



LEGAL AID IN:

BELGIUM

SNAPSHOT

**€12.9
MILLION**

ANNUAL EXPENDITURE
ON CRIMINAL
LEGAL AID (2013)

€2.10

PER CAPITA

€380

AVERAGE AMOUNT
SPENT PER
CRIMINAL CASE

Until recently,
there was
no right of
access to
a lawyer in
the 24 hours
between
arrest and
remand
in pretrial
custody by a
judge.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

Belgium has a decentralised system of criminal legal aid. The decision to provide legal aid to a person is made by the local legal aid bureau, which is controlled by the regional bar associations in each of the 27 districts in Belgium. Each of the bureaus organizes itself and determines its own policy.

The Legal Aid bureau appoints a lawyer from a list, which is made up of lawyer-trainees who are obliged to provide legal aid during their three-year traineeship, and qualified lawyers who choose to add their names to the list.

HOW IS IT FINANCED?

The federal government pays for the cost of providing criminal legal aid and the administrative costs of the Legal Aid Bureaus. Belgium has a closed budget for legal aid determined by the government at the beginning of each year. In 2013 the amount spent on criminal legal aid was €12.9 million, also expressed as €2.10 per capita. This is relatively low compared to many other EU countries, but discussion about reforms – such as the Ministry of Justice's controversial proposal to require a €50 administrative fee for legal aid beneficiaries – have been focused on how to further cut costs. The average pay for lawyers per legal aid case is approximately €365-400.

HOW IS IT MONITORED?

There are no quality control mechanisms for legal aid lawyers in criminal cases and there is no requirement that they be specialised in this field. Instead, the bar associations in each district are in charge of the general quality of legal services and are responsible for handling complaints for breaches of professional conduct.

ELIGIBILITY

WHO IS ELIGIBLE FOR LEGAL AID?

Experts estimate that only 10-20% of the population are eligible for legal aid. This is mainly due to a strict means test with a low financial ceiling. Legal aid is only available to people who are habitually resident in Belgium.

MEANS AND MERITS TEST

In order to satisfy the means test for full legal aid, a single applicant must have a monthly net income of less than €942. They may be eligible for partial legal aid if their income is under €1,210. People who are married or who have children have a slightly higher threshold: for full legal aid their monthly net income must be less than €1,210 and for partial legal aid it must be under €1,477 (2014 statistics). Decisions about how much the person must pay if they qualify for partial legal aid are made by the local bar association and can vary from place to place.



LEGAL AID IN: BELGIUM

MAJOR ISSUES WITH LEGAL AID

Low annual budget for criminal legal aid and low levels of remuneration for lawyers, leading to concerns about the quality of services.

Restrictions on the right for lawyers to actively participate and advise their clients during interrogations, in breach of EU Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

There are no quality control mechanisms for legal aid lawyers in criminal cases

A strict means test with low financial ceiling results in a system where only 10-20% of the population are eligible for legal aid.

Certain groups of people are exempted from financial thresholds. This includes minors, some groups of welfare beneficiaries, asylum seekers, detained applicants, defendants in special accelerated criminal proceedings, and people with mental illness.

There is a merits test, in that legal aid will be denied if the case is “manifestly unfounded”.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Until recently, there was no right of access to a lawyer in the 24 hours between arrest and remand in pre-trial custody by a judge. On 1 January 2012, the “Salduz Bill” came into force, giving every suspect the right to a 30 minute consultation with a lawyer before their interrogation, and for the lawyer to be present during interrogation. But this law allows mere presence only; the lawyer cannot actively participate or advise his client or ask questions during the interrogation. This will need to be reformed to avoid breaching EU Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

A duty counsel scheme has been set up to bring the Salduz Bill into force. The Flemish Bar Association has developed a special computer program to organize the assistance of an advocate during the first interrogation in police stations. The computer system enables the police to call one single telephone number where they are informed of the lawyer who will attend the interrogation. The operator will then contact the lawyer. However, few experienced lawyers sign up to attend interrogations, as they feel it is too time-consuming and they cannot fit it in around their regular practices.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

Generally, in practice there are different standards of representation for those who can afford to pay private lawyers compared to that for those who have to rely on legal aid lawyers. Concerns about quality are generally tied to two issues: (i) trainee lawyers with relatively little experience are obliged to take on legal aid cases during their training period; and (ii) there is low level of pay for legal aid work and the process of payment is very slow.

Lawyers are paid for each task they undertake in criminal legal aid proceedings through a points system. Tasks are allocated a certain number of points and each point represents a certain sum of money, which ensures that simple or complex cases are paid appropriately. However, the value of a point has been declining in recent years and the remuneration is low—approximately €365-400 per case. Legal aid lawyers claim that this is insufficient and that they do not have enough time to do the necessary administrative work. As a consequence, the quality of their services is said to suffer.

The system for payment is also slow, with payment often delayed by up to a year and a half after the case has finished. Lawyers only know at the end of the year how much money they will receive for the legal aid cases they worked on.



OPEN SOCIETY
JUSTICE INITIATIVE





LEGAL AID IN:

FINLAND

SNAPSHOT

**€67.7
MILLION**
ANNUAL LEGAL AID
BUDGET FOR CIVIL
AND CRIMINAL

€12
PER CAPITA

€694
AVERAGE AMOUNT
SPENT PER
CRIMINAL CASE

Overall budget for legal aid services has been maintained at a similar level since the 1990s.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

The Finnish Constitution guarantees the right to legal aid and the Legal Aid Act regulates its organisation. The Public Legal Aid Office, which reports to the Ministry of Justice, is responsible for providing legal aid services across the country. In 2010 there were 60 legal aid offices organised into six legal aid districts, ensuring even geographical coverage across the country. However, there is a plan to downsize to 27 offices which could hinder access for certain communities. Finland has a "dual" system, whereby criminal legal aid services can be provided by private lawyers as well as by public lawyers employed by the legal aid offices. Legal aid is organised through one of the legal aid offices, whether the applicant is using a public or a private lawyer.

