



WARDYŃSKI & PARTNERS

Legal aid in Europe

Chisinau, Republic of Moldova
22 October 2005

Dr Marcin Radwan-Röhrenscheff
Adwokat/Partner
Wardyński & Partners

Legal Aid as a Civil Liberty

- Article 47 of the Charter of Fundamental Rights of the European Union
 - Right to an effective remedy and to a fair trial
 - (...)Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being **advised, defended and represented**.
 - **Legal aid shall be made available to those who lack sufficient resources** in so far as such aid is necessary to ensure effective access to justice.
- EU Directive on legal aid

Legal Aid as a Civil Liberty 2

- **Article 45 - Polish Constitution**
- Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court ...

- **Article 42**
- (...) Anyone against whom **criminal proceedings** have been brought shall have **the right to defence** at all stages of such proceedings. He may, in particular, choose counsel or avail himself - in accordance with principles specified by statute - of counsel appointed by the court.

- **Restriction typical to post-socialist thinking about law**

3

 WARDYŃSKI & PARTNERS

Legal Aid as Civil Liberty 3

- Lack of express reference in some constitutional texts – France, Germany
- Right to defence is considered as a part of broader right to the fair trial
- US Constitution:
 - VI Amendment:
 - *In all criminal prosecutions, the accused shall enjoy the right to (...) to have the Assistance of Counsel for his defence.*
 - XIV Amendment
 - *nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.*

4

 WARDYŃSKI & PARTNERS

The Basic models of Legal Aid

- Public Defence Offices (rather US)
- Duty of individual practitioners (most of the European countries)
- Hybrid models (Lithuania)

5

 WARDYŃSKI & PARTNERS

Why Independent Lawyer?

- Trust of the client (valid in administrative and criminal proceedings)
- Independence from the government/court/prosecutors influence (important for the countries emerging from the totalitarian systems – like Central and Eastern Europe)
- The equality of the process parties
- More guarantees of independence of the lawyer (corporation) than of the right to defence understood as a Basic Civic Right

6

 WARDYŃSKI & PARTNERS

The Legal Aid Challenges

- The growing scope of cases in which legal aid is attributed, e.g. Poland
- Growing costs of legal aid
- EU Directive – extensive scope of legal aid (including **pre-trial assistance**)

	1995	2000	2002	2003
Total	40957	64983	87612	85401
Criminal	35584	52053	77174	70625
Civil	4726	6822	9916	14183
Other	647	6108	522	593

7

 WARDYŃSKI & PARTNERS

The potential ways forward

- Clear procurement system within the hands of independent body,
- Reasonable categories in which legal aid is foreseen,
- Reasonable court fees system (rather high fees and clear rules for legal aid grants – deterring the irrational claims)
- Recognition of the growth in costs of legal services (50 - 100 Euro is an average expenditure level per hour of work of an lawyer)

8

 WARDYŃSKI & PARTNERS



WARDYŃSKI & PARTNERS

Legal aid in Europe

Thank you for your attention

Dr Marcin Radwan-Röhrenscheff
Adwokat, Partner

Wardyński & Partners
Aleje Ujazdowskie 10, 00-478 Warsaw, Poland
tel. (48-22) 437 82 00, (48-22) 537 82 00,
fax (48-22) 437 82 01, (48-22) 537 82 01
e-mail: [name.surname@wardynski.com.pl]