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Strategic Litigation for Rights in Europe: Building Knowledge, Skills and Connections for Legal Practitioners to Use the EU Charter of Fundamental Rights (STARLIGHT)

LEGAL CLINIC ARGUMENTS

CRIMINAL JUSTICE

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The Legal Clinics are a core part of the STARLIGHT programme, where all participants worked in groups to develop legal arguments on a real or potential case. Groups were mentored by their course leads and one case per thematic stream selected for publication.¹

LEGAL ARGUMENTS

FACTS OF THE CASE

Mr. V, a vulnerable 18-year-old with a psychiatric illness and on medication, was accused of a robbery based on an anonymous tip after police released an ATM recording. Despite living with his mother, she was misled by police officers, believing he was only a witness, and didn't seek legal representation for him. Upon detaining him, police subjected him to restricted vision by placing a holed cap over his head and detained him for six hours. Under distress, after being denied restroom facilities, he was coerced into signing a confession. Despite his retraction of this confession after detoxing from medication, his state-appointed lawyer, whom he met briefly before the trial, used the confession as a mitigating factor. Following a quick 40-minute trial, Mr. V was imprisoned for three years solely based on his confession. The state appointed lawyer convinced Mr. V not to appeal, so the first instance decision became final. Later, Mr. V asked for retrial on the grounds that at the time of the robbery he was in a psychiatric institution under treatment, which could be proven with medical documentation. He was acquitted and seeks compensation for wrongful conviction and incarceration. However, under Hungarian law, the defendant is not entitled to compensation in case they withheld exculpatory information/evidence during the allegedly wrongful trial.

According to Section 846. § (1) e. of the Act XC of 2017 on the Code of Criminal Procedure: (1) *"Recompense may not be provided even when the conditions specified in section 845 are met if the person seeking recompense" ... e) was acquitted, subjected to a less detrimental penalty, released on probation, ordered to perform reparation work, subjected to reprimand, or the proceeding against him was terminated, at a retrial, but in the underlying case, he/she withheld facts or evidence that served as ground for the judgement passed at retrial."*²

¹ The final legal arguments have been lightly edited but are the work of the group. Experimental legal arguments were encouraged. Readers are encouraged to draw inspiration from the work but should note that there may be some legal inaccuracies.

² Note - this was the currently valid regulation at the time of Mr. V's case, 581. § (1)-(2) of Act XIX. of 1998 on the Code of Criminal Procedure, with almost the same content.

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LEGAL ANALYSIS

2. Introduction

Mr. V's rights of defence as a vulnerable person were infringed, violating a number of EU laws and the Charter of Fundamental Rights (CFR). At trial, the state lawyer appointed by the court provided limited and brief assistance, ignoring Mr. V's will to retract his initial testimony. Mr. V's status as a vulnerable person during the investigation phase was fully ignored.

The overall fairness of the criminal proceedings was not observed since the initial testimony was taken into consideration.

In the re-trial, the application of Hungarian law by the court leads to a refusal of compensation. This means that, in fact, no remedy exists for Mr. V.

2. EU Law arguments

The laws and practice fall within the scope of EU law in the following areas:

Potential breach of Directive EU 2016/1919 of the European Parliament and of the Council of 26 October 2016 on Legal Aid for suspects and accused persons in criminal proceedings and for requested persons in European Arrest Warrant proceedings.

The Legal Aid Directive requires effective legal aid (Article 7), requires that a person's vulnerability is considered (Article 9) and requires that if a person's rights under the Directive are breached, there should be an effective remedy (Article 8).

In Mr. V's case, these requirements have been breached, because:

- a. He was interrogated without a lawyer. The state appointed lawyer did not attend the first interrogation, where Mr. V. was coerced into confession;
- b. His legal aid lawyer did not provide effective legal aid work. In addition to not attending Mr. V's initial interrogation, the lawyer did not adequately and thoroughly consult with Mr. V before the court hearing and did not properly investigate the potential directions of the defence of Mr. V, who was not able to talk properly and tell his version to his appointed lawyer before the trial. Furthermore, the legal aid lawyer convinced Mr V. to not appeal against the first instance conviction;
- c. This is especially problematic because of his vulnerability: According to Commission Recommendation 2013/C 378/02 of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, "vulnerable persons are suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities." Mr V's mental problems were visible, and he had just turned 18. However, not only was he not treated as a vulnerable person, but he was put under duress, and no efforts were made by the authorities to provide him with legal aid that is of a quality adequate to safeguard the fairness of the proceedings.

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These factors led in the case to the conviction of an innocent person.

Under the legal aid directive, in such a case, an effective remedy should be at the concerned person's (Article 8) disposal, however, the Hungarian legislation excludes the granting of compensation based on Mr V's failure to put forth exculpatory evidence in the original proceeding that ended with his conviction.

