



BELGIUM

SNAPSHOT

**€12.9
MILLION**

ANNUAL EXPENDITURE
ON CRIMINAL
LEGAL AID (2013)

€2.10

PER CAPITA

€380

AVERAGE AMOUNT
SPENT PER
CRIMINAL CASE

Until recently, there was no right of access to a lawyer in the 24 hours between arrest and remand in pretrial custody by a judge.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

Belgium has a decentralised system of criminal legal aid. The decision to provide legal aid to a person is made by the local legal aid bureau, which is controlled by the regional bar associations in each of the 27 districts in Belgium. Each of the bureaus organizes itself and determines its own policy.

The Legal Aid bureau appoints a lawyer from a list, which is made up of lawyer-trainees who are obliged to provide legal aid during their three-year traineeship, and qualified lawyers who choose to add their names to the list.

HOW IS IT FINANCED?

The federal government pays for the cost of providing criminal legal aid and the administrative costs of the Legal Aid Bureaus. Belgium has a closed budget for legal aid determined by the government at the beginning of each year. In 2013 the amount spent on criminal legal aid was €12.9 million, also expressed as €2.10 per capita. This is relatively low compared to many other EU countries, but discussion about reforms – such as the Ministry of Justice's controversial proposal to require a €50 administrative fee for legal aid beneficiaries – have been focused on how to further cut costs. The average pay for lawyers per legal aid case is approximately €365-400.

HOW IS IT MONITORED?

There are no quality control mechanisms for legal aid lawyers in criminal cases and there is no requirement that they be specialised in this field. Instead, the bar associations in each district are in charge of the general quality of legal services and are responsible for handling complaints for breaches of professional conduct.

ELIGIBILITY

WHO IS ELIGIBLE FOR LEGAL AID?

Experts estimate that only 10-20% of the population are eligible for legal aid. This is mainly due to a strict means test with a low financial ceiling. Legal aid is only available to people who are habitually resident in Belgium.

MEANS AND MERITS TEST

In order to satisfy the means test for full legal aid, a single applicant must have a monthly net income of less than €942. They may be eligible for partial legal aid if their income is under €1,210. People who are married or who have children have a slightly higher threshold: for full legal aid their monthly net income must be less than €1,210 and for partial legal aid it must be under €1,477 (2014 statistics). Decisions about how much the person must pay if they qualify for partial legal aid are made by the local bar association and can vary from place to place.



LEGAL AID IN: BELGIUM

MAJOR ISSUES WITH LEGAL AID

Low annual budget for criminal legal aid and low levels of remuneration for lawyers, leading to concerns about the quality of services.

Restrictions on the right for lawyers to actively participate and advise their clients during interrogations, in breach of EU Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

There are no quality control mechanisms for legal aid lawyers in criminal cases

A strict means test with low financial ceiling results in a system where only 10-20% of the population are eligible for legal aid.

Certain groups of people are exempted from financial thresholds. This includes minors, some groups of welfare beneficiaries, asylum seekers, detained applicants, defendants in special accelerated criminal proceedings, and people with mental illness.

There is a merits test, in that legal aid will be denied if the case is “manifestly unfounded”.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Until recently, there was no right of access to a lawyer in the 24 hours between arrest and remand in pre-trial custody by a judge. On 1 January 2012, the “Salduz Bill” came into force, giving every suspect the right to a 30 minute consultation with a lawyer before their interrogation, and for the lawyer to be present during interrogation. But this law allows mere presence only; the lawyer cannot actively participate or advise his client or ask questions during the interrogation. This will need to be reformed to avoid breaching EU Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

A duty counsel scheme has been set up to bring the Salduz Bill into force. The Flemish Bar Association has developed a special computer program to organize the assistance of an advocate during the first interrogation in police stations. The computer system enables the police to call one single telephone number where they are informed of the lawyer who will attend the interrogation. The operator will then contact the lawyer. However, few experienced lawyers sign up to attend interrogations, as they feel it is too time-consuming and they cannot fit it in around their regular practices.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

Generally, in practice there are different standards of representation for those who can afford to pay private lawyers compared to that for those who have to rely on legal aid lawyers. Concerns about quality are generally tied to two issues: (i) trainee lawyers with relatively little experience are obliged to take on legal aid cases during their training period; and (ii) there is low level of pay for legal aid work and the process of payment is very slow.

Lawyers are paid for each task they undertake in criminal legal aid proceedings through a points system. Tasks are allocated a certain number of points and each point represents a certain sum of money, which ensures that simple or complex cases are paid appropriately. However, the value of a point has been declining in recent years and the remuneration is low—approximately €365-400 per case. Legal aid lawyers claim that this is insufficient and that they do not have enough time to do the necessary administrative work. As a consequence, the quality of their services is said to suffer.

The system for payment is also slow, with payment often delayed by up to a year and a half after the case has finished. Lawyers only know at the end of the year how much money they will receive for the legal aid cases they worked on.



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