Chapter 31
Migrants and Effective Legal Representation in Criminal Cases via Legal Aid Systems

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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.

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 representation.

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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.*

Also, the European Charter of Fundamental Rights provides in article 47 the “Right to an effective remedy and to fair trial. (3). Legal aid shall be available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.”

In order to evaluate whether the right to legal representation includes the right to effective legal representation, or specifically whether the representation via legal aid ensures the right to fair trial it is considered necessary for the scholar to study the case law regarding ineffective legal representation in conjunction with researches on the topic which involve legal aid cases.

Qualitative research regarding poverty and discrimination in justice system which was carried out in Greece during 2006-2009 (Sorvatzioti, 2011) especially for the legal aid lawyers indicates that most of the times they lack sufficient experience and expertise. The interviews were taken from the judiciary, court officials, defense lawyers, prisoners, police and prison officers. The research also conducted field observation in courtrooms and criminal files were studied mainly from personal archives due to my capacity as a trial lawyer in criminal cases with 20 years of experience. But the aforementioned observation was also noted in the research of Bright (1994, 1997) which were carried out in the U.S. where it was clearly mentioned that the legal aid lawyers in many cases did not defend the accused efficiently. Also the Canadian report of the National Council of Welfare titled “Justice and the Poor” (2000) points out that although some are competent the legal aid lawyer does not provide the best possible protection for the poor accused while at the same time it is not expected from them to pay much attention to their clients.

The ECtHR case law, which will be following in the analysis, has clearly stated that the right to fair trial includes the right to efficient legal representation. It is well known that the case law is binding for the States where violations were found and furthermore this jurisprudence is guiding for the members of the Council of Europe. The lawyer who voluntarily places himself at the service of legal aid should do so to help not only to provide a fair trial but an effective legal representation for the accused. For this reason but especially when the indictment refers to felony/ies it is of major importance that he has sufficient knowledge of the law and the trial proceedings while his experience in criminal litigation should
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