HOW IS IT FINANCED?

The overall budget for legal aid services in the country has been maintained at a similar level since the 1990s. In 2014, the overall legal aid budget for civil and criminal matters was €67.7 million, also expressed €12 per capita or 0.03% of GDP. There is no official data available on what percentage of that is spent on criminal cases, but Finland spends approximately €694 per case on criminal legal aid.

The standard remuneration for legal aid lawyers is €110 + 24% VAT per hour. If a lawyer requires any special expertise for a particular case, then a higher remuneration rate can be applied (maximum of 20% more). Lawyers can bill a maximum of 80 hours per case and this can be extended by the courts in special circumstances.

HOW IS IT MONITORED?

The Legal Aid Office manages and collects data on the legal services provided. The Finnish Bar Association generally monitors the quality of work done by public and private defence counsel, and it can issue disciplinary sanctions.

ELIGIBILITY

Finland has fairly generous eligibility criteria, with approximately 75% of people being eligible for full or partial legal aid.

All people who are residents of Finland can apply for legal aid. Foreigners who enter the criminal justice system as suspects are usually eligible for legal aid as well. In criminal cases, there are wide categories of people who automatically qualify for legal aid without any means or merits test being applied. This includes people under the age of 18, people charged with an offence with a punishment of at least 4 months imprisonment, arrested or detained people, and people incapable of defending themselves.



LEGAL AID IN: FINLAND

MAJOR ISSUES WITH LEGAL AID

Some concerns about limiting access to legal aid services in rural areas.

Waiting time on the decision of whether or not to grant legal aid and waiting time to see a legal aid lawyer may adversely affect a suspect's decision to request legal aid.

Decreasing legal aid budget may negatively impact eligibility and provision of good quality legal aid services.

*We thank **Satu Saarensola**, district court judge, Pirkanmaa District Court, Tampere, for expert assistance with this paper.*

MEANS AND MERITS TEST

Under the means test, people receive assistance on a sliding scale depending on their level of income. For example, full legal aid is available to single people with a monthly income of less than €600/month. Partial legal aid, which can range from 20%-75% of the costs, is available to single people earning under €1300/month. If the suspect lives with a partner, full legal aid will be available if their combined income is less than €1,100/month, and partial legal aid is available if it is under €2,400/month. Taking into account an average salary, full or partial legal aid is available to around 75% of the population.

There is a sort of merits test, in that legal aid is not available for 'simple' criminal cases. The Legal Aid Office or a court decides whether a case is 'simple' on a case-by-case basis. Generally offences such as drunk driving and larceny, where the potential penalty is no more severe than a fine, will be denied legal aid.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Under the Criminal Procedure Act, the pretrial authority must immediately inform suspects of their right to counsel when they have been apprehended, arrested or remanded in custody. The pre-trial authority must also inform the suspect of their right to apply for legal aid and help the suspect contact a lawyer by showing them a list or roster of lawyers who work in the area and who are available 24 hours a day. Defence lawyers have a right to attend investigations and police questioning, as well as request additional pre-trial investigative measures that may potentially influence the outcome of a case. Meetings between a lawyer and a suspect cannot be restricted or monitored.

As noted above, most people qualify for full or partial legal aid. However the waiting time for a decision about whether a person qualifies for legal aid is 1-2 days, and then they may have to wait further before the legal aid lawyer can meet with them. In the early stage of proceedings, suspects may choose not to request legal aid due to uncertainty about whether it will be free or whether they will have to make a partial or full contribution to it.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

Public legal aid attorneys are appointed by the Minister of Justice and must have a Masters in Law and adequate experience in advocacy and adjudication. They are under an obligation to observe the rules of proper professional conduct for advocates in their activities. Remuneration of legal aid lawyers is monitored by the Bar Association to ensure that it is reasonable and in accordance with the Bar Association guidelines. An adequate level of hourly pay, and the right to bill up to 80 hours per case and apply for further hours in complex cases, impacts positively on the quality of representation. There is generally a positive view among the public and lawyers of the quality of legal aid services.



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LEGAL AID IN:

France

SNAPSHOT

**€119
MILLION**

ANNUAL EXPENDITURE
ON CRIMINAL
LEGAL AID

€1.8

PER CAPITA

€398

AVERAGE LEGAL AID
FEES PER CASE

Legal culture
and poor
rates of
pay raise
concerns
about quality
of legal aid in
France.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

Legal aid committees (*le bureau d'aide juridictionnelle*) within the French courts receive applications and determine eligibility for legal aid. The committees include a magistrate, a member of the general public, a member of the local bar and additional representatives. Once an eligible person is approved for legal aid, the president of the local bar association appoints an attorney. One may also request a specific lawyer, and the bar association will attempt to procure the lawyer if he or she is available. Bar associations take into consideration the background of lawyers when determining how to place a lawyer. For instance, only lawyers with experience in criminal law will be appointed as defense counsel for an accused individual. Similarly, lawyers experienced with working with minors will be appointed to juvenile cases.

Legal aid includes two types of services. The first is *l'aide juridictionnelle*, which provides for court proceedings as well as out of court settlements, for civil, criminal, and administrative matters. The second is *l'accès au droit*, which provides for legal consultations and assistance. Lawyers are remunerated for *l'aide juridictionnelle* work but not for *l'accès au droit* work.

HOW IS IT FINANCED?

