) by virtue of the Police and Prosecutorial Guidelines. Interrogations of suspects (i.e. before being charged with an offence) by police officers in police stations are audiovisually recorded in all cases except in the event of urgency. The part of the interrogation where suspects are informed about their rights is also recorded. The relevant rules address privacy and data protection considerations. Although our LEAP survey respondents did not identify any specific measures adopted for the implementation of the Recommendation, any person under the age of 16 or who says they consider themselves to be vulnerable will be treated as “vulnerable”.
43. **Practical issues** – LEAP respondents have indicated that all courts and police stations are appropriately equipped. In Scotland, the recording of interrogations has become routine. Police may still speak to suspects off camera but in court, that can be viewed as unconvincing or even inadmissible.

Taiwan

44. **Legal framework** - audiovisual recording technology is used during the whole interrogation process. If the recording has to be suspended during the interrogation, the exact time and reason has to be noted on the written record. The audiovisual recording will be provided to the prosecutor for consultation.

United States of America

45. **Legal framework** – at federal level, until 2014, the Department of Justice (DOJ) investigatory agencies – the Federal Bureau of Investigation (FBI), Drug Enforcement Agency (DEA), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) – did not require their agents to make electronic recordings of custodial interrogations of felony suspects. In fact, the FBI had a non-recording policy. A substantial number of commentators, including federal and state court judges, expressed severe criticisms of the FBI policy that discouraged the recording of custodial interviews: “the prevailing practice has been to record only the confession itself, excluding the many hours of interrogation leading up to it, or to rely upon written or untapped oral confessions. Current practice has led to false confessions, escape of the guilty for years, violations of constitutional rights, and insufficient training in the most effective interrogation techniques”.⁶⁴
46. A recording pilot program was launched by the DOJ in 2006 in Arizona following a series of acquittals in cases in which alleged confessions had been taken by agents, using the customary method of note taking, followed by preparation of typewritten reports known as “302s”, without making electronic

⁶⁴ Taslitz, A., High Expectations and Some Wounded Hopes: The Policy and Politics of a Uniform Statute on Videotaping Custodial Interrogations, 7 Nw. J.L. & Soc. Policy [i], 454, 2012, p. 401.

recordings. A new policy was adopted in 2014 by the Office of the Deputy Attorney General of the DOJ establishing a presumption in favour of electronically recording custodial interviews, with certain exceptions, and encouraging agents and prosecutors to consider taping outside of custodial interrogations in relation to all federal crimes. There is a presumption that the custodial statement of an individual in a place of detention with suitable recording equipment, following arrest but prior to initial appearance, will be electronically recorded, subject to the certain exceptions: (i) refusal by the interviewee; (ii) public safety and national security; (iii) where the recording is not reasonable practicable; and (iv) where the Special Agent in Charge and the United States Attorney, or their designees, agree that a significant and articulable law enforcement purpose requires setting it aside. The policy specifies that this exception is to be used sparingly. A decision not to record any interview that would otherwise presumptively be recorded under the DOJ policy must be documented by the agent as soon as practicable and be made available to the United States Attorney for review.

47. At State-level, the audiovisual recording of police interrogations varies across States. According to the research of the National Association of Criminal Defense Lawyers, 25 States have no statute or court rule relating to recording,⁶⁵ although within all of these States, many departments record police interrogations as a matter of local policy. The other States have a judicial ruling (8 States) or a statute (18 States) which prescribes the audio or audiovisual recording of police interrogations in specified cases (e.g. serious crimes). For instance Minnesota has a 1994 Supreme Court ruling requiring the recording of all interrogations including any information about rights and any waiver of those rights. The failure to record the interrogation results, in some States, in the exclusion of the declarations at trial, but not in other States. For instance, an unexcused failure to record in Missouri is specifically expressed as not constituting a ground to exclude evidence.

B. Countries where there is a limited obligation to audiovisually or audio record interrogations of suspects and accused persons

Estonia

48. **Legal framework** - the audiovisual recording of interrogations of both suspects and accused persons is required only in specified cases "where necessary" at police stations or in the offices of prosecutors. At present, we do not have any further information on what types of cases qualify as "necessary". Where an audiovisual recording is made, the recording must be made available to the person concerned. No fee is required and persons in pre-trial detention can have access to the recording.
49. As far as minors are concerned, in Estonia, the audiovisual recording of children's interrogations is possible upon request, but limited to certain cases. In particular, there is a requirement to audiovisually record the interrogation of underage witnesses where the evidence obtained is intended to be used at trial.⁶⁶ No measures have been adopted for the implementation of the Recommendation and the law does not specify a definition of a "vulnerable person".⁶⁷

⁶⁵ <https://www.nacdl.org/usmap/crim/30262/48121/d/>.

⁶⁶ By virtue of Section 70 para 3 of the Code of Criminal Procedure.

⁶⁷ The Code of Criminal Procedure (Chapter 3, Division 2, §70) provides that: "(3) *if necessary, the hearing of minors is video recorded. In the case specified in subsection (2) of this section, the hearing of minors is video recorded if the intention is to use such hearing as evidence in court proceedings because questioning a minor directly in a court is impossible due to his or her age or mental state. (4) A suspect has the right to examine during the pre-trial proceedings the video recordings specified in (3) of this section. The suspect or a counsel has the right to submit questions to witnesses during five days after the questioning. A prosecutor's office shall review a request within five days as of the receipt thereof. Dismissal of a request shall be formalised by an order a copy of which shall be communicated to the person who submitted the request. Dismissal of a request shall not prevent re-submission of the request pursuant to the procedure provided for in § 225 of this Code or in the court proceedings.*"

50. **Practical issues** – LEAP survey responses indicate that audiovisual recording is generally not used in respect of the interrogation of suspects. Instead, a written record, signed by both the investigating officer and the person interrogated, is produced. However, one of the LEAP survey respondents reported that there are plans to record all interrogations from 2020.

Germany

51. **Legal framework** - the audiovisual recording of interrogations of both suspects and accused persons is required only in respect of specified offence.⁶⁸ Police officers and judicial authorities are subject to the requirement. The part of the interrogation where suspects are informed about their rights is also recorded. However, the LEAP survey response we received in respect of Germany indicated that certain categories of crime are excluded from the requirement, although we do not have any further information on the scope of this exception for the time being. Moreover, the law does not address privacy or data protection issues. There are no specific safeguards for vulnerable persons or minors. There is, however, new legislation not yet in force that requires the recording to be made available to the person concerned in a timely fashion.

Hungary

52. **Legal framework** – the prosecutor or investigative authority may order the audio or video recording of interrogations. A recording may be requested by the accused person, his or her lawyer, or the victim, subject to the payment of the audiovisual recording costs – if the costs are advanced, making a recording becomes mandatory.⁶⁹
53. The video recording of interrogations is not obligatory in Hungary. The recording is added to the case file and must be retained as long as the case is active. According to the HHC report, the number of interrogations that are audiovisually recorded is very low, representing less than 0.1% for the period 2012-2014.⁷⁰

Italy

54. **Legal framework** –any questioning of a person who is detained for any reason in any place of detention outside a court hearing must be fully documented by means of audio or audiovisual recording.⁷¹ There are several Supreme Court rulings stating that the rule does not apply if the defendant is subject to house arrest (adults and juveniles).⁷² Moreover, a Supreme Court ruling further restricted the scope of this requirement by stating that it only applies to questioning by judicial authorities (outside a court hearing), which means that questioning by police officers, even if they are delegated from the prosecutor, is not covered.⁷³ Likewise, so-called “spontaneous information” is also not covered.
55. The audio or audiovisual recording requirement is further limited in scope to persons (adults and children) placed in detention, but does not extend to suspects who are not deprived of their liberty, including children suspects.

⁶⁸ By virtue of new § 136 Abs. 4.

⁶⁹ Act XIX of 1998 on the Code of Criminal Procedure, Article 167. This regulation is in fact contrary to the concluding observations of the Human Rights Committee regarding Hungary from 2010 (CCPR/C/HUN/CO/5, 16 November 2010), saying that Hungary should “provide free video-recording services so that indigent suspects are not deprived of their rights by virtue of their economic status” (§ 13).

⁷⁰ HHC report, 2017, page 98.

⁷¹ Article 141 bis of the Italian Criminal Procedure Code, which has been applicable since 1995.

⁷² Corte di cassazione, Joined Chambers, 25.3.1998 n. 9; 4th chamber 14.1.2008 n. 6473; 3rd chamber 21.07.2016, n. 31415.

⁷³ Corte di Cassazione, Joint Chambers, ruling 9 of 1998.

