

Comparative perspectives on Access to Justice

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Relevant Applicable Laws:

Constitution Basic Law of Hungary:

- E. Article (1) Hungary shall be contribute to creating European unity, so as to achieve freedom, well-being and the security for the European people.
- I. Article (1) Inviolable and inalienable fundamental rights of humans have to be respected. Protecting them shall be the primary obligation of the state.
- IV. Article (1) Everyone has the right to libery and security of person; no one shall be deprived of this freedom except on the grounds and in accordance with the procedures provided for by law. Persons may only be deprived of their personal freedom after a court has established the criminal responsibility in a final judgment for a crime committed. (2) A person suspected of committing a crime, who has been detained, will be set free or brought before a court within the shortest time possbile. The court must hear such a person and detailed forthwith in a written ruling with detailed reasoning on setting the person free or placing the person under arrest.
- XXVI. Article (3) (3) ***Everyone subjected to criminal proceedings shall be entitled to be defended at all stages of the proceedings.*** Representative of the defence shall not be held responsbile for opinions expressed in the case of the defence(6) Everyone shall be entitled to seek legal remedy against decisions of the courts, the public administration or other authorities, which infringe their rights or legal interests

United Kingdom LAPS0 Bill Clause 12:

(12) Criminal Legal Aid

(1) Initial advice and initial assistance are to be available under this Part to an individual who is arrested and held in custody at a police station or other premises if the Director has determined that the individual qualifies for such advice and assistance in accordance with this Part (and has not withdrawn the determination).

Case Law:

Pupino C-105/03: *Police and Judicial Cooperation in Criminal Matters.*

Salduz v Turkey (Application No. 36391/02): *“In order for the right to a fair trial to remain sufficiently ‘practical and effective’ Article 6 § 1 [of the ECHR] requires that, as a rule, access to a lawyer should be provided as a from the first interrogation of a suspect by the police.”*

Jespers v Belgium (1981) 27 DR 61: *“creates a general positive obligation on each State to adopt ‘appropriate measures’ to place the defence in parity with the prosecution.”*

Kaufmann v Belgium (Application No. 10938/84): *“everyone who is a party to such proceedings shall have a reasonable opportunity of presenting his case to the court under conditions which do not place him at substantial disadvantage vis-à-vis his opponent.”*

International and European Instruments

European Convention on Human Rights:

Article 6 3 (c): Everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require

Charter of Fundamental Rights:

Article 47: Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. *Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.*

Preamble 6 of the Framework Decision on the European Arrest Warrant:

(6) The European Arrest Warrant provided for in this Framework Decision is the first concrete measure in this field of criminal law implementation the principle of mutual recognition within the European council referred to as the “cornerstone” of judicial cooperation.

Convention on International Access to Justice 1980

Article 1:

Nationals of any Contracting State and persons habitually resident in any Contracting State shall be entitled to legal aid for court proceedings in civil and commercial matters in each Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

European Parliament and Council Measures:

- The Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens (2010/C 115/01)
- Council Resolution 15434/09 Roadmap for Strengthening Procedural Rights of Suspects and Accused Persons in Criminal Proceedings
- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the Right to Interpretation and Translation in Criminal Proceedings
- European Commission Proposal (COM(2010) 392) for a Directive of the European Parliament and of the Council on the Right to Information in Criminal Proceedings
- European Commission Proposal (COM(2011) 326) for a Directive of the European Parliament and of the Council on Rights of Access to a Lawyer in Criminal Proceedings