

The new Austrian legal aid emergency service: First experiences

Richard Soyer, Vienna

ECBA Autumn Conference

The fair trial principle under pressure

Bratislava, 3 – 4 October 2008

The **old/new** Austrian legal aid system

Legal aid lawyer („Verfahrenshilfeverteidiger“)

- Requirement: insufficient financial means
- Complicated appointment procedure
(delayed contacts with client, ~ 10 days after arrestment)
- No direct payment to the lawyer
- Lack of specialisation and low motivation

Emergency legal aid lawyer („Pflichtverteidiger“)

- „Pflichtverteidiger“ in force until December 31, 2007
- Only in custody cases, for the first 2 weeks
- Small direct payment, fast appointment

The new **pre-trial procedure** (1/1/2008)

Prosecutor in charge of pre-trial procedure
(instead of an investigating judge)

Suspect's right

- of immediate consultation to a lawyer
- of lawyer's presence at the first interrogation
- to talk to the lawyer in private before interrogation

But: The emergency legal aid service was abolished
(with the mere perspective of a new emergency service)

The new legal aid emergency service I

Lack of regulation

abolition of the „Pflichtverteidiger“

Implementation of the project „Anwaltlicher Journdienst“ (emergency lawyer service)

- to research the way it works
- a new service, available for all detainees, regardless of their financial background, nationwide, and 24 h / day
- Lawyers are paid on an hourly basis; € 100/h

The new legal aid emergency service II

- It is possible to waive this right
(huge discussion how this waiver should be handled
e.g. only after a contact with a lawyer?)
- The first call and consultation by phone is free
(for a maximum duration of up to 5 minutes)
- A telephone hot-line was installed
- In every city with a court house two lawyers are
on duty for a period of 24 h

The new legal aid emergency service III

- The services consist of advice / consultation, lawyers presence during the first interrogation and other defence activities (motion for legal aid)
- The services terminate when the detainee arrives at the court detention center (within 48 h)
- The project started on July 1 and will terminate on October 31, 2008

EU-project: Pre-trial emergency service

- Comparative analysis of defence rights at the pre-trial stage in Austria, Germany, Slovenia, Croatia (and Bulgaria)
- Information gathered by quantitative and qualitative empirical research
- Country reports and a general report
- Development of best practices and practical measures

Main points for a discussion

- It does not work!
only a few contacts: 39 in July all over Austria vs.
approx. 1200 arrestments per month
- Black box how the police informs the detainee
- Presumption that the waiver of the right takes place under incorrect circumstances
no proper information, pressure, negative influence by the police, missing tradition of active defence at the beginning of the pre-trial phase