56. The questioning of children held in pre-trial detention (whether in a police station or a prison) by a prosecutor are offered the technical means to access the recording (and our understanding, subject to confirmation, is that the same applies to adults). The questioning must also be minuted in summary form and the transcript of the recording may be requested, subject to the payment of fees. In principle, the part where the detained person is informed of his or her rights is recorded. However if no transcript has been carried out even if requested by the defendant, the questioning is still valid.⁷⁴ As far as privacy and data protection is concerned, the recording must remain in the confidentiality of the investigation.⁷⁵
57. There are no specific provision implementing the Recommendation in respect of vulnerable suspects or accused persons, although the Italian Criminal Procedure Code identifies certain criteria of vulnerability in respect of victims, such as age, illness, type of crime (e.g. mafia-related).⁷⁶ The audiovisual recording of children's interrogations is mandatory in respect of child witnesses in proceedings relating to specific offences (sexual violence and abuse, cruelty, children prostitution, slavery, child pornography, amongst others).⁷⁷ The recording has to be done by a police officer or a judicial authority. There is no fee to be paid by the minor to access the recording, but it is noted that in practice, the recordings are not made available to the child in a timely manner. If there is no audiovisual or audio recording of the child's interrogation when there should have been one, the evidence can still be used in court.⁷⁸
58. **Practical issues** – in respect of the interrogation of children, a respondent to the IJJO survey indicated that only few police stations and courtrooms are equipped with the adequate installation, as a result of a lack of financial resources. In respect of suspects and accused persons, one of the LEAP survey respondents indicated that in practice, the mandatory recording of interrogations of persons in detention is only by audio means with portable recording equipment. However, the LEAP survey respondent indicated that audio recording was useful to avoid threats by the interrogating authority, but did not consider that any aspects of the recording practice in Italy were particularly positive. In particular, the interrogator can start the recording only after a preliminary discussion with the detained person, and moreover has the ability to switch off the recording during the interrogation. The presence of a lawyer is not sufficient to protected detained persons from abuse, because in some cases the lawyers' objection is against the person's own interest (for example, if there is the request for pre-trial detention, the defendant will not be willing to start an argument).

Japan

59. **Legal framework** - police investigations in Japan have recently been subject to important reforms. By way of background, Japan has been criticised in the media for its heavy reliance on confessions and for how defendants are treated in order to obtain admissions of guilt - with resulting miscarriages of justice. In 2007, the Economist reported: "Japan is unique among democratic countries in that confessions are obtained from 95% of all people arrested, and that its courts convict 99.9% of all the suspects brought before them."⁷⁹ Following a nationwide pilot project launched in 2009, the law of May 2016 amending the Code of Criminal Procedure introduced the system for audiovisual recording of

⁷⁴ Corte di Cassazione, Joint Chambers, 39061 of 2009.

⁷⁵ Article 114 of the Code of penal procedure.

⁷⁶ Article 90 quarter of the Italian Criminal Procedure Code.

⁷⁷ Article 398, paragraph 5 bis of the Italian Procedural Code.

⁷⁸ For instance, a judicial precedent admitted written declaration and verbalization (Supreme Court - Cassazione, sect. III, 2.8.2004, Nr. 33180).

⁷⁹ "Confess and be done with it: Almost everyone accused of a crime in Japan signs a confession, guilty or not", Economist, 8 February 2007, at: <http://www.economist.com/node/8680941%26URL%3dhttp%253a%252f%252fwww.economist.com%252fnode%252f8680941>.

interrogations⁸⁰ to increase the credibility of evidence. Police officers are required in principle to record voice and picture of the entire interrogation of suspects in custody. However, the obligation is limited to certain types of crimes (certain financial and economic crimes, drugs and firearm offences). When the suspect's statement in a document is challenged at the trial in cases to which the new system applies, the public prosecutor must request the examination of the audio and video recordings of the suspect's interrogations. The exceptions are limited to (i) equipment malfunctioning; (ii) refusal by a suspect; (iii) certain categories of crime; and (iv) possibilities of offending.

The Netherlands

60. **Legal framework** - the audiovisual recording of interrogations of suspects is possible (the equipment/facilities are generally available) but only required by law in specified cases, namely offences such as murder and sexual assault, and in respect of specific suspects (minors under the age of 16 and vulnerable persons). In respect of cases where audiovisual recording is not mandatory, the police officers in consultation with the prosecutor on duty decide whether to audiovisually record the interrogation or take a written note, based upon grounds such as the nature of the case. Moreover, defence counsel may make a request for audiovisual recording.⁸¹ There exist audiovisual recording guidelines⁸² which give a detailed scheme of what is expected and assist authorities in deciding whether to audiovisual record an interrogation. The guidelines also specify the practical settings, such as the minimum number of cameras required in each situation (suspect, child...). The consequences of a failure to record an interrogation vary, but there is not much case-law on the failure to audiovisual record an interrogation. Copies of the tapes are not made available to defence counsel as a matter of course, unless requested by the person concerned. The transcript of the recording is, however, made available as soon as possible after the recording is completed. Further, prisons provide the technical means to access the recordings to the suspect. There are clear provisions on the conservation periods of the recordings.
61. In respect of vulnerable persons, the Netherlands specifically implemented the Recommendation and interrogations are recorded and take place in the presence of the defence counsel in special audiovisual hearing rooms (which pre-exist the Recommendation). Vulnerable persons are defined as minors under the age of 16 and persons with a (manifest) intellectual disability or cognitive disability. However, there is no specified process to identify a vulnerable adult. It is up to the police to assess whether a suspect is vulnerable. At this stage it is about the "apparent vulnerability of the suspect". In case of doubt, police tend to call in a lawyer.
62. The mandatory audiovisual recording of children's interrogations is limited to certain specific situations, such as minors under the age of 16. However, for minors over 16 years old it is not mandatory and audiovisual recording is decided on the basis of a case-by-case assessment. There is also a clear distinction between minors under the age of 12 and other minors. The latter category is heard in traditional hearing rooms whereas under 12-year olds are interviewed in specially designed rooms. In the official instruction, the different rooms (interrogation room, director's room...) and the possible roles (interviewer, interview coach, behaviour expert, director) are defined and a whole script is prescribed. Hence, in practice, the interrogations are not child-friendly for children above 12 years old. There is no fee to access the recording.

⁸⁰ White Paper on Police 2016/23, http://www.npa.go.jp/hakusyo/h28/english/WHITE_PAPER_ON_POLICE_2016/P23-25_WHITE_PAPER_2016_23.pdf.

⁸¹ One LEAP survey respondent indicated that: "I made such a request only twice in my entire career and the police after consulting the prosecutor agreed with me to record audiovisually the interrogations."

⁸² "Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers, getuigen en verdachten Aanwijzing 1/1/2013, available at: <http://wetten.overheid.nl/BWBR0032552/2013-01-01>.

63. **Practical issues** – for the time being, the recording of children’s interrogations in the Netherlands is limited to certain locations, but work is in progress towards the installation of audiovisual recording equipment in all police stations (declaration of the Minister of Justice in 2017). Mobile equipment is also used for the audiovisual recording of children’s interrogations. In respect of adults, one of the LEAP survey respondent expressed the view that the main barrier to the expansion of the audiovisual recording practice is lack of willingness by the police, who is accustomed to taking written notes.⁸³ Moreover, one of the LEAP survey respondents indicated that criminal courts tend not to review recordings of interrogations. According to prosecutors and judges, this would take up too much time. Judges consider the presence of a recording to be important, but rarely look at them. Dutch criminal proceedings are generally conducted on the basis of written records, and those involved assume these written pieces to accurately represent the “reality”, according to one of the LEAP survey respondents.
64. One of the LEAP respondents noted to importance of audiovisual recording in practice, to identify, for instances, cases where the police forgot to caution the client; where the quality of interpretation was not acceptable; or where the police sought to exclude the lawyer from the interrogation. According to another LEAP respondent, the main advantage of audiovisual recording for defense lawyers is to check the accuracy of the written version prepared by the police. However, one respondent highlighted a potential risk of producing a transcript of an interrogation based on the audiovisual recording, citing a case where during questioning, the police discussed with a suspect the possibility of informing. This was subsequently noted in the verbatim transcription and subsequently in the criminal proceedings, when the transcript was divulged to other parties, the client was subject to threats. This raises interesting privacy issues linked to interrogations.

