

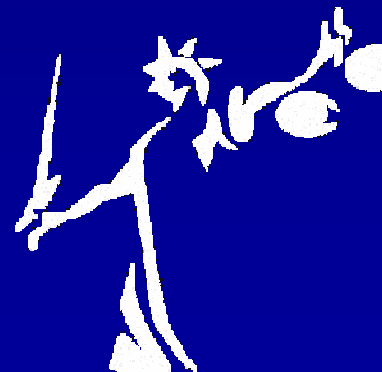
The European Union, Human Rights and Accession States

Progressing to and beyond theory and
illusion

Roger Smith

Director

JUSTICE

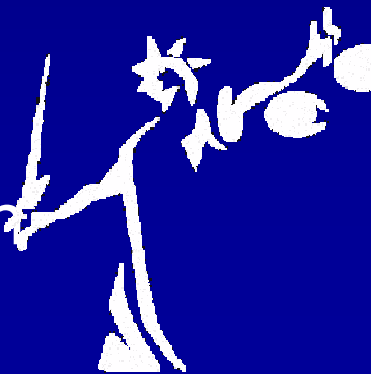


The right to legal aid in criminal cases – the Convention obligation

Everyone charged with a criminal offence has the following rights: ...

to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interest of justice so require.

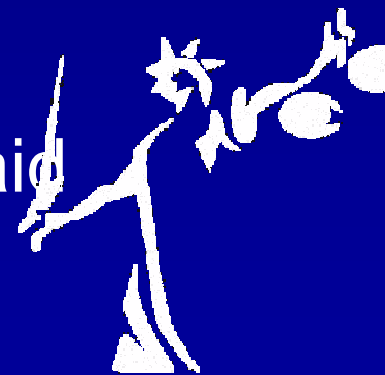
Article 6.2 European Convention of Human Rights



The right to legal aid in civil cases – the Convention obligation

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...

Article 6.1 – no express mention of legal aid



The EU and Human Rights: Criteria for accession

One of three 'Copenhagen criteria' for membership of EU

stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

Effective requirement membership of Council of Europe

Annual monitoring of accession states, culminating in comprehensive monitoring report before entry – included legal aid



Accession States and the European Convention on Human Rights

Most countries formerly under the influence of the Soviet Union joined the Council of Europe and ratified the European Convention in the early 1990s eg

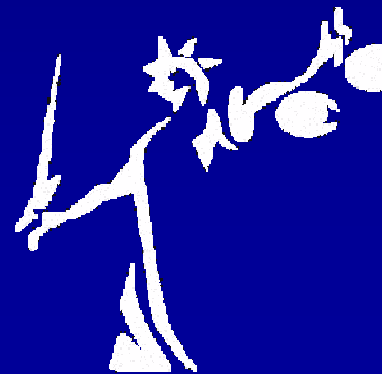
- Poland joined in November 1991 and ratified the European Convention on 19 January 1993;
- Bulgaria joined in May 1992, ratifying the European Convention on 7 September 1992 and
- Lithuania joined in May 1993, ratifying the convention on 20 June 1995.



The effect of Article 6 of the European Convention on Human Rights

Access to the courts must be ‘practical and effective’ not ‘theoretical and illusory’

eg *Airey v Ireland*



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The EU and Human Rights: the monitoring process

Annual monitoring through accession process
against Copenhagen criteria

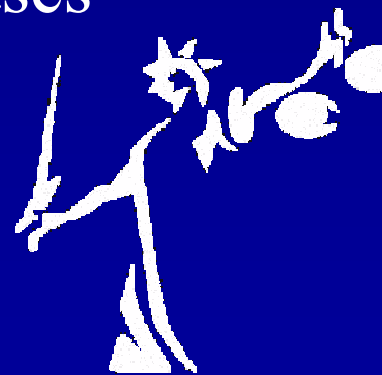
Final Comprehensive Monitoring Report

Some concerns eg Poland: *The system of legal aid is still under-developed and organised in a non-transparent way, with the result that citizens are not informed as to their rights.* Slovakia: *The level of public trust in the efficiency and fairness of the judicial system remains low.*



Eastern Europe: the problem

- Soviet legacy of state socialist justice system ie supremacy of interests of state over independence of judiciary
- ‘Ex officio’ defence system
- No culture of active defence by lawyers except to varying degree in high profile human rights cases
- Low expenditure on legal aid
- Some downright corruption



Eastern Europe: formal success

All accession countries developed legal aid laws eg

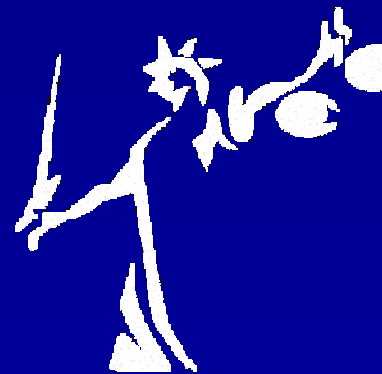
Estonia 2005

Hungary 2003

Lithuania 2005 (OSJI)

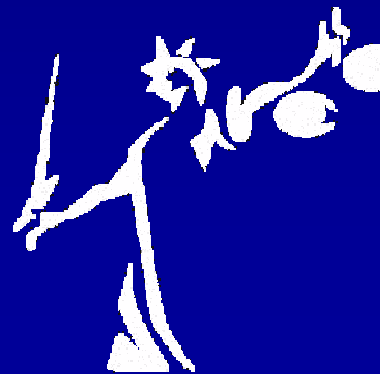
Slovenia 2001

Substance?



Countries on the margin of the EU

Movement towards new legal aid provision in countries prospectively seeking EU membership eg Moldova, Georgia and Turkey



Lesson

1. There is a role for systemic enforcement of fair trial rights in particular and human rights in particular.
2. EU can perform a valuable role in relation to matters relating to the rule of law in relation to accession states.
3. EU may, by implication, have enforcement role in relation to existing member states.