The state provides funds for legal aid through the Ministry of Justice. In 2012, the total expenditure on legal aid was €351 million, or 0.02% of GDP. Only one third of that budget is allocated to criminal legal aid. Private bar associations may also choose to contribute additional funds to supplement state subsidies for legal aid. Non-governmental organizations and non-profits that provide legal services to indigent individuals also receive grants from the government to carry out their work.

Payments to individual legal aid lawyers are calculated by how many units are allocated to the case, which is determined by the bar association. Each unit is worth €300. 2,283,883 units were allocated in 2012 for criminal cases, and the average expenditure per case was €398. A judge has discretion to require the losing party of a case to pay the legal fees of the other party, including fees paid via legal aid.

In 2013, France eliminated its €35 tax on litigants, which caused a deficit of 60 million euros. France is in the process of determining new ways of financing legal aid, including lowering compensation for lawyers and recovering costs from awards paid to litigants. The proposals have been met with discontent, as most lawyers believe they are not paid adequately and there have been calls for at least a twofold increase.

HOW IS IT MONITORED?

The legal aid committees that assess the eligibility for and allocation of legal aid do not monitor the quality of legal services provided. Rather bar associations evaluate the skills and qualities of lawyers to determine if they



LEGAL AID IN: France

MAJOR ISSUES WITH LEGAL AID

Lack of sufficient funding for legal aid and poor remuneration for legal aid lawyers, leading to discontent and protest among the profession.

French legal culture does not highly value defence work, and inexperienced lawyers are more likely to take on legal aid cases, resulting in concerns about the quality of representation.

We thank **Yoann Thinès**, *Conseiller Technique—Secteur Justice, Coopération française en Haïti* for his expert assistance with this document

are providing adequate services. Clients who have grievances about the lawyer's services may bring their complaints to the local bar association.

ELIGIBILITY

WHO IS ELIGIBLE FOR LEGAL AID?

Anyone who is physically and legally in France is eligible for legal aid if they meet the means and merits test. Those requesting legal aid must exhaust other means of funding first, such as insurance. Victims of crimes may access legal aid free of any charges, regardless of income. Legal aid is available for any legal issue and is not confined to criminal law.

MEANS AND MERITS TEST

France employs a means test and provides legal aid on a sliding scale based on need which is re-evaluated on an annual basis. As of 2014, the maximum net income to obtain 100% legal assistance is €936 per month. The maximum increases by €167 for every two dependent persons in the household and €106 for each of any other dependant persons. Those making between €1299 to €1404 a month can receive 15% of the cost of legal assistance through legal aid.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

In 2011, France passed a law reforming the *Garde à Vue* procedure (used when someone is arrested and detained by the police) to remove limitations on the right to early access to a lawyer. Previously, access to a lawyer was not guaranteed; it was limited to a 30 minute consultation and lawyers could be excluded from interrogations. Now, police officials must inform the arrestee that he or she has the right to a lawyer. Once a person invokes their right to counsel, questioning must cease for at least two hours to give the lawyer time to reach the police station, and the lawyer may attend all interrogations. The appointment of a lawyer (who is "*commis d'office*"—mandatorily assigned by the local bar president) is separate from the ordinary legal aid system. Those who are not eligible for legal aid must repay the cost of this lawyer. Bar associations across France have had varying success responding to this new law, with some bars creating telephone hotlines for arrested persons to call for assistance.

In exceptional circumstances, including serious drug trafficking, organized crime, terrorism, extortion, and conspiracy, authorities may prevent an individual from consulting with an attorney.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

French legal culture creates a professional divide between prosecutors and judges, and defence lawyers. Prosecutors and judges share a common training and view their role as dominant, and the legal tradition does not typically support a role for strong, pro-active, defence lawyers. This is exacerbated by the low rate of remuneration for legal aid work, and the fact that most legal aid work is carried out by young attorneys as part of their training, who are unlikely to have the confidence or skills to stand up to a corps of more experienced judges and prosecutors. This raises concerns about equality of arms.



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LEGAL AID IN:

Germany

There is no formal legal aid or public defender scheme in Germany.

There is no national police station advice scheme, so people are routinely interrogated without a lawyer.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

There is no formal legal aid scheme for criminal proceedings in Germany. Rather, legal aid is substituted by the mandatory defence regime (*notwendige Verteidigung*), which is based on the seriousness of the offence or vulnerability of the accused, not on financial need.

Every accused in a case of mandatory legal representation has the right to a court-appointed lawyer, regardless of their financial means. The accused can identify and request a specific lawyer. Every lawyer may be appointed as court-appointed counsel; there is no public defender scheme in Germany. However, this lawyer is not necessarily provided free of charge to the accused. Instead, the questions of payment are deferred until after the proceedings are complete. If convicted, the accused is responsible for the legal costs of the case. As a result, it is common for people to take out insurance against legal expenses in Germany, because of the risks of being held responsible for the costs of a case. If acquitted, the State pays the court-appointed lawyer under the codified ordinary fees scheme.

The system is decentralized, with the federal government establishing the laws regulating court-appointed lawyers and the individual states providing the pre-funding for the lawyers. The organizational responsibility for administering the system falls primarily on the courts. Courts are responsible for determining if the case is one of mandatory legal representation, and for the appointment of the lawyer. The court that hears the cases is responsible for assigning the costs of the case to the losing party. The court-appointed lawyer then files a remuneration claim to the court. The decision about whether the accused is indigent and can thus avoid a remuneration claim against them follows complex rules of German civil procedure.

HOW IS IT FINANCED?

