



Legal aid in the EU Transposition of Directive (EU) 2016/1919

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2009 Roadmap

Measure C: Legal Advice and Legal Aid

'The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.'

Case of Salduz v. Turkey

Pt.55: (...) the Court finds that in order for the right to a fair trial to remain sufficiently “practical and effective” (...), Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 (...). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

The right of access to a lawyer and legal aid

- Directive (EU) 2016/1919 (legal aid) builds upon Directive 2013/48/EU (access to lawyer);
- Article 1(2) and 2(1) and (2) of Directive (EU) 2016/1919;
- Both Directives need to be correctly transposed to ensure effective legal assistance;
- Report on the implementation of the access to lawyer Directive: COM(2019) 560 final.

Directive on legal aid - overview

Directive 2016/1919 adopted on **26 October 2016**
- Transposition period ended on **5 May 2019**

- Scope, Article 2
- Legal aid in criminal proceedings, Article 4
- Legal aid in European arrest warrant proceedings, Article 5
- Decisions regarding the granting of legal aid, competent authority, Article 6
- Quality and training, Article 7

Legal aid in criminal proceedings

- Means or merits test or combination of both, Article 4(2)+(2)
- Means test, criteria of ECHR case law Article 4(3)
- Merits test, Articles 4(4) and 9:
 - Proportionality test – criteria of ECHR case law;
 - In any event, when
 - ✓ being brought before a competent court or judge in order to decide on detention
 - ✓ during detention
- Legal aid to be granted without undue delay, Article 4(5) (Recital 19)

Legal aid in EAW proceedings

- Legal aid upon arrest in the executing Member State, Article 5(1)
- Legal aid the issuing Member State (EAW for purpose of conducting criminal prosecution), Article 5(2)
- Means testing (only), Article 5(3)

Decision making and quality

- Article 6: Decisions – Recital 24: in principle by independent authority
- Article 7: Quality and training – rather strong provisions on training (in particular Art. 7(2))
- Further guidance: Points 14 to 26 of the Commission Recommendation on legal aid, 2013/C 378/03

Added value of the legal aid Directive?

- Refers to criteria used by ECtHR, but the text will be interpreted by CJEU (preliminary rulings and infringement proceedings)
- Legal aid to be granted without undue delay
- Legal aid in the executing Member State and in the issuing Member State (EAW for purpose of conducting criminal prosecution) – means test only
- Provisions on decision making and quality

Directive on legal aid – state of play concerning transposition

- Notifications to the Commission (Article 12 of the Directive):
 - Complete transposition: 17 Member States
 - Partial transposition: 4 Member States
 - No notification: 2 Member States
- Infringement proceedings for non-communication (4 Member States)
- Completeness and conformity check



Thank you!

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