C. Countries where audiovisual recording is required in cases or in respect of persons other than suspects or accused persons

Belgium

65. **Legal framework** - in Belgium, audiovisual recording is limited to the following cases: (i) victims and witnesses who are minors in the context of interrogations relating to an exhaustive list of crimes;⁸⁴ and (ii) in relation to suspects and accused persons, where the investigating judge or public prosecutor orders the audiovisual interrogation.⁸⁵ Moreover, a recent law⁸⁶ states that where an adult gives up his right to assistance by a lawyer, an audiovisual recording must be made where possible. The public prosecutor has the discretion to order the audiovisual or audio recording of the interrogation.⁸⁷ The person is informed of the recording beforehand. The recordings are stored by way of two copies, which can only be consulted by people involved in the proceedings. During the investigation, the parties can only see the recording upon request (as provided by Article 61ter of the Code of criminal procedure). After the investigation, the audiovisual recordings are considered to be part of the criminal file and are accessible for the parties. The evidence obtained from the interrogation will only be dismissed where the defence can convince the court that the lack of audiovisual recording renders the interrogation unreliable or if the absence of the recording constitutes a violation of Article 6 ECHR.⁸⁸
66. At present, there is no established definition of a “vulnerable person” and no measures have been adopted to implement the Recommendation. The individual investigator assesses whether the person is

⁸³ Specifically: “Willingness. Rusty tradition is that police write it down.”

⁸⁴ Article 92 of the Code of criminal procedure.

⁸⁵ Article 112ter Code of criminal procedure or Article 2bis § 3 Law on Pre-trial detention - the latter concerns audiovisual recording in the case of detained persons.

⁸⁶ Law of 21 November 2016 on certain rights for people submitted to an interrogation published in the *Belgian Moniteur* on 24 November 2016.

⁸⁷ Code on criminal procedure, Art. 112 ter.

⁸⁸ The so-called “Antigone”-doctrine; on this issue see the ECtHR case *Kaleniene v. Belgium*.

vulnerable. There are no specific safeguards with regard to vulnerable persons with the exception of the obligation in Article 47bis of the Code of criminal procedure which provides that the letter of rights should be communicated in a manner comprehensible for vulnerable persons. There are, however, no standard forms to be applied and no requirement for the assessment or education of investigators with respect to the vulnerability of the interrogated persons.

67. With regard to minors, certain safeguards are in place in the Code of criminal procedure and the Law on pre-trial detention providing for mandatory legal assistance prior to and during an interrogation. In the Belgian context the child-friendly character of the provisions is much more elaborated when dealing with victims than when with suspects. For instance, the presence of a specifically trained police official is not required for child suspects, where this is the case for minor victims or witnesses.⁸⁹ The same discrimination is made for the interrogation room setup and the mandatory character of the recording.⁹⁰ For minor suspects, the same legislation applies for them than for adults.⁹¹ The audiovisual or audio recording of the interrogation can be required by the prosecutor or the investigating judge, but is not made mandatory by law.⁹² The recording in this case can only be seen and/or listened to by parties involved into the investigation.⁹³ Children do not have to pay a fee to obtain access to the recording. A child in pre-trial detention (whether in a police station or in a prison) is offered the technical means to access the recordings. The recordings are in general made available to the child in a timely manner.
68. For minors older than 12 years old, the recording must be practiced only with consent from the minor. It is important to note that, in Belgium, thanks to the TAM (Techniques d'Auditions de mineurs) training,⁹⁴ there is a great expertise within the police force regarding interrogations of minors and all the specificities tied to them. The audiovisual recording of a minor's interrogation must take place in a specially adapted location,⁹⁵ soundproof, welcoming, child friendly, sober, neutral and without objects that could distract the auditioned person (cell phone, toys). There are currently about a hundred of those specifically adapted rooms in Belgium. The required equipment must be set up in a technical room next to the audition room. The minor can interrupt the recording at any time.⁹⁶ Only persons involved in the instruction and judgement and parties to the trial can access the recording of the minor's interrogation.⁹⁷
69. **Practical issues** - currently, with respect to adults, the prevailing procedure is a written police report by way of a live transcript which is typed up simultaneously during questioning by the interrogating officer, leading to a summary note. The majority of police stations are not equipped with audiovisual recording facilities, however, in the more recent buildings, equipment is provided subject to funding. In particular, the federal judicial police in general have the possibility to record interrogations, but the availability of the necessary equipment varies in the local police offices. One LEAP survey respondent indicated that where audiovisual equipment is available, it is typically used for surveillance purposes rather than to record the interrogation. As such, the practice of recording police interrogations varies depending on the police station where the suspect or accused person is questioned. Moreover, certain police stations

⁸⁹ Code on Criminal Instruction, art. 94.

⁹⁰ Code on Criminal Instruction, art. 92§1.

⁹¹ That is to say Article 112ter of the Code on criminal procedure.

⁹² *Ibid.*, art. 112ter § 1.

⁹³ *Ibid.*, art. 112ter § 2.

⁹⁴ "Techniques d'Audition de mineurs (TAM)", Available online at <http://www.police.ac.be/fiche-fr-887.htm>

⁹⁵ Code on Criminal Instruction, art. 94.

⁹⁶ *Ibid.*, art. 95.

⁹⁷ *Ibid.*, art. 99.

dispose of a special setup and a specific technique for interviews for people up to the age of 25.⁹⁸ There have been pilot projects for the use of bodycams but police officers in certain regions of Belgium, but respondents to the LEAP survey indicated that there are no ongoing projects to broaden the use of audiovisual recording to suspects and accused persons. In the federal parliament, the Committee for Justice is currently considering broadening the scope of audiovisual recordings, but only in respect of victims.⁹⁹

Cyprus

70. **Legal framework** – where possible, the law specifies that interrogations by police officers of victims of domestic violence as well as minors victim of sexual exploitation should be audiovisually recorded. Cyprus has not implemented the Recommendation by way of any specific measures and there are no audiovisual recording measures relating to the interrogations of suspects and accused persons. In such cases, interrogations are recorded by way of a summary note.
71. **Practical issues** – one of our LEAP respondents noted that there is special audiovisual recording equipment in certain police stations and in certain court rooms. However we do not have further information on the extent of its use.

Denmark

72. **Legal framework** – although we did not obtain information on the audiovisual recording of interrogations of adults, we did gather information on the audiovisual recording of children. In Denmark, the audiovisual recording of children’s interrogations is possible upon request for certain categories of children,¹⁰⁰ but not required by law. Therefore, information from interrogations is generally collected through a written report. However, there are specific safeguards in place for the interrogations of child victims. For child victims, more specifically children victimised sexually, audiovisual recording of the interrogation is ensured.
73. **Practical issues** – the respondent to the ECJJ survey indicated that the police does have the equipment and facilities to carry out audiovisual recordings. However the main obstacle to the introduction of more widespread audiovisual recording of interrogations in Denmark seems to be that the court, in order to admit evidence, must see the evidence itself.

Poland

74. **Legal framework** - the audiovisual recording of interrogations is only required by law in respect of minor victims.¹⁰¹ The recording is then made available to the person concerned and there is no fee for the recording. A “vulnerable person” is defined a minor, a person who is deaf, dumb or blind, or if there is a reasonable doubt as to the mental state of the person concerned (in which case, a medical expert will confirm whether the person is vulnerable). However, the Recommendation has not been implemented in Poland. The interrogations of suspects and accused persons are, in practice, recorded through written minutes. The waiver of the person’s defence rights is not recorded.
75. **Practical issues** – LEAP survey respondents are not aware of any plans to introduce an audiovisual recording requirement. In practice, the police do not have the equipment to record interrogations. However, some courts have the necessary recording equipment.

⁹⁸ See the local investigation group on youth criminality of the City of Antwerp, the targeted group is integrated in the strategy of the local police,

https://www.politieantwerpen.be/sites/default/files/Zonaalveiligheidsplan2013_2017.pdf

⁹⁹ “5.800 auditions filmées d’enfants victimes en Belgique”, *La Meuse*, 08/06/2017.

¹⁰⁰ The Danish criminal justice system only provides for interrogations of minors under 15 years old in order to assess if older persons were involved in the offence, but minors under the age of 15 cannot be accused in criminal proceedings.

¹⁰¹ By virtue of Article 185a of the Code of Criminal Procedure.

Slovakia

76. **Legal framework** - the audiovisual recording of interrogations is only required by law in respect of the interrogation of victims of certain specified crimes (e.g. sexual offences) and children by police officers. For suspects and accused persons, the interrogator produces a written transcript of the interrogation.
77. **Practical issues** – our LEAP survey respondent noted that in practice, the equipment is available but the practice of audiovisual recording is not established at a pre-trial stage.

D. Countries where audiovisual recording is not required but possible

Czech Republic

78. **Legal framework** – the criminal procedure code does not require the audiovisual recording of interrogations, which remains optional. However, all police stations are not equipped with the necessary technology. The prevailing practice remains to produce a live transcript of the interrogation. Any waiver of the person's defence rights is recorded in writing in the presence of a lawyer and after prior consultation with the lawyer. The audio recordings of court proceedings are obligatory, but the interrogations by police are not.