Since the financial administration of the criminal legal aid equivalent falls to the individual States, no comprehensive and uniform statistics on spending are available. Court-appointed lawyers receive fixed fees for legal services under the codified ordinary fees scheme, which are lower than fees charged by privately-hired lawyers. The payment process is bureaucratic and defence lawyers criticise the amount of time it takes.

HOW IS IT MONITORED?

There is no separate quality control mechanism for court-appointed lawyers. All lawyers must be members of the Bar Association, and clients may submit complaints about their lawyer directly to the Bar Association. However, the Bar does not run any independent monitoring or quality assurance mechanism.



LEGAL AID IN: Germany

MAJOR ISSUES WITH LEGAL AID

German criminal justice does not have a legal aid scheme, but it does have a complex functional equivalent in limited circumstances, based on the seriousness of the offence and not on financial need.

If a defendant is convicted, they will generally **have to repay the cost of their court-appointed lawyer**, unless they can prove their indigence in a separate and complex civil proceedings regime.

Lack of mechanisms to provide free legal assistance at the police station.

No quality control mechanism for court-appointed lawyers.

We thank Dr. iur. Stefan Schumann, Johannes Kepler Universität for his expert assistance with this document.

ELIGIBILITY

WHO IS ELIGIBLE FOR LEGAL AID?

Anyone accused in a mandatory legal representation case is eligible for a court-appointed lawyer, including foreign nationals and non-residents. Defendants shall be ordered a court-appointed lawyer if they are in pre-trial detention or they cannot defend themselves. Individuals who cannot defend themselves are defined as lacking the mental ability to understand the proceedings or the facts, or the legal issues are too complicated for the average person to understand.

MEANS AND MERITS TEST

There is no means test. If a person is charged with a crime that is punishable by one year or less of imprisonment, such as petty theft, they are not entitled to a court-appointed lawyer, even if they are indigent and cannot afford to privately hire a lawyer. However some categories of vulnerable people still qualify for mandatory legal representation, such as those who cannot defend themselves and those who are committed to pre-trial detention by a judge.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Although accused persons have the right to legal advice prior to interrogation, there is no national mechanism to enable accused persons to consult with a lawyer, and very few positive obligations on the police to assist the accused to contact a lawyer. A broad variety of emergency defence lawyer services have been set up on a local basis, and lawyers can participate on a voluntary basis, but there is no national or centrally organised and managed scheme. In addition, the accused is not explicitly entitled to a lawyer during the interrogation itself, however the law provides for the right to access legal advice in each stage of proceedings. In practice, accused persons are routinely interrogated without receiving the assistance of a lawyer.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

The quality of lawyers is ensured predominately by their compulsory membership of the Bar, which requires the lawyer to have passed the German State Examinations in Law. However, once a member, there is very little monitoring or requirements of quality assurance.

Quality is also linked to fees and to independence. Under the codified ordinary fee scheme, court-appointed lawyers receive considerably lower fees than privately-hired lawyers, leading to concerns that experienced criminal lawyers are unwilling to be appointed by the courts. In addition, because lawyers are usually chosen and appointed at the discretion of the courts, there have been some criticisms that those lawyers who are "regularly chosen" may not be fully independent and willing to stand up to the judges on whom they rely to earn their living.



OPEN SOCIETY
JUSTICE INITIATIVE





Greece

There is no independent quality assurance or monitoring of legal aid.

Legal aid is not available at the police investigation stage or when the suspect is questioned by the police.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

Responsibility for legal aid is shared between the Ministry of Justice, the Courts and the Bar Associations. In civil, administrative and criminal cases, a person who lacks the financial means to pay for legal aid submits an application to the Ministry of Justice. A judge or justice of the peace reviews the application and decides whether to grant legal aid. This decision is appealable to a three-judge district court. Each Bar Association creates a list of lawyers who are on duty to provide legal aid services. Irrespective of the defendant's financial means, the court must appoint a legal representative where the defendant is charged with an indictable offence (*kakourgima*), where the defendant is taken directly to court (in relation to less serious offences) and in pre-trial proceedings before the investigating judge.

There is uncertainty as to the extent to which the system operates effectively in practice. In August 2013, the Ministry of Justice raised grave concerns that particular lawyers were manipulating the appointment process to ensure access to a disproportionate number of legal aid cases and the payment of substantial sums of legal aid compensation exclusively to them. Legislation introduced in July 2014 (Law 4274/2014) sought to deal with this problem, by limiting the amount of legal aid compensation that a lawyer can be paid in a particular year to a maximum of €15,000, and by excluding from the annual appointment lists any lawyer who received more than this in the previous year.

In the midst of the socio-economic crisis faced by Greece, informal, non-state, mechanisms of legal aid—such as those supported by the charitable actions of groups including Solidarity Now, Arsis and some local bar associations—have emerged as alternatives to state-sponsored legal aid.

HOW IS IT FINANCED?

Legal aid may cover the entire cost of the trial or a portion of the costs. It provides the cost of the lawyer, plus related costs such as stamp and copy duties, witnesses and experts' fees, and security for costs. Compensation for legal aid is paid through the Ministry of Justice (Directorate of Economic–Administrative Services and Electronic Government). Lawyers submit the required documentation directly to the relevant department of the Directorate.

HOW IS IT MONITORED?

There is no independent legal aid authority with the responsibility of managing or overseeing the provision of legal aid. There are no independent codes or standards for legal aid lawyers, who must act in accordance with the general legislative and regulatory framework for lawyers.



LEGAL AID IN: Greece

MAJOR ISSUES WITH LEGAL AID

Unavailability of legal aid at the police investigation stage.

Legal aid lawyers are often not informed of their appointment until the day of the hearing, leading to poor quality assistance.

