



POLAND

SNAPSHOT

**€23
MILLION**

ANNUAL EXPENDITURE
ON CRIMINAL LEGAL
AID (2013)

€0.59

PER CAPITA

The legal aid system is decentralized, and lacks clear eligibility criteria.

OUTLINE OF THE LEGAL AID SYSTEM

HOW IS IT ORGANISED?

There is no unified system of legal aid in Poland and no specific legal aid legislation to address its provision in a systemic and organized manner. In criminal cases, the decision to grant legal aid is always taken by a judge. The judge decides whether the request for legal aid should be granted and if so, which lawyer should be appointed. There is no separate or specialized group of lawyers acting in legal aid cases: the judge appoints a lawyer from a list provided by the local bar associations. The judge is not required to pay attention to the specialisation or availability of the lawyer, meaning that lawyers who have little or no experience in criminal law can be appointed to complex criminal trials.

The Polish government has expressed its commitment to significant legal aid reform, including the development of a model whereby the government could fund local municipal authorities to provide and manage legal aid.

HOW IS IT FINANCED?

There is no separate budget for legal aid in Poland. Costs of legal aid are covered by the State but decentralized; the decision to grant legal aid is made by judges, who must pay for it out of their individual court budget. This means that the decision of a judge whether or not to award legal aid could be influenced by the financial limitations of their budget. In 2013, the annual expenditure on legal aid as a whole was approximately €23 million, also expressed as €0.59 per capita or 0.01% of GDP. Neither the courts nor the Ministry of Justice systematically collect data on the costs or the amount spent on criminal legal aid. It is not possible to estimate what percentage of the legal aid budget is spent on criminal cases.

HOW IS IT MONITORED?

Lack of reliable statistical data makes it difficult to evaluate the functioning of the legal aid system. There is some data on state expenditure for general legal aid, but the government does not systematically track data on how much money is spent annually on criminal legal aid cases, how many people are eligible or require legal aid, how many people request or receive criminal legal aid per year, or the reasons for legal aid being granted or refused.

There are no standards of professional conduct for legal aid cases and there is no mechanism for monitoring or quality assurance.

ELIGIBILITY

WHO IS ELIGIBLE FOR LEGAL AID?

In criminal cases, indigent defendants can receive legal aid if their case falls within the scope of cases for which defence is mandatory. This includes certain categories of vulnerable people including minors, and people charged with a crime for which the lower sentencing limit is more than three



LEGAL AID IN: POLAND

MAJOR ISSUES WITH LEGAL AID

Very rare for people to be able to obtain legal aid during investigative stage due to the police not providing information about the right to legal aid or about how to access legal aid, and due to extremely slow bureaucratic process of getting a judge to appoint a legal aid lawyer.

Lack of clear criteria for awarding legal aid, no clear means or merits test, and too great discretionary power for the judge deciding on legal aid.

No separate budget for legal aid, with payments for legal aid coming out of the limited budget of the individual courts.

No effective mechanism for quality control or assurance and adequate criteria for remuneration.

years of imprisonment. In practice, this excludes many serious offences, some of which have upper limits of sentencing of 12 years.

MEANS AND MERITS TEST

There is no clear means or merits test and no clear criteria as to when a person should be granted legal aid. There are no clear guidelines for defendants about what evidence to provide to the judge to demonstrate that they cannot afford a lawyer. There is no explicit duty on judges to provide detailed reasons for their decision. This means that judges have a wide discretion to deny legal aid except in certain mandatory cases.

THE REALITIES OF ACCESS TO LEGAL AID

ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

In theory, the right to legal aid covers all phases of the proceedings. In practice, it is very rare for a person to get access to a lawyer—either a legal aid lawyer or privately paid lawyer—during the investigative stage. Even in cases of mandatory defence, suspects generally are not able to get a legal aid lawyer during the early stages due to the slow bureaucratic process of appointing one. Even if the prosecutor requests the court to appoint a lawyer at the earliest stage of proceedings, the appointment only occurs after the first hearing of the court, which decides on pretrial detention. This takes place within 72 hours after arrest. As a result, most people who are arrested or detained go unrepresented during this crucial stage in criminal proceedings. The lack of possibilities to have legal assistance during the investigative stage and police interrogations has been criticised by the Committee for the Prevention of Torture (CPT).

People are often not informed about their right to legal aid by either the police or the prosecutor. In cases that do not require mandatory detention, the police are under no obligation to inform suspects of their right to legal aid, and the right is not included in the written Letter of Rights given to the suspect. The police generally do not provide any assistance or explanation about how to obtain legal aid. The prosecutor has a discretion about whether to inform a person of their right to legal aid, depending on whether the prosecutor forms an opinion that a person cannot bear the costs of proceedings. Confidentiality between defence lawyers and clients is not guaranteed, as the arresting officer, in special circumstances, may reserve the right to be present when the consultation takes place. Also, in certain “justified cases”, prosecutors can supervise lawyer-client consultations, with no judicial review of this decision.

QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

Cases are appointed to members of the bar irrespective of their field of expertise or availability. Legal aid remuneration rates are relatively low, with no differentiation in payments according to the time spent on a case or its complexity. There are no standards of professional conduct for legal aid cases. There is also no effective mechanism for quality control or assurance. All responsibility for disciplinary proceedings lies within professional bodies that are widely criticised for not fulfilling this task properly.



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