Legal aid in Europe

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Legal Aid as a Civil Liberty

- Article 47 of the Charter of Fundamental Rights of the European Union
  - Right to an effective remedy and to a fair trial
  - (…)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.

- EU Directive on legal aid
Legal Aid as a Civil Liberty 2

- Article 45 - Polish Constitution
  - Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court …

- Article 42
  - (...) Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself - in accordance with principles specified by statute - of counsel appointed by the court.

- Restriction typical to post-socialist thinking about law

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- Lack of express reference in some constitutional texts – France, Germany
- Right to defence is considered as a part of broader right to the fair trial
- US Constitution:
  - VI Amendment:
    - In all criminal prosecutions, the accused shall enjoy the right to (…) to have the Assistance of Counsel for his defence.
  - XIV Amendment
    - nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.
The Basic models of Legal Aid

- Public Defence Offices (rather US)
- Duty of individual practitioners (most of the European countries)
- Hybrid models (Lithuania)

Why Independent Lawyer?

- Trust of the client (valid in administrative and criminal proceedings)
- Independence form the government/court/prosecutors influence (important for the countries emerging from the totalitarian systems – like Central and Eastern Europe)
- The equality of the process parties
- More guarantees of independence of the lawyer (corporation) than of the right to defence understood as a Basic Civic Right
The Legal Aid Challenges

- The growing scope of cases in which legal aid is attributed, e.g. Poland
- Growing costs of legal aid
- EU Directive – extensive scope of legal aid (including pre-trial assistance)

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The potential ways forward

- Clear procurement system within the hands of independent body,
- Reasonable categories in which legal aid is foreseen,
- Reasonable court fees system (rather high fees and clear rules for legal aid grants – deterring the irrational claims)
- Recognition of the growth in costs of legal services (50 - 100 Euro is an average expenditure level per hour of work of an lawyer)
Legal aid in Europe

Thank you for your attention

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