The lack of appropriate institutional mechanisms for the effective operation of the legal aid system, and the complexity of the existing system, with Bar Associations, courts and the Ministry of Justice all sharing responsibility but lacking the means for effective supervision and control.

Lack of quality control and monitoring.

*We thank **Dimitrios Giannouloupoulos**, Associate Dean and Senior Lecturer in Law, Brunel University London for his expert assistance with this paper.*

ELIGIBILITY

WHO IS ELIGIBLE FOR LEGAL AID?

Any national of an EU member state can apply for legal aid, as well as nationals of third countries who habitually reside in the EU and can show proof of residence.

MEANS AND MERITS TEST

Only those who have an annual family income that is less than two-thirds the minimum annual personal pay stipulated by the national general Collective Labour Agreement are eligible for legal aid (according to 2013 figures, anyone with an annual income lower than €6,597.36 would be eligible). When applying for legal aid, a person must submit supporting documentation showing their financial situation.

Public interest corporate bodies, non-profit organizations, and groups of persons that have the right to take part in court proceedings may also get legal aid, if the costs of the proceedings would make it impossible to accomplish the aims of the group.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Greek law provides for legal aid during trial proceedings and proceedings before the investigating judge. This includes the hearing where the investigating judge questions the person and determines bail and remand in custody.

However, legal aid is not available at the police investigation stage or when the suspect is questioned by the police. Theoretically, suspects have the right to consult with a lawyer prior to and during custodial interrogation, but the unavailability of legal aid at this stage means that this right is illusory for most people. The Committee for the Prevention of Torture has identified the unavailability of legal aid as a major problem in Greece and has asked the Bar Associations to extend the existing legal aid system to the police investigation stage of the proceedings.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

Legal aid lawyers complain that they are often not informed of their appointment until the day of the hearing, rendering them unable to provide quality assistance. In addition, a court-appointed lawyer cannot resign. The compulsory nature of the appointment is especially problematic because the legal aid lawyer is considered to act not only in the interest of his or her client, but also in the interest of the public and the administration of criminal justice. Opinion is divided as to whether this means that legal aid lawyers can act beyond or even against the will of their client.

In 2014-15, the Athens Bar Association together with the Hellenic Bar Association, began to provide training to junior criminal law practitioners (100 lawyers have registered with the programme). They aspire to use this as a platform for the provision of certification for legal aid lawyers in the near future.



OPEN SOCIETY
JUSTICE INITIATIVE





HUNGARY

No national statistics on legal aid spending are kept.

Police have discretion about which *ex officio* lawyer to appoint, leading to concerns of corruption.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

Legal aid in Hungary is characterised by a lack of unified management. In criminal matters, if a person cannot afford a lawyer, they will be given an *ex officio* appointment of a private lawyer as defence counsel. These lawyers are appointed by whoever conducts that particular phase of the proceedings; the police, prosecutor or court. Lawyers are selected from a list compiled by the regional bar associations, but the appointing authorities are completely free in making their choice. Appointed lawyers are not required to have experience or training in criminal defence.

It is mandatory for a person to formally have a lawyer in a number of situations, including if the person is detained or if they are accused of a serious crime. However, unless the defendant meets the means test, which is very low, they will be legally obliged to pay back the State back for the costs and fees of their *ex officio* lawyer. In practice, it is commonly not possible to enforce this claim, so in practice the system works as a kind of unofficial free legal aid.

HOW IS IT FINANCED?

Payments for *ex officio* lawyers are made by the individual appointing authorities (the police, prosecution and courts). The lack of unified management means that it is not possible to acquire exact data about the average total annual amounts spent on criminal legal aid. The numbers would have to be collected from each of the three different appointing authorities and attempts to do so have indicated that most of these institutions do not keep separate records of the amounts they pay to lawyers as legal aid fees and costs.

HOW IS IT MONITORED?

There is no institution with responsibility for managing legal aid services or monitoring quality. Clients who have grievances about the lawyer's services may bring their complaints to the local bar association.

ELIGIBILITY

WHO IS ELIGIBLE FOR LEGAL AID?

It is mandatory for a person to formally have a lawyer in a number of situations, and if they cannot hire their own, they will be appointed an *ex officio* lawyer. Mandatory defence situations include: (i) if the person is suspected of a criminal offence punishable by imprisonment of five years or more; (ii) if they are detained; (iii) if they are a juvenile, deaf, blind, or have a mental impairment; (iv) if they do not speak Hungarian; or (v) if they meet the means test and request a lawyer. In addition, the appointing authority has the discretion to appoint an *ex officio* lawyer at any time if they consider that the principles of a fair trial require it. Due to the wide range of situations requiring mandatory defence, a relatively high percentage of defendants are theoretically eligible for an *ex officio* lawyer. Importantly, unless they meet the means test, these defendants will be obliged to pay back the costs of the *ex officio* lawyer.



LEGAL AID IN: HUNGARY

MAJOR ISSUES WITH LEGAL AID

No national authority to administer criminal legal aid and monitor the quality of services.

Access to a lawyer during the investigative stage of proceedings is problematic.

Means test is very low—to qualify you must earn less than €95-190/month.

Choice and appointment of lawyers is entirely at the discretion of the investigating authority leading to concerns about independence.

Low remuneration for legal aid work.

Police do not have to wait for the lawyer to arrive before interrogating suspects.

MEANS AND MERITS TEST

The financial ceiling for the means test is extremely low, and linked to the minimum old age pension in Hungary. In 2015, for a person who lives alone to satisfy the means test, their monthly income could not exceed €190. For a person who lives with other persons, their monthly income could not exceed €95.

