

The impact of the new legal aid regime - in Croatia



CRACOW, 3/3/2017



Co-funded by the Justice Programme 2014-2020 of the European Union.

Legal aid regime in Croatia



Defendant has the right to:

- defend himself in person
- through defence counsel of his own choosing
- through defence counsel appointed *ex officio*
- publicly funded defence counsel if he does not have sufficient means to pay for defence counsel

Legal aid regime in Croatia - mandatory defence



The defendant must have a defence counsel:

- from the first examination until the conclusion of the criminal proceedings by a final judgment if he is mute, deaf, blind, deaf and blind or not capable of defending himself in person
- from the first examination or the service of the investigation order until the conclusion of the criminal proceedings by a final judgment if proceedings are being conducted for a criminal offence carrying a sentence of imprisonment of more than twelve years and in the case of criminal offences for which a sentence of long-term imprisonment was pronounced also in proceedings on extraordinary remedies
- from the taking of the decision imposing on him custody or investigative imprisonment
- for the duration of the proceedings for a criminal offence prosecuted *ex officio* if he has been deprived of liberty or is serving a prison sentence in the framework of another case

Legal aid regime in Croatia - mandatory defence



- at the moment of service of the indictment for a criminal offence carrying a sentence of at least ten years imprisonment until the conclusion of the criminal proceedings by a final judgment
- from the issuance of the order for the conduct of the trial *in absentia* (Article 402, paragraphs 3 and 4), during his absence
- during trial stages taking place in the defendant's absence (Article 404, paragraphs 2 and 3)
- if he has been left without defence counsel as a result of an order denying defence counsel the right to an act or representation
- from the issuance of the investigation order in proceedings against a mentally disturbed defendant
- during negotiations on the terms of admission of one's guilt, negotiations on the penalty and other measures referred to in Article 360, paragraph 4, item 3, of the present Act and at the signing of the statement on adjudication on the basis of the reached agreement

Legal aid regime in Croatia - mandatory defence



- If the court deems that by their acts the defendant or defence counsel stalls the proceedings, an *ex officio* defence counsel shall be appointed for the remainder of the proceedings until the judgment becomes final
- If in the case of mandatory defence the defendant did not retain a defence counsel or has been left during the proceedings without a defence counsel and has not retained a new one, he shall be appointed an *ex officio* defence counsel
- Defence counsel shall be appointed by the president of the court upon the motion of the court or the State Attorney (and police? – draft amendments to CPA)

Legal aid regime in Croatia - publicly funded defence



- When defence is not mandatory, at request
- **after receipt of the investigation order or the preferment of the indictment for a criminal offence for which no investigation is conducted or when the investigation has not been conducted**
- until the conclusion of the criminal proceedings by a final judgment
- if due to his financial condition he is unable to pay for his defence without jeopardising the maintenance of himself and his family or of the persons he is required to maintain by law, provided the complexity, hardness and special circumstances of the case justify this

Legal aid regime in Croatia - publicly funded defence



- request shall be accompanied by proof of the defendant's financial condition, the condition of his family or the persons he is required by law to maintain, or the persons who are required by law to maintain him. Such proof of the financial condition must clearly indicate the total revenues within the preceding one-year period, the data on and the account balances of accounts in banks and other financial institutions, ownership of immovable and movable property and of rights, upon which the well-foundedness of his request is based
- Without proof - dismissing the defendant's request

Legal aid regime in Croatia - publicly funded defence



- If the defendant submitted the request for the appointment of a publicly funded defence counsel, the body conducting the proceedings **shall not be authorised to perform any act** in which the defendant is entitled to take part or decide on any remedy or means of legal recourse filed for until it has decided on the well-foundedness of the defendant's request, unless the acts in question are acts that cannot be delayed.

Legal aid regime in Croatia - publicly funded defence



- the body conducting the proceedings is required to ensure that the appointed publicly funded defence counsel has adequate time to prepare the defence
- The defence counsel shall be appointed by an order of the president of the court
- if the request has been refused, the defendant may resubmit the request if his financial condition or the financial condition of his family changes to the extent that he no longer can pay for his defence without jeopardising his maintenance and that of his family or of the persons he is required to maintain by law

Legal aid regime in Croatia - in the future



- Create mechanism to enable arrested person to have and to effectively use a right to publicly funded defence counsel
- Make it possible to appoint publicly funded defence counsel to every suspect or accused before and during police interrogation
- Mandatory defence



THANK YOU FOR YOUR ATTENTION!

ana.kordej@pravosudje.hr