



# 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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