There is no specific merits test, instead there is a wide range of situations requiring mandatory defence, coupled with a wide discretion on behalf of the appointing authority to appoint legal aid.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

In practice, suspects rarely have effective access to an *ex officio* lawyer during the investigative stage of proceedings and some are not even aware that a lawyer has been appointed to them at this stage. Research conducted by the Hungarian Helsinki Committee in 2011 found that only 16% of suspects had a lawyer at the first interrogation, with lawyers frequently failing to make any contact with their clients until the first court hearing. There is no duty lawyer scheme, and even if the police notify defence lawyers, they do not have to wait for the lawyer to arrive before interrogating suspects. A 2014 study by the Hungarian Helsinki Committee also found ethnic disparities in this respect. The study found that in 65% of cases against Roma and 40% of cases against non-Roma defendants, the police notified the lawyer less than one hour (and in some cases, mere minutes) before the beginning of the interrogation, ensuring there was not enough time for them to attend or be properly prepared.

Even in mandatory defence cases, *ex officio* lawyers often do not attend police interrogations. Mandatory defence does not require the actual presence of the lawyer during the investigative stage, so the failure of the lawyer to show up will not prevent the police from interrogating the suspect or undertaking other procedural acts.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

Concerns about the low quality of legal aid in Hungary are linked to two major issues: independence and low remuneration.

The decision about which *ex officio* lawyer to appoint is entirely at the discretion of the investigating authority. They can choose any lawyer from a list provided by the bar association. In 2013, the Committee for the Prevention of Torture criticised this practice, noting allegations that these lawyers act in the interests of police officers rather than in the interests of their clients. Research conducted by the Hungarian Helsinki Committee across 47 police units in 2011 found that police repeatedly appoint a preferred lawyer; in one police station, 82% of legal aid cases were given to a single lawyer. In a pilot project where a computer generated system was used to allocate lawyers from an approved list, the police frequently over-rode the system until a 'suitable' lawyer appeared.

Remuneration for legal aid is significantly below the pay for private cases. Legal aid lawyers earn approximately 17-21 EUR per hour, and only half this amount for consulting with a detained defendant.



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LEGAL AID IN:

ITALY

SNAPSHOT

**€87
MILLION**

ANNUAL EXPENDITURE
ON CRIMINAL
LEGAL AID

€1.45

PER CAPITA

€1,000-1,500

STANDARD LEGAL AID
FEES PER CASE

It is
mandatory
to have
a lawyer;
defendants
often go into
debt to pay
them.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

The system of criminal legal aid in Italy is not unified or managed by one central body. Instead, it operates as an *ex officio* appointment system. If a suspect or defendant does not have a lawyer, the prosecuting authority – the police, prosecution or judge—will request the Bar Association to appoint one. These *ex officio* lawyers are not free and they will only be paid by the State if the suspect or defendant is indigent and meets the threshold for the means test.

A key characterizing feature of Italian criminal law is that it is mandatory to have a lawyer at all stages of all criminal proceedings. This is rigorously applied: a person generally cannot represent themselves during the investigation, trial, or appeal, and can be assigned a lawyer against their will. Without a robust legal aid scheme, this results in a situation where many poor defendants go into debt to pay for their lawyer.

HOW IS IT FINANCED?

The Ministry of Justice finances the provision of legal aid to indigent defendants. The total criminal legal aid budget is €87 million per year, or €1.45 per capita.

Lawyers' fees are determined by a decree from the Ministry of Justice which provides for a minimum and maximum fee for every professional act a counsel may perform. The fee for legal aid is low; a legal aid lawyer can expect to earn €1,000-1,500 for a simple case of three to five hearings whereas a private lawyer could expect to earn €4,000-5,000 for the same case. Legal aid lawyers also complain that judges can cut the fees presented at the end of each stage of criminal proceeding. Remuneration is so low that many lawyers refuse appointment, and those who do accept appointment may lack the funds or motivation to conduct a thorough investigation of the case.

HOW IS IT MONITORED?

Without a central body to administer and manage legal aid, it is difficult to ensure monitoring of legal aid services and quality assurance. The Bar Association and the Penal Chamber (a private association that many criminal lawyers belong to) have codes of conduct and can impose sanctions on a lawyer, but this is rare.

ELIGIBILITY

MEANS AND MERITS TEST

People who earn under €10,776 per year are eligible for legal aid. This low financial ceiling, coupled with the fact that those who do qualify are often unaware that they can apply, results in a very small percentage of defendants accessing legal aid. Although statistics are not collected on the rate of legal aid, it is estimated that just over 2-3 per cent of defendants, not including juveniles, receive legal aid.



LEGAL AID IN: ITALY

MAJOR ISSUES WITH LEGAL AID

Whilst all accused persons must be represented by counsel, the low means test **requires many poor defendants to go into debt** to pay for their lawyer. It is estimated that only 2-3% of defendants receive legal aid.

Low remuneration means that many lawyers refuse appointment and those who do accept a case may lack the funds or motivation to conduct a thorough defence.

Lack of quality control mechanisms.

When a person earns above this financial threshold, even slightly, they are not entitled to any legal aid but they cannot choose to defend themselves. They must accept the lawyer appointed *ex officio* to them and they must pay that lawyer's fees. This puts a strain on both the defendant and the lawyer. Defendants may have to go into debt to pay for a lawyer that they did not choose or want appointed to them, and lawyers may have to take time-consuming steps such as having to sue their clients for payment.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Suspects have the right to a lawyer from the earliest point of proceedings, the commencement of the criminal investigations. In some parts of the investigation, the presence of a lawyer is mandatory. This includes when a person under arrest is questioned by the judge, or when a suspect is called by the police to be questioned. Preliminary hearings must also be conducted with the attendance of counsel. Other investigative acts such as the prosecutor's interrogation of the suspect and personal searches can legally be performed without the presence of a lawyer, but it is very unusual for the lawyer not to attend.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

There is a general lack of quality control on the legal profession in Italy. The mandatory nature of legal assistance gives rise to a situation where what matters is that a lawyer was present, not whether the lawyer was prepared and sufficiently skilled to perform his or her duty. For example, at trial, the judge has the power to appoint an *ex officio* lawyer on the spot if the accused does not have a lawyer. The judge will ask if one of the lawyers in the courtroom is willing to accept the defence of a person without counsel, and usually someone will volunteer.