Finland

79. **Legal framework** - the audiovisual recording of interrogations is possible upon request (the equipment/facilities are available) but not required by law. There are no rules concerning the recording of the statements of suspects or accused persons.¹⁰² The police may opt to audiovideo record the interrogations if there is a reason to believe that the suspect would later in trial withdraw his statement/confession etc. But if the defence asks the police to audiovideo record the interrogation, a LEAP survey respondent indicated that they rarely accept to do so. In most cases, the police who is the interrogator writes the minutes of the interrogation (not verbatim but the main points) and then the suspect and his/her lawyer (if present) signs the document. There is a standard statement which the interrogator reads out to the suspect in respect of any waiver of access to a lawyer. That text is included in the minutes of the interrogation and signed by the suspect in the event of a waiver. During the court proceedings, all interrogations are audio recorded by the court.
80. **Practical issues** – there are special rooms equipped for video recording in certain police stations, but they are used mainly for interrogations of victims or witnesses. There are presently no reported plans to introduce audiovisual recording, but there are plans to introduce audiovisual recording in courtrooms in order to limit the need to repeat oral hearings in the appeal courts. According to two of the LEAP survey respondents, the main barrier appears to be the negative attitude of the police towards audiovisual recording. The prosecutors and the judges do not see any problem with the current practice of using as evidence, even in the most serious cases, minutes of the interrogation that are drafted by the police. Another LEAP respondent indicated that audiovisual recording is not understood to be a right of the defence, but rather a right of the police, despite the importance of audiovisual recording, in particular as lawyers are often not allowed to participate in interrogations. Moreover, the quality of interpretation is in general poor and not trustworthy, as interpreters do not need to be qualified, and the police may use their own interpreters and deny access of the defence's own interpreter.

Lithuania

¹⁰² Note that according to the Criminal Investigations Act, a victim or a witness who is under 15 years' old or is a victim of a sexual offence must be interrogated with audiovisual recording if his/her statement will be used as evidence in the trial.

81. **Legal framework** - the audiovisual recording of interrogations is possible upon request (the equipment/facilities are available) but not required by law in respect of suspects and accused persons. The decision whether to record is made by the investigating officer, prosecutor or judge of the pre-trial investigation. There is, however, a requirement to audiovisual record the questioning of juvenile victims and witnesses. In practice, the availability of audiovisual recording equipment/facilities varies between different police stations.

Spain

82. **Legal framework** - the audiovisual recording of interrogations is possible upon request (the equipment/facilities are available) but not required by law. Typically, interrogations of persons in custody are typed up in a written report by a court clerk. The decision to record or not the interrogation depends on the judge, however if there is a special circumstance, such as the detainee being a foreign national who requires the assistance of an interpreter, the detainee can make a request that the judge record the declaration. In respect of vulnerable persons, there is no legal requirement but in practice, the audiovisual recording of the questioning of minors replaces physical presence in the courtroom. Minor witnesses below 12 years old have specific safeguards but none apply to minor suspects.
83. **Practical issues** – in practice, only judicial authorities have audiovisual recording equipment, and not police stations. Criminal trials are usually recorded even though this is not required in the Act on Criminal procedure. One respondent to the LEAP survey indicated that it would be very helpful to demonstrate, at trial, what has been said and what not as well as the conditions of such interrogations, and that audiovisual recording would act as a barrier against excessive use of the powers of police officers and judicial authorities. However, respondents to our LEAP survey were not aware of any plans in respect of audiovisual recording.

E. Countries where audiovisual recording is not mandatory nor possible

Bulgaria

84. **Legal framework** - according to most LEAP survey respondents, the audiovisual recording of interrogations is neither possible nor required by law. Only the court proceedings are audiorecorded. Two respondents indicated however that audiovisual recording is possible upon request, but that police stations typically do not have the equipment to record interrogations and therefore it is rare in practice. Interrogations are instead typically recorded by way of a summary note typed up by the interrogator. In the courtroom, there is an official responsible for the recording. The waiver of the person's defence rights is recorded in writing, by way of the person signing a document, which is countersigned by two witnesses.
85. Information collected by HHC in 2016 suggests¹⁰³ that the Ministry of Interior issued internal guidelines requiring all interrogation rooms to be equipped with audiovisual recording equipment and that recordings be kept for a period of 30 days. The guidelines provide that the investigating authority, the suspect or the accused person may ask for the interrogation to be audio recorded. In such cases, the internal guidelines specify that the recording must cover the entire interrogation and be made available to the person concerned. Any additional statements must also be audio recorded and the person concerned must confirm, at the end of the recording, that it correctly reflects his or her statements. The recording is added to the note of the interrogation and may only be listened to with the permission of the prosecutor and in the presence of the person concerned. However, despite the adoption of such guidelines, the LEAP survey responses suggest that audiovisual recordings of interrogations remain, in practice, an exception rather than the rule.

¹⁰³ Page 38 of the 2017 HHC report.

86. **Practical issues** – respondents have indicated that the audiovisual option, even where available, is scarcely used. Respondents were not aware of any ongoing or planned pilot projects to introduce audiovisual recording requirements. One LEAP survey respondent considered that making audiovisual recording mandatory at EU level would be create a helpful safeguard in the pre-trial phase interrogations, where in the absence of a lawyer, or even in the presence of a lawyer, interrogations are conducted in an “outrageous manner”. It is almost equally necessary during the court phase where records are often not very accurate.

Greece

87. **Legal framework** - there is no audiovisual recording requirement. Instead, the interrogating official takes a written note, including in principle of any waiver. In specified cases, the court may order the audio (not audiovisual) recording. The witness testimonies of vulnerable persons (such as minors and victims of sex trafficking offences) are audiovisually recorded where possible. The investigating judge or the prosecutor can order the examination of a defendant that they believe may be vulnerable but there is no legal framework applicable to "vulnerable persons". However, in practice the audiovisual recording equipment is not available.

IV. PRELIMINARY FINDINGS

88. The legislation and practice of audiovisual recording of interrogations of suspects and accused persons varies widely across different jurisdictions. By way of overview:
- In 17 of the 27 jurisdictions¹⁰⁴ for which we have collected data, there is no general mandatory requirement to audiovisually record interrogations of suspects and accused persons, such that the prevailing practice remains for the interrogating person (or another person attending the interrogation) to produce a written note of the interrogation.
 - In ten jurisdictions,¹⁰⁵ there is a general obligation (subject to exceptions) to audiovisually or audio record interrogations of suspects and accused persons. However, LEAP survey respondents have reported that the requirement to audiovisually record interrogations of suspects and accused persons is not implemented in practice in certain countries such as Portugal and Romania.
 - In five of the countries for which we have received data,¹⁰⁶ the audiovisual recording requirements apply only in respect of victims and witnesses, but not suspects and accused persons.
 - In a further six countries,¹⁰⁷ audiovisual recording of interrogations is possible, but left to the discretion of investigative authorities.
 - Audiovisual recording technology appears to be available in all but two of the surveyed countries (although we do not have data on the extent of such availability across the territories of each jurisdictions). It is only in Bulgaria and Greece that LEAP survey respondents have indicated that audiovisual technology is simply not available.

¹⁰⁴ Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Japan, Lithuania, Netherlands, Poland, Slovakia and Spain.

¹⁰⁵ Croatia, England & Wales, France, Ireland, NSW, Portugal, Romania, Scotland, Taiwan and the USA.

¹⁰⁶ Belgium, Cyprus, Italy, Poland and Slovakia.

¹⁰⁷ Czech Republic, Denmark, Finland, Hungary, Lithuania and Spain.

