
JOINT STATEMENT ON LEGAL AID

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Introduction:

Significant progress has been made over the past years to improve defence rights across the European Union. Three groundbreaking directives have been adopted; the most recent in 2013 on the right to access a lawyer. We urge the European Union to continue this trajectory and adopt strong directives on outstanding issues, in particular on the right to legal aid.

Based on research, practice and observations that came out of a meeting held by **JUSTICIA** in May 2014 in Brussels with over 40 experts defence lawyers, academics, policymakers and civil society from across EU member states, who reviewed and analysed the Commission's proposals, we are concerned about the 'fragmented' approach created through the Commission's proposal for a Directive on Provisional Legal Aid and a non-binding Recommendation covering all other aspects. The fear is that this approach will leave gaps in protection and that without a wider scope and practical safeguards the proposed Directive will be an empty shell. **The future directive on the right to legal aid must be seen as inter-connected and aligned with the directive on access to a lawyer.** Legal advice and representation is rendered meaningless unless the accused person has the means to privately engage a lawyer or is supported through legal aid.

We welcome the draft report by the Rapporteur of the European Parliament's Civil Liberties Committee Mr. Dennis De Jong published in November 2014. The report proposes to expand the scope of the directive to mirror and make reference to, the scope of the Directive on the Right to Access a Lawyer which we think is a crucial and necessary step. The division between 'provisional' and 'ordinary' legal aid is a useful distinction that builds on the initial Commission proposal and the addition of articles covering eligibility for legal aid, independence and quality are all critical and build on standards set out by the European Court of Human Rights and other relevant international instruments.

We see five key areas for consideration on the Commission's proposal for a directive on Provisional Legal Aid:

1. SCOPE OF THE DIRECTIVE

The proposed Directive envisions a more limited scope of application than the Directive on the right of access to a lawyer. The Directive on access to a lawyer applies from the time that an individual is made aware that they are a suspect in criminal proceedings, whereas the proposed Directive on legal aid makes deprivation of liberty an additional condition. Thus suspects who are, for example, released on police bail would not be eligible for legal aid – regardless of the seriousness of the accusation, or of their means.

The time at which provisional legal aid comes to an end is also unclear. Under the proposed provisions it could be possible for someone to be denied access to legal aid – but be required within a matter of hours to present for police questioning. The scope should thus be extended, regardless of a decision on legal aid, to cover the period until the suspect appears in court for the purpose of determination of charges. And in any event access to legal aid should also remain open until the suspect has had a reasonable opportunity to find and engage the services of a lawyer.

Recommendation: The Directive on Legal Aid should mirror in scope the Directive on Access to a Lawyer given the inter-connected nature of the two Directives. Deprivation of liberty should not be a determining factor.

2. Recovery of Costs

The proposed Directive provides for the recovery of costs for provisional legal aid from those who are determined to be ineligible for legal aid. This could have serious consequences, especially as the proposed Directive is silent on eligibility criteria. Suspects are particularly vulnerable at the early stages of criminal proceedings and additional uncertainty around looming financial liability could influence a suspect's decision regarding access to legal aid. If as a consequence suspects are unrepresented this impacts not only on the individual's right to a fair trial, but also on the effective functioning of the trial itself.

Recommendation: the recovery of costs should not be included in the Directive.

3. Independence and Quality

Currently provisions on independence and quality of legal aid are consigned to the non-binding Recommendation. Mechanisms to ensure the independence and quality in individual Member States will differ but it is imperative that the principle of independence and quality of services are included in the Directive. On independence it is important that the appointment of legal aid lawyers is independent of those actors with an interest in the outcome of the case. Factors that help guarantee the quality of services should be identified such as the need for lawyers to have completed specialised training in criminal law, ongoing professional development, fair remuneration and regular monitoring activities. The directive on the Right to Interpretation and Translation includes a reference to the quality of services and thus it is appropriate for a similar provision to be included in this Directive.

Recommendation: the principle of independent and quality services should be included in the Directive.

4. The merits and means test

The Recommendation contains good guidance for what member states should take into account if they have a merits and means test and how to fairly apply these tests. In many countries across the EU, the means test in particular is an instrument to deeply restrict access to legal aid. In some countries the financial threshold for the means test is so low that a high proportion of poor defendants are denied legal aid, and many go into debt to pay for their lawyer. In others lack of clarity and transparency on what tests are applied make it very difficult for defendants to make an application and support it with the necessary documents.

Recommendation: the Directive should include provisions on the merits and means test.

5. Mechanisms and management of legal aid services

Very few countries in the EU have legal aid legislation or adequate mechanisms or bodies and resources to properly run a legal aid service. Too often we see fragmented provision of services on an ad hoc basis, with little management or oversight. Neither the Directive nor the Recommendation includes these practical but crucial requirements. Again the precise mechanics of each system will be left to the individual member state but the Directive should require that a competent and independent system is established.

Recommendation: the Directive should require Member States to establish a competent and independent system to effectively manage the provision of legal aid.

Conclusion

We encourage Member States and Members of the European Parliament to ensure a strong directive that guarantees the rights of suspects and accused persons, ensures the effective functioning of the judicial system and effectively mirrors and supports the directive on Access to a Lawyer.

ABOUT THE JUSTICIA EUROPEAN RIGHTS NETWORK:

The **JUSTICIA** European Rights Network, of which the Irish Council for Civil Liberties (ICCL) is Consortium Leader, was formally established in 2012.

JUSTICIA, a pan European Network, currently consists of 19 Network Member organisations based in 18 European Union States: Associazione Antigone Onlus (Italy), Association for the Defence of Human Rights in Romania – the Helsinki Committee, Bulgarian Helsinki Committee, Civil Rights Defenders (Sweden), Croatian Legal Centre, Estonian Human Rights Centre, Greek Helsinki Monitor, Helsinki Foundation for Human Rights (Poland), Human Rights Monitoring Institute (Lithuania), Hungarian Civil Liberties Union, Irish Council for Civil Liberties, KISA - Action for Equality, Support, Antiracism (Cyprus), Latvian Centre for Human Rights, League of Human Rights (Czech Republic), Ludwig Boltzmann Institute of Human Rights (Austria), Open Society Justice Initiative (Hungary), Rights International Spain, Statewatch (UK), and The Peace Institute (Slovenia).

The Network's thematic focus is on EU criminal justice, including procedural rights, and the human rights of victims. **JUSTICIA** member organisations jointly advocate for human rights to be fully mainstreamed into emerging European Union law and for the full implementation of relevant EU legal standards in their own jurisdictions.

Since 2012, the Irish Council for Civil Liberties has received core funding from the Criminal Justice Programme of the European Union to coordinate the **JUSTICIA** network.

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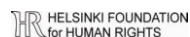
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