Poor remuneration leads to concerns about the quality of legal aid lawyers. However, there is generally a strong legal culture of criminal defence and some lawyers routinely accept legal aid cases on ethical grounds despite the state remuneration being lower than what they could earn applying the normal fees. The *Giuristi democratici* (Democratic Jurists) is an association of lawyers dedicated to taking legal aid cases and improving the legal aid system, and its members are regularly appointed *ex officio* across Italy.



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LEGAL AID IN:

NETHERLANDS

SNAPSHOT

**€168.1
MILLION**

ANNUAL EXPENDITURE
ON CRIMINAL LEGAL
AID (2012)

€9.3

PER CAPITA

€530

LEGAL COSTS
OF TYPICAL
CRIMINAL CASE

Recipients
of legal
aid must pay
a fee of
€76-€823.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

The *Raad voor Rechtsbijstand* (Legal Aid Board) oversees the provision of legal aid across the country. The Board assesses applications for legal aid and determines eligibility based on the applicant's income and assets, as well as the significance of the legal problem in question. In assessing the merits of the legal problem, the Board takes into consideration the costs associated with the case and if hiring a lawyer or going to trial is necessary. The Legal Aid Board also oversees the Legal Services Counters, which provide on-the-spot, free legal information, and referrals to lawyers and alternative dispute resolution.

HOW IS IT FINANCED?

In 2012, the state provided €486 million for legal aid. Criminal legal aid made up 36% of that expenditure, €168.1 million, also expressed as 0.08% of GDP or €9.3 per capita.

Legal aid lawyers are generally paid a fixed fee per case. It is calculated on an assessment of the average number of hours a type of case generally takes, and the basis of an hourly rate of €106. A general criminal case is fixed at 5 hours, meaning legal aid lawyers can expect to receive a fee of €530 per case. However, attending police stations and interrogations is paid at a lesser rate: €85 for consulting with an arrestee and €113 for attending interrogations, irrespective of the number or duration of interrogations. Legal aid lawyers are growing discontent at the reduction of fees and the possibility of further reductions, and in November of 2013, criminal legal aid lawyers went on strike to protest reduced rates.

The costs of legal aid are partly covered by a contribution from the client himself. This amount varies from €76-€823 depending on the type of matter and the person's means. One important exception is early access to a lawyer after arrest; if a person needs a legal aid lawyer when they are arrested and interrogated by the police, this is entirely free of charge.

HOW IS IT MONITORED?

The Legal Aid Board manages the administration and supervision of legal aid, in addition to the actual implementation of the system. The board may remove lawyers who do not adequately fulfil their duties from the list of eligible legal aid attorneys. The Bar Associations should ensure quality of their members and are responsible for disciplining lawyers.

MEANS AND MERITS TEST

Individuals who have been arrested may receive the immediate assistance of a lawyer free of charge, regardless of the arrestee's income. However, after the initial arrest period is over, people must then apply for the legal aid through the Legal Aid Board, which involves a means test to the individual, as well as a merits test of their case. The board reviews the nature and



LEGAL AID IN: NETHERLANDS

MAJOR ISSUES WITH LEGAL AID

Lawyers are growing discontent at the reduction of fees, particularly at the fees for police station assistance. In November of 2013, criminal legal aid lawyers went on strike to protest reduced rates.

The amount a person is required to pay as a contribution to their own case is high (€200-823) and being increased regularly.

Lawyers can be present during police interrogation but cannot intervene or ask questions until the end.

seriousness of the legal problem, the accessibility of alternative solutions, and the financial cost of the case. It also examines a person's income of the last two years and assets to determine financial need. In 2010, a single person would be eligible for legal aid if their annual income was below €24,900, and a family if their income was below €35,200. The applicant's assets cannot exceed €20,014 with an additional €2.762 per child.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Since the reform in 2010, suspects in police custody now have a right to meet with a lawyer for 30 minutes before they are interrogated. This is mandatory for persons suspected of serious crimes and juveniles. The lawyer can be present during the interrogation but cannot intervene or ask questions until the end, which appears to breach the EU Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

Arrestees can ask for a duty lawyer, and various types of police station duty lawyer schemes are operated by the Legal Aid Board across the country. Regardless of the scheme, under the latest regulations of the Legal Aid Board, a registered legal aid attorney must be on standby at all times to provide services in case of an arrest. If a person is arrested between the hours of 7am and 8pm, their legal aid lawyer must arrive at the police station to see them within two hours of their arrest. If they are arrested outside these hours, the legal aid lawyer must arrive at 9am at the latest. Legal aid lawyers are paid €85 for the first consultation, €85-170 for the second consultation, and €113 for attending interrogations, irrespective of the number or duration of interrogations.