89. The advantages of audiovisual recording appear to be progressively recognised across jurisdictions. In 2014, a ban was lifted on US federal investigators recording interrogations¹⁰⁸ and in France the law was changed in 2007 to require the recording of interrogations of suspects and accused persons in respect of certain types of offences.¹⁰⁹ A number of countries in Europe, including Ireland, have required the recording of interrogations since the 1980s; others, such as Croatia, have recently made audiovisual recording mandatory. Moreover, from a technological perspective, audiovisual recording is easier than ever before. Advances in video technology have reduced costs and simplified the use of recording devices and storage of recordings. However, other EU Member States, such as Belgium and Bulgaria, resist the introduction of mandatory audiovisual recording. In order to explain the limited use of audiovisual recording, several LEAP survey respondents have identified lack of financing as a common problem, but also a resistance amongst police and judicial authorities against audiovisual recording of interrogations, even where the technology is available, such as in the Netherlands¹¹⁰ and in Finland.¹¹¹
90. LEAP survey responses suggest that in jurisdictions where audiovisual recording of interrogations of suspects and accused persons has recently been made mandatory, such as Croatia,¹¹² the practice has been positively received. These findings corroborate the research papers and other documentation we have reviewed, which indicate that “the advantages of audio or visual recording are relatively clear and uncontroversial”¹¹³ for both law enforcement officials and suspects and accused persons. By way of an overview, we set out the main benefits below.
- a) First, the audiovisual recording of interrogations helps ensure the effective implementation of procedural rights. In particular, audiovisual recording enables judges to make an effective assessment of the observance of due process rights¹¹⁴ by providing evidence that the interrogated person has been duly informed of his or her rights and also whether a right is invoked (such as the right to remain silent). A recording constitutes a key safeguard to assessing whether compulsion by authorities has been excessive, in light of the particular situation and potential vulnerabilities of individual suspects.
 - b) Second, audiovisual recording allows for a better and more comprehensive account of the interrogation than written police reports. Recent research¹¹⁵ shows that only a quarter of the interrogation process is recorded in official reports. In particular, the behaviour of the interrogator is not described in the official reports, despite the fact that this behaviour can impact on a suspect’s

¹⁰⁸ US Department of Justice Memorandum dated 12 May 2014 setting out the new department policy concerning electronic recording of statements.

¹⁰⁹ See further the country overview below.

¹¹⁰ By way of example, one of the LEAP respondents in respect of the Netherlands indicated that: “Willingness. Rusty tradition is that police write it down” in response to the question on the barriers to the introduction of audiovisual recording of interrogations.

¹¹¹ One of the LEAP respondents in respect of Finland indicated that: “the attitude of the police – they are in general against it. But rather prefer to write their interrogation in minutes” in response to the question on the barriers to the introduction of audiovisual recording of interrogations.

¹¹² One of the LEAP respondents in respect of Croatia indicated that: “there are very good experiences with audio-video recording since it provides good quality of the interrogation and it guarantees a respect of defence rights. I cannot make reference to a specific case or source, but it is a common opinion among practitioners and academics”.

¹¹³ Chalmers, J., 2014, “Recording of police interviews”, in: Chalmers, J., Leverick, F. and Shaw, A. (eds.), *Post-Corroborator Safeguards Review Report of the Academic Expert Group*, The Scottish Government, Edinburgh, p. 121.

¹¹⁴ Donovan, D., Rhodes, J., “Comes a Time: The Case for Recording Interrogations”, *61 Montana Law Review*, 223, p. 227.

¹¹⁵ Malsch, M. , Kranendonk, R. , de Keijser, J. , Elffers, H., Komter, M. and de boer, M. , 2015, “Kijken, luisteren, lezen. De invloed van beeld, geluid en schrift op het oordeel over verdachtenverhoren (Look, listen, read. The influence of visuals, audio and written word on the judgment of suspect interrogations)”, *Politie en Wetenschap*, Apeldoorn, Reed Business.

statements. For instance, pressure placed on suspects during interrogations to provide information or make a confession may not be accurately reported. An audiovisual recording offers an objective record to prevent the police from fabricating confessions or damaging statements¹¹⁶ and “promotes truth-finding by reducing lying and deterring risky interrogation techniques because police and suspects both know they are being watched”,¹¹⁷ for instance, by limiting the use of suggestive questions.¹¹⁸ Furthermore, emotions, tensions and hesitations expressed by the suspect are often not recorded in written reports. Audiovisual recording can provide insight into the nonverbal cues and body language of defendants—an invaluable tool for investigators and prosecutors that is lost in transcripts and audio-only recordings,¹¹⁹ leading to a better interpretation of the pronounced words, and a better understanding of the personality¹²⁰ of the suspect or accused person. In addition, “recordings may allow detectives to focus their full attention on proper interrogation techniques, improving the overall quality of the interrogation because it frees them from the need to take notes”.¹²¹ From this perspective, the interrogation is likely to be more accurate, leading to more reliable evidence and, also, a judgment of higher quality.¹²²

- c) Third, audiovisual recording could help reduce the length of criminal proceedings. Police records and interrogations are often challenged at trial, for instance by way of applications to exclude statements and confessions, or through complaints about the conduct of the police officers in charge of conducting an interrogation.¹²³ For instance, an accused person may claim that information on his or her rights was not duly provided. By providing strong evidence to support or dismiss such claims, an audiovisual recording of the interrogation may help avoid unduly lengthening the duration of proceedings and the costs of defence.¹²⁴ Court time, taken up in resolving disputes over confessional evidence, would be saved, thus reducing unnecessary delays during trials, and also possibly in pre-trial detention. In sum: “such recording will provide a more accurate record of the interview than note taking, and avoids unnecessary dispute about what was said, something which may avoid not just disputes at the trial but prevent unnecessary trials taking place”.¹²⁵

¹¹⁶ Argument made in the Report n. 14 of the Royal Commission on criminal procedure (in the context of England and Wales).

¹¹⁷ Taslitz, A., High Expectations and Some Wounded Hopes: The Policy and Politics of a Uniform Statute on Videotaping Custodial Interrogations, 7 *Nw. J.L. & Soc. Policy* [i], 454, 2012, p. 405.

¹¹⁸ Also the materials used in interrogation should exclude any suggestion, see De Wiest, H., 2006, “Het audiovisueel verhoor van minderjarigen”, in Centrum voor Beroepsvervolmaking in de Rechten (ed.), *De procesbekwaamheid van minderjarigen*, Antwerpen, Intersentia.

¹¹⁹ Innocence Project, page 6; also Sullivan T., 2008, Recording Federal Custodial Interviews, 45 *Am. Crim. L. Rev* 1297, 1306.

¹²⁰ D. Van Daele, “Het afnemen van verklaringen met behulp van audiovisuele media”, *T.Strafr.*, 2003, 46-60.

¹²¹ Taslitz, A., High Expectations and Some Wounded Hopes: The Policy and Politics of a Uniform Statute on Videotaping Custodial Interrogations, 7 *Nw. J.L. & Soc. Policy* [i], 454, 2012, p. 405; also Sullivan T., 2008, Recording Federal Custodial Interviews, 45 *Am. Crim. L. Rev* 1297, 1306.

¹²² Sullivan T., 2008, Recording Federal Custodial Interviews, 45 *Am. Crim. L. Rev* 1297, p. 1298.

¹²³ Daniel Donovan, John Rhodes, “Comes a Time: The Case for Recording Interrogations”, 61 *Montana Law Review*, 223, p. 229. In this respect, it is interesting to note that from a law enforcement perspective, the International Association of Chiefs of Police (IACP), which represents police forces globally, also recommends that police forces adopt a policy to electronically record specific custodial interrogations and confessions in order to provide an evidentiary record of statements made by suspects of major crimes. According to the IACP, such electronic recordings can help protect both the suspect(s) and interviewing officers against potential assertions of police coercion or related interrogation misconduct, and may increase the likelihood of successful prosecution.

¹²⁴ Sullivan, T., 2005, Electronic Recording of Custodial Interrogations: Everybody Wins, 95 *J. Crim. L. & Criminology*, p. 1128.

¹²⁵ Chalmers, J., *Recording of police interviews*, in: Chalmers, J., Leverick, F. and Shaw, A. (eds.), *Post-Corroborator Safeguards Review Report of the Academic Expert Group*, The Scottish Government, Edinburgh, p. 121.

91. However, our review of the literature on audiovisual recording also reveals potential drawbacks to audiovisual recording, and highlight in particular the risk that police officers and other officials adopt strategies to circumvent the use of audiovisually recorded interrogations and collect evidence in alternative ways, thereby undermining the procedural safeguards of suspects and accused persons.¹²⁶ In particular, a video recording cannot demonstrate what happens off-camera prior or post interview, and which may influence the answers given during the recorded interrogations.¹²⁷ Equally, the audiovisual recording itself can be manipulated so as to influence the viewer's perception and create a "camera perspective bias".¹²⁸ Further, some research¹²⁹ suggests that the use of an audiovisual recording deteriorates the image of the suspect and increase the risk of a finding of guilty at trial. Finally, even if modern technology allows for a recording to be produced with relative ease, transcription of significant numbers of interviews is time consuming and expensive.¹³⁰ Other research suggests that the transcription of the recording is not always produced because of lack of (police) capacity¹³¹ and that judges or other interested persons will not necessarily take the time to view a recording in full.
92. Thomas P. Sullivan analysed the concerns raised by US federal agents in respect of audiovisual recording of interrogations of suspects and accused persons,¹³² which we summarise in this report as these are objections that may also be raised by officials in other countries. Sullivan also reported that despite initial resistance to the requirement of mandatory recording, through time, and after proper techniques were adopted, "the detectives became accustomed to the recording and resistance dissipated".¹³³
- a) Testimonies of federal agents are, in practice, rarely challenged, and usually admitted by courts and juries. However, Sullivan notes that in this electronic area, judges and jurors are increasingly questioning the failure of agents to make use of readily available equipment. Reviewing case-law, Sullivan concludes that it is "a central purpose of the judicial system to determine the truth with regard to past events. Even the most hard line proponents of the current federal non-recording system must in candor concede that electronic recordings will inevitably yield a far more accurate and complete account of past events than even the most honourable effort at later testimonial description based on handwritten notes and recollection".¹³⁴

¹²⁶ One of the LEAP respondents in respect of France noted the benefits of audiovisual recording: "especially when the accused are questioned by the police. It is the time of the proceedings where they have no access to their case and also usually the police tries different methods to make them recognize the facts. Having the possibility to watch the interrogation would be a great tool for the defense especially in France for the fast track proceeding".

