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

2013/0409(COD) - 26/10/2016 - Final act

PURPOSE: to set out common minimum rules governing the right to provisional legal aid in criminal proceedings.

LEGISLATIVE ACT: Directive (EU) 2016/1919 of the European Parliament and of the Council on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

CONTENT: this Directive lays down **common minimum rules concerning the right to legal aid** for: (i) suspects and accused persons in criminal proceedings; and (ii) persons who are the subject of European arrest warrant proceedings.

This Directive is the last legal text foreseen as part the **roadmap** for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted by the Council in November 2009.

Up to now, **five measures** on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives of the European Parliament and the Council:

- Directive 2010/64/EU on the right to interpretation and translation,
- Directive 2012/13/EU on the right to information,
- Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings,
- Directive 2016/343/EU on the presumption of innocence,
- Directive 2016/800/EU on procedural safeguards for children.

Scope: this Directive applies to **suspects and accused persons** in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU and who are:

- deprived of liberty;
- required to be assisted by a lawyer in accordance with Union or national law; or
- required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following: (i) identity parades; (ii) confrontations; (iii) reconstructions of the scene of a crime.

This Directive also applies, **upon arrest** in the executing Member State, to requested persons who have a right of access to a lawyer pursuant to Directive 2013/48/EU.

This Directive also applies, under the same conditions, to **persons who were not initially suspects** or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.

In any event, this Directive applies when a decision on detention is taken, and during detention, **at any stage of the proceedings** until the conclusion of the proceedings.

Legal aid in criminal proceedings: Member States shall ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the **right to legal aid** when the interests of justice so require.

Member States may apply a means test, a merits test, or both to determine whether legal aid is to be granted.

To define whether a person is eligible to legal aid, EU countries will be able to use a means and a merits test.

A "means test" aims at assessing whether the person effectively lacks sufficient resources to pay for legal assistance, while a **"merits test"** allows to assess whether the provision of legal aid would be in the interest of justice in the light of the circumstances of the case.

Decisions and remedies: the competent authorities should grant legal aid **without undue delay** and at the latest before questioning of the person concerned by the police, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts referred to in the Directive are carried out.

Suspects, accused persons, and requested persons must be **informed in writing** if their request for legal aid is refused.

Member States shall ensure that suspects, accused persons and requested persons have an **effective remedy** under national law in the event of a breach of their rights under this Directive.

The particular needs of **vulnerable persons** shall be taken into account in the implementation of this Directive.

Provision of data and report: by 25 May 2021, and every three years thereafter, Member States shall submit available data to the Commission showing how the rights laid down in this Directive have been implemented.

By 25 May 2022, and every three years thereafter, the Commission shall submit a report on the implementation of this Directive.

ENTRY INTO FORCE: 24.11.2016.

TRANSPOSITION: 25.5.2019 at the latest.