The arrestee can access this lawyer free of charge until the first detention order. Thereafter, the financial capacity of the arrestee is assessed and the case continues through regular assignment to legal aid cases. For the majority of arrestees, this system ensures they can see a lawyer without any charge during the period immediately after arrest. The only exception is in cases of minor offences; if a person is arrested for a crime for which imprisonment is not a possible punishment, they are not eligible for this free service.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

In order to provide legal aid, lawyers must be registered with the Legal Aid Board and comply with a set of quality standards. The Bar Associations are responsible for ensuring the standards of lawyers and can discipline their lawyers, and the Legal Aid Board supervises the provision of legal aid and can remove lawyers from the list of legal aid providers if they fail in their duties. Generally, the quality of legal aid services is considered high, but the reduction of fees for legal aid lawyers – especially for early assistance at police stations – means that some experienced lawyers may become less willing to do legal aid work.



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LEGAL AID IN:

POLAND

SNAPSHOT

**€23
MILLION**

ANNUAL EXPENDITURE
ON CRIMINAL LEGAL
AID (2013)

€0.59

PER CAPITA

The legal aid system is decentralized, and lacks clear eligibility criteria.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

There is no unified system of legal aid in Poland and no specific legal aid legislation to address its provision in a systemic and organized manner. In criminal cases, the decision to grant legal aid is always taken by a judge. The judge decides whether the request for legal aid should be granted and if so, which lawyer should be appointed. There is no separate or specialized group of lawyers acting in legal aid cases: the judge appoints a lawyer from a list provided by the local bar associations. The judge is not required to pay attention to the specialisation or availability of the lawyer, meaning that lawyers who have little or no experience in criminal law can be appointed to complex criminal trials.

The Polish government has expressed its commitment to significant legal aid reform, including the development of a model whereby the government could fund local municipal authorities to provide and manage legal aid.

HOW IS IT FINANCED?

There is no separate budget for legal aid in Poland. Costs of legal aid are covered by the State but decentralized; the decision to grant legal aid is made by judges, who must pay for it out of their individual court budget. This means that the decision of a judge whether or not to award legal aid could be influenced by the financial limitations of their budget. In 2013, the annual expenditure on legal aid as a whole was approximately €23 million, also expressed as €0.59 per capita or 0.01% of GDP. Neither the courts nor the Ministry of Justice systematically collect data on the costs or the amount spent on criminal legal aid. It is not possible to estimate what percentage of the legal aid budget is spent on criminal cases.

HOW IS IT MONITORED?

Lack of reliable statistical data makes it difficult to evaluate the functioning of the legal aid system. There is some data on state expenditure for general legal aid, but the government does not systematically track data on how much money is spent annually on criminal legal aid cases, how many people are eligible or require legal aid, how many people request or receive criminal legal aid per year, or the reasons for legal aid being granted or refused.

There are no standards of professional conduct for legal aid cases and there is no mechanism for monitoring or quality assurance.

ELIGIBILITY

WHO IS ELIGIBLE FOR LEGAL AID?

In criminal cases, indigent defendants can receive legal aid if their case falls within the scope of cases for which defence is mandatory. This includes certain categories of vulnerable people including minors, and people charged with a crime for which the lower sentencing limit is more than three



LEGAL AID IN: POLAND

MAJOR ISSUES WITH LEGAL AID

Very rare for people to be able to obtain legal aid during investigative stage due to the police not providing information about the right to legal aid or about how to access legal aid, and due to extremely slow bureaucratic process of getting a judge to appoint a legal aid lawyer.

Lack of clear criteria for awarding legal aid, no clear means or merits test, and too great discretionary power for the judge deciding on legal aid.

No separate budget for legal aid, with payments for legal aid coming out of the limited budget of the individual courts.

No effective mechanism for quality control or assurance and adequate criteria for remuneration.

years of imprisonment. In practice, this excludes many serious offences, some of which have upper limits of sentencing of 12 years.

MEANS AND MERITS TEST

There is no clear means or merits test and no clear criteria as to when a person should be granted legal aid. There are no clear guidelines for defendants about what evidence to provide to the judge to demonstrate that they cannot afford a lawyer. There is no explicit duty on judges to provide detailed reasons for their decision. This means that judges have a wide discretion to deny legal aid except in certain mandatory cases.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

In theory, the right to legal aid covers all phases of the proceedings. In practice, it is very rare for a person to get access to a lawyer—either a legal aid lawyer or privately paid lawyer—during the investigative stage. Even in cases of mandatory defence, suspects generally are not able to get a legal aid lawyer during the early stages due to the slow bureaucratic process of appointing one. Even if the prosecutor requests the court to appoint a lawyer at the earliest stage of proceedings, the appointment only occurs after the first hearing of the court, which decides on pretrial detention. This takes place within 72 hours after arrest. As a result, most people who are arrested or detained go unrepresented during this crucial stage in criminal proceedings. The lack of possibilities to have legal assistance during the investigative stage and police interrogations has been criticised by the Committee for the Prevention of Torture (CPT).

People are often not informed about their right to legal aid by either the police or the prosecutor. In cases that do not require mandatory detention, the police are under no obligation to inform suspects of their right to legal aid, and the right is not included in the written Letter of Rights given to the suspect. The police generally do not provide any assistance or explanation about how to obtain legal aid. The prosecutor has a discretion about whether to inform a person of their right to legal aid, depending on whether the prosecutor forms an opinion that a person cannot bear the costs of proceedings. Confidentiality between defence lawyers and clients is not guaranteed, as the arresting officer, in special circumstances, may reserve the right to be present when the consultation takes place. Also, in certain “justified cases”, prosecutors can supervise lawyer-client consultations, with no judicial review of this decision.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

Cases are appointed to members of the bar irrespective of their field of expertise or availability. Legal aid remuneration rates are relatively low, with no differentiation in payments according to the time spent on a case or its complexity. There are no standards of professional conduct for legal aid cases. There is also no effective mechanism for quality control or assurance. All responsibility for disciplinary proceedings lies within professional bodies that are widely criticised for not fulfilling this task properly.



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