¹²⁷ McConville, M., "Videotaping interrogations: police behaviour on and off camera", 1992, *Crim LR* 532.

¹²⁸ Kaiser, M., 2014, "Wrongful Convictions: if Mandatory Recording is the Antidote, Are the Side Effects Worth It", 67 *Ark. L. Rev.*, p. 183, reports that videotaped interrogations including only the suspect in the frame may have an intended prejudicial effect.

¹²⁹ Report by the Netherlands Institute for the Study of Crime and Law Enforcement, 18 January 2016, available at: <https://www.nscr.nl/en/visual-and-audio-recordings-of-interrogations-are-important-for-criminal-proceedings/>.

¹³⁰ Chalmers, J., *Recording of police interviews*, in: Chalmers, J., Leverick, F. and Shaw, A. (eds.), *Post-Corroborator Safeguards Review Report of the Academic Expert Group*, The Scottish Government, Edinburgh, p. 121.

¹³¹ For instance in Belgium: A. Deladière et V. Gengoux, *Présentation des principaux résultats de l'évaluation de la circulaire ministérielle du 16 juillet 2001*, *Revue de droit pénal et de criminologie*, 2017, p. 523.

¹³² Sullivan T., 2008, *Recording Federal Custodial Interviews*, 45 *Am. Crim. L. Rev* 1297, pp. 1315-1335.

¹³³ Sullivan T., 2008, *Recording Federal Custodial Interviews*, 45 *Am. Crim. L. Rev* 1297, p. 1314.

¹³⁴ Sullivan T., 2008, *Recording Federal Custodial Interviews*, 45 *Am. Crim. L. Rev* 1297, p. 1321.

- b) The presence of recording equipment impairs the agents' use of rapport-building techniques with the suspect: however, Sullivan argues that most suspects pay no attention to the recording equipment, which is so prevalent nowadays. Instead, the lack of recording may raise doubt at trial as to why agents failed to record the interrogation.
 - c) Suspects may be less candid, and/or "play to the camera": Sullivan does not consider this concern to be evidenced in practice.
 - d) Recordings may disclose certain lawful investigative methods that jurors may deem inappropriate, such as misrepresentations about the evidence: again, this concern is unfounded and lawful interrogation tactics have not resulted in the suppression of evidence or acquittals.
 - e) Technical or operational difficulties such as equipment malfunctioning will lead to the suppression of evidence: Sullivan's research shows that these problems seldom occur in practice. Moreover, many statutes contain exceptions to cover situations where law enforcement officials are faced with unanticipated problems with audiovisual recording.
 - f) Failure to make recordings required by law may result in the exclusion of evidence, such as valid confessions: in practice, evidence is excluded where there is a wilful violation of the obligation to record the interrogation.
 - g) The costs will be prohibitive, in particular front-end costs involving equipment, sound-proof rooms, courtroom facilities and training for officers, but also recurring costs in the preparation of transcripts and storage: Sullivan suggests judging the costs associated with recordings in the context of the funds available to law enforcement officials and the saving that will result if recordings are adopted as standard practices. In particular, recording interviews reduces pre-trial disputes and prevents convictions of innocent persons based on erroneous testimony. Moreover, Sullivan notes that recordings are also excellent tools for self-evaluation and training of detectives. Long-term cost-benefit analysis show that electronic recording creates savings in the time and resources of police, prosecutors, judges and juries that outweigh its costs.¹³⁵
93. In view of the benefits and potential drawbacks identified in respect of the audiovisual recording of police interrogations, it appears fundamental that an audiovisual recording requirement be incorporated into a comprehensive legal framework which includes procedures for the use of audiovisual recording of interrogations beyond a simple mandatory requirement that recording should take place.¹³⁶ In this respect, it is useful to identify the existing recommendations that have been made by researchers and in particular the Innocence Project¹³⁷, in view of assessing their relevance in the context of the in-depth domestic research before producing our final report and recommendations in respect of audiovisual recording of interrogations.

¹³⁵ Kaiser, M., 2014, "Wrongful Convictions: if Mandatory Recording is the Antidote, Are the Side Effects Worth It", 67 Ark. L. Rev., p.187.

¹³⁶ In this respect, the detailed PACE codes of practice applicable in England & Wales can be of use, as recommended by Chalmers, J., *Recording of police interviews*, in: Chalmers, J., Leverick, F. and Shaw, A. (eds.), *Post-Corroborated Safeguards Review Report of the Academic Expert Group*, The Scottish Government, Edinburgh, p. 122.

¹³⁷ The Innocence Project, October 2015, *Implementing Electronic Recording of Custodial Interviews – A Primer for Law Enforcement*.

- a) The integral interrogation must be audiovisually recorded,¹³⁸ meaning that the recording should begin before the suspect or accused person enters the interrogation room and conclude when both the interviewer and the interrogated person leave the room. A recording is only useful when there is a guarantee that it covers the entire interrogation, including specifically the reading of rights.¹³⁹ If certain parts are omitted, the story of the interrogated person is undermined and therefore less reliable.¹⁴⁰ This can be guaranteed for instance by the use of time stamps showing the date and time of the recording. The use of time markers also facilitates the reading: when an important statement is made, it can be marked with a time code, so all the concerned parties can easily find the episode. Any lapse in the recording for comfort breaks or other reasons should be explained, and the recording should continue during breaks.¹⁴¹
- b) In practice, police may question suspects and other persons during field interventions and therefore outside the police station where audiovisual recording equipment is available. The Innocence Project specifies that police officers involved in the pre-interview phase do not have to refrain from talking to a suspect who has indicated a willingness to talk either at the crime scene or en-route to the place of detention. However, the legal framework should specify that officers cannot purposefully interview a suspect in a non-custodial setting or interview a person as a “witness” in order to avoid audiovisual recording requirements.¹⁴²
- c) Laws or policies should expressly and restrictively describe any exceptions to the practice of recording interviews, such as equipment failure or lack of suspect cooperation, and deviations from the practice should be documented.¹⁴³
- d) The legal framework must set out the consequences of a failure to record an interrogation.¹⁴⁴ Certain jurisdictions adopt a strict approach such that a failure to record results automatically in the inadmissibility of the evidence at trial (such as Croatia and France). However, recognising the risk that a strict approach may be disproportionate in certain cases, many jurisdictions¹⁴⁵ accept the use of non-legally obtained evidence at trial. It appears fundamental that in every jurisdiction, there is a good and predictable legal framework on how to deal with evidence obtained in interrogations that have not been audiovisually recorded.
- e) Access to the recording should be organised within the legal framework, for instance, by requiring that copies of the recording be made available without cost and in a timely fashion to the person who has been interrogated as well as to his or her defence counsel. Moreover, it may also be helpful for the procedures to specify what arrangements must be made to permit viewing of the audiovisual recording by persons held in pre-trial detention. It would also be helpful to address the question of

¹³⁸ See the Uniform Law Commission’s proposed Uniform Electronic Recordation of Custodial Interrogations Act of 2010, described in Taslitz, A., High Expectations and Some Wounded Hopes: The Policy and Politics of a Uniform Statute on Videotaping Custodial Interrogations, 7 Nw. J.L. & Soc. Policy [i], 454, 2012, p. 401.

¹³⁹ Kaiser, M., 2014, “Wrongful Convictions: if Mandatory Recording is the Antidote, Are the Side Effects Worth It”, 67 Ark. L. Rev., p.190.

¹⁴⁰ See Kaiser, M., 2014, “Wrongful Convictions: if Mandatory Recording is the Antidote, Are the Side Effects Worth It”, 67 Ark. L. Rev., p.184.

¹⁴¹ The Innocence Project, October 2015, *Implementing Electronic Recording of Custodial Interviews – A Primer for Law Enforcement*, p. 5.

¹⁴² The Innocence Project, October 2015, *Implementing Electronic Recording of Custodial Interviews – A Primer for Law Enforcement*, p. 5.

