Chapter 12
Migrants and Effective Legal Representation in Criminal Cases via Legal Aid Systems

Demetra F. Sorvatzioti
University of Nicosia, Cyprus

ABSTRACT
The European countries are obliged to fulfill the provisions of the European Convention on human rights regarding the protection of the accused rights’ and ensuring the principle of fair trial. Nowadays, because of the economic crisis more people are affected by poverty and many immigrants enter Europe. Poor and immigrants who break the law cannot afford to pay for the services of a lawyer and for the most of them the states provide legal aid assistance. This chapter indicates that in order to safeguard the accused rights’ it is mandatory for the legal aid lawyer to defend the accused effectively, otherwise the protection is just formal and does not fulfill the substantive conventional obligation of the State for fair trial. It is proposed for the States to establish qualitative criteria for the legal aid lawyers. The voluntary character of the legal aid scheme imposes an imperative duty for the lawyers to ensure fair trial for the poor.

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INTRODUCTION

Don’t I think a poor man has a chanst in coort?
Iv coorse he has. He has th’ same chanst there that he has outside.
He has a splendid poor man’s chanst.
Mr. Dooley.
(On the recall of judges, 1912)

This chapter examines the way the European Court of Human Rights’ (ECtHR) approaches effective legal representation and compares it with the relevant U.S. case law. In both there is no distinction between the retained and the appointed legal aid counsel. As a European example the chapter examines how the Greek and Cypriot legal aid systems in conjunction with the Criminal Procedure ensure the right to effective legal representation. The two countries have different legal systems. Greece belongs to the continental system of law and Cyprus to the mixed jurisdiction system. In both countries the right to effective legal representation is not clearly stated either in the constitution or in any other legal document.

The right to legal aid is connected with the right to equality before the law, the right to legal representation and the right to a fair trial. The European Convention on Human Rights (ECHR) provides the right to legal aid in article 6 para. 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.

The International Covenant on civil and Political Rights (ICCPR) in article 14 para.d states that:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.
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