However, he cannot be found at fault exactly because of his vulnerability, mental state and reliance on the legal aid lawyer's assistance and advice which were substandard.

Therefore, there is a potential breach of the Legal Aid Directive based on the lack of good quality legal aid and the absence of an effective remedy for the violations caused by the substandard provision of legal aid to a particularly vulnerable defendant.

Potential breach of Directive EU 2013/48/EU on the right to access a lawyer

The Directive on the Right to Access to a Lawyer requires that suspects and accused persons have the right of access to a lawyer in such a time and in such a manner as to allow the persons concerned to exercise their rights of defence practically and effectively (Article 3).

It requires that suspects or accused persons who are deprived of liberty are able to exercise their right to have at least one person, such as a relative, nominated by them, informed of their deprivation of liberty without undue delay if they so wish, and they are able to communicate effectively with them (Articles 5 and 6).

The Directive also requires Member States to take into consideration the special needs of vulnerable persons (Article 13).

In Mr. V's case, he was taken by the police as a witness, but he was immediately interrogated and treated as a suspect without his relative (mother) being informed. As a result, she was not able to seek and appoint a lawyer for her son and the state appointed lawyer was not present during interrogation. He remained without effective legal assistance, and he was not able to communicate with his mother. His special needs as a vulnerable person had not been taken into any account.

Potential breach of the right to effective remedy

The breach of the obligation to provide effective legal assistance and the failure to treat Mr. V as a vulnerable suspect (as required by both the Legal Aid Directive and Access to Lawyer Directive) resulted in an innocent person being incarcerated, which opens his right to effective remedy.

According to Hungarian law, the defendant is not entitled to compensation in cases where they withheld information/evidence during the allegedly wrongful trial (846 § (1) e. of Hungarian Criminal Procedure Code).

However, it is crucial to understand that Mr. V withheld the information (that he was in a psychiatric hospital during the time of the crime) because of his mental condition. This was partly due to the Hungarian authorities' failure to properly assess and address his vulnerable status.

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As a result, Mr. V was not compensated in any way for what he had gone through, therefore the requirement of the existence of an effective legal remedy under EU law cannot be considered to have been fulfilled.

This opens a potential breach of the right of effective remedy provided by both the Legal Aid Directive (Article 8.) and the Access to Lawyer Directive (Article 12).

3. EU Charter of Fundamental Rights (CFR)

When read in conjunction with the above EU laws, there has been a potential violation of the CFR articles 47 and 48.

Article 47: Right to an effective remedy and to a fair trial. Article 47 of the CFR had been violated in this case, as Mr. V did not have effective remedy, as according to the Hungarian legislation, he is not entitled to compensation, even if he was convicted innocently.

The second paragraph of Article 47 has also been violated, as he did not have access to lawyer at the interrogation phase and later he did not receive proper representation in the trial phase. Furthermore, he was not treated according to his mental condition, and these circumstances led to the fact that he was withholding information on his being hospitalized during the time of the crime.

Article 48: Presumption of innocence and right of defence. Article 48 of the CFR had been violated, as Mr V's defence rights were not adequately guaranteed.

Conclusion

Based on the above, it is suggested that a preliminary reference to CJEU is made, asking for clarification in terms of the compatibility of Hungarian law and the right to effective remedy under EU law, including the CFR.

4. Preliminary Reference to the EU

QUESTION 1: Where a person has not received effective legal assistance in violation of **Article 3(1) of Directive 2013/48**, must Article 12(1) of the same directive be interpreted as precluding national legislation which denies compensation in a case of wrongful conviction and incarceration on the ground that the suspect withheld information/evidence during the initial trial?

QUESTION 2: In the absence of a **specific definition of vulnerability in Directive 2013/48 or in Directive 2016/1919**, shall vulnerability in the context of the application of those directives be interpreted in accordance with the definition set forth by the Commission Recommendation 2013/C 378/02 of 27 November 2013 on procedural safeguards for vulnerable persons suspected of being accused in criminal proceedings?

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QUESTION 3: If there is a **violation of Article 13 of Directive 2013/48**, must Article 12 of the same directive interpreted as precluding national legislation that denies compensation based on the withholding of exculpatory evidence for a person's wrongful conviction and incarceration whose needs as a vulnerable suspect were not assessed and taken into account?

QUESTION 4: Whether **Articles 7, 8 and 9 of DIRECTIVE (EU) 2016/1919 and more broadly Articles 47 and 48 of the Charter** (which also imply the minimum ECHR standards) must be interpreted as precluding a Legislation of a Member State (Hungary) which denies compensation on the basis of the acquitted defendant's failure to put forth exculpatory evidence, even if the defendant's vulnerability hindering him/her in participating effectively in the criminal procedure was not duly taken into account by the authorities during the proceedings?

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