¹⁴³ Sullivan, T., 2005, “Electronic Recording of Custodial Interrogations: Everybody Wins”, 95 J. Crim. L. & Criminology, p. 1137.

¹⁴⁴ Sullivan, T., 2005, “Electronic Recording of Custodial Interrogations: Everybody Wins”, 95 J. Crim. L. & Criminology, p. 1136.

¹⁴⁵ For instance in Belgium: the so-called “Antigone” doctrine.

whether access to the recording should also be made available to other parties to the criminal proceedings, such as witnesses and co-defendants.

- f) The retention of the recordings must also be addressed. Some jurisdictions currently foresee the necessity to obtain a court order¹⁴⁶ for the destruction of the recordings or give indications on how to store them. The Innocence Project recommends that records should be kept until final disposition of the case, and recognises the value of retaining recordings until at least the completion of a sentence, as the records may become useful in the context of post-conviction proceedings.¹⁴⁷ Other countries seek to preserve the recordings for training or evaluation purposes (e.g. the Netherlands, the UK).
 - g) Costs, capabilities and ease of use are all considerations in the purchase of recording equipment. The Innocence Project suggests that the appropriate type of recording equipment will depend upon the number of interviews conducted and available funding.¹⁴⁸ Mobile equipment such as body-worn cameras also enable the record of field interactions between suspects and police officers.
 - h) Training on how to operate recording and storage equipment for officers responsible for recording interrogations is essential.¹⁴⁹
 - i) The set-up of the interrogation room is not neutral and may also be subject to detailed provisions. A report on Dutch recordings¹⁵⁰ shows that the manipulation of a keyboard in a recording room negatively affects the quality of the recording, to the extent that the interviewed person cannot be understood anymore. The research makes a series of practical recommendations which could be incorporated into a legal framework, in particular: (i) no typing in the interrogation room; (ii) setting up a separate director's room enabling an interrogation supervisor to check live the quality of the audio and the image at all times; (iii) a better position of the microphone (e.g. in the table itself); (iv) the dynamics of an interrogation should not be interrupted by the dactylographer (ideally the interviewer should type up the written report after the interview). Moreover, the camera should be positioned in a way that includes in its frame both the interrogated person and the interviewer present.¹⁵¹
94. Examples of existing good practices emerge from the practice of audiovisual recording of the interrogation of children. However, we note significant shortcomings in respect of the current existing legislative frameworks and practices of audiovisual recording of interrogations of children. In particular, a distinction is often made between children victims or witnesses, and children suspected or accused of committing a criminal offence. As a result of this distinction, many jurisdictions do not require the audiovisual recording of interrogations of child suspects, such as in Belgium. Differences in treatment are also made according to the age of the child. For instance in the Netherlands, children under 12 years of age are guaranteed a child-friendly hearing, but not necessarily all children over 12 years old. The IJJO recommends that practice and legislation abolish the distinction between children victims or witnesses on the one hand, and children suspected or accused on the other hand as to the protection of their rights during the pre-trial interrogations. All children, whether victims or accused, should be

¹⁴⁶ To quote an example: Article 101 of the Belgian Code of Criminal Instruction.

¹⁴⁷ The Innocence Project, October 2015, *Implementing Electronic Recording of Custodial Interviews – A Primer for Law Enforcement*, p. 7.

¹⁴⁸ The Innocence Project, October 2015, *Implementing Electronic Recording of Custodial Interviews – A Primer for Law Enforcement*, p. 7.

¹⁴⁹ The Innocence Project, October 2015, *Implementing Electronic Recording of Custodial Interviews – A Primer for Law Enforcement*, p. 7.

¹⁵⁰ Horselenberg, R. , Vredeveltdt, A. And van Knoppen, P., 9 December 2016, « Nederlandse politieverhoren in de parktijk », *Nederlands Juristenblad*.

¹⁵¹ Kaiser, M., 2014, "Wrongful Convictions: if Mandatory Recording is the Antidote, Are the Side Effects Worth It", 67 *Ark. L. Rev.*, p.189.

treated as such in pre-trial proceedings, regardless of the reason for which they are interrogated. The importance of not making distinctions between children according to their age is recommended by the UN Convention on the Rights of the Child (UN CRC) which expressly stipulates in Article 1 that: “for the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

V. CONCLUSIONS

95. Audiovisual recording of interrogations can help protect suspects and accused persons, and in particular vulnerable persons, against undue compulsion in the context of interrogations, and also help strengthen the effective implementation of the procedural safeguards in criminal proceedings. However, our comparative research suggests that the practices of audiovisual recording of police interrogations varies significantly across the EU, resulting in an unequal protection of suspects and accused persons in criminal proceedings in different Member States. Moreover, although there is a slow move in the direction of increased audiovisual recording of the interrogation of vulnerable suspects or accused persons, the picture across Europe remains patchy.
96. Our research also indicates that in the majority of the surveyed countries, there are already in place certain mandatory audiovisual requirements for the interrogation of specified suspects and accused persons, as well as minors, victims, witnesses and/or vulnerable persons. As part of our in-depth research, we recommend considering how the existing audiovisual recording practices with respect to certain persons could be extended more widely to suspects and accused persons, and exploring ways to promote the positive impacts of audiovisual recording to all criminal justice actors concerned in order to facilitate the implementation of the practice across the EU and beyond.
97. It also emerges from our research that any audiovisual recording requirement must be incorporated into a comprehensive legal framework which includes procedures for the use of audiovisual recording of interrogations beyond a simple mandatory requirement that recording should take place. In this respect, the qualitative research that will be conducted as part of the ProCam project could help identify the fundamental components of such a framework in view of producing recommendations for EU legislation.

VI. ANNEXES

Annex A: Questionnaire sent to LEAP partners

5. Audio-visual recording of interrogations

Fair Trials has just kicked off a new project on the audiovisual recording of interrogations. The aim is to map the link between audiovisual recording and enforcement of vulnerable defendants' rights as advised in the Commission Recommendation C(2013) 8178/2 (S3§13). The project will also research the role of audiovisual recording in securing rights granted in Directive 2013/48 on the right of access to a lawyer. Your answers will help us analyse the law and practice of all 28 EU member states on audiovisual recording of interrogations.

* 29. In our preliminary research, we identified a number of different legal frameworks on the recording of interrogations. Please identify below the framework that best describes your jurisdiction.

Please note that for the purposes of this multi-jurisdictional survey, the term "interrogation" is intended to cover all types of questioning of any person (including suspects and accused persons) by police officers, judicial authorities and any other crime enforcement agencies as part of both the pre-trial criminal investigation and the trial procedure.

- | | |
|--|--|
| <input type="radio"/> As a general rule, the audiovisual recording of interrogations is mandatory (subject to exceptions). | <input type="radio"/> The audiovisual recording of interrogations is possible upon request (the equipment/facilities are available) but not required by law. |
| <input type="radio"/> The audiovisual recording of interrogations is required only in specified cases. | <input type="radio"/> The audiovisual recording of interrogations is neither possible nor required by law. |
| <input type="radio"/> The audio recording of interrogations is required but not the audiovisual recording. | |

6.

If audiovisual recording is required...

* 30. What specific legislation, case law or other policy guidance requires that interrogations must be recorded either audiovisually or by audio? Please provide the reference, original text and English translation/summary if possible.

* 31. Please specify if your jurisdiction has adopted any specific measures for the implementation of Commission Recommendation C(2013) 8178 on procedural safeguards of vulnerable persons suspected or accused in criminal proceedings, which states that "any questioning of vulnerable persons during the pre-trial investigation phase should be audio-visually recorded".

* 32. What type of recording is required?

audiovisual

audio

Other (please specify)

* 33. Which persons are subject to the requirement?

Police officers

Judicial authorities

Other (please specify)

* 34. Who are the persons covered by the requirement?

Suspects (i.e. before being charged with an offence)

Vulnerable persons

Accused persons (i.e. charged with an offence)

Minors

Witnesses

Victims

Other (please specify)

* 35. Are there any exceptions from the requirement? Which ones?

Categories of crime excluded from the requirement

Urgency

Other (please specify)

* 36. If the recording of interrogations by police or judicial authorities limited to certain locations (e.g. police stations)? Is any mobile equipment used (e.g. police body-worn cameras, police car cameras)?

* 37. Does the relevant legislation require that the recording be made available to the person concerned in a timely fashion? If so, please indicate if the person concerned is required to pay a fee to obtain access to the recording. Please also specify if a person in pre-trial detention (whether in a police station or a prison) is offered the technical means to access the recording.

* 38. Is the part of the interrogation where suspects are informed about their rights also recorded?

