Legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

2013/0409(COD) - 18/05/2015 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Dennis DE JONG (GUE/NGL, NL) on the proposal for a regulation of the European Parliament and of the Council on the proposal for a directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings.

The parliamentary committee recommended that the European Parliament's position adopted at first reading following the ordinary legislative procedure amends the Commission proposal as follows.

Purpose: while the European Commission proposal would guarantee the right to "provisional" legal aid, Members suggested broadening the scope of the proposal to include the **right to "ordinary" legal aid** to suspects and individuals charged in criminal proceedings, as well as for those whose surrender is sought in the context of the execution of a European arrest warrant.

The Directive should aim to increase the effectiveness of Directive 2013/48/EU on the right of access to a lawyer which states that measures to effectively exercise this right could include arrangements for legal aid.

Scope: the Directive shall also apply to suspects in criminal proceedingsor any legally binding Union instrument on **procedural safeguards for child suspects**.

Without prejudice to the right to a fair trial, in respect of minor offences, the Directive shall only apply to the **proceedings before a court having jurisdiction in criminal matters**. In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, **irrespective of the stage of the criminal proceedings**.

Access to legal aid: Members clarified the precise nature of the rights concerned. In particular, **provisional aid should not be suspended** until a final decision has been taken on ordinary legal aid. Moreover, the right to access to a lawyer also applies in the case of a negative decision on legal aid: in that case, there should be sufficient time to find a suitable lawyer.

Reimbursement of costs: exceptionally, the costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons if it is established through a **final decision** that those persons do not meet the eligibility criteria for ordinary legal aid as applicable under national law, and if they have **intentionally provided the competent authorities with false information** on their personal financial situation.

The conditions attached to recovery of costs should be **clear and reasonable** and **take account of the specific financial situation** of the suspect or accused person or the requested person.

E**valuation of resources and merits**: Members introduced measures whereby legal aid should be granted subject to an assessment of the financial means of the applicant ("means test") and/or of whether it is in the interests of justice to provide legal aid ("merits test") in the case concerned.

- The **means test** should be based on all relevant and objective factors, such as income, capital, family situation, standard of living and the cost of a legal aid lawyer;
- The **merits test** shall include an assessment of the urgency and complexity of the case, the seriousness of the offence and the severity of the potential penalty that may be imposed, as well as the social and personal circumstances of the suspect or accused person or the requested person concerned.

Information and decisions: information on legal aid in criminal proceedings should be easily **accessible and understandable** to suspects including i) information on how and where to apply for such aid, ii) **transparent criteria** on eligibility for legal aid, as well iii) as information on the possibilities available in circumstances where access to legal aid is refused or a legal aid lawyer provides insufficient legal assistance.

Decisions on whether or not to grant legal aid, and the assignment of lawyers, should be made **promptly by an independent competent authority**. Member States should ensure that the responsible authorities make decisions diligently and that there are substantial guarantees against arbitrariness.

Quality of legal aid: Members introduced guarantees of the quality of legal aid. Thus, Member States should ensure that:

- ordinary legal aid is provided at **all stages** of the criminal justice process;
- systems ensuring the **quality and independence of legal aid lawyers** are put in place or maintained, in particular a system of accreditation for legal aid lawyers as well as education and continuous professional;
- suspect or accused person and requested person have the right to have the legal aid lawyer assigned to them **replaced** once;
- any decision rejecting in part or in full an application for legal aid is given to the suspect or accused person and the requested person **in writing**.

Right of appeal and remedies: any person who applies for legal aid under this Directive shall have the right to appeal a decision refusing legal aid before an independent court, with a view to preserving the right to a fair trial and the right to defence. Suspects, accused persons and requested persons should have an effective remedy if their rights under this Directive have been breached.