* 39. Does the law address privacy or data protection considerations? In particular, please specify if the storage and destruction of the recordings of interrogations is regulated.

* 40. What are the consequences of a failure to record an interrogation audiovisually or by audio (as applicable)? For instance, is a confession made during questioning admissible evidence in court if the police failed to comply with the requirement?

* 41. Have the national courts in your jurisdiction given any guidance on the audiovisual or audio (as applicable) recording of interrogations? If yes, please provide a reference to the relevant judgment(s).

* 42. How does the legislation in your jurisdiction define a "vulnerable person" and how in practice is such a person identified (e.g. trained police officer, judicial authority, medical expert)?

The practice and implementation of the requirement

* 43. What implementing measures have been adopted to allow for the audiovisual or audio recording of interrogations in your jurisdiction? In particular, please describe the extent of the installation of the required equipment in police interrogation rooms and courtrooms.

* 44. Based upon your experience, is the recording of interrogations useful for the protection of the procedural rights of accused persons and/or suspects, in particular:

- | | |
|--|--|
| <input type="radio"/> the lawyer's effective participation during an interrogation | <input type="radio"/> the right to legal advice, before and at trial, and legal aid |
| <input type="radio"/> the right to interpretation and translation | <input type="radio"/> the right for a detained person to communicate with family members, employers and consular authorities |
| <input type="radio"/> the right to information about rights (letter of rights) | |

For each of the boxes you have ticked, please provide a reference to specific cases.

* 45. Are there any aspects of the recording practice in your jurisdiction that you consider to be particularly positive? If so, please provide details.

* 46. Please identify any limitations in practice to the audiovisual or audio recording of interrogations. For instance, does the person conducting the interrogation have the ability to question a person before starting the recording, or the option to switch on/off the audiovisual/audio equipment during questioning?

* 47. Do you have any other comments on the audiovisual recording of interrogations?

Annex B: Questionnaire sent to IJJO partners

The Hungarian Helsinki Committee is collaborating with the International Juvenile Justice Observatory (IJJO), Antigone (Italy), Fair Trials Europe, Human Rights House Zagreb (Croatia) and the League of Human Rights (Czech Republic) to analyse the law and its implementation within the 28 EU Member States in matters concerning the audiovisual recording of interrogations. The IJJO is focusing specifically on child interrogations. This survey is part of the **ProCam Project: Procedural rights observed by the Camera – Audiovisual recording of interrogations in the EU**, funded by the European Union’s Justice Programme (2014-2020).

For the purposes of this survey, the term “children’s interrogation” is intended to cover all types of questioning of any child (persons under the age of 18), including child suspects or accused by police officers, judicial authorities and any other law enforcement agency as part of both the pre-trial criminal investigation and the trial procedure.

I. Background information

Name (Optional) and Organisation:

Country:

Number of years of professional experience:

II. The legal framework in your jurisdiction

Please, answer the following question and proceed to the appropriate section of the survey:

A. In your jurisdiction, the audiovisual recording of children’s interrogations...

- a. **Is mandatory by law.** (Please go directly to questions 1 to 16, *Sections III and IV, pp. 3 to 5*)
- b. **Is only required in specific cases.** (Please go directly to questions 1 to 16, *Sections III and IV, pp.3 to 5*)
- c. **Is not required, only audio recording is required by law.** (Please go directly to questions 1 to 16, *Sections III and IV, pp.3 to 5*)
- d. **Is possible upon request (the equipment/facilities are available) but not required by law.** (Please go directly to questions 1 to 8, *Section V, pp. 6 to 7*)
- e. **Is neither possible nor required by law.** (Please go directly to questions 1 to 8, *Section V, pp. 6 to 7*)

III. Legal framework and implementation in the situations outlined in answers a, b and c

1. Please provide the reference to your country’s domestic legislation about audio-visual recording of children’s interrogations. (Name of the law, articles of the law that refer to recording of interrogations, original text and English translation/summary if possible)

2. Did your jurisdiction adopt any specific measures for the implementation of Commission Recommendation C(2013) 8178¹⁵² ?

Yes	No

¹⁵² European Commission, *Commission Recommendation of 27.11.2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings* (C(2013) 8178), Section 3 §13 notably states that “any questioning of vulnerable persons during the pre-trial investigation phase should be audio-visually recorded”.

3. Have implementing measures been adopted to allow for the audiovisual or audio recording of children's interrogations in your jurisdiction? (For example: installation of the required equipment in police interrogation rooms, courtrooms...)

Yes	No

If yes, can you describe them, focusing in particular on the extent of the installation of the required equipment in police interrogation rooms and courtrooms?

4. Are there any judicial precedents in your jurisdiction that offer guidance on the audiovisual or audio recording of children's interrogations? (Please provide reference of judicial precedents)

5. Are you aware of any difficulties or obstacles encountered during the implementation process?

IV. The practice in situations outlined in answers a, b and c

6. Please indicate the right answers for your country's situation:

- The type of recording required is: (multiple-answer questions)

Audiovisual	Audio	Other (please specify)

- The people (or agencies) responsible for the recording of children's interrogations are: (multiple-answer questions)

Police officers	Judicial authorities	Other law enforcement agencies

- Are there any exceptions to the requirement?

Categories of crime excluded from the requirement	Urgency	Age (please explain)	Other exclusions (specify)	None

- The children covered by the requirement are: (multiple-answer questions)

Suspects	Accused	Witnesses	Victims	Other (specify)

- Who has to be present during the recording of children's interrogation? (Multiple-answer questions)

Parent/guardian	Lawyer	Social worker	Other (please specify)

7. Is the part of the interrogation where child suspects are informed of their rights also recorded?

Yes	No
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8. Are children concerned required to pay a fee to obtain access to the recording?

Yes	No

Please also specify if a child in pre-trial detention (whether in a police station or a prison) is offered the technical means to access the recording:

Yes	No

9. Are such recordings being made available to the child in a timely manner?

Yes	No

10. Is the recording of children’s interrogations by police or judicial authorities limited to certain locations (e.g. police stations...)? If no, please indicate where it can take place.

Yes	No

11. Is mobile equipment used for the recording of interrogations (e.g. police body-worn cameras, police car cameras)?

Yes	No

12. Does the law address privacy or data protection considerations? In particular, please specify if the storage and destruction of the recordings of interrogations is regulated.

13. Please explain the consequences of failing to make an audiovisual or audio recording of a child’s interrogation. For instance, is a confession made during questioning admissible evidence in court if the police failed to comply with the requirement?

14. Please choose below the child rights that you think benefit the most from the recording of children’s interrogations (you can choose more than one).

The lawyers’ effective participation during an interrogation.	The right to interpretation and translation.	The right to information about rights (letter of rights).	The right to legal advice (before and during trial) and legal aid.	The right to communicate with family members, consular authorities and other appropriate adults.	Other (specify)

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15. Please identify any advantages or disadvantages of recording children’s interrogations.

16. Please feel free to share any comments, questions or remarks on the audiovisual recording of children’s interrogations.

V. The practice in situations outlined in answers d and e

1. If the audiovisual or audio recording of children’s interrogations is not required in your jurisdiction, how is information from interrogations collected? (Summary note, live transcript etc.)? *Please specify.*

2. Are there any specific safeguards in place for the interrogations of children in general and of particularly vulnerable children (with special needs, foreigners...)? *If there are specific safeguards, please specify.*

	YES	NO
All children (no distinction)		
Children with special needs		
Foreign children		
Child victims		
Child witnesses		
Other (please specify)		

3. Based on your experience, please identify the main obstacles to introducing the audiovisual recording of children’s interrogations in your jurisdiction.

4. In practice, do the police, judicial authorities or other law enforcement agencies have the equipment/facilities to carry out audiovisual recordings of children’s interrogations?

	YES	NO
Police		
Judicial authorities		
Other law enforcement agencies (please specify)		

*If you answered yes to one or more of the categories in the above table, please explain in which circumstances interrogations are audiovisually recorded and whether, prior to the investigation, the child is **made aware of the possibility to request the recording of the interrogation.***

5. Are you aware of any plans to introduce an audiovisual recording requirement, such as a pilot project? If yes, please explain?

6. In your view, would audiovisual recording of interrogations be useful for the protection of the procedural rights of accused children and/or suspects, in particular:

The lawyers’ effective participation during an interrogation.	The right to interpretation and translation.	The right to information about rights (letter of rights).	The right to legal advice (before and during trial) and legal aid.	The right to communicate with family members, consular authorities and	Other (please specify)
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				other appropriate adults.	

7. Is future European Union action needed on this issue? If yes, what action do you think is necessary?

8. Please feel free to share any comments, questions or remarks on the audiovisual recording of children's interrogations.

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